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 for 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 case 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.

http://www.cnpa.com/Leg/GA/Letters/05-06/AB%202581.htm

11/14/2007
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
ASSEMBLY BILL No. 2581

Introduced by Assembly Members Nation and Yee

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


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

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

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

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

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

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

(e) Nothing in this section prohibits an institution from adopting rules and regulations that are designed to prevent hate violence, as defined in subdivision (a) of Section 4 of Chapter 1363 of the Statutes of 1992, from being directed at students in a manner that denies them their full participation in the educational process, if the rules and regulations conform to standards established by the First Amendment to the United States Constitution.
Constitution and Section 2 of Article 1 of the California Constitution for citizens generally.