

2017 SENATE JUDICIARY

SB 2201

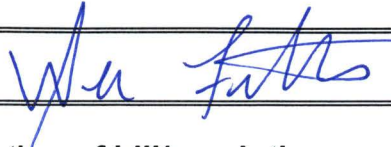
2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2201
1/23/2017
27234

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the freedom of expression of student journalists.

Minutes: **Testimony attached #**

1,2,3,4,5,6,7,8,9,10,11,12,13,14,15

Testimony 11-15 are written testimony handed out with other testimony. No verbal testimony was given regarding these.

Chairman Armstrong called the committee to order on SB 2201. All committee members were present.

David Rust, District 2 Senator of North Dakota, introduced and testified in support of the bill. (see attachment 1)

Senator Larson: "I had emails saying that there needs to be some religious freedom provisions in this bill. Have you had any contact with that?"

Senator Rust: "No I have not. My personal opinion, if I sent my kids to private school, I would do it out of some strong commitment to that school and that school will probably reflect what I believe. I would never include private schools in this one because that's the reason you send your students there. Now with regard to private institutions like higher learning, there are a couple factors that enter into the picture: 1 – They are 18 years old so they are adults. 2 – There may be some students going there not for religious reasons but for other reasons, maybe it's in their home town, or maybe they have an athletic scholarship there, but in addition to that, you and I know students won't rely on the school's newspaper to get their message out, they will use social media. I believe at that age level they are going to be stating their conflicting opinion that will get out to the public regardless, and the thing about this bill is that it does put them into a place where there is hopefully some good journalism, and not a lot of fake news."

Chairman Armstrong: "Are we not worried that we are imposing a public right on a private entity? When does that line draw? What I mean is, are we going to impose a public right on

a private business? Private entities have the right to restrict things under their purview, government does not.”

Senator Rust: “The right of free speech and free press are essential to our country, and second I’ll say that I think the first two portions of this bill are great. I don’t think the schools should be liable for what is put in the student newspaper, and I don’t think there should be any retaliation. I knew the third section of this bill was going to generate some enthusiasm, but I’ll leave that up to you to listen to the testimony and then you can decide.”

Steve Listopad, former Journalism Faculty at the University of Jamestown, testified in support of bill. (see attachment 2)

Chairman Armstrong: “With any constitutional right, we have time, place, and manner restrictions. I agree with the sentiment of this bill, but at the end of the day I make the decision on where to go to college. Private institutions don’t have to follow what the government institutions do in terms of constitutional rights; I’m just having a hard time getting my head around that.”

Steve Listopad: “I recommend looking at the court ruling of Corry vs. Stanford University, and the Judge’s explanation of the expansion of one’s groups rights not necessarily infringing on another groups rights.”

Brian Swanberg, High School Journalist Student at Legacy High School in Bismarck, testified in support of the bill. (see attachment 3)

Senator Larson: “It sounds like a great story you wrote, but what if the story you wanted to write was about how to actually get into human trafficking for your financial benefit. Should your school allow something like that to be printed.”

Brian Swanberg: “As a student there is a whole staff that are entitled to believe what they wish and they have some form of morality, and keep in mind that in journalism you aren’t supposed to provide bias.”

Senator Nelson: “Is there a statement anywhere in your newspaper that says opinions of writers don’t necessary represent the ND school system.”

Brian Swanberg: “I’m not aware, but like I said we try to remain unbiased in our reporting.”

Sydney Trottier, Newspaper Editor-in-Chief, Century High school in Bismarck testified in support of the bill. (see attachment 4)

Karen Bauer, Bismarck State College Journalism Faculty, testified in support of the bill. (see attachment 5)

Chairman Armstrong: “The First Amendment also covers the freedom of religion and we talked about religious exemption, but those two can be in conflict with each other. I can’t think of place more apt for that to occur than an institution of Higher Learning that is also associated with a religion. How do we get past that portion of this?”

Karen Bauer: "That is a difficult question. Not that the freedom of speech trumps religion, because it doesn't, but I think there has to be a medium, a space that even students who are strictly religious can go in and talk about issues that may not be acceptable in their religious beliefs, without repercussions."

Karen Bauer answered Senator Larson's question from early which was directed toward Brian Swanberg, the question was regarding, as an example, writing about the benefits of human trafficking and whether schools should have the right to have control over publication if the topic may be deemed morally or ethically reprehensible.

"We would have advisors who would step in to have an open discussion with the students. These advisors would talk about those serious issues with the students and then ultimately the students would be responsible for writing the story. But we would help guide them and the advisors I've known over the years are very good at discussing these issues with their students."

Senator Luick: "What is the outcome of a topic, such as we were discussing earlier, such as the trafficking situation where a student would write a story and promote it. Could they get reprimanded for that?"

Karen Bauer: "What I would personally do is have a discussion with the student and we would go from there. We could make it an opinion piece with a disclaimer that the school doesn't conform to this belief so the student would be responsible that way."

Senator Luick: "Mr. Chairman, maybe you could answer that for me. In the law, could that student be prosecuted since he or she promoted that idea? Or is it freedom of speech that they can do that?"

Chairman Armstrong: "It's pretty difficult for me to say, especially when we keep adding to a hypothetical and it just snowballs from there. This hypothetical has gotten off track where I'm not sure if I feel comfortable answering the question."

Steve Andrist, Executive Director of the North Dakota Newspaper Association, testified in support of the bill. (see attachment 6)

Chairman Armstrong: "Are you aware of any censorship of private universities in North Dakota?"

Steve Andrist: "I do not know of any."

Katie Winbauer Nelson, Bismarck State College Alumni, and Valley City State University Student, testified in support of the bill. (see attachment 7)

Senator Larson: "What would you like to write at the University of Mary that they would prohibit?"

Katie Winbauer Nelson: "I can't speak for sure about University of Mary. I just know that they don't have the same protections as a public university would have."

Steve Listopad came back up to make a brief statement: "Regarding which clause in the First Amendment trumps which, speech or religion, Leonard Law in California stated student's rights are protected up to the point that they violate the rules of the institution, and we are okay with that."

Neutral testimony of Dr. Bob Bodal, President of University of Jamestown, was handed out to the committee. (see attachment 8)

Christopher Dodson, Executive Director of the North Dakota Catholic Conference, testified in opposition to the bill. (see attachment 9)

Rod Backman, Representing University of Mary, testified in opposition of the bill. (see attachment 10)

Chairman Armstrong closed the hearing on SB 2201.

No motions were made.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2201 Committee Work
1/24/2017
27315

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the freedom of expression of student journalists.

Minutes:

Attachments

1

Chairman Armstrong called the committee to order on SB 2201. All committee members were present.

Chairman Armstrong discussed the Amendment that was handed out. (see attachment 1)

Senator Myrdal: "Does this, in your mind, address the concerns coming from the University of Mary?"

Chairman Armstrong: "Yes it takes private institutions out of it, and I'll say this, the rest of the bill is really good, in my opinion."

Senator Larson: "I did speak with Mr. Dodson in the hall today and he said he is fine with the amendment."

Senator Nelson motioned to adopt the amendment. **Senator Larson** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0
The motion carried.

Senator Luick motioned for a Do Pass as Amended. **Senator Osland** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0
The motion carried.

Senator Luick carried the bill.

January 24, 2017

OK
1/24/17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2201

Page 1, line 10, remove "or private"

Page 1, line 16, remove "or private"

Page 1, line 20, remove "or private"

Renumber accordingly

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2201**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0714.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Senator Nelson Seconded By Senator Larson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Osland	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2201**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0714.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Senator Luick Seconded By Senator Osland

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Osland	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Luick

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2201: Judiciary Committee (Sen. Armstrong, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2201 was placed on the Sixth order on the calendar.

Page 1, line 10, remove "or private"

Page 1, line 16, remove "or private"

Page 1, line 20, remove "or private"

Renumber accordingly

2017 HOUSE JUDICIARY

SB 2201

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2201
3/1/2017

28577

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the freedom of expression of student journalists.

Minutes:

1,2,3,4,5,6,7,8,9,10,11

Chairman K. Koppelman: Open the hearing on SB 2201.

Senator Rust: Introduced the bill. (#1) Went over his testimony. (1:45-5:35)

Representative Jones: What is making this bill come about?

Senator Rust: It has to do with some cases in law that bridge some of the rights of student journalists. It has to do with teaching kids in colleges and high schools about freedom of speech and press. You want to do this under the guidance of an instructor who can teach you the tenants of good journalism. Freedom of speech and press can anger some individuals if they happen to be one of the people that maybe someone is criticizing something within the school system. Get back to teaching young adults about good journalistic writing. You can have a good media advisor who finds themselves on the receiving end because a student may have written something that angered somebody. That student advisor should have known.

Representative Klemin: Page 2, line 22 & 23; it talks about the limitation of liability of an official employee, a parent or legal guardian of a student journalist. It says in the case of willful misconduct by the individual. Who is that word individual referring to?

Senator Rust: I am guessing that is the journalist.

Representative Klemin: If there was willful or wanton on the part of a student then the official would be liable. It is not clear to me that is why I am asking.

Senator Rust: I think it is the journalist that would be held liable.

Chairman K. Koppelman: Why the need for the bill?

Senator Rust: This bill does two things and expands on the bill that was passed two years ago. I think we should have put this in at the begin with the first bill. So that an advisor is not fired when someone finds something they do not like.

Chairman K. Koppelman: In the bill the only limitation would be liable or slander. There might be other things that might be inappropriate to do. How far does this go. Are we totally absorbing advisors of wrong doing?

Senator Rust: Lines 17 & 18 goes on to talk about that. A student media advisor may not be dismissed, suspended, or disciplined for acting to protect a student journalist engaged in protected activity or refusing to infringe on a protected activity.

Chairman K. Koppelman: I am concerned about suppose it was factually wrong; there is nothing in the bill that holds it to that standard.

Steve Listopad, Journalism Educator: (#2) Read testimony. (14:42-22:10)

Representative Klemin: Who is the individual that is protected?

Steve Listopad: It was to identify the individuals or a grouping of individuals that would have an authorities position over student conduct that would be exempt from legal action for protected student speech. So the line where it says misconduct should be directed at that protected grouping; the school board, teacher etc.

Representative Klemin: We may have to make some changes in here because it does now read it could either be those four categories you have listed there on line 20 or the student journalist as Senator Rust thought we were talking about. In your testimony you wanted to make it clear that schools, parent teachers, advisors and others have limited liability and you say other stake holders, but the bill itself isn't quite that broad. It says school officials. It doesn't say schools. Who are you talking about?

Steve Listopad: We are talking about individuals that would be in an authority's capacity to a student journalist that could be named in a lawsuit regarding that student's speech.

Representative Klemin: That would be someone who is not a school official; not an employee of the school; not a parent or legal guardian. Who else could it be?

Steve Listopad: That language was provided to legislative counsel and they matched our intent as close as we could.

Representative Klemin: It says school official. It doesn't say school. That might be something else we need to fix.

Representative Paur: HB 1471 legated the supreme court decision on Hazelwood. I think that interesting that we did that.

Steve Listopad: It was a 5-3 decision in 1988 where the Supreme Court said the Hazelwood v. Kuhlmeier Court decision that said school officials do have the right to censor any school speech that resides in the curriculum. States like Kansas after the 1988 decision said we don't agree with the Supreme Court decision. We think that journalistic freedom is valuable and important so they passed a bill. That put more protections into their state law.

Representative Hanson: Can you describe to me what is willful and wanton misconduct?

Steve Listopad: When you have an advisor who clearly doesn't show up for work at the high school level; students cannot report on certain things. That is where you have misconduct on preventing students from publishing something illegal. You have other situations where students maybe engaging in hate speech and things like that that gets into a publication that causes issues in the school and advisors doesn't discuss that with the students ahead of time.

Representative Hanson: You mentioned an advisor stopping hate speeches. In your testimony you said that they have to stop their authority short of censuring the students. Where is the line with the people in authority has control over that content?

Steve Listopad: That 2015 law that was passed explicitly covers areas where we expect an advisor to step in. I believe foul language was one of them in the high school section.

Representative Hanson: What about the parallels between a school publication and what the newspapers might do in the free market. So if a journalist is found guilty of liability how are their employers or individual s held responsible. How does that compare to the private world?

Steve Listopad: Our education system is the government. We have identified that we have freedom of expression to our relationship to the government. These students are not employees. So the relationship between our journalist working under the provisions of a state institution versus a journalist working under the opuses of a private entity; there is not much of a comparison.

Representative Hanson: How would the responsibility of a journalist compare? Where does the buck stop on a private business?

Steve Listopad: It would stop at the student. In private industry is stops at the private owner.

Chairman K. Koppelman: Willful or wanton is not defined in the bill. Neither is protected activity.

Steve Listopad: Protected activity would be interrupted as protected speech. Willful and wanton misconduct should maybe be better defined.

Representative Jones: Sounds like we have two different things going on here. Do you intend for those people that were listed to be liable or not?

Steve Listopad: Will and wanton misconduct should be defined or maybe there is a better way of phrasing it.

Representative Jones: We have two different things going on here. If the student does engage in something that is willful and wanton misconduct liable or slander. Do you intend for those people who are listed to be liable for what they did or not? With this bill what is your intention with this bill? Are you intending if a student does something willful, wanton and really bad; that they all stand responsible for what they did or not?

Steve Listopad: The intention is that if the speech is protected no one else can be included in a suit. We can sue for anything and you can sue for protected speech. If it is speech that is protected by the law passed in 2015; then if everyone was doing their jobs, then they shouldn't be sued for abiding by the law.

Representative Jones: I like free speech, but sometimes it has consequences. You defined willful and wanton misconduct of the supervisor not being there and providing the supervision so as we work this out in committee; are we going to need to divide this out and describe who is going to be held liable for the speech if the student does something that is willful and wanton in his conduct and then also have something in there where the advisor if he is negligent in his duties causes a problem? Was that your intention?

Steve Listopad: The intention is that if the law tells me as an advisor that I can't censure this speech; then I should not be held liable for something that the law has already precluded you from censuring.

Representative Klemin: Here is another problem in the way this is written. If the student engages in freedom of the speech or press; then the school or school district or the school official; none of those people can be held liable either. I am having difficulty seeing how they can be held liable if the student is not going to be liable because it is a protected activity.

Steve Listopad: There are two different time periods here. You have censorship ahead of time where you are looking at student speech before it goes to press and you are stopping it. That is what the John Wall protects you against.

Representative Klemin: That is true in the case of the school district; but it doesn't say that in the other section relating to the college.

Steve Listopad: We were discussing prior restraint. I believe we were discussing it for high school but in college there is no areas where prior restraint is thing.

Representative Klemin: It says in the existing law that the section doesn't protect the student who is liability and slanders etc. if it is not protected here then how does the advisor protect himself without exercising some prior restraint to say no you can't do this because it is libelous or slanders?

Steve Listopad: The advisor has to read through and exercise the advisor authority to remove content.

Chairman K. Koppelman: The intent of the bill is mainly a liability shield and protection for discipline for advisors. In a school situation on page 3, line 20 it says this section does not authorize these four things listed. I can see things outside of those standards that might be deemed inappropriate by an advisor or a school district etc. Where are the lines. Suppose a student decided to propagate all kinds of falsehoods. Let's say it is a school newspaper. I am troubled on where journalistic standards have gone. If an advisors job is to teach a student to subscribe to journalistic standards it probable goes further than that list, I just read and should the advisor have no responsibility before the administration of the school or the board to make sure he or she is carrying out those journalistic tenants and teaching a student how to be a well informed and ethical journalist?

Steve Listopad: When you were trained to be a journalist it was before Hazelwood? The goal today is make explicit what judges will interrupt if it comes to that. They need to experience the real world ramifications of getting a fact wrong. This is civic engagement. We have taught out journalist students the only thing that they actually get practice in is making the school and community look good.

Steve Andrist, Executive Director of ND Newspapers: (#3) (53:20) In our industry we see our future as our young people. We do have responsible people running our newspapers so when we get to what we are talking about today. The John Wall Act and these amendments proposed to it we see as a way to teach young people how to be journalists using the same laws and standards as they will use when they are in professional careers.

Representative Jones: What is they don't do it properly?

Steve Andrist: It is whatever the judge can be convinced by a plaintive to support. If for some reason a student printed information that is liability and is determined by the court to be liability; the court would then use the same standards to determine who is responsible for that liable.

Chairman K. Koppelman: Outside of the obvious in current law. Because these are students the advisor is supposed to do their job. If the advisor neglects that duty it seems to be perhaps the bill could still shield an individual who is negligent in that way.

Steve Andrus: If a student media advisor acts irresponsibly could he still be protected because the student has not done anything that is illegal? I would say the say the law is written that would be true.

Jeremy Murphy, Media Advisor: (#4) Read testimony. (58:19) Discussed the role he plays with his students.

Representative Simons: What happened; if that is not too personnel?

Jeremy Murphy: It was 2009 and we were our second year into a new superintendent and there were a lot of changes happening in the district. I promote accurate, fair and balanced reporting so the students were encouraging to get both sides to all stories or even asked for records of certain stories or topics. Some stories that ran and there was a lot of controversy over whether that was the best thing we should do. It was also the year there was a floor in

Fargo and West Fargo schools chose to stay open one day when other schools were closed so there was some heat from that as well. I received several emails and had several conversations where things like this isn't for the public's ears. I felt they were dissatisfied it might not have shed the most positive light on our district. They wanted a more a PR tool. That summer of 2009; we had a bond referendum declined and then I received a phone call a week later that I was no longer going to be a newspaper advisor. I would hate an advisors position to be dependent upon whoever is in power.

Chairman K. Koppelman: When we make law we have to anticipate those questions. How do we legislate something that does not absolve people to do that?

Jeremy Murphy: When you give students the base line of what is expected of professionals they rise to the task. Student's recognize what is appropriate.

Chairman K. Koppelman: I someone in your role as an advisor; should if someone abuse that role should there be no repercussions?

Jeremy Murphy: There are systems in place to help teachers through that process.

Robecca Livermont, Editor in Chief, Senior at West Fargo High School: (#5) Read her testimony.

Opposition: None

Neutral: None

Hearing Closed

Additional testimony handed out: (6,7,8,9,10,11)

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2201
3/20/2017
29442

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the freedom of expression of student journalists.

Minutes:

1,2

Chairman K. Koppelman: Opened the meeting on SB 2201.

Rep. Simons: What is your concept on this?

Chairman K. Koppelman: I think it is important that student journalists learn the tenants of journalism and that they are a hoarded a measure of the freedom of the press that exists out in the real world. We have to balance to the fact that they are students; and in a school situation etc. I don't have a specific answer for you.

Representative Klemin: (#1 & #2) Proposed amendment and version of the bill that shows where the amendments go in the bill. I did get an email from Jack McDonald and he approved of them. Went over the proposed amendment.

(2:04-7:17)

Chairman K. Koppelman: I am not comfortable with the language willful or wanton misconduct either. If you delete it; you are basically deleting any circumstance in which they can be held responsible. The intent of the bill was there would still be some circumstances where they could be held responsible and if we delete it was being saying no matter what you do you are not responsible.

Representative Klemin: Yes, you are right. That is exactly what it does. If it is a protective activity to start with how are they going to be liable for willful or wanton misconduct for allowing that student journalist to engage in a protected activity?

Chairman K. Koppelman: The intent is to say most of the time free speech and freedom of the press prevails. There can be circumstances where an advisor just is not being

responsible in how he or she is advising that student and they have gone way beyond where they should have been.

Representative Klemin: Line 23, page 2 is not the student. It is a school official, employee, parent or legal guardian or the student media advisor who is not mentioned there.

Representative Paur: I don't care for this bill. If a newspaper prints something or a reporter prints something that is liable the newspaper is subject to penalties. I think that is exactly the same thing here. We are trying to make them exempt from that. This Hazelwood or supreme court decision that was saying it overcomes it said the administration had control of the paper. I don't think that is a good idea?

Chairman K. Koppelman: That decision was referenced in a bill that passed 1471 in 2015?

Representative Paur: This would also legate that Hazelwood?

Chairman K. Koppelman: Should there be any oversight on what student's write?

Rep. Simons: Don't all papers have a policy or platform or a direction they are going at? If we allow them to freelance aren't we giving them as a student a false representation of what their job would be?

Chairman K. Koppelman: I don't know if newspapers would necessarily say this is how you need to write. They have certain requirements that they would want and outline them.

Representative Klemin: Those boundaries are described in Subsection 3 of the law. The things we have been discussing are outlined; they type of things are not protected.

Chairman K. Koppelman: Do we need to reference protected activity?

Representative Klemin: It is existing law.

Rep. Magrum: There are two definitions of a student journalist under section 1 & 2? The second definition could be students under 18 years of age.

Representative Klemin: The first point applies to colleges and universities and the second one applies to K-12.

Closed.

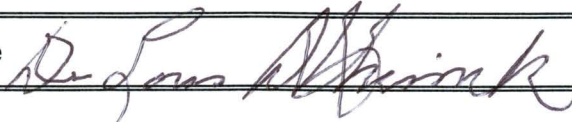
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2201
3/21/2017
29529

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the freedom of expression of student journalists.

Minutes:

Chairman K. Koppelman: Opened the meeting on SB 2201. Went over the proposed amendment. The point was made the protected activity was defined so we know what that is. Rep. Klemin brought up the issue on individual language on lines 22 & 23 of page. At one time there was a discussion on removing that and willful and wanton conduct. I think we should remove by the individual because that clarifies the intent of the language here. I am concerned if we remove the phrase except in the cases of willful and wanton misconduct. Jack McDonald indicated that is common contractual language. If we remove that it would put these folks at a higher protected state than professional journalists out there practicing in the real world.

Representative Jones: I have a different take on this. When I was reading this by the individual that it did mean by the individual and the student is out there and he is exercising his freedom of speech; meaning protest and he is banging on cars windows and he breaks a window or does other things that is completely out of line, he is going to be held liable for that in a case and the school would not be. I thought the wording in there was appropriate.

Chairman K. Koppelman: The wording that says the school is not liable is dealing with the school journalism and it does deal with the liability of the advisor and if there is any responsibility that those people should bear.

Representative Jones: Freedom cannot exist if we are not teaching responsibility for our actions.

Chairman K. Koppelman: They would be absolved of their responsibility if we just have recourse or limits.

Representative Klemin: I prepared those proposed amendments. I don't think willful or wanton makes any difference. I would like to revise my proposed amendment; page 2, line

22 just remove the words by the so line 23 would be to remove individuals. Page 4, line 13 do the same thing. Add a new subdivision to say that it doesn't protect the expression by a student that engages in obscenities.

Motion made to move the amendment which strikes the words except in the case of willful and wanton misconduct from the amendment on page 2, line 22 and page 4, line 13. On page 2, line 11 and on page 3, line 21 in Subsection an after the word landaus remove the or inserting a coma after libelous, or obscene; by Representative Klemin: Seconded by Representative Maragos

Discussion:

Rep. Satrom: Are we leaving anything out?

Chairman K. Koppelman: What Rep. Klemin just included in his amendment for obscenity makes it clear that this bill will not protect that kind of activity.

Voice vote carried.

Representative Simons: No one working for any company unless you own and edit your own newspaper, has the right to talk anyway without your boss telling you that is not appropriate and you are not writing that in this newspaper. I don't see any importance to this bill whatsoever. I will be a no.

Do Pass as Amended Motion Made by Rep. Klemin; Seconded by Rep. Satrom

Discussion:

Representative Hanson: Page 3, line 27 the school may not authorize prior restraint of any school sponsored media except when it deals with liable or slander; or violates law. It is saying an editor will step in and stop the student from publishing something when it is liability or slanderous. If it is outside of that it is free speech and then they have the ability to publish that news article or opinion piece.

**Do Pass as Amended Motion Made by Rep. Klemin; Seconded by Rep. Satrom-
Withdrawn**

Chairman K. Koppelman: We have the bill back before us and Rep. Klemin would like to amend his previous motion. Rep. Klemin would like to add the word obscene in like manner on line 29 of page 3.

Motion Made to amend and add obscene on line 29, page 3 by Rep. Klemin; Seconded by Rep. Satrom

Discussion:

Voice vote carried.

Do Pass as Amended 17.0714.02002 by Rep. Klemin; Seconded by Rep. Satrom

Representative Jones: Is this bill based on one person being censured or punished because he let a student write something that he shouldn't wrote in a newspaper?

Chairman K. Koppelman: Yes, that is what brought this bill about. The bill would protect on a broader basis than that. The concern is freedom of the press rights. This bill gives them responsibilities for their actions also.

Representative Klemin: The John Wall Act has been enacted last session. We have had a need to refine this law and that is what this bill does. I would support a yes vote on this.

Representative Simons: Rep. Klemin when you said the current law has some wrinkles in it; that is what these amendments are for. Those things are in the new language that is being added to this existing law so if we don't approve this bill we still have the existing law with these problems in it.

Representative Paur: I am going to resist the bill.

Roll Call Vote: 9 Yes 5 No 1 Absent Carrier: Rep. Maragos

Closed.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2201

Page 1, line 8, after "a." insert "Protected activity" means an expression of free speech or freedom of the press.

b."

Page 1, line 15, overstrike "b." and insert immediately thereafter "c."

Page 1, line 19, overstrike "c." and insert immediately thereafter "d."

Page 2, line 19, after "A" insert "school."

Page 2, line 22, remove ", except in the case of willful or wanton misconduct by the"

Page 2, line 23, remove "individual"

Page 2, line 28, after "a." insert "Protected activity" means an expression of free speech or freedom of the press.

b."

Page 3, line 3, overstrike "b." and insert immediately thereafter "c."

Page 3, line 6, overstrike "c." and insert immediately thereafter "d."

Page 4, line 10, after "A" insert "school."

Page 4, line 13, remove ", except in the case of willful or wanton misconduct by the"

Page 4, line 14, remove "individual"

Renumber accordingly

March 21, 2017

3/21/17 DP

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2201

Page 1, line 8, after "a." insert "Protected activity means an expression of free speech or freedom of the press.

b."

Page 1, line 15, overstrike "b." and insert immediately thereafter "c."

Page 1, line 19, overstrike "c." and insert immediately thereafter "d."

Page 2, line 11, overstrike "or" and insert immediately thereafter an underscored comma

Page 2, line 11, after "slanderous" insert ", or obscene"

Page 2, line 19, after "A" insert "school."

Page 2, line 22, remove "by the"

Page 2, line 23, remove "individual"

Page 2, line 28, after "a." insert "Protected activity means an expression of free speech or freedom of the press.

b."

Page 3, line 3, overstrike "b." and insert immediately thereafter "c."

Page 3, line 6, overstrike "c." and insert immediately thereafter "d."

Page 3, line 21, overstrike "or" and insert immediately thereafter an underscored comma

Page 3, line 21, after "slanderous" insert ", or obscene"

Page 3, line 29, overstrike "or" and insert immediately thereafter an underscored comma

Page 3, line 29, after "slanderous" insert ", or obscene"

Page 4, line 10, after "A" insert "school."

Page 4, line 13, remove "by the"

Page 4, line 14, remove "individual"

Re-number accordingly

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2201**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: 17.0714.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Klemin Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

0
 Total (Yes) _____ No _____

Absent _____

Floor Assignment Rep.

If the vote is on an amendment, briefly indicate intent:

Voice vote carried.

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2201**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: _____ add obscene on line 29, page 3 _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Klemin Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

0
Total (Yes) _____ No _____

Absent _____

Floor Assignment Rep.

If the vote is on an amendment, briefly indicate intent:

Voice vote carried.

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2201**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: 17.0714.02002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Klemin Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	X		Rep. Hanson	X	
Vice Chairman Karls	X		Rep. Nelson	X	
Rep. Blum		X			
Rep. Johnston		X			
Rep. Jones	X				
Rep. Klemin	X				
Rep. Magrum	---				
Rep. Maragos	X				
Rep. Paur		X			
Rep. Roers-Jones	X				
Rep. Satrom	X				
Rep. Simons		X			
Rep. Vetter		X			

0
Total (Yes) 9 No 5

Absent 1

Floor Assignment Rep. Maragos

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2201, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2201 was placed on the Sixth order on the calendar.

Page 1, line 8, after "a." insert ""Protected activity" means an expression of free speech or freedom of the press.

b."

Page 1, line 15, overstrike "b." and insert immediately thereafter "c."

Page 1, line 19, overstrike "c." and insert immediately thereafter "d."

Page 2, line 11, overstrike "or" and insert immediately thereafter an underscored comma

Page 2, line 11, after "slanderous" insert ", or obscene"

Page 2, line 19, after "A" insert "school,"

Page 2, line 22, remove "by the"

Page 2, line 23, remove "individual"

Page 2, line 28, after "a." insert ""Protected activity" means an expression of free speech or freedom of the press.

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Page 3, line 21, overstrike "or" and insert immediately thereafter an underscored comma

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Page 3, line 29, after "slanderous" insert ", or obscene"

Page 4, line 10, after "A" insert "school,"

Page 4, line 13, remove "by the"

Page 4, line 14, remove "individual"

Re-number accordingly

2017 TESTIMONY

SB 2201

①

1/23/17

Mr. Chairman and Members of the Judiciary Committee:

I'm here to introduce SB 2201. This is a follow-up to a bill affectionately termed "The John Wall New Voices Act."

Former Representative John Wall and I became friends around 1970 when he was teaching at Sargent Central of Forman, ND and I was teaching at North Sargent of Gwinner, ND. Years later we were colleagues in the ND House of Representatives for three sessions prior to his passing away in July, 2014. He was a tremendous teacher who had a profound influence on his many students in the Language Arts.

Background information on the John Wall New Voices Act of 2015:

1. Gives student journalists of public schools and SBHE colleges and universities the right to free speech and press regardless of financial support by the institution.
2. Four exemptions
 - a. Libel and slander
 - b. Invasion of privacy
 - c. Violations the law
 - d. Creation of a clear and present danger or substantial disruption
3. Student may take civil action if that right is abridged.
4. No disciplinary action can be taken against the student.
5. School districts shall adopt a written policy on student expression.

Those provisions were codified into NDCC 15-10-55 which deals with Higher Education and NDCC 15.1-19-25 which deals with public schools.

SB 2201 adds a couple of protections and extends the law beyond SBHE institutions. Its basic provisions are:

1. Schools and their employees can't be held liable for free speech and freedom of the press of a student journalist,
2. There shall be no retaliation against the student journalist's media advisor, and
3. These rights apply to private universities as well.

Private universities were amended out of the 2015 bill. Those who approached me about SB 2201 wanted to re-visit that provision and make the law more inclusive.

Others following me will explain the details and provide additional information.

I will try to answer any questions you may have, or I will deflect them to those who follow.

Mr. Chairman.

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1/23/17

Testimony in Support of SB 2201
~~Presented January 22, 2017~~ to the Senate Judicial Committee
A BILL for an Act to amend and reenact sections 15-10-55 and 15.1-19-25 of the North Dakota
Century Code, relating to the freedom of expression of student journalists.
The John Wall New Voices Act

Steven Listopad
Journalism Educator
Former University of Jamestown Faculty and Student Media Director

Thank you Senator Armstrong and members of the Senate Judiciary committee for hearing our bill and testimony today regarding amendments to the John Wall New Voices Act. I am Steven Listopad, former journalism faculty at the University of Jamestown where the John Wall New Voices Act got its start - where six of my students wrote a bill in 2013 that started a national movement to honor our First Amendment rights and improve journalism education.

In 2015, HB 1471 passed unanimously in the House and Senate, adding two sections to the Century Code regarding student press rights. Those sections accomplished very specific things. One section () legislatively negated the 1988 Hazelwood v. Kuhlmeier Supreme Court decision that said high school journalists have less speech rights to pursue journalism than the average student does to choose a t-shirt to where to school. The other section () legislatively negated the 7th Circuit's 2005 Hosty v. Carter decision that the Hazelwood standard could be applied to public colleges.

After the unanimous victory for our bill in 2015, a nation-wide movement began. In 2016, Maryland and Illinois passed their own New Voices laws. And now in 2017, Missouri, Vermont, New Jersey, Arizona, Nevada, Indiana, Washington state, and Rhode Island all have New Voices bills in action. And more than a dozen other states are working on getting their bills into the next session.

On behalf of journalism educators and journalism students in North Dakota and across the country, I want to take this moment to express my sincere appreciation to the 2015 assembly for helping us jump start this national conversation on the role of journalism in our educational systems. What we did together in 2015 launched positive reform in the educational phase of a profession that has long been under considerable scrutiny. And the principle underlying that reform is very simple - we have had 30 years of experience telling journalism students and student journalists that they need to accept "NO" for an answer. That our PR is more important than your perspective. That our policy is more important than your citizenship. This is a simple example of where court-made law failed pedagogy, thereby causing pedagogy to fail a profession that is a fundamental part of our democracy. So again, thank you from the bottom of my heart.

Today we are here to make our law just a little bit better. A little bit clearer. To make explicit what is now implicit. And also to reintroduce a section of the original bill that was cut in 2015 - to extend the first amendment rights related to the press to our adult students at our private institutions of higher education. To honor their citizenship and to enhance the pedagogy and profession of journalism. After all - it was six students at the private University of Jamestown that wrote the original bill - seeking to codify their First Amendment press rights. In 2015, my

former students succeeded in protecting the press rights of all student journalists in North Dakota. All except their own.

Before I go into the complex conversation of First Amendment rights of the student versus the private University, I want to briefly touch on the two other improvements to our law.

Our law as it exists implies something very important to the implementation of the law - that if the student is legally protected to choose the editorial content, with exception, in student media, then others cannot be held responsible for that content. Since our law passed, both Illinois and Maryland chose to make those implications explicit and we believe that strengthens the law for all stakeholders.

The addition of section () refers to adviser/faculty protection from administrative reprisals and this is paramount to our concern. We have our own in-state example of an adviser being fired for the content of a student publication - Jeremy Murphy of West Fargo. I direct you to the testimony of Jeremy Murphy and several of his students included in your packet. Faculty and media advisers are on the front lines. But media advisers specifically are in a necessarily precarious position - they have to teach their students ethical and professional journalism but they have to stop their authority short of censoring the students. While our existing law implies this protection for advisers, our goal is to make it explicit so there is no confusion or misconception down the road.

Along those lines, we seek to make explicit the schools, parents, teachers, advisers and other stakeholders are exempt from legal action related to student editorial content. I'm referring to the addition of section (). This is now implicit in our existing law, however stating it clearly now eliminates confusion or misconception down the road.

Before I move on to our last amendment, I would like to entertain any questions on these two related matters....

Thank you for your questions.

Finally today, I would like to address extending press protections to students practicing journalism at private higher education institutions in our state. As I mentioned earlier, the John Wall New Voices Act was written by six University of Jamestown students to protect their own press rights, and due to committee amendments in 2015, they ended up being the only students not protected by the law they wrote. A big part of why we're here today is to conclude what they started - to realize their vision.

First, let's address the big constitutional question. You'll hear from opponents today that say the state has no right to tell private organizations what to do. That it's unconstitutional even. Well we know none of that is true. There is a law on the books in one of our great 50 states that does just this. In 1992, California passed The Leonard Law which protects student speech at all schools, including private schools. In 1994, students at Stanford University brought suit claiming that Stanford's speech code violated the recently passed Leonard Law and Santa Clara County Superior Court Judge Peter Stone agreed. Stone also ruled that the Leonard Law was constitutional, essentially because it did not in any way restrict the speech of the university as a corporate entity. The university remained free to express its abhorrence of racial and other forms of prejudice. He ruled that the law expanded, rather than contracted, the range of legally permissible speech by protecting the free speech rights of students without abridging those of

the university itself. To be able to express its own opposition to prejudice, he ruled that it was not necessary for the university to have the power to prohibit speech with which it strongly disagreed.

Stanford chose not to appeal so we do not have a Supreme Court ruling on the matter. Other than points of critique over clarification, one recent one including Occidental College, Leonard Law stands as a constitutional approach to extending First Amendment protections to private college students. So now it is in our hands to decide what do we want to do. What is best for all parties involved, and that includes the students.

Since we know that it is constitutional to expand student rights while not infringing on the rights of the private entity, we believe that the First Amendment rights and the pedagogical needs of journalism students and student journalists take precedence over any freedom of association rights or contractual wants of the private organization. We believe, that in this current climate of a professional decline in journalism and the growing public distrust of the profession, that if an institution of higher education says its teaching journalism and says its offering platforms for the student press, that the institution be held to the same standard as public entities. The state does this with nursing programs, it does this with teacher education programs, it does this with any program that the public demands minimum standards must be maintained. And what more important standard to maintain than a journalist's freedom from faction and ultimate loyalty to the public trust.

But we do understand and appreciate the concerns of private institutions, including the University of Mary and the University of Jamestown. President Robert Badal of the University of Jamestown supports the principle of what his former students want to accomplish regarding press rights. He supports the expression principle so much that his university's speech code gives students very broad protections, and I refer you to the UJ speech code in the packet. However, President Badal will retire one day, and we need the standard to out live any one president.

While we believe, and the law supports us our belief, that the rights of students at private institutions can be expanded by the state, we also are willing to offer the committee two options for compromise only if needed. The details of these compromises is spelled out in the packet.

Option 1: Schools that are associated with a religion have the right to censor speech in the context that the speech conflicts with the religious mission of the school. This addresses the equally important religious establishment and exercise clauses of the First Amendment. Leonard law in California does allow for this as well.

Option 2: In a critique of the Stanford case and Leonard Law, it was mentioned that a compromise to address a private entity's association rights, that private schools could opt out if they choose. If they decide to opt out of the law, then schools would be required to inform students in the admissions process that the student is abandoning all of his or her First Amendment rights by attending the school. The principle here is that if we are going to do freedom of expression and press rights then lets do it right, lets do it all the way, or lets not do it at all.

While we don't believe either of these options are ideal, they are better than the way it sits today, which is, in my experience, retroactively informing 18 to 22 year old adults that they

unfortunately chose to go to a school where their First Amendment rights mean nothing. That they cannot speak truth to the power that owns the roof over their heads, that supplies their heat and water and electricity, that controls their daily meals and who their roommates are, that determines their grades and their worth to future employers, and that charges them exorbitantly for all of this. It also means that these student journalists can be censored from reporting on actual government - the very purpose of the press. Institutions that are claiming to offer journalism and the press to their students need to be held to minimum standard and the law is on our side.

In your packet of testimony you will find letters from University of Jamestown students and alum who implore you to pass this bill and implore President Robert Badal to support it.

Together we can realize the vision of those six University of Jamestown students and put closure to what they began in 2013 by passing these three amendments to our current law.

Thank you very much for your time and I look forward to any more questions you may have.

③

**Testimony of Brian Swanberg
Bismarck Public Schools journalism student**

Good morning, chairman and members of the committee. My name is Brian Swanberg and I am a senior in high school and currently the editor-in-chief of the Bismarck Legacy High School newsmagazine, the *Legacy Uncut*. I decided to pursue journalism in high school because I wanted to learn more about people and share their perspective with others.

I get more freedom to pursue story ideas because of The John Wall New Voices Act. It allows my newsmagazine to keep its independence as we look for ideas to write about that are relevant to our high school. That allows me to pursue more controversial topics if I desired or just explore ideas that perhaps Legacy or the Bismarck Public Schools may not agree with.

For example, last November, I decided to find out what happened to an old classmate of mine. His alias, in order to protect his privacy, is John Smith. He dropped out of high school his sophomore year. I didn't know why John had dropped out or what he was doing now. I found out that John is a very bright and well-spoken individual who dropped out because of severe depression and some poor decision-making. He moved out of his parents' house and lived at a "trap house," a place where drugs are bought and distributed, for several months. Since dropping out, John has attempted suicide four times, two of those times in the past six months. I also learned about the steps he is taking to climb out of this difficult period in his life.

Personally, I don't believe that if I wanted to write a story about a high school dropout, Legacy would've let me pursue it. I personally doubt that, after my interviews, Bismarck Public Schools would have allowed me to write about John's raw suicide experiences or life in the trap houses. But because of the New Voices Act, I could pursue it. I had the opportunity to write the story and pursue ideas and topics that many students across the state and country cannot. I was able to publish the story and share it with many Legacy students who can relate to the John's struggles with school, drugs, family, anxiety, and suicidal thought. Given the responses from the Bismarck/Mandan community to John and I, I know that his story has been able to change lives. I also believe that the story has helped John move forward and continue putting his life back together.

I am here today to ask you to vote yes on all three amendments to The John Wall New Voices Act so that other students like me can use the freedom of speech and of the press as stated in the First Amendment. Thank you for your time and consideration.

Sincerely,

Brian Swanberg

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SB 2201

1/23/17

**Testimony of Sydney Trottier
Century High School newspaper Editor-in-Chief**

Hello chairman and member of the committee. My name is Sydney Trottier and I am a free thinker. I am a collaborator. I am a listener. I am a mouthpiece. And I am a voice. When all of these attributes are brought together there is one line that sums them all into one: I am a student journalist. I joined my high school's journalism program my freshman year, when I took Journalism I at Century High School here in Bismarck. This is where I learned the rich value of our First Amendment rights and how journalists truly impact this world. Although, it wasn't until sophomore year of high school when I joined Journalism II: Newspaper (or Varsity Journalism as we liked to call it) where I learned the true meaning of being a journalist and what comes along with it. I have now been apart of my school paper for the last three years and served as Editor for the last two. I promise you there is no other room at Century High that holds more promises to the future of America's youth than the journalism room.

When I first joined my school paper the editor asked each student why they joined the class. I remember being a small sophomore in the back of the room, and scared of all the big scary seniors, but being able to find my words, "because I want to tell people's story." What I did not know at the time was that this reasoning would not change three years later. I am now a senior and I love being apart of my school newspaper because I believe that every single student at my school has a story to tell, and in order to hear it all you need is the ability to listen. By going out and finding the stories I have learned that words are the single most powerful tool that humans have in their arsenal. Words have the power to evoke feeling, refurbish memories, create tears, stir anger, and spark thought.

Yet, if student's face the battle of being censored for telling anothers' story, then their arsenal is dulled. When stories have the ability to be censored and the right to free speech is lost, then the raw honesty of a student's story is covered in a blanket and picked and prodded until it no longer holds truth. Over the years I have had the seemingly impossible task of finding the right words to give justice to someone else's story. I written about a young woman at my school who traveled across the world to escape prejudice and death. I have had the honor of writing about a young man who started a sock drive to aid helpless immigrants from another world, and the humbling honor of telling about our school's first ever transgender student. And I even have had the moving experience of writing the story of a young man who lost his ability to ever walk again on the ski slopes of his spring break. The strongest and most valuable aspect of all of these stories is that they were real. Student journalists cannot be censored and forced to cover-up the truth of our hallways and the lives of those walking within them.

I ask you today to invest not only in me, but in future student journalists who just want to tell the true stories of the souls of their school by voting yes on all amendments proposed for the John Wall New Voices Act.

Thank you for your time and consideration.

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SB 2201

1/23/17

**Testimony of Karen Bauer
Bismarck State College Journalism Faculty**

Good morning Chairman Armstrong and committee members.

My name is Karen Bauer. I am assistant professor of mass communications at Bismarck State College and have advised the student newspaper for the past 17 years. I strive to offer students a real-life experience, including the ability to exercise their First Amendment rights.

At BSC, I have been fortunate to work in an environment that is supportive of student news media. However, that doesn't mean I haven't been called into question by the school administration. And that is why the John Wall New Voices Act is so important. I am here today to encourage the following changes to the New Voices Act.

The first addition offers explicit liability protection for schools. No college or university should feel threatened by the actions of its student media. This amendment makes the students responsible for their choices and their freedom of expression.

The second addition directly affects my position. My philosophy for teaching young people has changed and evolved, but two things remain solid: first, a student journalist has the same rights and responsibilities as any journalist working in the media world; second, the student media belongs to the students; they are responsible for what is published and produced. My job as an adviser is to guide, counsel and advocate – teaching young people how to ethically and responsibly tell the stories that need to be told.

This amendment allows me to do my job without concern for retaliation and again makes the students responsible for their actions. All advisers deserve to teach without worrying about administrative consequences solely because students exercised their First Amendment rights.

Finally, as a University of Mary alumna, when a student comes to me with interest in attending Mary, I have supported the decision but always with this caution: they may not have the same right to free speech that they have had at BSC. As a proponent for the First Amendment, it is important for me to advise students to seek education at universities that support our rights as citizens of the United States. It is important that students leave BSC prepared to be conscientious citizens of the world. I strongly recommend the proposal that private colleges and universities are included and protected under the John Wall New Voices Act.

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1/23/17



Written Testimony of Steve Andrist
Executive Director, North Dakota Newspaper Association
Before the North Dakota Senate Judiciary Committee
In Support of SB 2201

Mr. Chairman and members of the committee. Thank you for the opportunity to provide written testimony in support of SB 2201.

Last session, without dissent, the Legislature adopted a new law extending free speech rights to student journalists in the state. In doing so, North Dakota became a trend setter. A number of other states have followed our lead, adopting or proposing measures patterned after ours.

What we have learned in the last two years is that some of them did it just a bit better than we did. Thus, SB 2201 proposes to make three small tweaks to improve the law. One says that when students engage in activity that is protected under the law it may not be construed as an expression of school policy, and schools and their employees may not be held liable for it. A second says that when students engage in protected activity, their student media advisors cannot be disciplined or dismissed as a result. The last extends free speech protections to students at the state's two private colleges as well as to all public schools.

Like most industries, newspapers see our youth as our future, and through scholarships, internships and fellowships we continue to put an increasing amount of resources into journalism education. We support this law and these proposed amendments because we believe it is important for students to learn under the same rules that will guide them as adults with careers.

These amendments accomplish that, extending free speech rights everywhere they go, whether in public or private places, while also protecting their schools, whether public or private, from any liability, and also declaring that free expression by students may not be construed as an expression of a school's policy or beliefs.

In short, we believe that these amendments allow students real life learning opportunities without providing any jeopardy to their schools, and we would appreciate your vote in support of SB 2201.

Thank you.

**Testimony of Katie Winbauer Nelson
BSC alum and VCSU student**

Good morning Chairman Armstrong and committee members. My name is Katie Winbauer Nelson and I am a Valley City State University student majoring in professional communications with an emphasis in journalism.

I have been involved in journalism throughout my entire high school and college education. I was on the Bismarck High School HiHerald staff and also interned at the Bismarck Tribune my senior year of high school. At Bismarck State College, I was the editor-in-chief of The Mystician and also completed a journalism fellowship thanks to the North Dakota Newspaper Association.

Through all of this I was able to attend numerous state and national journalism conferences. At the first conference I traveled to, I attended a session regarding journalistic laws and ethics. It was here that I learned about those crazy things called rights and how they applied to me, as a student journalist.

It was interesting to hear stories from students across the country who were experiencing censorship issues in their schools. Because of my attendance to this session, I was able to recognize when I was getting censored at Bismarck High. However, even though I was able to recognize the censorship, I felt as though I couldn't do anything about it since I knew the Hazelwood standard was being upheld.

After the victory of the New Voices act in 2015, I felt fully confident leading my newspaper staff at Bismarck State College. If issues came up, we had discussions and conducted research. We went to our adviser for questions and advice, but the ultimate publishing decision was ours to make.

When it came time for me to make education plans past Bismarck State College, I knew I wanted to stay in Bismarck. That left the University of Mary as a likely option. However, after being involved in the New Voices Act in 2015 and knowing that the University of Mary didn't follow the same standards that I had at Bismarck State College, I ruled out the school entirely.

As a student, it is very important to me that my education reflects my future career goals and plans. As a journalist, I know that having my full first amendment right is crucial. If students are restricted from fully developing a story while they are in college, they won't enter their careers to their fullest potentials.

Your approval on this bill ensures that all college journalists in North Dakota will have the opportunity to write valid stories and use their own voices without someone else telling them what they can say. I thank you all for your time and consideration today, and welcome any questions you may have.

8

January 23, 2017

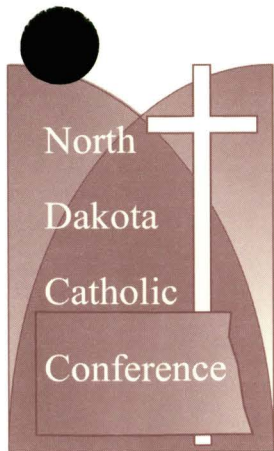
The University of Jamestown is a fiercely independent University that was established during the Territorial era; we have never looked to the State to provide our moral compass; our values drive us.

In this instance (SB 2201) there are matters of conscience that trump the obvious desire to protect the independence of the University. The current law (John Wahl Act) that was passed in the last session was created by our students for all the right reasons. We see no harm in following these provisions ourselves, and, in fact, we do. The University of Jamestown experience is about the search for truth. Free speech is an explicit right granted to our students in our Handbook.

I won't contradict that commitment by opposing the bill, but I would ask the Legislature to resist the temptation to overreach into matters that limit or weaken the rights of private colleges under the US Constitution as it has been interpreted by the High Court since at least 1819.

Sometimes it is better to ask than to legislate. Surely there is a better way to unify the State behind college journalists?"

Bob Badal
President, University of Jamestown



Representing the Diocese of Fargo and the Diocese of Bismarck

Christopher T. Dodson
Executive Director and
General Counsel

To: Senate Judiciary Committee
From: Christopher T. Dodson, Executive Director
Subject: Senate Bill 2201 - Student Journalists on Private Campuses
Date: January 23, 2017

The North Dakota Catholic Conference opposes Senate Bill 2201 as an unconstitutional and troubling intrusion into the rights of a private institution.

Senate Bill 2201 dictates to universities how they should handle certain student expressions of speech. As applied to public universities, this a proper function of the state. The public universities and colleges are government institutions. As applied to private institutions, however, such attempts are impermissible infringements upon the rights of a private entity. The Legislative Assembly last session wisely rejected language to include private colleges and universities in the law. This body should do the same.

In *Boy Scouts of America v. Dale*¹, the U.S. Supreme Court held that private, non-profit entities have a First Amendment right to prevent dilution of its message through government actions, even if the government was attempting to further a legitimate government interest. In short, the state may want to protect rights of students but it cannot do so by trampling on the rights of a private college or university.

Proponents of SB 2201 have pointed to California's Leonard Law² to support their contention that private colleges and universities have no First Amendment protection against legislation like SB 2201. That state's Leonard Law was used by a lower court to strike down Stanford University's speech code.³

That case, however, was decided before *Boy Scouts of America v. Dale*. As one law professor has put it, "the opinion is clearly not good law after *Dale*" because a private university "has an expressive association right to . . . enforce rules banning speech."⁴ In fact, the Stanford case has since been unpublished, meaning it cannot be cited as good law.

The North Dakota Catholic Conference has no position on the other portions of the bill, but so long as the sections applying to private colleges and universities remain in the bill, we strongly oppose the bill and urge a **Do Not Pass** recommendation.⁵

¹ 120 S. Ct. 2446 (2000)

² Cal. Educ. Code Sec. 94367.

³ *Robert J. Corry, et al. v. The Leland Stanford Junior University, et al.*, No. 740309 (Cal. Super. Ct. Feb. 27, 1995) [Unpublished.]

⁴ David E. Bernstein, *The Right of Expressive Association and Private Universities' Racial Preferences and Speech Codes*, 9 Wm. & Mary Bill Rts. J. 619 (2001), <http://scholarship.law.wm.edu/wmborj/vol9/iss3/5>

⁵ Proponents have indicated they might seek to have the following language inserted into the bill:

“This section does not apply to any postsecondary educational institution that is controlled by a religious organization, to the extent the application of this section would not be consistent with the religious tenets of the organization.”

This language does not resolve the problems. In fact, it compounds them.

First of all, as *Dale* indicates, the right of a private entity to regulate its own affairs exists by virtue of it being private, not because it is religious. Second, the provision impermissibly invites courts to review the “religious tenets” of a religious organization. Such review is clearly unconstitutional under the First Amendment. See, e.g. *Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969).

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Senate Judiciary Committee

January 23, 2017

SB 2201

Testimony by Rod Backman
University of Mary

Chairman Armstrong & members of the committee my name is Rod Backman, I am here today representing the University of Mary.

The University of Mary is committed to both free speech and to academic freedom for our students, but are opposed to extending public control over private institutions. The Attorney General in a 2005 opinion has concluded we are a private religious entity. As such we take issue with the state presuming to be able to define the parameters of discourse on our campuses. Our contention is the state has no authority to assist us in safeguarding our students' freedom of expression.

The issue of extending this statute to private universities was addressed in legislation last session. The amendments to take us out of the 2015 bill passed the House Education Committee by a 11-2 vote and the final bill passed both houses unanimously.

We are not opposed to other provisions within SB 2201, but we do requests amendments be made to exclude private entities from the legislation. If we remain in the bill, we respectfully request a do not pass recommendation

Thank you, Mr. Chairman, I would be happy to take any questions the committee may have.

**Testimony of Jeremy Murphy
West Fargo Media adviser
In Absentia**

First, thank you to the chairman and committee members for considering these important amendments to this legislation. I have been a journalism adviser for the last 12 years and a professional journalist before that.

In my time in the classroom, I have witnessed students reach extraordinary goals because they strive to show their community members the unbelievable stories existing around them. Students have covered presidential candidates, national figures, popular bands, controversy, heartache, successes and everything in between. They have covered these events because they are passionate about providing readers with important stories – an opportunity that more students around the state now have with the passing of the John Wall New Voices Act. For the last few years, I have been fortunate enough to work as a publications adviser in a district that values student journalism. Students have flourished in this environment, starting a new broadcast program, working with district officials during open records requests, starting a literary magazine, visiting top state officials, collaborating with local media and winning numerous state and national awards and scholarships. All of which has been student-directed. It hasn't always been that way in West Fargo. The national and state recognition was still there, but the supportive district officials were not. As an adviser, I encouraged a collaborative, student-run environment no different than the one we have today, but I was removed from my position. That is why the amendment protecting advisers is so important to publications programs around the state. Creating an environment where advisers are not censoring for fear of retribution, it will provide all students with an opportunity to thrive and gain skills today's workforce deems necessary.

As a forward-focused adviser, I'm looking for ways to allow students to practice skills that will give them the best opportunity to be successful in their future endeavors. The National Association of Colleges and Employers says the top skills employers want in new hires includes: critical thinking, communication, collaboration, time management, data analysis, technical knowledge, writing, editing and marketing skills. I have also had the opportunity to visit with multiple employers in the Fargo-Moorhead area and they echo these results. If you visit any of the top publications rooms in the state, you will see students practicing these skills in a real-world, student run environment every single day. However, in an environment where an adviser takes control for fear of retribution, this might not be the case.

I have been on both sides of the spectrum, from a restrictive environment to an expressive one. If we really want students to attain these skills and tell great stories, these amendments are necessary step in that direction.

Thank you again.

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**Testimony of Brittany Rheault
University of Jamestown Student
Former West Fargo High School Student
In Absentia**

Dear Senate Committee:

My name is Brittany Rheault and I am writing as a constituent to encourage you to support the John Wall New Voices Act. This important appropriation for student journalists would allow young reporters in private universities to continue practicing their skills of pursuing a story with integrity and passion without constraint. Without this piece of legislation, private college students and those mentoring them are limited in furthering their education of becoming quality reporters. The passing of this bill would pave the road to a deeper understanding of in-depth journalism and responsible reporting.

I am the former Head Editor of The Packer newspaper at West Fargo High School, staff member of The Collegian at the University of Jamestown, and employee for the Jamestown Sun newspaper. I want to share with you my experience of studying at a public high school and continuing on to a private university, along with the impact this extension of the New Voices Act could provide for private university students.

My senior year of high school, Jim Jonas, a Packer football coach, was fired from his coaching position. The West Fargo High School and community was in an uproar of rallies and social media discussions concerning the reasoning behind his release. There was an abundance of information being released to try and justify the situation. The Yearling Head Editor and I took on the story with the sole purpose of uncovering only the facts. Because we are not censored at West Fargo High School, we had the freedom to pursue this story without constraint, allowing us to file for open records requests, set up interviews with the superintendent and even Jonas himself. With this freedom, we learned how to be professional journalists, were treated as such, and reported with the integrity and responsibly of professional journalists. Through this experience, I was prepared entering into college journalism and the professional journalism setting at the Jamestown Sun.

Luckily the University of Jamestown does practice the First Amendment just as a public campus would, however, this is not the case for all private schools. The First Amendment, along with what has already been passed with the New Voices Act, is a platform which heightens expectations for young student journalists to write with integrity and present passionate stories in a professional way. I was fortunate enough to have a high school journalism experience under the laws of the First Amendment, therefore, it only seems natural that I will be held to the same standard of professionalism when I further my education at a private university. Due to the New Voices Act laws that have already been passed, now all high school journalists will be held to that same professional level. If these students choose to further their education in a private university like I did, they are currently restricted when trying to further their professional development by now having constraints on the First Amendment once they get to private college. This is why the extension of the New Voices Act is so pivotal.

This next stage in extending the John Wall New Voices Act is the natural step in furthering the development of young student journalists. It breaks down the barrier which separates students

from being professionals. High school journalists are being treated with the same responsibilities as professional journalists, therefore, nothing should be different for those in private universities.

I ask you to support this important piece of legislation, which will make such an educational difference in the lives of future journalists.

Sincerely,

Brittany Rheault

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SB 2201

1/23/17

**Testimony of Sue Skalicky
Bismarck Public Schools journalism educator
In Absentia**

Good morning, chairman and members of the committee. My name is Sue Skalicky and I am a journalist, and have been one for over 25 years. I have been a high school journalism teacher for almost twelve years. But, one of the most rewarding things I have ever done professionally is to advise high school publications at Century, and now at Legacy. Over the past eleven years, I have witnessed teenagers wrestle with making decisions in the classroom, decisions that will have a public impact. And, instead of telling them what to do, I've asked them to recall what they've learned about their First Amendment rights and the responsibilities that come with those rights. In the end, it has been thrilling to watch them wrestle with options, discuss the impact of each option, and decide how to move forward.

I believe the best place to find a high school student with a love for learning, top-notch critical thinking skills, an innate interest in humanity, a burden to seek out the truth and inform the masses, a desire to affect positive change in the world, a habit of working above and beyond what is expected, and a knack for working collaboratively on fast-paced, multi-faceted projects would be in the high school newsroom. These students, who WILL change the world, won't necessarily pursue a post-secondary degree or career in journalism. That's because they aren't being groomed for the field of journalism. They are being encouraged, equipped and empowered to be world changers in myriad fields and trades by high school journalism advisers who use the production and publication of newspapers and yearbooks to hone critical thinking, collaboration, communication and creativity - 21st Century skills. But, in order to do that, these students need to have the freedom to do so.

Even the threat of censorship hinders student free speech and a free scholastic press, because the students aren't allowed to explore every possibility. Instead, they are spending their time and energy trying to contain their thoughts and ideas within the boundaries of a lesson, the only impact being that on their GPA. Students with First Amendment freedoms naturally collaborate, think critically, exercise creativity, and communicate professionally, because they are motivated to make a difference in matters important to them, their peers, and their community.

I ask you today to invest in the future of these students by voting yes on all amendments proposed for the John Wall New Voices Act.

Thank you!

Sue Skalicky

(14)

SB 2201

1/23/17

I have always told my students, "No one wants to read your Facebook rant. Journalism raises the bar higher." The nature of what journalists do requires that they sign their name to what they are doing. It requires that they do their research or pay the consequences publicly. In this day and age, where anyone can make up a name and blast off fake information on any topic he or she chooses, shouldn't we be protecting anyone willing to learn how to do that?

Please add my name to the list of supporters for the New Voices bill.

Sincerely,
Amy N. Miller, Ph. D.
University of Jamestown, '07

I would like to submit the following testimony in support of the ND SENATE BILL NO. 2201. A BILL for an Act to amend and reenact sections 15-10-55 and 15.1-19-25 of the North Dakota Century Code, relating to the freedom of expression of student journalists.

"Lux et Veritas," the words emblazoned on a banner as I walked across the stage to receive my degree from then named Jamestown College in 2007 are words that still burn brightly at my core.

In a time where anyone can post a Tweet or a blog post or a Facebook rant, the work being done with the John Wall New Voices Act is so important, now more than ever. It is within our education system where the lessons of journalistic responsibility are ingrained in our systems. It is there where the real journalists are forged. I took countless communications courses, but they paled in comparison to the real life experiences I had at the Jamestown College Collegian, our student newspaper.

One of the biggest lessons came when I served as editor. We had an opinion column that rotated through the newspaper editorial staff. I had an editor who chose to voice her opinion about the college itself, suggesting more monetary focus be put on staffing and less on buildings. Nothing about her opinion was slanderous, but the freedom of the press (which we as students were not privy to) was called into question. Should we be censored? With shaking hands I argued on behalf of my staff to the dean of students. I had no rights here. I had very little ground to stand on. What I did have was simple: Lux et Veritas — Light and truth.

University of Jamestown President Robert Badal has expressed his support for the New Voices Act, and I thank him for that. If it were not for his trust ten years ago, my future could have been very different. In the end, they didn't clip our wings; in fact, they thanked us for our service to the college.

I am one of the few that took my communications media degree to heart. I currently serve as editor in chief for one of the weekly news organizations across the state that champion for their readers. I since have had the opportunity to teach others both in high school and college through the North Dakota Newspaper Association Education Foundation internship program. I taught them as I was taught: If you treat students the with the respect the profession deserves, they will reflect that.

As a former member of the student media and a current journalist in the state of North Dakota, I hope our government will stand by the work being done to ensure we create a better generation of journalists by putting our trust in them in every higher education institution in our state. Journalistic integrity starts in the classroom, but it blossoms newsroom. If I have learned anything from the state of the media today, we could all use a little more light and truth. It starts here.

Allison (O'Toole) Olimb
University of Jamestown Class of 2007
Collegian staff 2003-2007

Thank you for the important feat that you and my fellow University of Jamestown alumni accomplished in writing and passing the John Wall New Voices Act. I would also like to thank University of Jamestown President Robert Badal for supporting his students and recognizing the need for this important law.

Freedom of speech is one of our country's most fundamental rights, guaranteed by the Bill of Rights. The John Wall New Voices Act protects the press rights of almost all college students in North Dakota, with the exception of those at private schools. University of Jamestown is a forward-thinking haven for students who are learning to spread their wings and prepare for the real world. The ability for student journalists to write and publish without censorship is paramount to their education.

I once heard someone say, "There is no place with more freedoms than a college campus." In fact, I believe it was you. During my time at UJ studying journalism, writing and editing for The Collegian, I found that to be the epitome of truth.

Students at University of Jamestown are encouraged to learn, to dig deeper into social issues, and to express their support for causes that they believe in. Many of the students participate in athletics, music, department clubs, honor societies, and charitable-minded projects. Some attend chapel. Some work on and off campus. All attend classes that challenge their minds.

UJ prides itself on turning out well-rounded students with an all-encompassing education. The school's support of the New Voices Act shows that they, too, believe allowing press freedom for those same students is essential for future success.

Thank you again.
Stephanie Hruska
2007 UJ and Collegian Alum

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11/23/17

SB 2201

Support from University of Jamestown Students, Alum and UJ President Robert Badal

Responsibility. Accountability. Accuracy. Diligence.

These values of reporting, arguably diluted in the digital age, must be the bedrock of educating the next generation of media members.

The best way to instill these virtues is through freedom; the freedom to fail and the freedom to succeed.

The New Voices Act ensures the members of the student media are granted the freedom to explore the waters of reporting and investigation without fear of undue censorship, while being held accountable by their faculty superiors.

As our media students to enter this largely unknown world of digital reporting, the New Voices Act does its part to prepare these students for the trials and triumphs of the journalistic world.

Peter Odney
Collegian Editor in Chief 2013-2014
John Wall New Voices Act Co-Author

I was very excited when I learned that the New Voices Act had passed the ND Legislature, granting student-journalists protection and freedom to report on issues with the same capacity granted to professional journalists. This will allow students to learn more about the journalistic process without the fear of not being able to publish the truth.

This was a great first step, but the same protections need to be extended to private colleges and universities as well. During my time at the University of Jamestown (then Jamestown College) I had the opportunity to work with many great people at The Collegian, JCTV, and as an alumnus able to see the introduction of a radio station. These opportunities for students to gain essential experience in editing, writing, filming, recording, and story-telling outside of the classroom are vital to training journalists. It is imperative that they are able to report truthfully without fear of retaliation from the college.

I would like to thank the students that helped pen this Bill along with Steve Listopad and support from Robert Badal, President, University of Jamestown.

I believe this quote from George Orwell sums it up perfectly when he wrote, "If liberty means anything at all, it means the right to tell people what they do not want to hear."

With Sincere Thanks,
Will Oren | Multimedia/Server Specialist
North Dakota State College of Science
701-671-2190

I am writing in support of the New Voices Act, to be discussed before the Senate Education Committee this week. I am doing so as a former student journalist, former student newspaper advisor, and UJ alumnus. The reason I feel it necessary to voice my support is that I had the luxury of acting as though I had a right I didn't actually have. I would like to ensure future student journalists actually have that right.

During my tenure as an editor at the Collegian, I opted to write a controversial opinion piece about the UJ building projects. My advisor, Steve Listopad, cautioned me that this was going to cause a stir. My editorial colleagues, as well as my editor-in-chief, reminded me that I didn't have to go through with publishing it. And then, we went ahead and published it anyway. And each and every person who was biting their fingernails in the newsroom walked out onto campus and stood unblinkingly by my right to publish that article. There were upset letters to the editor from faculty members who disagreed with my stance. There were conversations with administrators. There were conversations with students. I personally received a three page rebuttal letter from one of the deans arguing with my article point by point.

I have since gone on and earned my Ph. D. in communication. And in all those years of schooling, this extracurricular activity, this opinion piece for the school paper remains one of my most foundational educational moments. Why? Because it taught me what it takes to make a good argument and what it feels like to be attacked for the one you make. It taught me how to have the bigger conversation about the issue at hand. It taught me about audience, about lenses of interpretation, about clarity of words. In a parallel universe where the response to "I'm going to write this article" was "nope", do you know what I would have learned? That no one cared what the students had to say.

In my teaching role, I have both taught numerous journalism classes as well as advised the school newspaper. I have had the privilege and responsibility of advising a staff of students who wrote about campus marijuana use, teacher racism, election corruption in the student government, the rate of homelessness on campus, and the issues with the search for a new campus president. I have talked an editor-in-chief through the decision about whether or not to publish a neo-conservative opinion piece, a staff through a potential boycott from the LGBTQ club on campus, and a miscaptioned photo that resulted in allegations of racism. Allowing my students to write the way they wanted (and teaching them how to do so) was stressful. It was heartbreaking. It was a huge time commitment outside of my regular teaching duties. But I did it because the University of Jamestown taught me that that is what you do as the advisor in order to turn out responsible and well-prepared journalists: You teach them to cover the story, regardless of whether or not it makes people look good, bad, or indifferent, and you cover it thoroughly, responsibly, accurately, and ethically.

What the New Voices bill does is lock in that tradition and ensure it can continue. No advisor should be penalized for teaching his or her students how to tackle the tough issues. No student should be told not to cover the story because it doesn't look good for the school or it courts too much controversy. I was blessedly protected from ever feeling like I was not free to use my voice, thanks to an editor who backed me, an advisor who went to bat for me, and an administration who chose not to exercise their veto power. Every student should be afforded that same protection.

I am happy to add my support for the bill protecting our student journalists.

Let me know if you need any additional information.

The Collegian, Editor-in-Chief (emeritus)

Jakob Barnard
Boston University - MSCIS Program Alumni
jakobb@bu.edu
701-320-3973

As a UJ alum, I want to express my support for the New Voices bill. This is great and becoming increasingly more important! Thanks for all of your work on this!

Holly Eamon

I am writing this letter in my support of the John Wall New Voices Act allowing private school students the same press rights as public school students. I am a football coach at Concordia College in Moorhead MN and am an advocate for student journalism. The purpose of this bill is well thought out and Freedom of the Press is an essential right. Students should have the right to voice their views and opinions without the fear of censorship. Students are preparing to be in the real world while in college. To me that means becoming responsibly engaged in the world. What better way for future journalists to prepare than while at their university. That requires freedom of expression in the media at their own institution. Thank you for your time and I hope you consider the change.

Sincerely,

Brian Mistro
Concordia College Football
Special Teams Coordinator
Defensive Backs Coach
O: 218.299.4934
Twitter: [@Coach_Mistro](https://twitter.com/Coach_Mistro)

University of Jamestown President Robert Badal

"The University of Jamestown is a fiercely independent University that was established during the Territorial era; we have never looked to the State to provide our moral compass; our values drive us.

In this instance (HB 2201) there are matters of conscience that trump the obvious desire to protect the independence of the University. The current law (John Wahl Act) that was passed in the last session was created by our students for all the right reasons. We see no harm in following these provisions ourselves, and, in fact, we do. The University of Jamestown experience is about the search for truth. Free speech is an explicit right granted to our students in our Handbook.

I won't contradict that commitment by opposing the bill, but I would ask the Legislature to resist the temptation to overreach into matters that limit or weaken the rights of private colleges under the US Constitution as it has been interpreted by the High Court since at least 1819.

Sometimes it is better to ask than to legislate. Surely there is a better way to unify the State behind college journalists?"

①

1/24/17

Submitted by Jack McDonald, counsel
ND Newspaper Association
January ~~23~~, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2201

Page 1, line 10, remove "or private"

Page 1, line 16, remove "or private"

Page 1, line 20, remove "or private"

Renumber accordingly

#1
2201
3-1-17

Mr. Chairman and Members of the House Judiciary Committee:

For the record, I'm David Rust, Senator from District 2, encompassing the great NW of ND (Divide, Burke, Williams (with the exception of most of Williston, and Mountrail Counties).

I'm here to introduce SB 2201. This is a follow-up to a bill affectionately termed "The John Wall New Voices Act."

Former Representative John Wall and I became friends in the very early 1970s when he was teaching English at Sargent Central of Forman, ND and I was teaching math at North Sargent of Gwinner, ND. Years later we were colleagues in the ND House of Representatives for three sessions prior to his passing away in July, 2014. He was a tremendous teacher who had a profound influence on his many students in the Language Arts.

Background information on the John Wall New Voices Act of 2015:

1. Gives student journalists of public schools and SBHE colleges and universities the right to free speech and press regardless of financial support by the institution.
2. Four exemptions
 - a. Libel and slander
 - b. Invasion of privacy
 - c. Violations the law
 - d. Creation of a clear and present danger or substantial disruption
3. Student may take civil action if that right is abridged.
4. No disciplinary action can be taken against the student.
5. School districts shall adopt a written policy on student expression.

Those provisions were codified into NDCC 15-10-55 which deals with Higher Education and NDCC 15.1-19-25 which deals with public schools.

SB 2201 adds a couple of protections. It's basic provisions are:

1. A school official, employee, and parent or legal guardian can't be held liable for free speech and freedom of the press of a student journalist,
2. There shall be no retaliation against the student journalist's media advisor

Others following me will explain the details and provide additional information.

I will try to answer any questions you may have, or I will deflect them to those who follow.

Mr. Chairman.

#2
2201
3-1-17

Testimony in Support of SB 2201
Presented March, 2017 to the House Judicial Committee
A BILL for an Act to amend and reenact sections 15-10-55 and 15.1-19-25 of the North Dakota
Century Code, relating to the freedom of expression of student journalists.
The John Wall New Voices Act

Steven Listopad
Journalism Educator
Former University of Jamestown Faculty and Student Media Director

Thank you Senator Rust for introducing this bill, and thank and the rest of our sponsors for supporting these amendments to the John Wall New Voices Act.

Thank you Chairman Koppelman and members of the House Judiciary Committee for hearing our bill and testimony today regarding amendments to the John Wall New Voices Act. I am Steven Listopad, former journalism faculty at the University of Jamestown where the John Wall New Voices Act got its start - where six of my students wrote a bill in 2013 that started a national movement to honor the First Amendment rights of students and improve journalism education.

In 2015, HB 1471 passed unanimously in the House and Senate, adding two sections to the Century Code regarding student press rights. Those sections accomplished very specific things. One section legislatively negated the 1988 Hazelwood v. Kuhlmeier Supreme Court decision that said high school journalists have less speech rights to pursue journalism than the average student does to choose a t-shirt to wear to school. The other section legislatively negated the 7th Circuit's 2005 Hosty v. Carter decision that said the Hazelwood standard could be applied to public colleges.

After the unanimous victory for our bill in 2015, a nation-wide movement began. In 2016, Maryland and Illinois passed their own New Voices laws. And now in 2017, Missouri, Vermont, New Jersey, Arizona, Nevada, Indiana, Washington state, and Rhode Island all have New Voices bills in action. And more than a dozen other states are working on getting their bills into the next session.

On behalf of journalism educators and journalism students in North Dakota and across the country, I want to take this moment to express my sincere appreciation to the 2015 assembly for helping us jump start this national conversation on the role of journalism in our educational systems. What we did together in 2015 launched positive reform in the educational phase of a profession that has long been under considerable scrutiny. And the principle underlying that reform is very simple - we have had 30 years of experience telling journalism students and student journalists that they need to accept "NO" for an answer. That administrative PR is more important than their perspective. That our policy is more important than their citizenship. Hazelwood was a simple example of where a law failed pedagogy - by removing civic engagement from the educational process - thereby causing pedagogy to fail a profession that is a fundamental part of our democracy. So again, thank you to the 2015 Assembly from the bottom of my heart.

Today we are here to make our law just a little bit better. A little bit clearer. To make explicit what is now implicit.

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Our law as it exists implies that if the student is legally protected to choose the editorial content, with exception, in student media, then others cannot be held responsible for that content. Since our law passed, both Illinois and Maryland chose to make those implications explicit and we believe that strengthens the law for all stakeholders.

In the First Engrossment, document 17.0714.02000, I direct your attention to Page 2, Lines 6-9 and Page 3, Lines 16-19: The addition of the adviser/faculty protection from administrative reprisals is paramount to our concern. We have our own in-state example of an adviser being reassigned for the content of a student publication - Jeremy Murphy of West Fargo, who is here to testify today. Faculty and media advisers are on the front lines. But media advisers specifically are in an unnecessarily precarious position - they have to teach their students ethical and professional journalism but they have to stop their authority short of censoring the students. While our existing law implies this protection for advisers, our goal is to make it explicit so there is no confusion or misconception down the road.

Now I direct your attention to Page 2, Lines 18-23, and Page Lines 8-14. Here we seek to make explicit that the schools, parents, teachers, advisers and other stakeholders are exempt from legal action related to student editorial content. I'm referring to the addition of section. This is now implicit in our existing law and our amendment here can also eliminate confusion or misconception down the road.

It was six students at the University of Jamestown, a private college, that wrote the original bill. In 2015, those UJ students succeeded in protecting the press rights of all student journalists in North Dakota. All except their own. While the bill before you does not address students at private educational institutions, it does move North Dakota closer to realizing the vision of those six University of Jamestown students: Peter Odney, Dan Arens, Ashley Domino, Jesse Boyle McKenna, Masaki Ova and Josh Berg.

We encourage the House Judiciary Committee to give SB 2201 a DO PASS as it has been presented to you today. Thank you very much for your time and I look forward to any more questions you may have.

#3
2201
3-1-17



Testimony of Steve Andrist
Executive Director, North Dakota Newspaper Association
Before the North Dakota House Judiciary Committee
In Support of SB 2201

Chairman Koppelman and members of the committee: My name is Steve Andrist, and as executive director of the North Dakota Newspaper Association I represent the 80 weekly and 10 daily newspapers in the state.

Last session, without dissent, the Legislature adopted a new law extending free speech rights to student journalists in the state. In doing so, North Dakota became a trend-setter. A number of other states have adopted or proposed laws patterned after ours.

What we have learned is that some of them did it just a bit better than we did, so SB 2201 proposes a couple tweaks. The first says that when students engage in appropriate activity that is protected under the law, it may not be construed as school policy, and schools and their employees can't be held liable for it. The second says that when students engage in protected activity, their student media advisors can't be disciplined or dismissed as a result.

Like every industry, newspapers see young people as our future, and we continue to put resources into journalism education through scholarships, internships and fellowships. We support 2201 because we believe it is important for students to learn under the same rules that will guide them as adults in careers.

These proposed changes allow students real life learning opportunities while also protecting their schools and school staffs, and we would appreciate your support of 2201.

#4
2201
3-1-17

**Testimony of Jeremy Murphy
West Fargo Media adviser**

First, thank you to the chairman and committee members for considering these important amendments to this legislation. I have been a journalism adviser for the last 12 years and a professional journalist before that.

In my time in the classroom, I have witnessed students reach extraordinary goals because they strive to show their community members the unbelievable stories existing around them. Students have covered presidential candidates, national figures, popular bands, controversy, heartache, successes and everything in between. They have covered these events because they are passionate about providing readers with important stories – an opportunity that more students around the state now have with the passing of the John Wall New Voices Act. For the last few years, I have been fortunate enough to work as a publications adviser in a district that values student journalism. Students have flourished in this environment, starting a new broadcast program, working with district officials during open records requests, starting a literary magazine, visiting top state officials, collaborating with local media and winning numerous state and national awards and scholarships. All of which has been student-directed. It hasn't always been that way in West Fargo. The national and state recognition was still there, but the supportive district officials were not. As an adviser, I encouraged a collaborative, student-run environment no different than the one we have today, but I was removed from my position. That is why the amendment protecting advisers is so important to publications programs around the state. Creating an environment where advisers are not censoring for fear of retribution, it will provide all students with an opportunity to thrive and gain skills today's workforce deems necessary.

As a forward-focused adviser, I'm looking for ways to allow students to practice skills that will give them the best opportunity to be successful in their future endeavors. The National Association of Colleges and Employers says the top skills employers want in new hires includes: critical thinking, communication, collaboration, time management, data analysis, technical knowledge, writing, editing and marketing skills. I have also had the opportunity to visit with multiple employers in the Fargo-Moorhead area and they echo these results. If you visit any of the top publications rooms in the state, you will see students practicing these skills in a real-world, student run environment every single day. However, in an environment where an adviser takes control for fear of retribution, this might not be the case.

I have been on both sides of the spectrum, from a restrictive environment to an expressive one. If we really want students to attain these skills and tell great stories, these amendments are necessary step in that direction.

Thank you again.

L.

#5
2201
3-1-17

Testimony in Support of SB 2201
Presented March, 2017 to the House Judicial Committee
A BILL for an Act to amend and reenact sections 15-10-55 and 15.1-19-25 of the North Dakota
Century Code, relating to the freedom of expression of student journalists.
The John Wall New Voices Act

Rebecca Livermont
Editor in Chief of school newspaper
Senior at West Fargo High School

Good afternoon. My name is Rebeca Livermont, I am a senior at West Fargo High School and the Editor-in-Chief of the Packer newspaper, a student run news publication. In my time as an editor and a staff member, my peers and I have had the opportunity to cover everything from local businesses closing to in-depth coverage on the presidential election and everything in between. Of these stories though, a few stick out in my mind as reminders of the importance of student journalism and the support of it.

Last year, I wrote a story about a student who had transferred to West Fargo High from Sheyenne High school because she had been sexually harassed repeatedly throughout her sophomore year. After feeling like she was receiving no help from teachers or administration, she reported the incidents to a local news station, and her reports were made public. After this however, she was bullied so harshly that she had to transfer schools, something that is almost unheard of in our district.

About a week after the story was published, the student approached me in the hall and thanked me, telling me how good it felt to finally be heard by her peers and her teachers.

This year, one of my colleagues wrote a story on how recent immigration policies would affect the student refugees in our school. She reached out to an ELL teacher about speaking to a few refugees who felt comfortable enough to share their stories with her. She expected to meet with one or two, but instead was met with a line of students who wanted to have their voices heard. Some of these students had family members who had planned to join them here who now faced uncertainty. They were scared and angry and they wanted somebody to recognize that.

In another district or in another time, these stories might not have been told. Fortunately, I am living in a place and a time where student journalism is valued and respected, and where the administration and lawmakers support student press writes. I have never been discouraged from writing or publishing a story for fear of it being received poorly or reflecting badly on the district.

In my sophomore year, during my first year on staff I sat in this same building and watched as the John Wall New Voices Act was proposed with the goal of supporting student journalists the same way my adviser and my school had supported my colleagues and me. Having that bill passed was a huge step forward for student journalism in the state, but it still does not completely protect the rights of students and their supporters.

Passing the amendments proposed today would ensure that student journalists have the support and protection they need in order to help those around them, because the goal of student journalists isn't to make their own voices heard, it is to ensure that the voices of students who would otherwise remain silent are heard.

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#6
2201
3-1-17

**Testimony of Brian Swanberg
Bismarck Public Schools journalism student**

Good morning, chairman and members of the committee. My name is Brian Swanberg and I am a senior in high school and currently the editor-in-chief of the Bismarck Legacy High School newsmagazine, the *Legacy Uncut*. I decided to pursue journalism in high school because I wanted to learn more about people and share their perspective with others.

I get more freedom to pursue story ideas because of The John Wall New Voices Act. It allows my newsmagazine to keep its independence as we look for ideas to write about that are relevant to our high school. That allows me to pursue more controversial topics if I desired or just explore ideas that perhaps Legacy or the Bismarck Public Schools may not agree with.

For example, last November, I decided to find out what happened to an old classmate of mine. His alias, in order to protect his privacy, is John Smith. He dropped out of high school his sophomore year. I didn't know why John had dropped out or what he was doing now. I found out that John is a very bright and well-spoken individual who dropped out because of severe depression and some poor decision-making. He moved out of his parents' house and lived at a "trap house," a place where drugs are bought and distributed, for several months. Since dropping out, John has attempted suicide four times, two of those times in the past six months. I also learned about the steps he is taking to climb out of this difficult period in his life.

Personally, I don't believe that if I wanted to write a story about a high school dropout, Legacy would've let me pursue it. I personally doubt that, after my interviews, Bismarck Public Schools would have allowed me to write about John's raw suicide experiences or life in the trap houses. But because of the New Voices Act, I could pursue it. I had the opportunity to write the story and pursue ideas and topics that many students across the state and country cannot. I was able to publish the story and share it with many Legacy students who can relate to the John's struggles with school, drugs, family, anxiety, and suicidal thought. Given the responses from the Bismarck/Mandan community to John and I, I know that his story has been able to change lives. I also believe that the story has helped John move forward and continue putting his life back together.

I am here today to ask you to vote yes on all three amendments to The John Wall New Voices Act so that other students like me can use the freedom of speech and of the press as stated in the First Amendment. Thank you for your time and consideration.

Sincerely,

Brian Swanberg

#7
2201
3-1-17

**Testimony of Sydney Trottier
Century High School newspaper Editor-in-Chief**

Hello chairman and members of the committee. My name is Sydney Trottier and I am a free thinker. I am a collaborator. I am a listener. I am a mouthpiece. And I am a voice. When all of these attributes are brought together there is one line that sums them all into one: I am a student journalist. I joined my high school's journalism program my freshman year, when I took Journalism I at Century High School here in Bismarck. This is where I learned the rich value of our First Amendment rights and how journalists truly impact this world. Although, it wasn't until sophomore year of high school when I joined Journalism II: Newspaper (or Varsity Journalism as we liked to call it) where I learned the true meaning of being a journalist and what comes along with it. I have now been apart of my school paper for the last three years and served as Editor for the last two. I promise you there is no other room at Century High that holds more promises to the future of America's youth than the journalism room.

When I first joined my school paper the editor asked each student why they joined the class. I remember being a small sophomore in the back of the room, and scared of all the big scary seniors, but being able to find my words, "because I want to tell people's story." What I did not know at the time was that this reasoning would not change three years later. I am now a senior and I love being apart of my school newspaper because I believe that every single student at my school has a story to tell, and in order to hear it all you need is the ability to listen. By going out and finding the stories I have learned that words are the single most powerful tool that humans have in their arsenal. Words have the power to evoke feeling, refurbish memories, create tears, stir anger, and spark thought.

Yet, if student's face the battle of being censored for telling anothers' story, then their arsenal is dulled. When stories have the ability to be censored and the right to free speech is lost, then the raw honesty of a student's story is covered in a blanket and picked and prodded until it no longer holds truth. Over the years I have had the seemingly impossible task of finding the right words to give justice to someone else's story. I written about a young woman at my school who traveled across the world to escape prejudice and death. I have had the honor of writing about a young man who started a sock drive to aid helpless immigrants from another world, and the humbling honor of telling about our school's first ever transgender student. And I even have had the moving experience of writing the story of a young man who lost his ability to ever walk again on the ski slopes of his spring break. The strongest and most valuable aspect of all of these stories is that they were real. Student journalists cannot be censored and forced to cover-up the truth of our hallways and the lives of those walking within them.

I ask you today to invest not only in me, but in future student journalists who just want to tell the true stories of the souls of their school by voting yes on all amendments proposed for the John Wall New Voices Act.

Thank you for your time and consideration.

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8
2201
3-1-17

**Testimony of Karen Bauer
Bismarck State College Journalism Faculty**

Good morning Chairman and committee members.

My name is Karen Bauer. I am assistant professor of mass communications at Bismarck State College and have advised the student newspaper for the past 17 years. I strive to offer students a real-life experience, including the ability to exercise their First Amendment rights.

At BSC, I have been fortunate to work in an environment that is supportive of student news media. However, that doesn't mean I haven't been called into question by the school administration. And that is why the John Wall New Voices Act is so important. I am here today to encourage the following changes to the New Voices Act.

The first addition offers explicit liability protection for schools. No college or university should feel threatened by the actions of its student media. This amendment makes the students responsible for their choices and their freedom of expression.

The second addition directly affects my position. My philosophy for teaching young people has changed and evolved, but two things remain solid: first, a student journalist has the same rights and responsibilities as any journalist working in the media world; second, the student media belongs to the students; they are responsible for what is published and produced. My job as an adviser is to guide, counsel and advocate – teaching young people how to ethically and responsibly tell the stories that need to be told.

This amendment allows me to do my job without concern for retaliation and again makes the students responsible for their actions. All advisers deserve to teach without worrying about administrative consequences solely because students exercised their First Amendment rights.

Finally, as a University of Mary alumna, when a student comes to me with interest in attending Mary, I have supported the decision but always with this caution: they may not have the same right to free speech that they have had at BSC. As a proponent for the First Amendment, it is important for me to advise students to seek education at universities that support our rights as citizens of the United States. It is important that students leave BSC prepared to be conscientious citizens of the world. I strongly recommend the proposal that private colleges and universities are included and protected under the John Wall New Voices Act.

#9
2201
3-1-17

**Testimony of Katie Winbauer Nelson
BSC alum and VCSU student**

Good morning Chairman and committee members. My name is Katie Winbauer Nelson and I am a Valley City State University student majoring in professional communications with an emphasis in journalism.

I have been involved in journalism throughout my entire high school and college education. I was on the Bismarck High School HiHerald staff and also interned at the Bismarck Tribune my senior year of high school. At Bismarck State College, I was the editor-in-chief of The Mystician and also completed a journalism fellowship thanks to the North Dakota Newspaper Association.

Through all of this I was able to attend numerous state and national journalism conferences. At the first conference I traveled to, I attended a session regarding journalistic laws and ethics. It was here that I learned about those crazy things called rights and how they applied to me, as a student journalist.

It was interesting to hear stories from students across the country who were experiencing censorship issues in their schools. Because of my attendance to this session, I was able to recognize when I was getting censored at Bismarck High. However, even though I was able to recognize the censorship, I felt as though I couldn't do anything about it since I knew the Hazelwood standard was being upheld.

After the victory of the New Voices act in 2015, I felt fully confident leading my newspaper staff at Bismarck State College. If issues came up, we had discussions and conducted research. We went to our adviser for questions and advice, but the ultimate publishing decision was ours to make.

When it came time for me to make education plans past Bismarck State College, I knew I wanted to stay in Bismarck. That left the University of Mary as a likely option. However, after being involved in the New Voices Act in 2015 and knowing that the University of Mary didn't follow the same standards that I had at Bismarck State College, I ruled out the school entirely.

As a student, it is very important to me that my education reflects my future career goals and plans. As a journalist, I know that having my full first amendment right is crucial. If students are restricted from fully developing a story while they are in college, they won't enter their careers to their fullest potentials.

Your approval on this bill ensures that all college journalists in North Dakota will have the opportunity to write valid stories and use their own voices without someone else telling them what they can say. I thank you all for your time and consideration today, and welcome any questions you may have.

#10
2210
3-1-17

**Testimony of Brittany Rheault
University of Jamestown Student
Former West Fargo High School Student
In Absentia**

Dear House Committee:

My name is Brittany Rheault and I am writing as a constituent to encourage you to support the John Wall New Voices Act. This important appropriation for student journalists would allow young reporters in private universities to continue practicing their skills of pursuing a story with integrity and passion without constraint. Without this piece of legislation, private college students and those mentoring them are limited in furthering their education of becoming quality reporters. The passing of this bill would pave the road to a deeper understanding of in-depth journalism and responsible reporting.

I am the former Head Editor of The Packer newspaper at West Fargo High School, staff member of The Collegian at the University of Jamestown, and employee for the Jamestown Sun newspaper. I want to share with you my experience of studying at a public high school and continuing on to a private university, along with the impact this extension of the New Voices Act could provide for private university students.

My senior year of high school, Jim Jonas, a Packer football coach, was fired from his coaching position. The West Fargo High School and community was in an uproar of rallies and social media discussions concerning the reasoning behind his release. There was an abundance of information being released to try and justify the situation. The Yearling Head Editor and I took on the story with the sole purpose of uncovering only the facts. Because we are not censored at West Fargo High School, we had the freedom to pursue this story without constraint, allowing us to file for open records requests, set up interviews with the superintendent and even Jonas himself. With this freedom, we learned how to be professional journalists, were treated as such, and reported with the integrity and responsibly of professional journalists. Through this experience, I was prepared entering into college journalism and the professional journalism setting at the Jamestown Sun.

Luckily the University of Jamestown does practice the First Amendment just as a public campus would, however, this is not the case for all private schools. The First Amendment, along with what has already been passed with the New Voices Act, is a platform which heightens expectations for young student journalists to write with integrity and present passionate stories in a professional way. I was fortunate enough to have a high school journalism experience under the laws of the First Amendment, therefore, it only seems natural that I will be held to the same standard of professionalism when I further my education at a private university. Due to the New Voices Act laws that have already been passed, now all high school journalists will be held to that same professional level. If these students choose to further their education in a private university like I did, they are currently restricted when trying to further their professional development by now having constraints on the First Amendment once they get to private college. This is why the extension of the New Voices Act is so pivotal.

This next stage in extending the John Wall New Voices Act is the natural step in furthering the development of young student journalists. It breaks down the barrier which separates students

14

#11
2201
3-1-17

**Testimony of Sue Skalicky
Bismarck Public Schools journalism educator
In Absentia**

Good morning, chairman and members of the committee. My name is Sue Skalicky and I am a journalist, and have been one for over 25 years. I have been a high school journalism teacher for almost twelve years. But, one of the most rewarding things I have ever done professionally is to advise high school publications at Century, and now at Legacy. Over the past eleven years, I have witnessed teenagers wrestle with making decisions in the classroom, decisions that will have a public impact. And, instead of telling them what to do, I've asked them to recall what they've learned about their First Amendment rights and the responsibilities that come with those rights. In the end, it has been thrilling to watch them wrestle with options, discuss the impact of each option, and decide how to move forward.

I believe the best place to find a high school student with a love for learning, top-notch critical thinking skills, an innate interest in humanity, a burden to seek out the truth and inform the masses, a desire to affect positive change in the world, a habit of working above and beyond what is expected, and a knack for working collaboratively on fast-paced, multi-faceted projects would be in the high school newsroom. These students, who WILL change the world, won't necessarily pursue a post-secondary degree or career in journalism. That's because they aren't being groomed for the field of journalism. They are being encouraged, equipped and empowered to be world changers in myriad fields and trades by high school journalism advisers who use the production and publication of newspapers and yearbooks to hone critical thinking, collaboration, communication and creativity - 21st Century skills. But, in order to do that, these students need to have the freedom to do so.

Even the threat of censorship hinders student free speech and a free scholastic press, because the students aren't allowed to explore every possibility. Instead, they are spending their time and energy trying to contain their thoughts and ideas within the boundaries of a lesson, the only impact being that on their GPA. Students with First Amendment freedoms naturally collaborate, think critically, exercise creativity, and communicate professionally, because they are motivated to make a difference in matters important to them, their peers, and their community.

I ask you today to invest in the future of these students by voting yes on all amendments proposed for the John Wall New Voices Act.

Thank you!

Sue Skalicky

from being professionals. High school journalists are being treated with the same responsibilities as professional journalists, therefore, nothing should be different for those in private universities.

I ask you to support this important piece of legislation, which will make such an educational difference in the lives of future journalists.

Sincerely,

Brittany Rheault

12

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2201

Page 1, line 8, after "a." insert ""Protected activity" means an expression of free speech or freedom of the press.

b."

Page 1, line 15, overstrike "b." and insert immediately thereafter "c."

Page 1, line 19, overstrike "c." and insert immediately thereafter "d."

Page 2, line 19, after "A" insert "school."

Page 2, line 22, remove ", except in the case of willful or wanton misconduct by the"

Page 2, line 23, remove "individual"

Page 2, line 28, after "a." insert ""Protected activity" means an expression of free speech or freedom of the press.

b."

Page 3, line 3, overstrike "b." and insert immediately thereafter "c."

Page 3, line 6, overstrike "c." and insert immediately thereafter "d."

Page 4, line 10, after "A" insert "school."

Page 4, line 13, remove ", except in the case of willful or wanton misconduct by the"

Page 4, line 14, remove "individual"

Renumber accordingly

#2
2201
3-20-19

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2201

Introduced by

Senators Rust, Luick, Oban

Representatives Devlin, Schreiber-Beck, Mock

1 A BILL for an Act to amend and reenact sections 15-10-55 and 15.1-19-25 of the North Dakota
2 Century Code, relating to the freedom of expression of student journalists.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 15-10-55 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **15-10-55. Student journalists - Freedom of expression - Civil remedy.**

7 1. As used in this section:

8 a. "Protected activity" means an expression of free speech or freedom of the press.

9 b. "School-sponsored media" means any material that is prepared, substantially
10 written, published, or broadcast by a student journalist at ~~an institution under the~~
11 ~~supervision of the state board~~ a public institution of higher education, distributed
12 or generally made available to members of the student body, and prepared under
13 the direction of a student media adviser. The term does not include any media
14 intended for distribution or transmission solely in the classroom in which the
15 media is produced.

16 ~~b.c.~~ "Student journalist" means a student of ~~an institution under the supervision of the~~
17 ~~state board~~ a public institution of higher education who gathers, compiles, writes,
18 edits, photographs, records, or prepares information for dissemination in
19 school-sponsored media.

20 e.d. "Student media adviser" means an individual employed, appointed, or designated
21 by ~~an institution under the supervision of the state board~~ a public institution of
22 higher education to supervise or provide instruction relating to school-sponsored
23 media.

1 2. Except as provided in subsection 3, a student journalist has the right to exercise
2 freedom of speech and of the press in school-sponsored media, regardless of whether
3 the media is supported financially by the institution or by use of facilities of the
4 institution or produced in conjunction with a class in which the student is enrolled.
5 Subject to subsection 3, a student journalist is responsible for determining the news,
6 opinion, feature, and advertising content of school-sponsored media. This subsection
7 may not be construed to prevent a student media adviser from teaching professional
8 standards of English and journalism to student journalists. A student media adviser
9 may not be dismissed, suspended, or disciplined for acting to protect a student
10 journalist engaged in a protected activity or for refusing to infringe on a protected
11 activity.

12 3. This section does not authorize or protect expression by a student that:
13 a. Is libelous or slanderous;
14 b. Constitutes an unwarranted invasion of privacy;
15 c. Violates federal or state law; or
16 d. So incites students as to create a clear and present danger of the commission of
17 an unlawful act, the violation of institution or state board of higher education
18 policies, or the material and substantial disruption of the orderly operation of the
19 institution.

20 4. An expression of free speech or freedom of the press made by a student journalist
21 under this section may not be construed as an expression of school policy. A school,
22 school official, employee, or parent or legal guardian of a student journalist may not be
23 liable in any civil or criminal action for an expression of free speech or freedom of the
24 press made by a student journalist, ~~except in the case of willful or wanton misconduct~~
25 by the individual.

26 **SECTION 2. AMENDMENT.** Section 15.1-19-25 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **15.1-19-25. Student journalists - Freedom of expression - Civil remedy.**

29 1. As used in this section:
30 a. "Protected activity" means an expression of free speech or freedom of the press.

1 | _____ b. "School-sponsored media" means any material that is prepared, substantially
2 | written, published, or broadcast by a student journalist at a public school,
3 | distributed or generally made available to members of the student body, and
4 | prepared under the direction of a student media adviser. The term does not
5 | include any media intended for distribution or transmission solely in the
6 | classroom in which the media is produced.

7 | ~~b.c.~~ "Student journalist" means a public school student who gathers, compiles, writes,
8 | edits, photographs, records, or prepares information for dissemination in
9 | school-sponsored media.

10 | ~~e.d.~~ "Student media adviser" means an individual employed, appointed, or designated
11 | by a school district to supervise or provide instruction relating to
12 | school-sponsored media.

13 | 2. Except as provided in subsection 3, a student journalist has the right to exercise
14 | freedom of speech and of the press in school-sponsored media, regardless of whether
15 | the media is supported financially by the school district, by use of facilities of the
16 | school district, or produced in conjunction with a class in which the student is enrolled.
17 | Subject to subsection 3, a student journalist is responsible for determining the news,
18 | opinion, feature, and advertising content of school-sponsored media. This subsection
19 | may not be construed to prevent a student media adviser from teaching professional
20 | standards of English and journalism to student journalists. A student media adviser
21 | may not be dismissed, suspended, or disciplined for acting to protect a student
22 | journalist engaged in a protected activity or for refusing to infringe on a protected
23 | activity.

24 | 3. This section does not authorize or protect expression by a student that:
25 | a. Is libelous or slanderous;
26 | b. Constitutes an unwarranted invasion of privacy;
27 | c. Violates federal or state law; or
28 | d. So incites students as to create a clear and present danger of the commission of
29 | an unlawful act, the violation of school district policy, or the material and
30 | substantial disruption of the orderly operation of the school.

Sixty-fifth
Legislative Assembly

- 1 4. A school district may not authorize any prior restraint of any school-sponsored media
2 except when the media:
- 3 a. Is libelous or slanderous;
- 4 b. Constitutes an unwarranted invasion of privacy;
- 5 c. Violates federal or state law; or
- 6 d. So incites students as to create a clear and present danger of the commission of
7 an unlawful act, the violation of school district policies, or the material and
8 substantial disruption of the orderly operation of the school.
- 9 5. A school district may not sanction a student operating as an independent journalist.
- 10 6. Each school district shall adopt a written student freedom of expression policy in
11 accordance with this section. The policy must include reasonable provisions for the
12 time, place, and manner of student expression. The policy may also include limitations
13 to language that may be defined as profane, harassing, threatening, or intimidating. An
14 expression of free speech or freedom of the press made by a student journalist under
15 this section may not be construed as an expression of school policy. A school, school
16 official, employee, or parent or legal guardian of a student journalist may not be liable
17 in any civil or criminal action for an expression of free speech or freedom of the press
18 made by a student journalist, except in the case of willful or wanton misconduct by the
19 individual.