Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1471

Introduced by

Representatives Looysen, Rick C. Becker, Haak, Mock

Senators Grabinger, Luick

A BILL for an Act to create and enact a new section to chapters 15-10, 15-18.1, and 15.1-06 of the North Dakota Century Code, relating to freedom of expression rights of students of public institutions of higher education and public schools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Student journalists - Freedom of expression - Civil remedy.

1. As used in this section:
   a. "School-sponsored media" means any material that is prepared, substantially written, published, or broadcast by a student journalist at an institution under the supervision of the state board of higher education, distributed or generally made available to members of the student body, and prepared under the direction of a student media adviser. The term does not include any media intended for distribution or transmission solely in the classroom in which the media is produced.
   b. "Student journalist" means a student of an institution under the supervision of the state board of higher education who gathers, compiles, writes, edits, photographs, records, or prepares information for dissemination in school-sponsored media.
   c. "Student media adviser" means an individual employed, appointed, or designated by an institution under the supervision of the state board of higher education to supervise or provide instruction relating to school-sponsored media.
2. Except as provided in subsection 3, a student journalist has the right to exercise freedom of speech and of the press in school-sponsored media, regardless of whether

the media is supported financially by the institution or by use of facilities of the institution or produced in conjunction with a class in which the student is enrolled. Subject to subsection 3, a student journalist is responsible for determining the news, opinion, feature, and advertising content of school-sponsored media. This subsection may not be construed to prevent a student media adviser from teaching professional standards of English and journalism to student journalists.

3. This section does not authorize or protect expression by a student that:
   a. Is libelous or slanderous;
   b. Constitutes an unwarranted invasion of privacy;
   c. Violates federal or state law; or
   d. So incites students as to create a clear and present danger of the commission of an unlawful act, the violation of institution or state board of higher education policies, or the material and substantial disruption of the orderly operation of the institution.
4. A student enrolled in an institution under the supervision of the state board of higher education may commence a civil action to obtain damages under this section and appropriate injunctive or declaratory relief as determined by a court for a violation of subsection 2, the first amendment to the United States Constitution, or section 4 of article I of the Constitution of North Dakota.

SECTION 2. A new section to chapter 15-18.1 of the North Dakota Century Code is created and enacted as follows:

Student journalists - Freedom of expression - Civil remedy.

1. Notwithstanding the exemptions in section 15-18.1-02, a postsecondary educational institution may not make or enforce any rule subjecting any student to disciplinary sanctions solely on the basis of conduct that is speech or other communication which, when engaged in outside the campus or facility of the postsecondary institution, is protected from governmental restriction by the first amendment to the United States Constitution or section 4 of article I of the Constitution of North Dakota.
2. A student enrolled in a postsecondary institution may commence a civil action to obtain appropriate injunctive or declaratory relief as determined by a court for a violation of subsection 1.

3. 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.

4. This section does authorize any prior restraint of student speech.

5. This section does not prohibit the imposition of discipline for harassment, threats, or intimidation, unless constitutionally protected.

6. This section does not prohibit an institution from adopting rules and policies that are designed to prevent hate violence from being directed at students in a manner that denies students full participation in the educational process, so long as the rules and policies conform to standards established by the first amendment to the United States Constitution or section 4 of article I of the Constitution of North Dakota.

SECTION 3. A new section to chapter 15.1-06 of the North Dakota Century Code is created and enacted as follows:

Student journalists - Freedom of expression - Civil remedy.

1. As used in this section:

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

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

   c. "Student media adviser" means an individual employed, appointed, or designated by a school district to supervise or provide instruction relating to school-sponsored media.

2. Except as provided in subsection 3, a student journalist has the right to exercise freedom of speech and of the press in school-sponsored media, regardless of whether the media is supported financially by the school district, by use of facilities of the school district, or produced in conjunction with a class in which the student is enrolled.

Subject to subsection 3, a student journalist is responsible for determining the news, opinion, feature, and advertising content of school-sponsored media. This subsection may not be construed to prevent a student media adviser from teaching professional standards of English and journalism to student journalists.

3. This section does not authorize or protect expression by a student that:

a. Is libelous or slanderous;

b. Constitutes an unwarranted invasion of privacy;

c. Violates federal or state law; or

d. So incites students as to create a clear and present danger of the commission of an unlawful act, the violation of school district policy, or the material and substantial disruption of the orderly operation of the school.

4. A student enrolled in a public school or the student's parent or guardian may commence a civil action to obtain damages under this section and appropriate injunctive or declaratory relief as determined by a court for a violation of subsection 2, the first amendment to the United States Constitution, or section 4 of article I of the Constitution of North Dakota.

5. Each school district shall adopt a written student freedom of expression policy in accordance with this section. The policy must include reasonable provisions for the time, place, and manner of student expression.