
Threats to the Independence of Student Media

(DECEMBER 2016)

A committee composed of representatives from the American Association of University Professors, the College Media Association, the National Coalition Against Censorship, and the Student Press Law Center formulated this joint statement in fall 2016. The document received the endorsement of all four sponsoring organizations.

In 2015, the Black Lives Matter movement spawned protests on college and university campuses from coast to coast as students, faculty, and staff sought to draw attention to what they perceived as institutional racism in higher education. The glare of the national spotlight revealed genuine problems and had real consequences, with policy changes enacted and university presidents stepping down.

The movement also shone light on the status of student journalists and their faculty and staff advisers, as demonstrated by an incident involving a faculty member and a student videographer at the University of Missouri and by one involving the student newspaper at Wesleyan University.¹ While unusual for the attention they garnered, these incidents were by no means unique or even rare. It has become disturbingly routine for student journalists and their advisers to experience overt hostility that threatens their ability to inform the campus community and, in some instances, imperils their careers or the survival of their publications, as the sampling of cases discussed in this report demonstrates. Administrative efforts to subordinate campus journalism to public relations are inconsistent

with the mission of higher education to provide a space for intellectual exploration and debate.

But publicly reported cases may just be the tip of a much larger iceberg. A March 2016 survey of college and university media advisers affiliated with the College Media Association revealed that over a three-year period more than twenty media advisers who had not previously shared their stories reported suffering some degree of administrative pressure to control, edit, or censor student journalistic content. This pressure was reported from every segment of higher education and from every institutional type: public and private, four-year and two-year, religious and secular.

None of the cases has been made public, in most instances because the advisers feared for their jobs, regardless of whether the adviser was a staff or faculty member and regardless of his or her tenure status. In many cases, college and university officials threatened retaliation against students and advisers not only for coverage critical of the administration but also for otherwise frivolous coverage that the administrators believed placed the institution in an unflattering light. For example, administrators at one four-year public university demanded that the adviser begin conducting prepublication review after the newspaper published a story about the “top ten places to hook up on campus.” And it is not only administrators who apply this pressure. In the 2016 survey, one media adviser reported that a representative of graduate student government threatened to cut the newspaper’s funding if the newspaper did not cover more graduate student events. In some cases, advisers were told that conducting “prior review”—turning the adviser into

1. On Missouri, see the AAUP’s 2016 report “Academic Freedom and Tenure: University of Missouri (Columbia),” in *Bulletin of the American Association of University Professors* (special issue of *Academe*), July–August 2016, 25–43, <https://www.aaup.org/report/academic-freedom-and-tenure-university-missouri-columbia>. On Wesleyan, see Tara Jeffries, “Op-Ed in Wesleyan Argus Sparks Outrage, Petition to Defund Newspaper,” September 23, 2015, <http://www.spic.org/article/2015/09/op-ed-in-wesleyan-argus-sparks-outrage-petition-to-defund-newspaper>.

a gatekeeper with the ability to overrule the editors' judgments—was a requirement of employment.

In response to such cases, the American Association of University Professors, the College Media Association, the National Coalition Against Censorship, and the Student Press Law Center agreed to prepare this report, which reaffirms and expands upon the basic principles of a free student press previously endorsed by the AAUP and other organizations in the 1967 *Joint Statement on Rights and Freedoms of Students*.² With widespread erosion in staffing at traditional news organizations, college and university journalists are today asked to bear more responsibility than ever before as front-line information providers for the entire community. It is therefore essential that they enjoy the protections of a free press.

I. Invaluable Role of Student Media

The 1967 *Joint Statement on Rights and Freedoms of Students* declared:

Student publications and the student press are valuable aids in establishing and maintaining an atmosphere of free and responsible discussion and of intellectual exploration on the campus. They are a means of bringing student concerns to the attention of the faculty and the institutional authorities and of formulating student opinion on various issues on the campus and in the world at large.

Whenever possible the student newspaper should be an independent corporation financially and legally separate from the college or university. Where financial and legal autonomy is not possible, the institution, as the publisher of student publications, may have to bear the legal responsibility for the contents of the publications. In the delegation of editorial responsibility to students, the institution must provide sufficient editorial freedom and financial autonomy for the student publications to maintain their integrity of purpose as vehicles for free inquiry and free expression in an academic community.

2. The statement was drafted by a committee composed of representatives from the AAUP, the United States National Student Association (now the United States Student Association), the Association of American Colleges (now the Association of American Colleges and Universities), the National Association of Student Personnel Administrators, and the National Association of Women Deans and Counselors and was endorsed by each of these groups as well as by a number of other professional bodies. See AAUP, *Policy Documents and Reports*, 11th ed. (Baltimore: Johns Hopkins University Press, 2015), 381–86.

“As safeguards for the editorial freedom of student publications,” the *Statement* continued, “the following provisions are necessary”:

- a. The student press should be free of censorship and advance approval of copy, and its editors and managers should be free to develop their own editorial policies and news coverage.
- b. Editors and managers of student publications should be protected from arbitrary suspension and removal because of student, faculty, administration, or public disapproval of editorial policy or content. Only for proper and stated causes should editors and managers be subject to removal and then only by orderly and prescribed procedures. The agency responsible for the appointment of editors and managers should be the agency responsible for their removal.
- c. All institutionally published and financed student publications should explicitly state on the editorial page that the opinions there expressed are not necessarily those of the college, university, or student body.³

These principles should apply to all student media, which should not be subordinated to an institution's public-relations program.

Candid journalism that discusses students' dissatisfaction with the perceived shortcomings of their institutions can be uncomfortable for campus authorities. Nevertheless, this journalism fulfills a healthful civic function. A college or university campus is in many ways analogous to a self-contained city in which thousands of residents conduct their daily lives—drawing on the resources of the institution for housing, dining, police protection, medical services, employment, recreation, and culture. Student journalists keep watch over the delivery of these services, giving the members of their public a voice in the matters that concern them most.

Student-produced journalism increasingly serves as an “information lifeline” for the entire community. In 2012, the Knight Foundation and other philanthropic funders of journalism challenged universities to reimagine themselves as “teaching hospitals” for news, satisfying the public's critical information needs just as traditional teaching hospitals fulfill urgent medical

3. While a disclaimer is recommended as a potentially helpful clarification for the benefit of the audience, the decision whether and how to disclaim affiliation with the institution is, as with all editorial content decisions, ultimately a judgment for the student editors.

needs.⁴ This evolution was already well under way but has accelerated with the rapid erosion of staffing at professional news organizations; the Pew Research Center reports that 14 percent of all journalists responsible for covering state capitals are students.⁵

When they are not financially or legally independent, student media outlets have traditionally been categorized either as curricular or as co- or extracurricular—that is, as classroom labs where work is directed, assigned, and graded by a professor or as independent organizations affiliated with a college or university but run entirely by students, often being designated as a student club, with a skilled adviser who offers education and counsel but takes no part in editorial decisions. In both arrangements, professors or advisers, whether they are members of the faculty or the staff, can sometimes face intense pressure from college and university administrators to avoid topics or stories that the administration finds objectionable. Because the work of news outlets is, by nature, often more publicly visible than other classroom or club activities, administrators may be quick to discipline these staff and faculty members because they believe the institution's reputation to be at stake, sometimes on a daily basis, as each new news story is published in print, on air, or online.

Recent years have brought an increasing diversity of online publications and “media laboratories,” which can provide student journalists with the opportunity to disseminate their class-produced work to a public audience. These publications make a significant contribution to the community's journalistic ecosystem. Nevertheless, they are no substitute for independent, student-run media. Few, if any, laboratory-based publications supervised by instructors as graded classroom exercises are providing “watchdog” coverage of the campus itself (and indeed, significant structural issues make such class-generated watchdog coverage impracticable).⁶

Obstruction and harassment of campus media frequently signify deeper institutional mismanagement that administrators may seek to downplay or conceal. In one especially egregious example, the administration of California's Southwest College mounted a campaign of intimidation and bullying of student journalists—including freezing the newspaper's printing budget, cutting the adviser's salary, and even threatening staff members with arrest—as part of an effort to conceal high-level wrongdoing. The administrator responsible for the harassment campaign, Raj Chopra, was forced out of office soon afterward as part of a wide-ranging “pay-to-play” corruption scandal encompassing members of the college's board of trustees and contractors. The scandal resulted in criminal charges against eighteen individuals, including Chopra, who ended up accepting a guilty plea and serving three years' probation.⁷

No reputable college or university would insist that its auditors skew their findings to portray a deceptively favorable outlook because the institution is paying for the report, although they might dissent from those findings. Administrations should take a similar approach to the findings of their student

a less-protected constitutional status by virtue of the Supreme Court's ruling in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988). The *Hazelwood* ruling diminished the constitutional protection of student speech in school-supervised media and, while its applicability to the postsecondary level is disputed, at least some judges have found its reasoning applicable to the speech of college students. See, for example, *Hosty v. Carter*, 412 F.3d 731 (7th Cir. 2005) (*en banc*).

7. The punishment inflicted on the students and their adviser is detailed in a news release announcing their 2011 selection as winners of the College Press Freedom Award, which recognizes fortitude against adversity: Student Press Law Center, “Award Recognizes Calif. Editors' Bravery,” September 29, 2011, <http://www.splc.org/article/2011/09/press-release-award-recognizes-calif-editors-bravery>. See also James Palen, “Two Sentenced on Reduced Charges in South Bay Cases,” *The Daily Transcript*, April 7, 2014. Illinois's corruption-riddled College of DuPage likewise harassed and intimidated student journalists and fired a twenty-year-veteran adviser in 2011—after which it came to light that the college administration was engaged in a scheme to conceal millions in wasteful spending. See Ashley A. Smith, “The College That Can't Fix Itself,” *Inside Higher Ed*, May 19, 2015, <https://www.insidehighered.com/news/2015/05/19/illinois-college-dupage-courts-controversy-once-again>. The retaliatory discharge of adviser Cathy Stablein is described in Seth Zweifler, “Ill. College Journalists, Administrators at Odds over Adviser's Removal,” June 3, 2011, <http://www.splc.org/article/2011/06/ill-college-journalists-administrators-at-odds-over-advisers-removal>.

4. Eric Newton, “An Open Letter to America's University Presidents,” August 3, 2012, <http://www.knightfoundation.org/articles/open-letter-americas-university-presidents>.

5. Jodi Enda, Katerina Eva Matsa, and Jan Lauren Boyles, “America's Shifting Statehouse Press,” Pew Research Center, July 10, 2014, <http://www.journalism.org/2014/07/10/americas-shifting-statehouse-press/>.

6. For example, it sometimes becomes necessary for student journalistic publications to sue their institutions to obtain access to public records or meetings. It is unlikely that a news website closely supervised by a faculty instructor would be in a position to bring such a lawsuit. Moreover, “curricular” publications may occupy

media, the value of which is inextricably linked to their independence.

II. Trained Media Advisers as Assets

The best media advisers, often journalists themselves, are staunch defenders of their students' free press rights. They should not be punished for asserting themselves in this role.

The College Media Association, whose seven hundred members advise college media at every level of collegiate journalism, has endorsed a *Code of Ethical Behavior* for media advisers.⁸ It states: "The adviser is a journalist, educator and manager who is, above all, a role model. Because of this, the adviser must be beyond reproach with regard to personal and professional ethical behavior; should encourage the student media advised to formulate, adhere to and publicize an organizational code of ethics; and ensure that neither the medium, its staff nor the adviser enter into situations which would jeopardize the public's trust in and reliance on the medium as a fair and balanced source of news and analysis." The *Code* further declares:

Freedom of expression and debate by means of a free and vigorous student media are essential to the effectiveness of an educational community in a democratic society. This implies the obligation of the student media to provide a forum for the expression of opinion—not only those opinions differing from established university or administrative policy, but those at odds with the media staff beliefs or opinions as well.

Student media must be free from all forms of external interference designed to regulate its content, including confiscation of its products or broadcasts; suspension of publication or transmission; academic personal or budgetary sanctions; arbitrary removal of staff members or faculty; or threats to the existence of student publications or broadcast outlets.

Conducting "prior review" violates the basic tenets of the college or university media adviser's personal and professional code. Media advisers are, above all else, educators who seek to train young journalists in the practice of ethical, thorough journalism. Typically,

they are not *producers* of college or university journalism and should not be expected—or allowed—to interfere in the editorial process. An adviser who writes for the student newspaper without attribution or who rewrites material in the student newspaper is akin to a professor who rewrites an essay for a student instead of offering suggestions for improvement. An administrator who demands control of student media content is akin to a college or university official who dictates the content of a student essay.

When news content stems from classwork—when, for example, students in a journalism course produce work that the professor then posts to a class website—there might be greater ambiguity. However, even in these cases, professors still must restrain the impulse to control content, and administrators should never attempt to dictate what these classes can and cannot cover, no matter how objectionable they might find the content to be.

Students learn by doing: by reporting and writing, by photographing, or by making video or audio recordings. They should be in charge of editing, designing, managing, and leading their organizations, for this is the essence of experiential learning. The College Media Association *Code of Ethics* therefore mandates that advisers must always "defend and teach without censoring." Regardless of the type of institution or adviser, the *Code* asserts, "There should never be an instance where an adviser maximizes quality by minimizing learning. Student media should always consist of student work."

III. Cases

Many college and university authorities have exhibited an intimidating level of hostility toward student media, inhibiting the free exchange of ideas on campus.

A. Adviser Firings

When college or university administrators are disturbed by aggressive student journalism, faculty advisers sometimes pay with their jobs. Examples abound in public and private institutions alike. The following incidents have occurred since the beginning of 2015 alone:

- At Fairmont State University, a public institution in West Virginia, journalism adviser Michael Kelley was removed in 2015, after just nine months on the job, following his students' publication of a two-part series about unhealthy levels of mold in a campus dorm. The president

8. Founded in 1954 as the National Council of College Publications Advisers, the College Media Association serves student media professionals, staffs, and programs with education, research, and resources. Its current *Code of Ethical Behavior*, available online at http://www.collegemedia.org/about_cma/code_of_ethics/, dates from 1983.

and provost of the university explicitly told student editors that they wanted a less controversial newspaper with more positive stories. Kelley was the third journalism adviser in a row to leave Fairmont State under circumstances indicating retaliation over editorial content.⁹

- At Butler University, a private institution in Indiana, journalism educator and career journalist Loni McKown was stripped of her advising duties at the *Butler Collegian* and ordered to have no further contact with its staff after a dispute over whether she breached protocol by sharing an e-mail about impending institutional budget cuts with the student editors. McKown had clashed with college administration on multiple occasions over news coverage in the *Collegian* perceived as unfavorable to the university's reputation, including a 2013 article bringing to light past criminal charges against a high-profile newly hired staff member, which shared a national first-place investigative reporting award. After McKown filed a grievance challenging her removal as adviser, which President James Danko rejected, the university terminated her faculty appointment as well.
- Mount Saint Mary's University in Maryland fired newspaper adviser Ed Egan on the grounds of "disloyalty" after his students published an article describing conversations in which the university president told faculty members in graphic terms about his plans to cull underperforming first-year students. ("You just have to drown the bunnies . . . Put a Glock to their heads," the newspaper quoted him as saying.) The president, Simon Newman, ultimately resigned, and Egan returned to his job but was not reinstated to his previous advising position.¹⁰
- At Saint Peter's University, a Roman Catholic institution in New Jersey, media adviser Ernabel Demillo, an Emmy-nominated broadcast journalist with extensive experience in nearby New

York City, was removed in 2016 after students of the newspaper she advised published a Valentine's Day issue that included frank discussions of sex. Provost Gerald O'Sullivan sent an e-mail to Demillo, a full-time tenured professor who advised the paper on a part-time basis, in which he called the sex edition of the newspaper "degrading of human intimacy." Saint Peter's officials subsequently halted publication of the newspaper, removed Demillo as adviser (while allowing her to continue to teach in her department), and removed the student-elected leadership of the organization. University officials claimed that they removed the student leadership not because of newspaper content but because the organization's governing documents were out of date when the leaders were elected by their peers.¹¹

- At Muscatine Community College, a public institution in Iowa, adviser James Compton was removed by college administrators as an act of retaliation for content in the student newspaper, *The Calumet*. Administrators told Compton that he must censor the students or face retribution. In response, Muscatine students filed suit against several college officials, but they did not prevail in court, and Compton never returned to his post as media adviser.¹²
- At Northern Michigan University, adviser Cheryl Reed was removed in 2015 and the student managing editor was denied the opportunity to serve as editor-in-chief following attempts by student journalists to aggressively cover the administration. The removals were preceded by university officials' publicly

9. For an in-depth discussion of the Fairmont State situation, see Trisha LeBoeuf, "A Culture of Intimidation and Mistrust with Student Media at Fairmont State," *Student Press Law Center Report*, Winter 2015–16, <http://www.splc.org/article/2016/01/a-culture-of-intimidation-and-mistrust>.

10. Scott Jaschik, "Turmoil at the Mount," *Inside Higher Ed*, February 15, 2016, <https://www.insidehighered.com/news/2016/02/15/mount-st-marys-reinstates-professors-it-fired>.

11. The College Media Association officially censured Saint Peter's University as a result of the university's actions, which were recounted in a report from the association's First Amendment Advocacy Committee.

12. The Student Press Law Center assisted students in their suit, and the College Media Association issued a letter of concern as the case went forward. See Mark Keierleber, "Student Journalists at Iowa Community College Allege Harassment, Intimidation in First Amendment Lawsuit against Administrators," May 6, 2015, <http://www.splc.org/article/2015/05/student-journalists-at-iowa-community-college-allege-harassment-intimidation-in-first-amendment-lawsuit-against-administrators>, and "College Media Association Questions Removal of Iowa Student Newspaper Adviser," news release, May 7, 2015, http://www.collegemedia.org/news/cma_news/article_ea59c566-f4eb-11e4-821e-0b39aa080014.html.

criticizing student news content regarding travel expenses for members of the board of trustees.¹³

- At Delta State University in Mississippi, media adviser Patricia Roberts lost her job in 2014. The following year the state's higher education governing board voted to cease university funding to print the eighty-three-year-old student newspaper.¹⁴

These cases are but a sampling of publicly reported incidents. As previously noted, nearly two dozen advisers polled by the College Media Association in spring 2016 said they had faced some form of administrative pressure to control content. The College Media Association currently has five colleges and universities under censure, which represents the strongest possible condemnation of an institution of higher learning and designates that institution as hostile to student press freedom and to the educators who advise student journalists.¹⁵

B. Financially Based Censorship

While it is impossible to quantify the retaliatory removal of journalism advisers or to say with certainty whether retaliation is increasing, it is relatively easy to document the elimination of journalism programs and student journalistic publications. Recent years have seen a notable diminution in opportunities for students to obtain classroom instruction in journalism or to practice journalism in school-supported media. Decisions to eliminate journalism training and publishing opportunities often align with conflict over editorial content.

For example, Delta State University's 2015 decisions ended a highly successful journalism program that had produced generations of award-winning journalists for what the president and trustees contended were financial reasons. Northwest College in Wyoming recently voted to "sunset" journalism and broadcasting instruction, which will eliminate the laboratory courses that produced the college's *Northwest Trail* newspaper, known for its aggressive watchdog coverage of campus news. In both instances, serious

unanswered questions were raised about the veracity of the institutions' purported financial motivations, because of friction with administrators over editorial content and the apparent selective targeting of journalism for elimination.

In addition to the aforementioned controversy at Wesleyan University, where an opinion piece critical of Black Lives Matter published in the campus paper generated ongoing threats to cut the paper's funding, other campus publications have faced threats to or removal of their funding as a response to coverage unflattering to those in authority. In California, for instance, the University of Redlands stripped the student newspaper of funding after publication of an article that included comments critical of a major donor who endowed a scholarship program.¹⁶

Retaliation afflicts even some of the best-known journalism programs long associated with journalistic excellence, where it might be expected that administrators would be especially protective of a valued asset. At the University of Kansas, editors filed suit in February 2016 after a 50 percent reduction in student activity-fee support, initiated by the student government association and ratified by KU administrators, was acknowledged to have been motivated at least in part by a desire to punish unfavorable editorial commentary.¹⁷

Opportunities for students to disseminate news over the broadcast airwaves have declined precipitously as well, primarily for economic reasons. Since the 2007–08 recession, dozens of colleges and universities have closed or sold their licensed over-the-air radio stations, including Vanderbilt University, Rice University, the University of San Francisco, Southeast Missouri State University, Wellesley College, Texas Tech University, and Augustana University in South Dakota (although some of these institutions have moved their programming to online-streamed Internet radio). While there is no indication that controversial news content provoked any of these decisions, the continued erosion of outlets for journalists to reach a mass audience does not bode well for the civic health of campus communities.

13. David Jesse, "Northern's Student Newspaper Adviser Ousted," *Detroit Free Press*, April 6, 2015, <http://www.freep.com/story/news/local/michigan/2015/04/07/northern-paper-reed/25438113/>.

14. Katherine Schaeffer, "Delta State U. Journalism Program, Student Newspaper Print Funding Axed," April 16, 2015, <http://www.splc.org/article/2015/04/delta-state-u-journalism-program-student-newspaper-print-funding-axed>.

15. The list of censored institutions can be found at http://www.collegemedia.org/cma_advocacy/censored_schools/.

16. Scott Jaschik, "Why Did U. of Redlands Suspend Its Student Paper?," *Inside Higher Ed*, December 18, 2014, <https://www.insidehighered.com/quicktakes/2014/12/18/why-did-u-redlands-suspend-its-student-paper>.

17. Sara Shepherd, "Kansan Funding Tentatively Reinstated; KU and Newspaper Indicate Resolution of Lawsuit Is Pending," *Lawrence Journal-World*, May 27, 2016.

The knowledge that continued financial support for a journalism program, adviser, or publication may be contingent on pleasing campus authorities imposes a chill on the independence of journalistic coverage that invariably will produce more timid journalism that ill serves the public interest. Effective campus journalism requires a source of financial support fully insulated from content-based judgments by those who are the subjects of the journalists' coverage.

C. Denial of Access

The growing tendency of college and university administrations and their governing boards to conduct business "behind closed doors" and thwart access to critical information and documents has extremely troubling implications for college and university governance and the academic freedom of the faculty as well as for the integrity of student media. Even where student journalists are not directly barred from publishing unflattering information, image-conscious institutions may often achieve the same result by choking off access to information, at times in defiance of state laws guaranteeing the public, which includes student media, access to government meetings and documents.

Some especially disturbing recent examples include the following:

- At Louisiana State University, trustees resisted complying with a state law requiring disclosure of candidates considered for the presidency of LSU, refusing to budge even when a trial-court judge held the board in contempt and threatened to jail its members.¹⁸ LSU's recalcitrance is not an isolated occurrence. Kent State University delayed responding to student journalists' requests for records of its presidential search until the documents could be shredded, and universities elsewhere have similarly obstructed students' efforts to cover presidential searches despite state statutes requiring public access.¹⁹

18. Diana Samuels, "Judge Threatens Imprisonment, Suspension of LSU Board of Supervisors in Presidential Records Case," *Times-Picayune*, September 9, 2013. The university ultimately released the names of five finalists under orders from a state appellate court.

19. Carol Biliczky, "Kent State Shredded Documents to Hide Information about Presidential Search, Committee Members Say," *Akron Beacon Journal*, April 12, 2014. The secrecy surrounding recruitment and selection of university presidents, which is of concern well beyond the college newsroom, is discussed in greater detail in the AAUP's "Statement on Presidential Searches," November 3, 2015, https://www.aaup.org/sites/default/files/AAUP_Statement_on_Presidential_Searches_0.pdf.

- Trustees of the University of Michigan routinely hold closed-door "pre-meeting meetings" at which all meaningful discussion of agenda items is conducted, rendering the actual public meetings an empty formality at which all discussion is perfunctory and all votes are unanimous.²⁰
- It has become commonplace for colleges and universities to make requesters wait months for the fulfillment of even the simplest requests for public records or simply to ignore the requests entirely. For example, student journalists at the University of North Carolina at Chapel Hill report that it is not uncommon to wait two years or more to receive documents responsive to open-records requests to their institution.²¹

Many institutions increasingly filter access to information and to campus decision makers through public-relations offices. While these offices can serve a valuable role in facilitating requests for records and interviews, they obstruct the work of student journalists and do a disservice to the public when they impede the fulfillment of those requests. Policies requiring faculty and staff to clear media interactions with a campus public-relations office create an intimidating atmosphere that is inimical to the free exchange of ideas and, at a public institution, impermissibly restrict employees' constitutionally protected freedom of expression. Such policies also pose an inappropriate obstacle to the work of student journalists.

IV. The Legal Environment

Student journalists and their faculty advisers work in a gray zone of legal uncertainty. While the Supreme Court has been generally protective of First Amendment rights at public colleges and universities, the justices have never squarely addressed whether college

20. See Juliana Keeping, "Lawsuit Related to NCAA Probe Questions Practice of Closed-Door Meetings at University of Michigan," *Ann Arbor News*, March 7, 2010. At Michigan, Keeping explains, "monthly public meetings are typically 45 minutes to two hours long, following a full day of private meetings" at which the substance of the next day's votes are discussed. The university has been sued multiple times over its closed-door meeting practices, and a case challenging the legality of the regents' "pre-meeting meetings" is now pending at the Michigan Supreme Court. See Lori Higgins, "Free Press May Appeal Decision in Suit against U-M," *Detroit Free Press*, June 11, 2015.

21. The *Daily Tar Heel* student-run newspaper maintains an online spreadsheet reflecting the age of its unfulfilled public-records requests at <http://www.dailytarheel.com/page/records-requests>.

and university journalists have rights comparable to those of nonstudent professionals or whether they have only the minimal rights afforded to high school journalists under the Court's 1988 ruling in *Hazelwood School District v. Kuhlmeier*.²²

In the absence of clear guidance from the Supreme Court, lower courts have struggled to adapt First Amendment principles to the unique setting of a college or university news organization and have reached unsettlingly disparate results.²³ Although a handful of states have clarified and fortified the rights of college and university journalists by way of state statute, few extend that enhanced protection to faculty advisers. While all public employees are at heightened risk of retaliation as a result of court rulings diminishing protection for speech in the course of official duties, media advisers are in special peril because of the intrinsically adversarial role between watchdog journalists and government.²⁴

The First Amendment protects only against "state action" by government agents and therefore offers no relief for those enrolled in or employed by private institutions. But even at public institutions, federal courts have not reliably treated campus journalism as worthy of constitutional protection.

22. The case concerned censorship of two articles in the student newspaper of Hazelwood East High School in Saint Louis County, Missouri, in 1983. When the school principal removed an article concerning divorce and another concerning teen pregnancy because of concerns about privacy and fairness, the student journalists sued, claiming their First Amendment rights were violated. In a 5-3 decision, the Supreme Court concluded that readers might "reasonably perceive [articles in a school-sponsored publication] to bear the imprimatur of the school" and held that school administrators could exercise "editorial control over the style and content of student speech in school-sponsored activities so long as their actions are reasonably related to legitimate pedagogical concerns."

23. Compare *Kincaid v. Gibson*, 412 F.3d 731 (6th Cir. 2001) (*en banc*) (student-produced media is a "public forum" entitled to the highest degree of protection against content-based censorship) with *Hosty v. Carter*, 236 F.3d 342 (7th Cir. 2005) (*en banc*) (suggesting that *Hazelwood* is the "starting point" to analyze all claims involving censorship of student media, even at the postsecondary level).

24. See *Garcetti v. Ceballos*, 547 U.S. 410 (2006) (speech pursuant to official duties is "government speech" receiving no First Amendment protection). For a thorough account of the implications of *Garcetti* for faculty in higher education, see the AAUP's report "Protecting an Independent Faculty Voice: Academic Freedom after *Garcetti v. Ceballos*," in *Bulletin of the American Association of University Professors* (supplement to *Academe*), 2010, 67-88, <https://www.aaup.org/file/Protecting-Independent-Voice.pdf>.

Where state laws protect journalism advisers against retaliation, wrongfully discharged educators can meaningfully vindicate their rights. At Chicago State University, fired student media adviser Gerian S. Moore won reinstatement after a US District Court—applying Illinois's College Campus Press Act, an antiretaliation statute enacted in 2007—found that the university removed Moore as punishment for unflattering coverage in the student-run newspaper, *Tempo*.²⁵ Illinois, however, is one of only three states, along with California and Maryland, with statutes explicitly protecting college and university media advisers against adverse personnel actions in response to their students' journalistic work.

Without statutory protection, advisers have struggled to convince the courts to entertain retaliation claims. In 2015, First Amendment challenges to the removal of faculty advisers under circumstances strongly indicative of content-based retaliation were brought at Northern Michigan University and at Iowa's Muscatine Community College. In both cases, federal courts accepted uncritically the institutions' counterarguments that factors other than editorial content motivated the removals, disregarding substantial contrary evidence that institutional decision makers had expressed animus (at Northern Michigan) over the aggressive use of public-records laws and (at Muscatine) over coverage of an administrator's threats to a student editor in reaction to an unflattering photograph. The judges' refusal to grant relief in either case dramatizes the practically insurmountable burden that a wrongfully discharged journalism adviser faces in obtaining vindication through the federal courts.

V. The Need for Greater Safeguards

In the absence of clarification from the Supreme Court, which there is no reason to expect is imminent, state law offers the most promising recourse for curbing the worst abuses of student media rights.

State statutes can meaningfully advance the editorial independence of student news media by protecting the faculty advisers whose vulnerability can inhibit students from pursuing news of community importance. Student press rights legislation (sometimes referred to as "anti-*Hazelwood*" legislation) modeled after the New Voices of North Dakota Act, which was signed into law in 2015, has been proposed in a handful of states during 2016, including Maryland,

25. *Moore v. Watson*, 738 F.Supp.2d 817 (N.D. Ill. 2010) (applying the Illinois College Campus Press Act, 110 ILCS 13/1 *et seq.*).

where a New Voices–based law took effect October 1. The higher education community should lend its support to the New Voices movement and accept the consensus of experts in the journalism education field that the *Hazelwood* level of institutional control is irreconcilable with the ethical teaching and practice of journalism at the postsecondary level.²⁶

As the 1967 *Joint Statement on Rights and Freedoms of Students* recognized, financial independence provides significant insulation against untoward institutional influence over the editorial process. But it is unrealistic to expect that all student publications can be self-sustaining through earned revenue alone, particularly given their history of free distribution. Like other student-serving educational and cultural activities, student media deserve funding, either directly through institutional subsidies or through student activity fees. Colleges and universities should also work collaboratively with student media to diversify sources of funding through foundation grants and alumni donations just as they would for other valued programs contributing to the enrichment of campus life.

Equally important, the oversight of campus-based media should be structured to prevent those outside the student editor’s office from overruling editorial judgments or retaliating for journalistic choices. Absolute boundaries should separate the selection of editorial content from the financial and managerial oversight by campus administrators or appointed publication boards. (At Northern Michigan University, for instance, institutional bylaws placed a board of nonjournalists dominated by a single university administrator in charge of the “tone” of the newspaper, which board members took as an invitation to overrule the newsroom’s judgment on such matters as whether to file freedom-of-information requests.²⁷) True editorial independence requires that news judgments be self-policing within the workplace and that campus disciplinary

authorities be categorically forbidden from imposing sanctions based on the decisions made by journalists in their editorial discretion.²⁸

No postsecondary institution should require its faculty or staff to clear interactions with the student media through an institutional public-relations office, nor should campus public-relations offices obstruct student journalists from gaining direct access to those in positions of official authority. The community is entitled to hear directly from campus officials about how they perform their jobs and wield their authority—through face-to-face interaction with journalists, not simply prepared statements. Presidents and trustees should unequivocally instruct campus public-relations offices that their obligation is to facilitate maximum public access to records and interviews.

Ultimately, ensuring a campus environment conducive to substantive journalistic coverage requires a significant cultural readjustment that begins with those at the topmost levels of higher education. It is fashionable for colleges and universities to embrace “civic engagement” as part of their educational mission, but effective citizen engagement in campus affairs depends on well-supported news coverage with meaningful and timely access to information. Few colleges and universities are “walking the walk” of civic engagement in their governance of journalism, and too many are abandoning higher education’s traditional commitment to free and independent journalistic voices. ■

26. See “Resolution of the Board of Directors of the American Society of News Editors in Support of Legal Protection for Student Journalists and Advisers,” August 10, 2016, https://s3.amazonaws.com/media.spl/1333_asne_resolution_in_support_of_student_journalists_and_advisers_2016o.pdf; Society of Professional Journalists, “Resolution No. 9: Supporting the Need for Legal Protection for Student Journalists and Advisers,” September 20, 2015, <http://www.spj.org/res2015.asp#9>.

27. Francis X. Donnelly, “Northern Michigan University, Campus Paper Face Off,” *Detroit News*, March 8, 2015.

28. Those offended by the content of student media, in particular by attempts at humor or satire, have at times assertively invoked the student conduct system as a means of redress, placing editors in peril of suspension or expulsion from the institution for judgment calls of taste. See, for example, Janese Silvey, “Maneater Editors off Hook at MU,” *Columbia Daily Tribune*, April 13, 2012; Sam Friedman, “Appeal Seeks Re-examination of Sexual Harassment Complaints against UAF Student Newspaper,” *Fairbanks Daily News-Miner*, November 11, 2013; and Danielle Jaeding, “UW Superior Student Newspaper under Fire over April Fools’ Day Edition,” Wisconsin Public Radio, April 16, 2016, <http://www.wpr.org/uw-superior-student-newspaper-under-fire-over-april-fools-day-edition>. Such grievances should be redressed solely through the publication’s own grievance system (or, in extreme cases, through the civil justice system), as would be the case with a professional media organization. In no event should campus disciplinarians entertain such claims, which should be summarily dismissed to avoid the chilling effect of a prolonged adjudication process.