

**ACADEMIC SENATE
OF
THE CALIFORNIA STATE UNIVERSITY**

AS-2750-06/FGA
May 4-5, 2006

In Support of AB 2581 (Protecting Student Freedom of Expression)

RESOLVED: That the Academic Senate of the California State University (CSU) reaffirm its commitment to the principles of free speech rights, including the right to publish free of external constraints, as expressed in AS 2649-04/FA (attached); and be it further

RESOLVED: That as an application of these principles, the Academic Senate, CSU strongly urge passage of AB 2581, which would prohibit disciplinary sanctions by the CSU and other California public institutions of higher education against students on the basis of student speech or press activities that are protected by the California Constitution and the First Amendment of the United States Constitution; and be it further

RESOLVED: That this resolution be communicated to Assembly Members Yee and Nation, the Assembly Higher Education Committee, the Senate Education Committee, and any other members of the legislature that FGA may deem appropriate.

RATIONALE: Under existing law the CSU, the University of California (UC), and California's community colleges are prohibited from disciplining students for engaging in speech-related activities outside the campus, as protected by the California Constitution or the First Amendment of the United States Constitution. AB 2581 (Yee and Nation) reaffirms these free speech rights and additionally extends these provisions to the student press. Additional background can be found in the April 24, 2006 letter of support for AB 2581 released by the California Newspaper Publishers Association (Attached).

The Academic Senate CSU in the past has affirmed its commitment to the principles of academic freedom, including freedom of speech and freedom to publish, particularly as they apply to faculty (AS 2649-04/FA). Recognizing that student freedom of expression is an essential component of higher education, the Academic Senate, CSU expresses its support for AB 2581.

Approved Unanimously – May 4-5, 2006



California Newspaper Publishers Association
CNPA Services, Inc.

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April 24, 2006

Honorable Leland Yee
California State Assembly
State Capitol Room 3173
Sacramento, California 95814

RE: **Support AB 2581**

Dear Assemblyman Yee:

I am writing to you on behalf of the California Newspaper Publishers Association to express the Association's support sponsorship of your **AB 2581**, which would prohibit University of California, California State University or California Community College officials from censoring or requiring prior review of student newspapers. The measure would also prohibit any of these officials from disciplining a student who engages in speech or press activities.

The need for legislation arose from a federal Seventh Circuit court decision that ruled that a college administrator could require student editors of a state university's newspaper to submit articles for prior review by the administrator before the newspaper would be sent to the printer for publication.

The case, *Hosty v. Carter*, 412 F.3d 731 (7th Cir. 2005), involved student journalists at the *Innovator*, a student operated newspaper at Governor's State University in Illinois, which published a number of articles critical of the school's administration. One of the articles was about the decision not to renew the contract of the *Innovator's* adviser. In response, the dean of student affairs established a new policy whereby the students were required to submit all articles to the administration for approval. The students challenged the policy on First Amendment grounds in federal court. The U.S. District Court ruled that the students' First Amendment rights were violated. The Seventh Circuit Court of Appeals reversed and the U.S. Supreme Court recently declined to hear the student's appeal of the Seventh Circuit's decision.

The Seventh Circuit's decision in *Hosty* extended the holding of a previous case decided by the U.S. Supreme Court ca *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988). *Hazelwood* held that high school sponsored student publications do not enjoy the same First Amendment protections as professional publications and found that a public high school did not violate the First Amendment rights of its student editors when school officials refused to publish two pages of the student newspaper. The *Hosty* court applied the *Hazelwood* rationale to college student publications.

The California legislature has a long and rich tradition of protecting speech and press rights, regardless of the age of the person who is exercising these rights. As the *Hazelwood* case was being appealed to the Supreme Court, the idea of censorship in California was so abhorrent that this legislature decided not to wait for the Supreme Court to make a decision and so it added Section 48907 to the Education Code to protect high school journalists.

At the time Section 48907 was enacted, college and university newspapers were not included in the statute because the *Hazelwood* case involved only high school journalists and it was assumed at the time that the First Amendment already protected college and university publications. This assumption is no longer valid in light of the *Hosty* decision. As California high school journalists faced the threat of prior restraint during the *Hazelwood* controversy several decades ago, in 2006 college and university journalists find themselves in the same precarious position. AB 2581 is essential to ensure that college and university journalists have at least the same protection from censorship as high school journalists in this state.

CNPA applauds your leadership in protecting the rights of student newspapers and recognizing the vital role these publications serve on their campuses as well as in their communities. We look forward to working with you to obtain the Governor's signature on AB 2581.

Sincerely,

James W. Ewert,
CNPA Legal Counsel

cc: Will Fleet, CNPA President/Publisher, Glendale News-Press
Harold W. Fuson, Jr., CNPA Governmental Affairs Committee Chairman, V. P. and Chief Legal Officer, Copley Press, Inc.
Jack Bates, CNPA Executive Director
Thomas W. Newton, CNPA General Counsel
Bruce Hamlett, Chief Consultant, Assembly Higher Education Committee
Manuel Valencia, Counsel, Assembly Judiciary Committee

AMENDED IN ASSEMBLY MARCH 27, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2581

Introduced by Assembly Members ~~Nation and Yee~~ *Yee and Nation*

February 24, 2006

An act to amend Section 66301 of the Education Code, relating to postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 2581, as amended, ~~Nation Yee~~. Postsecondary education: student conduct.

Existing law prohibits the Regents of the University of California, upon adopting a specified resolution, and the Trustees of the California State University and the governing board of a community college district, from making or enforcing any rule subjecting a student to disciplinary sanction solely on the basis of conduct that is speech or other communication that, when engaged in outside a campus is protected from governmental restriction by specified provisions of the California Constitution or the United States Constitution. Existing law provides that nothing in this provision shall be construed to authorize any prior restraint of student speech.

This bill would additionally prohibit ~~this provision~~ *any administrator of any campus of those institutions from making or enforcing any rule subjecting a student to disciplinary sanction solely on the basis of conduct that is speech or other communication that, when engaged in outside a campus, is protected from governmental restriction by specified provisions of the California Constitution or the United States Constitution. The bill would also prohibit its provisions*

AB 2581

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from being construed to authorize any prior restraint of the student press.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 66301 of the Education Code is
2 amended to read:

3 66301. (a) Neither the Regents of the University of
4 California, the Trustees of the California State University, ~~nor~~ the
5 governing board of any community college district, *nor any*
6 *administrator of any campus of those institutions*, shall make or
7 enforce any rule subjecting any student to disciplinary sanction
8 solely on the basis of conduct that is speech or other
9 communication that, when engaged in outside a campus of those
10 institutions, is protected from governmental restriction by the
11 First Amendment to the United States Constitution or Section 2
12 of Article 1 of the California Constitution.

13 (b) Any student enrolled in an institution, as specified in
14 subdivision (a), that has made or enforced any rule in violation of
15 subdivision (a) may commence a civil action to obtain
16 appropriate injunctive and declaratory relief as determined by the
17 court. Upon *a* motion, a court may award attorney's fees to a
18 prevailing plaintiff in a civil action pursuant to this section.

19 (c) Nothing in this section shall be construed to authorize any
20 prior restraint of student speech or the student press.

21 (d) Nothing in this section prohibits the imposition of
22 discipline for harassment, threats, or intimidation, unless
23 constitutionally protected.

24 (e) Nothing in this section prohibits an institution from
25 adopting rules and regulations that are designed to prevent hate
26 violence, as defined in subdivision (a) of Section 4 of Chapter
27 1363 of the Statutes of 1992, from being directed at students in a
28 manner that denies them their full participation in the educational
29 process, if the rules and regulations conform to standards
30 established by the First Amendment to the United States

- 1 Constitution and Section 2 of Article 1 of the California
- 2 Constitution for citizens generally.

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