

By Senator Polsky

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1                                   A bill to be entitled  
2       An act relating to freedom of speech and the press in  
3       the public education system; creating s. 1003.4506,  
4       F.S.; providing that student journalists have the  
5       right to exercise freedom of the press in school-  
6       sponsored media; requiring that determinations  
7       regarding the news, opinion, feature, and advertising  
8       content of school-sponsored media be made by student  
9       journalists; authorizing student media advisors to  
10      teach professional standards of journalism to student  
11      journalists; defining terms; prohibiting school  
12      districts from restricting the publication or  
13      broadcast of certain materials; requiring school  
14      districts to show prior justification for limiting  
15      student journalist expression; providing that student  
16      journalists must be afforded the opportunity to appeal  
17      such limitations; providing construction; prohibiting  
18      school districts from disciplining students or student  
19      media advisors for the exercise of constitutionally  
20      protected freedom of the press; prohibiting school  
21      districts from retaliating against student media  
22      advisors who engage in specified conduct; requiring  
23      codes of student conduct to meet certain requirements;  
24      providing requirements for such codes of conduct;  
25      providing that student expression may not be deemed an  
26      expression of school district policy; providing that  
27      school districts may not be held liable for student  
28      expression; authorizing student journalists and  
29      student media advisors to institute proceedings for

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30           injunctive or declaratory relief and reasonable  
31           attorney fees; providing exceptions; amending s.  
32           1004.097, F.S.; defining terms; providing that student  
33           journalists have the right to exercise freedom of  
34           speech and freedom of the press in media sponsored by  
35           public institutions of higher education; requiring  
36           that determinations regarding news, opinion, feature,  
37           and advertising content of institution-sponsored media  
38           be made by student journalists; authorizing student  
39           media advisors to teach professional standards of  
40           journalism to student journalists; prohibiting public  
41           institutions of higher education from restricting the  
42           publication or broadcast of certain materials;  
43           requiring public institutions of higher education to  
44           show prior justification for restricting student  
45           journalist expression; requiring that students have an  
46           opportunity to appeal such restriction; providing  
47           construction; prohibiting public institutions of  
48           higher education from disciplining students or student  
49           media advisors for the exercise of constitutionally  
50           protected freedom of speech and freedom of the press;  
51           prohibiting public institutions of higher education  
52           from retaliating against student media advisors who  
53           engage in specified conduct; requiring public  
54           institutions of higher education to adopt a written  
55           policy for the exercise of student journalist rights;  
56           specifying requirements of such written policy;  
57           providing that student expression may not be deemed an  
58           expression of public institution of higher education

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59 policy; providing that public institutions of higher  
60 education may not be held liable for student  
61 expression; authorizing student journalists and  
62 student media advisors to institute proceedings for  
63 injunctive or declaratory relief and reasonable  
64 attorney fees; providing exceptions; providing an  
65 effective date.

66

67 WHEREAS, freedom of speech and freedom of the press are  
68 fundamental rights in our democratic society granted by the  
69 First Amendment to the United States Constitution and Article I  
70 of the State Constitution, and

71 WHEREAS, a robust and free student press is critical to the  
72 development of young people so that they may become informed,  
73 civic-minded adults, and

74 WHEREAS, student journalists in this state are being denied  
75 their right to free expression, a right that is guaranteed to  
76 other students, and their work is being censored when the speech  
77 of other students could not be infringed upon, and

78 WHEREAS, teachers in this state who defend their students'  
79 freedom of expression do so at great professional risk, and

80 WHEREAS, school-sponsored media in our public schools and  
81 public institutions of higher education in this state should  
82 foster students' intellectual and personal growth and encourage  
83 them to become educated, informed, and responsible members of  
84 society, NOW, THEREFORE,

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86 Be It Enacted by the Legislature of the State of Florida:

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88 Section 1. Section 1003.4506, Florida Statutes, is created  
89 to read:

90 1003.4506 Protection of freedom of the press in schools.-  
91 Except as provided in subsection (9), a student journalist has  
92 the right to freedom of the press in the publication or  
93 broadcast of school-sponsored media, regardless of whether the  
94 school-sponsored media is supported financially by a public  
95 school, uses the facilities of a public school, or is produced  
96 in conjunction with a public school course or class in which the  
97 student is enrolled. The determination of news, opinion,  
98 feature, and advertising content of school-sponsored media must  
99 be made by student journalists in conformance with this section  
100 under the guidance of student media advisors, who may teach  
101 professional standards of journalism.

102 (1) As used in this section, the term:

103 (a) "School-sponsored media" means material that is written  
104 or prepared for publication or broadcast in any medium by a  
105 student journalist under the guidance of a student media advisor  
106 and distributed or made generally available to members of the  
107 student body. The term does not include media intended for  
108 distribution or transmission for classroom or instructional  
109 purposes only.

110 (b) "Student journalist" means a public school student in  
111 grade 6-12 who gathers, compiles, writes, edits, photographs,  
112 records, or otherwise prepares information for inclusion in  
113 school-sponsored media.

114 (c) "Student media advisor" means an individual, board, or  
115 other entity employed, appointed, or designated by a public  
116 school to provide guidance to students in the production of

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117 school-sponsored media or provide instruction relating to  
118 school-sponsored media.

119 (2) Except as provided in subsection (9), a school district  
120 may not restrict the publication or broadcast of material  
121 prepared for school-sponsored media. A school district has the  
122 burden of proof in demonstrating, before imposing any  
123 restriction, that the material is subject to this exception, and  
124 a student journalist must be afforded the opportunity to appeal  
125 any such restriction.

126 (3) This section may not be construed as authorizing the  
127 publication of an advertisement in school-sponsored media which  
128 promotes the purchase of a product or service that is unlawful  
129 for purchase or use by minors.

130 (4) A school district may not discipline a student  
131 journalist or a student media advisor for the exercise of  
132 constitutionally protected freedom of the press.

133 (5) A school district may not dismiss, suspend, discipline,  
134 reassign, transfer, or otherwise retaliate against a student  
135 media advisor for any of the following:

136 (a) Refusing to infringe on conduct protected by this  
137 section or the First Amendment to the United States Constitution  
138 and Art. I of the State Constitution.

139 (b) Acting to protect a student journalist engaged in  
140 conduct permissible under this section or protected by the First  
141 Amendment to the United States Constitution and Art. I of the  
142 State Constitution.

143 (6) Provisions relating to free speech and school-sponsored  
144 media in the code of student conduct adopted by each school  
145 district pursuant to s. 1006.07(2)(c) must comport with this

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146 section and must provide:

147 (a) For the time, place, and manner of distribution of  
148 materials produced pursuant to this section.

149 (b) A process for the timely appeal within the school  
150 district of school district decisions made pursuant to this  
151 section.

152 (7) Except as provided in subsection (9), material written  
153 or prepared by a student journalist for publication or broadcast  
154 in school-sponsored media in the exercise of his or her free  
155 speech rights may not be deemed to be an expression of school  
156 district policy, and a school district may not be held civilly  
157 or criminally liable for the publication or broadcast of such  
158 material.

159 (8) A student journalist, individually or through a parent  
160 or guardian, or a student media advisor may institute  
161 proceedings to obtain declaratory and injunctive relief,  
162 reasonable court costs, and attorney fees in a court of  
163 competent jurisdiction for violations of the rights provided in  
164 this section. This section may not be construed to create a  
165 private cause of action for a student journalist other than to  
166 seek injunctive relief to allow the publication or broadcast of  
167 material in school-sponsored media.

168 (9) This section does not apply to material written or  
169 prepared by a student journalist for publication or broadcast  
170 which meets any of the following criteria:

171 (a) Is libelous or slanderous.

172 (b) Constitutes an unwarranted invasion of privacy.

173 (c) Is obscene.

174 (d) Violates federal or state law.

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175       (e) So incites students as to create a clear and present  
176 danger of the commission of an unlawful act, the violation of a  
177 school district policy, or the material and substantial  
178 disruption of the orderly operation of a public school. For  
179 purposes of this paragraph, a school district must base a  
180 finding that the publication or broadcast of material would  
181 result in the material and substantial disruption of the orderly  
182 operation of a public school on specific facts, including, but  
183 not limited to, past experience in the school district and  
184 current events influencing student behavior, and may not base  
185 such a finding on undifferentiated fear or apprehension.

186       Section 2. Present paragraphs (c) through (f) of subsection  
187 (2) of section 1004.097, Florida Statutes, are redesignated as  
188 paragraphs (d) through (g), respectively, a new paragraph (c)  
189 and paragraphs (h) and (i) are added to that subsection, and a  
190 new paragraph (h) is added to subsection (3) of that section, to  
191 read:

192       1004.097 Free expression on campus.—

193       (2) DEFINITIONS.—As used in this section, the term:

194       (c) "Institution-sponsored media" means any material that  
195 is written or prepared for publication or broadcast in any  
196 medium by a student journalist under the guidance of a student  
197 media advisor and distributed or made generally available to  
198 members of the student body of a public institution of higher  
199 education. The term does not include media intended for  
200 distribution or transmission for classroom or instructional  
201 purposes only.

202       (h) "Student journalist" means a public institution of  
203 higher education student who gathers, compiles, writes, edits,

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204 photographs, records, or otherwise prepares information for  
205 inclusion in institution-sponsored media.

206 (i) "Student media advisor" means an individual, a board,  
207 or other entity employed, appointed, or designated by a public  
208 institution of higher education to provide guidance to students  
209 in the production of institution-sponsored media or provide  
210 instruction relating to institution-sponsored media.

211 (3) RIGHT TO FREE-SPEECH ACTIVITIES AND FREEDOM OF THE  
212 PRESS.—

213 (a) Expressive activities protected under the First  
214 Amendment to the United States Constitution and Art. I of the  
215 State Constitution include, but are not limited to, any lawful  
216 oral or written communication of ideas, including all forms of  
217 peaceful assembly, protests, and speeches; distributing  
218 literature; carrying signs; circulating petitions; faculty  
219 research, lectures, writings, and commentary, whether published  
220 or unpublished; and the recording and publication, including the  
221 Internet publication, of video or audio recorded in outdoor  
222 areas of campus. Expressive activities protected by this section  
223 do not include defamatory or commercial speech.

224 (b) A person who wishes to engage in an expressive activity  
225 in outdoor areas of campus may do so freely, spontaneously, and  
226 contemporaneously as long as the person's conduct is lawful and  
227 does not materially and substantially disrupt the functioning of  
228 the public institution of higher education or infringe upon the  
229 rights of other individuals or organizations to engage in  
230 expressive activities.

231 (c) Outdoor areas of campus are considered traditional  
232 public forums for individuals, organizations, and guest



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233 speakers. A public institution of higher education may create  
234 and enforce restrictions that are reasonable and content-neutral  
235 on time, place, and manner of expression and that are narrowly  
236 tailored to a significant institutional interest. Restrictions  
237 must be clear and published and must provide for ample  
238 alternative means of expression.

239 (d) A public institution of higher education may not  
240 designate any area of campus as a free-speech zone or otherwise  
241 create policies restricting expressive activities to a  
242 particular outdoor area of campus, except as provided in  
243 paragraph (c).

244 (e) Students, faculty, or staff of a public institution of  
245 higher education may not materially disrupt previously scheduled  
246 or reserved activities on campus occurring at the same time.

247 (f) A Florida College System institution or a state  
248 university may not shield students, faculty, or staff from  
249 expressive activities.

250 (g) Notwithstanding s. 934.03 and subject to the  
251 protections provided in the Family Educational Rights and  
252 Privacy Act of 1974, 20 U.S.C. s. 1232g, and ss. 1002.22 and  
253 1002.225, a student may record video or audio of class lectures  
254 for their own personal educational use, in connection with a  
255 complaint to the public institution of higher education where  
256 the recording was made, or as evidence in, or in preparation  
257 for, a criminal or civil proceeding. A recorded lecture may not  
258 be published without the consent of the lecturer.

259 (h)1. Except as provided in subparagraph 9., a student  
260 journalist has the right to freedom of the press in institution-  
261 sponsored media regardless of whether the media is supported

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262 financially by the public institution of higher education, uses  
263 the facilities of the institution, or is produced in conjunction  
264 with a course or class in which the student is enrolled. Subject  
265 to subparagraph 9., the determination of the news, opinion,  
266 feature, and advertising content of institution-sponsored media  
267 must be made in conformance with this paragraph by student  
268 journalists under the guidance of a student media advisor.  
269 Student media advisors may teach professional standards of  
270 journalism to student journalists.

271 2. Except as provided in subparagraph 9., a public  
272 institution of higher education may not restrict the publication  
273 or broadcast of material prepared for institution-sponsored  
274 media. A public institution of higher education has the burden  
275 of proof in demonstrating, before imposing any restriction, that  
276 the material is subject to this exception, and a student  
277 journalist must be afforded the opportunity to appeal any such  
278 restriction.

279 3. This paragraph may not be construed as authorizing the  
280 publication of an advertisement in institution-sponsored media  
281 which promotes the purchase of a product or service that is  
282 unlawful for purchase or use by minors.

283 4. A public institution of higher education may not  
284 discipline a student journalist or a media advisor for the  
285 exercise of constitutionally protected freedom of speech and  
286 freedom of the press.

287 5. A public institution of higher education may not  
288 dismiss, suspend, discipline, reassign, transfer, or otherwise  
289 retaliate against a student media advisor for any of the  
290 following:

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291       a. Refusing to infringe on conduct that is protected by  
292 this paragraph or the First Amendment to the United States  
293 Constitution and Art. I of the State Constitution.

294       b. Acting to protect a student journalist engaged in  
295 conduct permissible under this paragraph or protected by the  
296 First Amendment to the United States Constitution and Art. I of  
297 the State Constitution.

298       6. Each public institution of higher education shall adopt  
299 a written policy for the exercise of the right of student  
300 journalists to freedom of speech and freedom of the press in  
301 institution-sponsored media in accordance with this paragraph.  
302 The policy must include both of the following:

303       a. Reasonable provisions for the time, place, and manner of  
304 distribution of student expression.

305       b. Provision for the timely appeal within the institution  
306 of decisions made pursuant to this paragraph.

307       7. Except as provided in subparagraph 9., material that is  
308 written or prepared by a student journalist for publication or  
309 broadcast in institution-sponsored media in the exercise of his  
310 or her free speech rights may not be deemed to be an expression  
311 of the policy of the public institution of higher education, and  
312 a public institution of higher education may not be held civilly  
313 or criminally liable for any publication or broadcast of such  
314 material.

315       8. A student journalist or student media advisor may  
316 institute proceedings to obtain declaratory and injunctive  
317 relief, reasonable court costs, and attorney fees in a court of  
318 competent jurisdiction for violations of the rights provided in  
319 this paragraph. This paragraph may not be construed to create a

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320 private cause of action for a student journalist other than to  
321 seek injunctive relief to allow the publication or broadcast of  
322 material in institution-sponsored media.

323 9. This paragraph does not authorize or protect expression  
324 by a student which meets any of the following criteria:

325 a. Is libelous or slanderous.

326 b. Constitutes an unwarranted invasion of privacy.

327 c. Is obscene.

328 d. Violates federal or state law.

329 e. So incites students as to create a clear and present  
330 danger of the commission of an unlawful act, the violation of a  
331 lawful public institution of higher education policy, or the  
332 material and substantial disruption of the orderly operation of  
333 the public institution of higher education. For purposes of this  
334 sub-subparagraph, a public institution of higher education must  
335 base a finding that the publication or broadcast of material  
336 would result in the material and substantial disruption of the  
337 orderly operation of the institution on specific facts,  
338 including, but not limited to, past experience in the public  
339 institution of higher education and current events influencing  
340 student behavior, and may not base such a finding on  
341 undifferentiated fear or apprehension.

342 Section 3. This act shall take effect July 1, 2022.