

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate March 18, 2021  
Rough Draft

**FOLEY:** Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the forty-sixth day of the One Hundred Seventh Legislature, First Session. Our chaplain for today is Senator Dorn. Please rise.

**DORN:** Good morning, colleagues. Good morning, Nebraska. As we begin Legislative Day 46 of our current session, thank you, Lord, for allowing us the time and the opportunity to accomplish the many issues brought before us. Thank you for keeping us safe and secure as the session continues. Be with the many people that have experienced health issues the past year, as we all have faced the many challenges of COVID. Bring healing to those that are suffering and comfort to those that have lost loved ones. As we continue this-- the season of Lent, we are mindful of Jesus' suffering and death and then rising from that death to bring us eternal life. Give us guidance and understanding as we continue the discussion of the issues, issues brought before us in the Legislature. May be-- we be respectful and thoughtful of other people as we continue the work brought before us. In Jesus' name, we pray. Amen.

**FOLEY:** I recognize Senator Lowe for the Pledge of Allegiance.

**LOWE:** Will you please join me in the Pledge of Allegiance? I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

**FOLEY:** Thank you, Senator Lowe. I call to order the forty-sixth day of the One Hundred Seventh Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

**ASSISTANT CLERK:** There is a quorum present, Mr. President.

**FOLEY:** Thank you, Mr. Clerk. Are there any corrections for the Journal?

**ASSISTANT CLERK:** No corrections this morning.

**FOLEY:** Thank you, sir. Are there any messages, reports, or announcements?

**ASSISTANT CLERK:** Mr. President, two items: agency reports that, that have been filed during the current week are available through the Legislature's website and a report of registered lobbyists for the current week as required by statute. That's all I have.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

**FOLEY:** Thank you, sir. Senator Albrecht would like us to recognize Dr. David Hoelting of Pender, Nebraska, who is serving today as family physician on the day. Dr. Hoelting, if you can please stand and-- under the north balcony, we'd like to thank you for being here today. We'll now proceed to the first item on the agenda, LB88. Senator Morfeld, if you could take a minute and then I understand Senator Groene has been authorized by Senator Halloran to speak for a minute to refresh us on the amendment. So Senator, Senator Morfeld for a minute, please.

**MORFELD:** Thank you, Mr. President. Colleagues, just to remind you with where we're at here today, first, I, I appreciate everybody's thoughtful questions, talking to me off the mike and on the mike. I, I urge all of you to oppose Senator Halloran's amendment and it appears as though there's another amendment after that and I urge you to oppose that as well. It's clear to me, after about four and a half hours of debate or so, that I've done my best to answer the questions. It appears as though there are folks that are trying to use this time to filibuster, so I, I will not be a part of that. So I'll be in the Senators' Lounge talking to senators and I'm happy to answer any questions, but I just want Nebraska to know and everybody else that I'm fully engaged in this, but I'm not going to be a part of a filibuster on the floor and just being used to take up time. So thank you, Mr. President, and thank you for everybody's questions, thoughts, and debate on this bill. Thank you.

**FOLEY:** Thank you, Senator Morfeld. Senator Groene, if you'd like a minute to refresh us on the Halloran amendment, AM690.

**GROENE:** Thank you, Mr. President. Steve, of course, is not here and I was asked to say a few words to remind folks what his legitimate amendment is. The Hazelwood case, which had been mentioned quite a bit around here, says if it's the free press, then it must-- then it's a publication controlled by the school district and they can manage the content. But if it is a public forum-- declared a public forum, then it is a Twitter account or whatever. Anybody can comment and say whatever they wish. Senator Halloran believed that LB88 eliminated school papers in our state-- publications, newspapers-- and turned them into a public forum like the local park. So in-- to-- interest and to follow the, the Supreme Court's guidance, he brought AM690, which states that a school district shall protect a students' journalists' [SIC] right to participate in the school's freedom of press in school-sponsored media. Such right shall be limited only by constituent-- constitutional allowable infringement of speech or by editorial oversight or the press-- of the press by the school

**Rough Draft**

district. Hazelwood. It's how our newspapers operate. Editors, publication--owners of the, of the publication, they have oversight and the press is held to a higher standard than an individual when making unfounded comments. And then it goes on to say "a school district may choose to designate some or all of its school-sponsored media as public forums. In the case of media so designated, the scope of, of permitted infringements and editorial oversight shall be determined in accordance with case law regarding public forums generally. For media not so designated--" Absolute clarifications. It gives local control back to the school. If a school board decides they don't want to be in the press business, they don't want to be in the publication business and they want to turn the journalism class into a free forum of comment, free speech forum, they can do so. But if they want to teach children what it is to be a journalist-- by the way, they're student journalists now-- then they must, must keep it as a paper and follow the guidance of our constitutional right to a free press. So that is what Senator Halloran's amendment does and its intent. Thank you.

**FOLEY:** Thank you, Senator Groene. Debate is now open on LB88 and the pending amendment. Senator Hughes to be followed by Senators Erdman, Clements, Groene, and Bostelman. Senator Hughes. I'm, I'm sorry, Speaker Hilgers needs to be recognized first. Sorry about that.

**HILGERS:** Thank you, Mr. President. Good morning, colleagues. I want to pause the, the debate on LB88 just for a second to give my weekly announcement. A couple-- I'm going to talk about the schedule for next week. A couple reminders: one, you have until 3:00 p.m. today to submit, hand delivered to my office, any requests for a consent calendar. Our first consent calendar will be the morning of March 29, so the morning of that Monday. We're going to have multiple consent calendars, so don't feel any pressure to have them in today. Early bird gets the worm, so if you get them in, great, but if not, there will be other opportunities. Number two, we are going to start our week on Monday at 10:00 a.m. So 10:00 a.m.-- I think this is a test for those who read my memos that are a few of-- I heard a few showed up here at 9:00 a.m. and didn't read the memo from this week. So it's 10:00 a.m. tomorrow mon-- I'm sorry, on Monday next week, not 9:00 a.m. And then in terms of the schedule, let me say a brief point on the debate. I really have-- this first week of debate, we're kind of getting into it again. Just from an observational perspective, I just appreciate the quality of the debate that we've had here over the bills that we've had this week. I think they've been on the issues. They've been on point and I just am very grateful for all the work that people put in, especially-- I will point out Senator Lowe and

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

Senator Briese. And we, we announced LB561 a week ago and they were prepare-- all the issues we had relating to dividing the question, everything else with LB561 had been vetted beforehand and I think that really-- that work and cooperation, even though they were on opposite sides, really helped things go more smoothly yesterday, even though we did have a couple of hiccups. So I do appreciate everyone's work this week. As we get into the scheduling rhythm, things are going to kind of evolve and change as we kind of get a little bit more comfortable. But I do want to-- so this won't look the same every week, but I do want to give you an advance notice of the bills that I'm going to put on the agenda next week. These aren't the-- there's no guarantee any of these-- these will all get heard. I want to be clear. Most of the ones I announced last week did get heard and not all have this week, but-- and also, it's not the all-inclusive list. As more bills get kicked out of committee, we'll take advantage of those opportunities to maybe put more on the agenda next week. So this isn't the all-inclusive list, but I do want to give you a heads-up about what could be coming because I strongly believe having advance notice helps the quality of the debate, eliminates surprises, and helps the, the functioning of our floor debate. So here are the bills that are coming for the agenda next week. And these are just in numerical order. These are not the order in which they're going to be on the agenda. LB40, Senator Groene's, adopt the Nebraska Rural Projects Act; LB156, Senator Wayne's, adopt the Municipal Inland Port Authority Act; LB215, Senator Hughes's, change the 911 service surcharge provisions; LB273, Senator Lowe's, change the provisions relating to youth rehabilitation and treatment centers; LB281, Senator Albrecht's bill regarding child sex abuse prevention and structural programs; LB390, Senator Murman's bill relating to credentials and reciprocity; LB528, Senator Walz's bill relating to-- it's, it's the-- it's a Education Committee Christmas tree bill. LB529 is the Lottery Fund bill out of the Education Committee. LB554-- LB544, excuse me, is Senator Wayne's Urban Redevelopment Act. LB572 is Senator Halloran's brand bill that came into the Ag Committee. LB639, Senator Day's Safe-- Seizure Safe Schools Act and LR29, Senator Cavanaugh's special investigatory committee. In terms of scheduling, we, we did LB561 this week. If you recall yesterday in the morning, it was the first bill on Wednesday morning. I intend to have the lottery bill next Wednesday at the beginning of the day. And on Thursday, I intend to have the Christmas tree bill from the Education Committee, along with the two Christmas trees that we didn't have today, at least on the schedule, along with some final reading. I hope we get to them. We do-- unfortunately weren't able to get to them today, but I hope to get to them at the end of next week. Again, with the Christmas tree, the logic is the

Floor Debate March 18, 2021

**Rough Draft**

more time people have to see the bills that are in there, the less likely that there will be any surprises when we finally get to debate. Last, but certainly not least, on Thursday, I think Senator Stinner is still scheduled to get the budget to us. Is he around? I-- hopefully he's nodding somewhere. And my intent today-- this could change, but my intent today-- and I think this is likely-- is that we'll pick up the budget, General File debate, the following week, probably Tuesday, not Monday, give everyone enough time to digest and I think there will be a briefing from the Appropriations Committee. So Senator Stinner is nodding. OK, good. That's all I have this morning. I appreciate the debate, the work this week. Have a, a good and relaxing longer weekend. It's not for four day, but I will tell you, we don't have a two-day weekend for, I think, almost four weeks, so that's good. So enjoy the weekend and thanks for all the work this week. Thank you.

**FOLEY:** Thank you, Mr. Speaker. Now onto the debate. Senator Hughes.

**HUGHES:** Thank you, Mr. President. Good morning, colleagues. I do apologize. This is the first time I've had an opportunity to engage on LB88. I am disappointed that Senator Morfeld has chosen not to be part of this debate anymore, since I have not had a chance to ask him some questions. So moving forward, I guess the, the challenge we have is the public institution versus private. Those are things that are very important to me. I do think that in our schools, especially, especially our public-funded schools, there do have to be guide rails that we put on individuals. They are institutions of learning that these young people do need to have boundaries and that is part of what learning is. With that, I do see Senator Morfeld has come back, so thank you, Senator Morfeld, for coming back. The question I do have you-- have for you, especially in this, this area, is how do you treat public versus private schools in this bill?

**FOLEY:** Senator Morfeld, would you yield, please?

**MORFELD:** Yes, and, and thank you for the question. And, and just to be clear, I'm happy to answer legitimate questions by people who have not asked questions before. I just don't want to be a part of a filibuster. To answer your question, we originally had private schools in the bill two or three years ago and at the request of private schools, particularly the Catholic Conference, they asked that I take that out simply because they have certain religious guidelines and other things that may collide with the intent or purposes of this bill.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

**HUGHES:** So their private concerns versus the public concerns is why you pulled that out, in, in essence?

**MORFELD:** Yes and really, to be honest with you, the, the purpose of my bill-- the intent of my bill was to protect speech that is being funded by government, not necessarily private entities. So to be honest with you, it wasn't really my intent to have private schools in there, but it was brought to me by the Catholic Conference that it was broad enough that it would encompass private schools. And so for me, there's a difference between government-funded speech, taxpayer dollars, and private schools and private speech.

**HUGHES:** OK, thank you, Senator Morfeld. I do appreciate--

**MORFELD:** You bet.

**HUGHES:** --you coming back--

**MORFELD:** Yep.

**HUGHES:** --to answer my question and I do apologize for not being available for debate on this in the past. Getting back, getting back to my challenges with LB88, you know, it, it's still-- there are, there are boundaries that we have to have for our kids. You know, that's what school is all about. You know, there's a reason that we don't let 12-year-olds drive. You know, there is a maturity factor that does come into play. When I talk to groups here at the Capitol, especially when I have the juniors and seniors who come from the high schools from my district, you know, the, the thing or the, the point that I always pose to them is, you know, you-- you're pretty good shape right now. I mean, you're learning a lot. You've, you've got a good handle on things, but take for a moment to think back where you were four years ago when you were a freshman in high school and think of yourself today, where you are as a junior or a senior. Look at the maturity that you've gained, the knowledge that you've gained, the insight that you've gained, you know, your perspective that has changed. And if you stop and think about that and-- and that applies to any of us. You know, how have we matured, you know, in this body in the last four years? You know, the freshmen members of this, of this body who-- you know, we're in Day 46.

**FOLEY:** One minute.

**HUGHES:** How much more do you know today than you did 46 days ago? You know, there is a, a definite measure there that you can use and that, that's the way for all of us. And it's extremely important for our

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

young people especially that we have structured environment. You know, there are reasons why we have speed limits. There are reasons why, you know, the, the age of majority-- you know, why you have to be 21 to buy alcohol, things like that. You know, we have to protect our young people and I'm-- you know, this, this free speech, you know, I'm certainly in favor of that and there are other avenues for young people with social media in place that they can go out and basically say whatever they want to say. And, and if you look at some of the challenges that go along with social media, there's some--

**FOLEY:** That's time, Senator.

**HUGHES:** --there's some very-- things-- thank you, Mr. President.

**FOLEY:** Thank you, Senator Hughes. Senator Erdman.

**ERDMAN:** Thank you, Lieutenant Governor. I appreciate it. Senator Hughes, I appreciate your comments and, and your question there. Yesterday, you heard me speak about local control and letting those districts make the decision for themselves and then I also spoke in favor of LB-- or excuse me, AM690. Senator Halloran's bill makes a lot of sense. And when you look at the decisions that are made locally, generally, they're the best decisions that can be made because they understand the situation in that location. So as I was considering those, those implications of this bill-- of this amendment, I began to look for opinions from others who may have looked at this issue and I found an article from the University of Nebraska that talked about local control in education. And it's a lengthy article and I'll be able to share some of that later, but one of the things that I think is very important that we understand is this comment that was in the article that said, "the theory of educational control holds that schools are best served by the boards of education." So we elect these people locally. We know who they are. We understand what their principles are and what their goals are and then we put those in a position-- those people in the position of leadership to make decisions for our children and Senator Halloran's bill does exactly that. His amendment allows the local control of deciding what will be in the paper and if they want to become a public forum or not. So we have had several discussions over the last couple of days about freedom of press, freedom of speech, and I think Senator Groene did a, a very fine job expressing that and explaining it in a way that we can understand it and there's a total difference between the two. And if we pass this bill, we're creating a public forum. And once you have created a public forum, it is totally different than what your newspaper-- a school newspaper is today. And in the article that I

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

also read, it said it's "generally accepted that decisions about the education of children in a public school district should be made by those that are closest to the site," which is a school board. And so yesterday when Senator Hilkemann asked Senator Morfield [SIC] what happens if a parent is upset with what was written in the school paper and they go to the superintendent and ask him and Senator Morfield [SIC]-- I'm paraphrasing here-- said didn't it bring up great discussion, though? And it's very similar to a situation that happened to me about 40 years ago. I was taking my parents to the airport and it became, became quite obvious to my parents that we were lost. And my mother said, we're lost, aren't we? And I said yes, we are, but aren't we making great time? So that's exactly the situation here. You know, we need to make sure that we're making decisions that are correct and so local control, I think, is very important. It always has been. And when asked the question to Senator Morfield [SIC] about whether he would accept Senator Halloran's amendment, I believe his opinion is that he doesn't want any school to make a decision for themselves. He wants all schools to have the decision made for them by this body and we do that quite a bit here. It doesn't fit very well sometimes in the rural parts of the state.

**FOLEY:** One minute.

**ERDMAN:** Thank you, sir. So we will talk further about local control later, but I just wanted to bring it to your attention. One other thing you need to take into consideration, you may have given your word or you may have told someone you're going to vote for their bill before you had all the information that you've gotten recently. Once you have more information to make a better informed decision, it would make sense that you visit with that person that you shared that information with and say now knowing what I know, I have to make a different decision, rather than just vote differently. So I, I would, I would encourage you to do that. Consider what has been said here today and the last couple of days and make your decision based on facts and not opinion. Thank you.

**FOLEY:** Thank you, Senator Erdman. Senator Clements.

**CLEMENTS:** Thank you, Mr. President. I'd like to review what Senator Halloran's amendment is since he isn't here. Regarding page 4, this is really the meat of the argument in opposition. This would remove the paragraph (2)(a) on page 4 and strike those lines and change it to this section. "Pursuant to the Constitution of the United States and the Constitution of Nebraska and subject to section-- subsection (3) of this section, a school district shall protect a student



Rough Draft

journalist's right to participate in the school's freedom of the press in school-sponsored media." So we are protecting their freedom of the press and their right to participate. Not going to prohibit that, but in the same time, such right shall be limited only by constitutionally allowed infringements of speech or by editorial oversight of the press by the school district. And the key is here, "a school district may choose to designate some or all of its school-sponsored media as public forums. In the case of media so designated, the scope of permitted infringements and editorial oversight shall be determined in accordance with case law--" which we'll be getting into later "--regarding public forums generally." And, and the last sentence is "for media not so designated--" that's not designated as a public forum, "--the case law applicable to school-sponsored media shall apply." So it allows a school to do either one that they prefer. The ones who really want to become a public forum, they may. It's not pro-- prohibiting them. The ones that do not can continue to operate as they have been. The problem with LB88 is that declares all public high school media shall be a public forum. And I think it's good to then review the Hazelwood case regarding the public forum. The Hazelwood case was filed in the U.S. District Court for the Eastern District of Missouri, where it came from. The students sought a declaration that their First Amendment and Fourteenth Amendment rights had been violated by undue actions of a public official, as well as injunctive relief and monetary damages. After a bench trial, the district court denied the injunction and monetary damages. In May 1985, it ruled that no violation of First Amendment rights had occurred and it held that school officials may restrict student speech in activities that are an integral part of the school's educational function. So they were-- the district court sided with the school, as long as the restriction has a substantial and reasonable basis, which would be the community standards, the administration, or the school board's prerogative. Next, it was appealed. The U.S. Court of Appeals for the 8th Circuit reversed the district court's decision in January 1986. It held that The Spectrum, which was the school newspaper, was not only part of the school program, but--

**FOLEY:** One minute.

**CLEMENTS:** --also a public forum. Thank you, Mr. President. The newspaper was intended to be and operated as a conduit for student viewpoint. The appeals court found, and as a public forum, it could not be censored unless necessary to avoid material and substantial interference with school work or discipline or the rights of others. And so this has been a contentious issue. It's-- one court went one way, another court when another way, and then it ended up at the

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

Supreme Court. And I'm out of time on this turn, but I'll be getting to that. And the, the issue here is that I'd like to have each school determine whether they are making a public form of their school-sponsored media or not and I would prefer to give that local control--

**FOLEY:** That's time, Senator.

**CLEMENTS:** Thank you, Mr. President.

**FOLEY:** Thank you, Senator Clements. Senator Groene.

**GROENE:** Thank you, Mr. President. I strongly disagree with Senator Morfeld's opening comments. He has his right to it, but-- sometimes eight hours isn't enough-- or 20 hours-- for a bill. This is a serious matter. This isn't just being-- this isn't framed in the context of being nice to children or letting children do their things. This is about core beliefs and how we understand our Constitution of the United States. These young people need to be-- understand that they have rights and those rights are only protected by the boundaries that we put on ourselves and institutions put on to protect our rights. We are one of those institutions that are supposed-- that are here. If you read our oath of office, when we stood in front of Judge Heavican and were sworn in, it says-- the first thing is we shall protect the Constitution of the United States. This is a pure and simple attack on the Constitution of the United States. It fuzzes the line between freedom of press and freedom of speech, two distinct rights, and our children need to be taught that. It is an honorable profession to be a journalist. And I-- by the way, I stand by my comment yesterday that these young people are not journalists. They are no more journalists than the first-year med school, school student is a doctor or the young individual who gets-- goes to the University of Nebraska and takes their first law class. They are not a lawyer. An engineering student entering the, the engineering college is not an engineer. When a med school student goes and helps out at a local health clinic, he is a med school student or she is. The proper title for these individuals are high school journalism students. They're not journalists. You earn titles in this country. The young people, the pages up here, are in college now because they will earn a title and they will earn respect for that title, their behavior and their profession. We just don't pass out titles. We used to not do that. Why do we need eight hours of debate? Well, first thing out of Senator Morfeld's mouth and Senator Slama's mouth was heck, Kansas is doing this. North Dakota is doing it. Iowa is doing it. Fourteen states are doing it. Well, we finally have the time because we delayed debate to

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

look up those statutes in other states. We went over Kansas' yesterday. Kansas law is a "reaffirmation" of the freedom of the press. Doesn't mean, mean-- doesn't use the term freedom of speech in their statute [SIC]. It gives clemency to school boards and school districts if a young individual in a journal-- journalism class begot, begot-- by the way, is a student in a class that gives credit. It is not a student paper, extracurricular activity, but Kansas says the student editor is responsible. That's a lot of responsibility a young individual takes on in Kansas. By the way, Iowa also says it. The responsibility of the content--

**FOLEY:** One minute.

**GROENE:** --is the student editor. Ours is a free for all, a public forum. This bill is a free for all, a public forum, a Twitter, a Facebook, a blog. Senator Morfeld's quite familiar with Twitter. I've been a victim there too-- of his account, but that's fine. That's free speech. That's free speech. It's a public forum. This thing needs to go away. The present system works. The status quo works. We preach local control. Local control is what we have. It works. Young people go through their high school years and did for years and years in my generation and went onto journalism college if they got a taste for it. The system works, but they learn parameters early on. This is a free for all. This is chaos, as Saul Alinsky-- tenant-- where he's-- if you know who he is-- I hope you young people have read his stuff, find that out--

**FOLEY:** That's time.

**GROENE:** --what's going on in this country.

**FOLEY:** That's time, Senator.

**GROENE:** Thank you.

**FOLEY:** Thank you, Senator Groene. Senator Bostelman.

**BOSTELMAN:** Thank you, Mr. President. Good morning, Nebraska. Good morning, colleagues. What we're talking about-- I fully support AM690. It's, it's a local control issue. It's about allowing our, our administration, our faculty, and our school boards to make the decisions that they want to make to the best effect for the education of the students that attend that school. AM690 gives that flexibility that they may be able to do that, not requiring one school to do something that the other school feels is not-- is a detriment to their students. That oversight, if you will, that instruction by those

Rough Draft

faculty members, by those administrators, is key in all elements of education in our high school students. One question-- one, one area of the bill on page 4, line 3-- I'll go back to that again-- in subsection (c), it says "student journalist means a public high school student who gathers, compiles, writes, edits, photographs, records, or prepares information of a journalistic nature for dissemination in school-sponsored media; and--" I believe what that does is allows any student that attends that high school attend-- that attends that school to be a, a journalist-- as being stated on the floor yesterday, that anyone can be a journalist. So now we're taking this outside of, say, a journalism class, but it can be any student that's in high school that can make that. And further, it says that the student of this section-- to subsection-- "subject to subsection (3) of this section, each student journalist is responsible for determining the news, opinion, feature, sports, and advertising, and advertising content such student produces for school-sponsored media." So they make the determination and what I've heard from the administrators in my district, from teachers in my district is, is that what this bill is allowing is for more student freedom than what a professional reporter has and we talked about that yesterday on the floor. Also, there is no way to prevent a bad thing from happening in school. So again, I spoke yesterday-- if a juvenile, a minor, a person attending that school has an opinion one way or another-- it can be-- whatever that opinion is and writes about it or produces media about it and puts it online, their decision at that point may not be the well advised or that paper, that documentary, whatever it is-- that media is-- may not be well-advised for them to actually publish it. Maybe there's some things within it that needs to be edited out, need to be stricken. They need to think about a little bit more. But the bill basically says, well, you can do what you want as long as there's a few-- there's a few exceptions in here. However, I question even then whether that's going to cover all the opportunities that may arise. The student just doesn't realize that they're, that they're taking action on. And then ten years later, they're applying for a job-- and this is online now because it's not going to go away-- and now that future employee come-- employer comes back and starts looking into their education and what they've done and something comes up there that, that is now detrimental to their, their advancement for their employment. So the, the importance then is of that faculty oversight and there's no accountability. We just let it happen and then the administration is left to clean up the mess. There's no professional addition-- ed-- editor who would allow this. In other words, as we talked yesterday again, on our--

**FOLEY:** One minute.

**BOSTELMAN:** --papers, our online sources, there is editorial oversight on what can and cannot be published or what should or should not be published or edited so that it has the proper content in it and it's not something that would be harmful. But we don't necessarily have that here, only in certain situations. But then again, if something does happen, well, the, the faculty member that has-- the media adviser, well, nothing's going to happen to them if they made an error in this or made-- or said don't do it or said do it, publish this and there is an ill effect to the school or to other students at that school. There's no-- there's nothing that can be done other than a lawsuit potentially could be filed against the school and others. And now the school has to make up-- defend themselves in a case where they had no ability to-- censor is the word we're using, but--

**FOLEY:** That's time, Senator.

**BOSTELMAN:** --effect that article.

**FOLEY:** That's time, Senator.

**BOSTELMAN:** Thank you, Mr. President.

**FOLEY:** Thank you, Senator Bostelman. Senator Arch.

**ARCH:** Thank you, Mr. President. I have not spoken on this bill up to this point. I've been listening intently to the arguments, but I do have a couple of comments that I would like to make. I, I am in opposition to LB88 after listening to these arguments, do support the amendment being discussed right now. First of all, my-- one of my largest concerns is the underlying premise of the bill. I, I listened yesterday and there were some very passionate speech given on, on how without this LB88, we are somehow squelching the, the inquiring minds of our students, the ability of students to question authority, the ability of students to, to challenge the status quo. Those of you that grew up in the '60s and '70s saw that in full bloom and I don't think anything up to this point has, has stopped that process right now. I think that the ability of students to challenge, the ability of adolescents to throw off authority and to make beliefs their own has been part of the process of, of growing into the maturity of an adult. Deciding whether or not the beliefs of your parents or the beliefs of authority are those of your beliefs has been part of that process. With today's society, the ability to express that on social media is unlimited. You can express and whether it be appropriately,

**Rough Draft**

inappropriately, with misspellings, with bad grammar, with whatever you want to use, you can express your opinions very freely. It is wide open. This particular bill, though, addresses a school newspaper. It doesn't address social media. Your ability to do that is, is unfettered. And I-- and so I don't think that whether or not we have this bill will impact the ability of students to challenge authority or to come up with innovative ideas. I hope not because that's what we need in society. We need new ideas. We need challenging. We need questioning. We need that, or, or we don't move as a society. But I don't think that this bill is, is part of that process. I think that there are multiple opportunities. I, I also want to draw your attention to page 5, line 7 through 14, and this concerns me greatly. Page, page 5, line 7 begins this way. "A student media adviser shall not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for: (a) acting to protect a student journalist engaged in conduct under subsection (2) of this section; or (b) refusing to infringe upon conduct that is protected by subsection (2) of this section or the First Amendment to the Constitution of the United States." So the protection that's granted in this particular bill is that of, of, of not taking action against an adviser who allows the student-- who supports the students' rights under this bill. I get it. So my question is what if the adviser feels very strongly that what is being about to be printed is inappropriate or just poor writing or whatever the, whatever the adviser is, is-- their opinion is at that time and expresses that very strongly to that student, very strongly to the point that the student rejects that advice and says no, I'm not going to follow that, I have my rights, and the adviser continues to press? Oops, can the adviser now be charged with bullying-- one of the, one of the words used today-- can the adviser now be charged with bullying? Well, I don't see protection for the adviser strongly expressing their opinion and, and my assumption is that, that the advisers under this bill are going to back off. Why would you, why would you take the risk--

**FOLEY:** One minute.

**ARCH:** --as an adviser in pressing your point to the student when the protection is you are protected if you allow the student to do what they think is correct. And you are pressing and saying no, I don't agree with that. That's-- that is inappropriate. Then the student turns and says I'm going to do it anyway. And, and I, I just don't see advisers then taking the risk of expressing their opinion strongly to that student, but rather backing off. I, I've got a couple other points to make, but I know my, my time is limited, so I'm going to

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

stop at that point and I will press my button for additional thoughts. Thank you.

**FOLEY:** Thank you, Senator Arch. Senator Hughes.

**HUGHES:** Thank you, Mr. President. Good morning again, colleagues. I want to follow up a little bit on what Senator Arch was talking about because that was one of the, one of the topics that I had on my list of things I wanted to visit about and the bullying issue on social media. You know, I've got grandkids in the school systems and I've talked to a lot of high school kids. And the challenges that we have today with social media and the lack of filter, I guess, is probably the best way to put it, of what gets put out there on social media can be very challenging. And, and that does allow me to circle back to my, to my point that, you know, these kids are in school. They're there to learn and they're there for structure and, you know, the maturing process that our public and private schools do provide our young people is a testament to the society that we have today. Everybody in here, you know, has gone through a public or a private school to get us to this point. But it still does give me concern when we're talking about our public school system and how quickly things can spiral out of control without some guardrails. I spent 12 years on the school board before coming to this institution and it-- until you have done that, you can be amade-- you will be amazed at how quickly an incident or something can spiral out of control within the school system and the general-- the public at general. You know, sports is probably more notorious for that, but also there have been instances when there have been things printed in the school newspaper that have caused an uproar in the community and unfortunately, heads roll because of that. So the oversight that we need to have-- and, and it still can be a teachable moment. You know, we're certainly not limiting what kids can say, but we do need to limit what gets printed in a public-- publicly funded venue. And I agree we need to allow our kids to make mistakes. That's how we learn. You know, I've told my kids the lessons that sting are the ones that you remember most, but I don't want those lessons to follow you throughout your lifetime. I think I mentioned before that there are several people, especially in the-- a national spotlight, who have made statements or done things, you know, decades in their past that have come back to haunt them. We saw that with great clarity during the last Supreme Court-- or second to the last Supreme Court nominee, that he was accused of something that had happened decades earlier in his life. Whether it was true or not, you know, there's-- it's-- you know, there was no-- other than one accuser. So when you put things in-- on paper or you post them--

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

**FOLEY:** One minute.

**HUGHES:** --on social media or when you write a letter, you know, let's, let's go old school here, when you put things in writing and under your name, at some point, that could be used against you and I think that's why we need the school administration to have the last say on what gets printed in the school newspapers. Now Senator Clements' amendment yesterday of, you know, this just applying to high school students and leaving college students out of that, you know, I probably could have supported the bill if that amendment had passed, but we're beyond that now. I didn't have a chance to express that opinion yesterday, but I, I still-- I stand firmly opposed to LB88 and I need to look a little bit more at Senator Halloran's L-- LB690 [SIC] to see--

**FOLEY:** That's time, Senator.

**HUGHES:** --how it affects that.

**FOLEY:** Thanks, Senator Hughes. Senator Erdman.

**ERDMAN:** Thank you, Lieutenant Governor. Thank you, Senator Arch and Senator Hughes for your comments. I appreciate that. As I was looking at the article from the University of Nebraska talking about local control, it is very evident that the University of Nebraska and their research has concluded that the best and most efficient way to make decisions is locally. And we hear about that all the time and if you don't believe me, just try to take some funding from someone-- excuse me-- someone who has been damaged by their budget, by the state taking money, and they will tell you that local control is the best. So some of the things in the article went on to say that local control by schools may emerge in newer forms because the sense of ownership is a powerful motivator toward insistence upon quality. So when local control gets involved and the, and the parents get involved, all of a sudden they're interested in quality education. Conversely, when parents and patrons feel alienated from the schools, there's evidence that-- there is low evidence of care and what goes on at the schools is no longer recognized as something that's important. And so what happens is when a person goes to the superintendent, as described in the conversation between Senator Hilke and Senator Morfield [SIC] yesterday, and they go to the superintendent and they say we have an issue with what was written in the paper and the superintendent blows them off and says it developed great discussion, they won't get involved the next time. And so when parents aren't involved and those people who have skin in the game feel disenfranchised and they stay



Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

home, all of a sudden things don't improve. And I have been involved in several of those instances, not only as a school board member, but also as a parent. And there are many, many roadblocks put in the way of people trying to share information with education officials at times and so the best school is the one that is take-- takes input from the local patrons. I'll share an example with you. In 1981, I had a son that was going to be five and he was going to start school in a local one-room schoolhouse. I didn't get a chance to go to the school board meeting, but I was elected chairman of the school board. Once I was in that position, I began to understand that I needed to form a budget. I needed to hire a teacher. I needed to do those things. When we had our first budget hearing, contrary to any other body I've ever served on, we had 40 people, 40 people show up at the budget hearing. Those people were engaged. Those people there were able to share with us exactly what their thoughts were about their taxes and how their children were educated. I got, I got the picture real quickly and so they were involved. So local participation, local control is very important. And the university study shows that when you have local control, things tend to be better because people are taking a serious interest in what their children are being instructed in. And so as we move forward with this bill and we pass this bill and the local control is now taken away and the control has been given to them by the state, granted by this statute, as Senator Arch said, what will happen to that instructor if he says, no, you can't write that or what will happen to the parent when they go and complain to the school about what was written--

**FOLEY:** One minute.

**ERDMAN:** --thank you, sir-- and the superintendent says we're just following state statutes. There's nothing we can do about it. They have been granted this opportunity through this public forum that was created by LB88. So as I said earlier, if you have made a decision or an agreement with the introducer of this bill for something and you have now heard the information that we have shared that has changed your mind, please make the right decision for the children of the state and for the betterment of the, of the education of their children by voting correctly and stopping LB88 unless it is amended with AM690. Thank you.

**FOLEY:** Thanks, Senator Erdman. Senator Clements.

**CLEMENTS:** Thank you, Mr. President. I'm going to pick up where I left off. I was discussing the amendment, which removes the absolute declaration of a public forum in every public school. And the reason

**Rough Draft**

for that is the Supreme Court ruling, which allowed schools to make that decision for themselves. So first of all, the-- as I said, the U.S. district court ag-- agreed with the school. The Court of Appeals reversed that decision, then it went to the Supreme Court. The Supreme Court granted judicial review in January 1987 and the case was argued on October 13, 1987. On January 13, 1988, the court handed down its decision overturning the circuit court in a 5-3 ruling. Its majority opinion set a precedent that school-sponsored activities, including school newspapers and drama productions, are not normally protected from administrative censorship under the First Amendment. And so the Supreme Court did agree that the school may have some degree of control, but they do have some responsibilities. And I'd like to read from the majority opinion by Associate Justice Byron White. He says the majority of the justices held that the school principal was entitled to censor the articles. The majority opinion written by Associate Justice Byron White stated that officials had never intended the school paper to be a public forum and that's where it came down to, whether the school had established policies that made it a public forum or whether they had not. And they were clear, clear here that they have a choice, as underground publications were in past cases. White went on to say that educators do not infringe on First Amendment rights when exercising control over student speech in school-sponsored activities, quote, so long as their actions are reasonably related to legitimate educational concerns, unquote. The court established that the student publication could be regulated by school officials and that they reserve the forum for its intended purpose as a supervised learning experience for journalism students. And that's-- what we're doing with this bill would take away that decision-making from the school and we're wanting to, in this amendment, to let the school decide whether they want to create this public forum or not or keep their own control-- ability to exercise control. A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not. Judicial action to protect students' rights is justified only when the decision to censor a school-sponsored publication, theatrical production, or other vehicle of student expression has no valid educational purpose. The decision overrode the precedent set in the Tinker case-- which was a previous case, which did restrict censorship more than this one-- which had permitted censorship of student speech only if it violated the rights of other students or threatened to cause a campus disruption. The majority opinion in Hazelwood held that this case was different. The majority opinion said that school administrators--

**FOLEY:** One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

**CLEMENTS:** --thank you, Mr. President-- are not required to tolerate speech that is contrary to the school's academic mission and continued, the question of whether the First Amendment requires a school to tolerate particular student speech, the question we addressed in Tinker, is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech. The former question addresses educators' ability to silence students' personal expression. The latter question concerns educators' authority over school-sponsored publications and activities that students, parents, and members of the public might reasonably perceive to bear the improper content. And so that's what we're trying to protect is a school's right to set community standards and to decide locally what they want to allow or not to allow.

**FOLEY:** That's time, Senator.

**CLEMENTS:** Thank you.

**FOLEY:** Thank you, Senator Clements. Senator Lowe.

**LOWE:** Thank you. Lieutenant Governor. LB88 is not a grassroots effort from here-- around here in Nebraska. It's, it's not about the University of Nebraska. It's not about our high schools. This is a nationwide effort put on by New Voices. New Voices is, is a student-powered movement of state-based activists who seek to protect student press freedom with state laws. These laws counter-- counteract the impact of the 1988 Hazelwood vs. Kuhlmeier Supreme Court decision. This is an activism group coming into Nebraska to push their agenda and we have to think about that. Think of it-- if this was a sporting event, say football, and the students wanted to run the plays, whether you were on the football team or not on the football team. What is the purpose of the coach? The coach is to teach you. That's why you have practices so that you could run through the plays. And you don't make adjustments to the plays because you want to go right instead of left. It doesn't work. And that is what journalism classes are. They have the coach. They have the adviser or the teacher. They have the, the method. It's the paper, it's the yearbook. On sports, it's the field or the court. This is not only the players, but the students of that school wanting to run the program. Now maybe they're good. Maybe it's great. Maybe it is an improvement over what that teacher wants to do, but it's not right. School is a learning time. What I know now is not what I thought I knew back then. The instructors, the, the teachers, the advisers, they've all been through life. They understand what's happening. They can understand what you might be going through later in life and that's why they're there, is to teach and to teach that

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

student the right way to do things, not the way that student wants to do things because he can do that on his own. There's many social media places that they can go to. As a father, I tried to limit the social media places that my sons went to by requesting that they don't go there and by restricting their uses of their cell phones and computers at certain times of the day. That's what a father does. That's what a mother does. Do they have freedom of speech? Sure they do. They can go out and they can talk to their friends. They can go to certain places. But a pub-- publicly run newspaper or yearbook, that's not the right place for freedom of the speech. As far as just plain expressing yourself, you need to be taught because you're influencing minds in your schools because they'll pick up that paper, they'll pick up that yearbook many years down the road and read about what you thought that day--

**FOLEY:** One minute.

**LOWE:** --but-- thank you-- but didn't think about the next day or the following day. Freedom of the press is wonderful. Free speech is wonderful and I wholly support that, but there are places for that and there are probably places that it ought to be taught on how to do things right. So I am not in support of LB88. I do like AM690. Thank you, Lieutenant Governor.

**FOLEY:** Thank you, Senator Lowe. Senator Bostelman.

**BOSTELMAN:** Thank you, Mr. President. As we're looking at this bill and as we continue to research, one interesting bit of information I think we've, we've come across is that out of the 14 states-- if you remember, there's 14 states that we hear about that have this language. Out of the 14 states, only Washington, only Washington makes school-sponsored media a public forum. Only one state makes it a public forum. So AM690, I'm fully in support. So out of Arkansas, California, Colorado, Colorado, Iowa, Kansas, Massachusetts, Pennsylvania, Washington, of those and of the other-- of the 14 total, only Washington makes school-sponsored media a public forum. In Arkansas, it says each school board shall adopt rules and regulations in the form of written student publications, publications policy developed in the conjunction with a student publication adviser or advisers and the appropriate school administrator or administrators consistent with the other provisions of this act, which shall include reasonable provisions for the time, place, and manner of distributing student publications such as pol-- such policy shall be in place by-- and it has a date. Other states have more-- Colorado, in fact-- I'll try to get the language the next time I'm on my-- I'm on the mike. I

**Rough Draft**

don't think I can pull it up right now. I'll try, but Colorado specifically provides for expulsion. So there are differings-- legislation statutes in the different states, but again, none of them, 13 of them at least, do not make it a public forum. LB690 [SIC] gives that school the ability, if they so choose, to make, make this a public forum. So with that, I will start to read a little bit here. There is a case from Chicago Business Litigation Lawyer blog says, can a school newspaper be held responsible for allegedly defaming-- a defamatory article? What if you were a college student and you realize one of your professors kept a seating chart that included comments that-- each student's race and judgments on their physical appearance? That's a possibility that Elmhurst College students faced when an article is published in the student newspaper, The Leader, about Professor Timothy Hays, the music business director at Elmhurst College. "A student allegedly took a photo of Hays's seating chart when he was out of the room and sent it to the school newspaper. The seating chart allegedly contained notes beneath each student's name relating to their physical appearance, including 'black', 'Hispanic,' and, for a female student, 'cute.'" While such notes might seem harmless to the professor, they could be, in the view of some of the students and the college administration, ways to-- of, of separating minority students out from the normal white male students and such notes some students and the administration could argue have a profound effect on the way the professor treats those students, even if he's not consciously aware of it. "Some will claim that such views simply reflect political correctness and that the private notes should not be a basis for taking action against a professor absent proof that he has ever acted in such a discriminatory fashion."

**FOLEY:** One minute.

**BOSTELMAN:** "However, benign discrimination is always hard to detect. Hays argued that the notes were intended to be private and were never meant to be publicly distributed and were simply a tool to help him identify and remember students and their classroom contributions. Hays then allegedly made the situation worse for himself after the initial article was published by allegedly lashing out at students in his class after the article was published. Some students complained to the college officials and got them to bring in a new professor for the class." The Leader published another article about Hays relating to the incident. "Another student alleged Hays cornered her in a stairwell and looked down her shirt. She said she told college officials about it, but nothing was done until the third article about Professor Hays was published detailing the incident. Hays is allegedly

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

facing a Title IX investigation as a result of the notes he had allegedly made on his seating chart, as well as his alleged actions--

**FOLEY:** That's time, Senator.

**BOSTELMAN:** --following the publication--"

**FOLEY:** That's time.

**BOSTELMAN:** Thank you, Mr. President.

**FOLEY:** Thanks, Senator Bostelman. Senator Murman.

**MURMAN:** Thank you, Mr. Lieutenant Governor. I just-- I think this is the first time I've spoken on this. I'd just like to reiterate some of the things that been mentioned so far. These people are students and with Senator Halloran's amendment, it, it keeps them-- keeps local control with the school district. You know, those-- and by the way, I should have mentioned first, I am for AM690, Senator Halloran's amendment, and opposed to LB88, Senator Morfield's [SIC] underlying bill. The-- in a public high school of-- the community and the taxpayers support that school with their high property taxes and, and somewhat from the state, which we need to increase the, the support from the state more. But the property tax is, is a local component of school funding and as a public institution that is the, the face of the school and the community, there needs to be control from that community on what is put in the, the school newspaper or yearbook and as students, they need some direction from the media adviser or whoever is in charge of, of those publications. That's the reason that they are students. They're not there just to present their own opinion, as in a public forum, and have no teaching from, from the school. You know, if, if they're just going to give their own public opinion, they have, they, they have that possibility to do on social media. And even there, there's-- there should be some guardrails. You know, as Senator Lowe, I believe, mentioned, guardrails should be put up by their parents, you know, their parents or the teachers in that situation especially. So-- but, but as a publication that, that is the face of the community, I don't think it's a good thing that they can use that as a public forum and have a very limited, limited amount of control-- local-- from the local community, which would be the media, media adviser and ultimately the school board on, on what they say on that public-- well, it should be freedom of the press, not a public forum, but-- I thought Senator Lowe's football analogy was, was a very good one. I'd like to just take it a step further. You know, the football coach or basketball, whatever the, the sport is, will draw up

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

a-- draw up the plays and the, the players are expected to follow that-- at least follow that general outline of what the, the coach draws up. The players don't come to the coach and say we're going to run this play, we're, we're going to do this or we're going to do that, and hopefully it'll all turn out and after we're-- after we do the play, you know, you can tell us what we did wrong or what we should have done, but, but we're just going to make up our own plays. Well, if that was the situation, if the coach is worth his salt, that wouldn't--

**FOLEY:** One minute.

**MURMAN:** --be allowed by the coach. You know, the coach should have ultimate control and, and that's what, what the situation is with journalism also. As students, they need to be taught that this is about freedom of the press. Freedom of, of speech is, is a part of it also, but as a journalism student and with the school newspaper, that's, that's freedom of the press. So as students, they're taught to hopefully move on into the bigger community eventually when they graduate. And as a journalist in, in-- at-- with the local newspaper or any kind of publication--

**FOLEY:** That's time, Senator. Thanks, Senator Murman. Senator Arch.

**ARCH:** Thank you, Mr. President. I want to go back to some of my comments that I was making earlier when I ran out of time. And in, in particular, my second point was the conflict that is set up between the student and the, and the student adviser, the member of the faculty, the, the teacher then that is advising the student and, and the, the impact of some of the language here. And I, I drew attention to page 5, beginning with line 7, and, and talked about that. But there's another section on page 5 that I also want to reference and that is on line 23 and this now is the relationship of the administration of the school to the student adviser. So it's the administration of the school to the teacher that is advising the student and it's similar in its, in its constraints. This section, which is Section 8 on page 23, excuse me-- on line 23, page 5, "this section shall not be construed to interfere with the school administrator's ability to provide appropriate professional--" and this is the, this is the key word here-- "feedback to a student media adviser consistent with rules and regulations adopted and promulgated by the State Department of Education regarding school district personnel." The key word there is, is feedback. And who, who now determines what is feedback? What, what constitutes feedback? So how about quote, you should not print that article? Is that, is that

**Rough Draft**

feedback? Is that feedback of administration to the adviser or to the student or does that cross the line? Or how about quote, I would not advise you to print that article. Is that feedback? What, what is feedback and how will that be determined? How will that be utilized in the relationship between the school administrator? Because clearly in this bill, the school administrator cannot say you cannot print that article. It is, it is the ability to provide feedback, which is an unusual relationship of the school administrator to a faculty member of the school to simply provide feedback and not direction, but it does tie the hands of the school administrators in this case. So the question then is I would not advise you to print that article and, and because you can, does that mean you should? Now these are the questions that an adult asks, right? Because I have the right, does that mean I should exercise that right? Is it wise for me to, to exercise that right simply because I can? Those are the kinds of questions that I know when my kids were growing up, I would sit down and, and have those conversations. Simply because you can, does that mean you should? Simply because you can say that on social media, does that mean you should say that on social media? That's a question of wisdom that gain-- that you hopefully gain as you grow older, as an adult, and that's what you're wanting these students to gain as, as you are teaching. But feedback limits you in that ability to express that and I-- again, I say with the hands being tied in, in some of this language, I think that school administrators, school advisers are, are going to back off not knowing exactly where that line is, not wanting to be accused of bullying, not wanting to be accused of, of crossing that line. The third point that I would like to make and is, is that truly-- and we, we know this-- that this is not the real world. Everyone has a boss. I had a boss. I had a, I had a board of directors. There is a way to not have a boss and that is to start your own business. And it was interesting, as we heard the testimony yesterday, that, that some of our senators started newspapers.

**FOLEY:** One minute.

**ARCH:** They started, they started newspapers in their basement. They became a sole proprietor and I say today in social media, very similar. You don't have a boss when you have your own site on social media. You can attract followers. You can make money on social media by having followers. You can be a sole proprietor with no boss. But if you go to work for a media company and you're a journalist, you will have a boss. We know that. You can't print your headline the way you want it to read. You will go to an editor and the editor will determine. So I'm not sure what we're teaching the students with this, but the real world is you do have a boss. There is, quote, censorship



Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

by your boss. All the ideas that you have will not necessarily be embraced by your boss. And so for that reason, I, I stand in opposition. For those three reasons, I stand in opposition to LB88 and I do support--

**FOLEY:** That's time, Senator.

**ARCH:** --AM690.

**FOLEY:** Thank you, Senator Arch. Senator Groene.

**GROENE:** Thank you, Mr. President. I told you what-- extended debate is a wonderful thing and-- because you have a chance and I appreciate the way the Speaker is doing it. As we debate, questions come up. And although we have staff, we need time to do research to find out what was said on the floor, how accurate it was. Was it correct? Should I base my vote that affects children in our schools and school districts based on what I heard or should I verify it? You heard on the floor that 14 states have done this. I told you yesterday, went over Kansas, how-- no, they did not. They did not, as Senator Bostelman said, create a public forum. They just reaffirmed free speech, free press rights. Here is the North Dakota student. We heard about North Dakota and boy, conservative North Dakota, how they had done this, really. They have not. If we had-- knew this prior to Senator Clements' vote, we might have voted differently. Their statute said protect activity means an expression of free speech or freedom of the press. School-sponsored media means any material that is prepared, substantially written, published, or broadcast by a student journalist at a-- now listen here-- public institution of higher education-- Not high schools. We were told it was high schools that are already doing it-- distribute or generally made available to members of the student body and prepared under the direction of a student media adviser. Student journalist means the student or a public institution of higher education who gathers, compiles, writes, edits, photographs students. And notice the term "student journalist," not journalist. Let me-- as I said, I sometimes do research as I stand here. Another key that we're finding in most of these state statutes is the immunity giving the school district and the school board and the administration because when you take their right away to decide what the content is of something with the name of the school on it, they shouldn't be liable. And by the way, you cannot sue or press charges against a juvenile for li-- libel or defamation of character. So who do they go after? They go after school, but we're wide open. LB88 says you can sue that school district. You can school-- sue those school board members. North Dakota states an expression of free speech or freedom

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

of the press made by a student journalist under this section may not be construed as an expression of school policy-- which we do have that in LB88. A school official, employer, or parent or legal guardian of a student journalist may not be liable in any civil or criminal action for an expression of free speech or freedom of the press made by a student journalist, except in the case of willful or wanton misconduct. I haven't cross-referenced it yet, but I was wondering if the student-- if the, the educator who's involved here-- what do we call them, the adviser-- if they can be sued. They can't be fired. It's a rare instant [SIC]. I don't know of any other government employee who can't be fired by their actions. I was going to say a judge, but no, they come before the public and we vote to retain them or not. I can't think of a single public employee-- maybe somebody can come up with--

**FOLEY:** One minute.

**GROENE:** --one-- who is protected from being sued or fired or taken disciplinary action by, by the-- their bosses or the elected officials if they don't follow direction of their administrator. This is quite an exception we're giving these student advisers. Are we going to start doing that? Please correct me, anybody, if you know of another instance where a government employee cannot be fired by their superiors for their actions. I know of none. I mean, they got tenure, yes, but if they step out of line, they can be fired. There's a lot in this bill, folks, a lot, and this bill isn't about this cheerful little teenager bopping around writing an article and how sweet that is--

**FOLEY:** That's time, Senator. Thank you, Senator Groene. Senator Hughes, you're recognized for your third opportunity.

**HUGHES:** Thank you, Mr. President. I was wondering if Senator Slama would yield to some questions?

**FOLEY:** Senator Slama, would you yield, please?

**SLAMA:** Yes.

**HUGHES:** Thank you, Senator Slama. So I-- you and I just had a, a recent conversation about the free speech and what is available to the public nowadays.

**SLAMA:** Um-hum.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

**HUGHES:** Being a, a Baby Boomer myself, you know, I'm, I'm familiar with Facebook, but there's also Instagram and Twitter and you mentioned a couple of others. Would, would you take just a moment to maybe give me a little rundown of everything that's out there for social media and, and how they work--

**SLAMA:** Um-hum.

**HUGHES:** --just briefly?

**SLAMA:** Sure and I won't pretend to be as savvy as other 24-year-olds in the world. I'm, I'm probably more in line with the Baby Boomers in terms of my technological prowess, but there is Facebook. That's widely available and you seem aware of it. Twitter goes without explanation. Snapchat, that's something where kids can-- or users can message each other using pictures or videos or even just text. There's TikTok where users can share short videos. It's usually dancing to music or something with a fun caption on it. Instagram, that's mainly more pictures, videos. Pinterest, where you can pin different pictures and put them on different boards. Off the top of my head, that's all I can think of, but there are literally thousands of different of-- different social media outlets crossing the whole political spectrum.

**HUGHES:** OK, thank you, Senator Slama. I appreciate that--

**SLAMA:** Yep.

**HUGHES:** --very much. I guess the, the point that I was wanting to make, you know, there has been the talk of whether this is freedom of speech and whether it's an avenue that's being taken away and the right is not there for our young people to have it in a school newspaper. And the, the point is there are multiple, multiple venues where if someone wants to put their opinion out there or do whatever, those are available. I, I did listen with interest at the beginning of this debate of Senator Morfeld starting a-- his own underground newspaper, if you will, and also Senator Flood starting his. And I, I would be curious to ask either of those, if they happen to be on the floor, you know, what their different perspective would be today. If the social media tools would have been available, had they still gone down that route? So is Senator Flood available for a question?

**FOLEY:** Senator Flood, would you yield, please?

**FLOOD:** Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

**HUGHES:** Thank you, Senator Flood. So given the opportunity of social media today, you know, how do you think that would have changed the newspaper or underground newspaper or private enterprise newspaper that you began when you were in high school? Would you, would you think you would have still done the same thing?

**FLOOD:** It would have been more effective because I was limited by the number of copies I could make on a copy machine in 1992 or '91. Yeah, I think the reality is that anybody that wants to be is a journalist and the question is are you going to train the journalists or are you going to let them do it the minute they get out of school, which they can still do and have more-- or less disciplined journalism?

**HUGHES:** And I agree. The training of--

**FOLEY:** One minute.

**HUGHES:** --journalists is what we're talking about with this bill and making sure that they have guardrails and guidelines and aren't making the mistakes. So I, I do appreciate you engaging with me on that. You know, this is a, a very important debate that we're having, you know, and it's partly about free speech, partly about, you know, parental guidance or, or school policy, if you will, and accountability, you know? And probably accountability is a subject that we need to make sure we have the opportunity to fully explore. That as a-- you know, and, and we all made mistakes when we were teenagers. There's no question about that. I-- you know, I'm still making mistakes today, but to make sure that those--

**FOLEY:** That's time, Senator.

**HUGHES:** --mistakes-- time?

**FOLEY:** That's time.

**HUGHES:** Thank you, Mr. President.

**FOLEY:** Thank you, Senator Hughes. Senator Friesen.

**FRIESEN:** Thank you, Mr. President. So when I'm-- I've been reading emails that I've been getting from some of my school officials and, and they're pretty well unanimous in their opposition to this. In, in my district at least, they all think the program is working. They've got good programs going. They're not concerned with any of the issues that have popped up, at least in-- from what I'm hearing, so I, I still stand opposed to the bill. In the bill-- and, and especially the

Rough Draft

problem is-- to me, it's Section 2 and it goes back to whether high schools should be a part of this. As far as the university, I have no problem with that, but when you go back to the high schools and we talk about-- the Section 2 and it talks about the journalists' responsibilities and it talks about the duties of the, the adviser and this-- when I, when I read that all-- the social media is now a public forum for them and then it refers to-- it goes back to the, the code of ethics that we're going to teach in those classes. So when I'm reading through the code of ethics and I'm-- I, I go back to comparing to what a journalist today working for The Wall Street Journal, The New York Times, or the Omaha World-Herald. They're not free to publish anything they want. They're censored. If they don't-- if they would publish the wrong story or get off track from the owners and the editor in chief, they'll lose their job. There is censorship. There's always going to be censorship unless you own your own newspaper. And even today in this cancel culture, there's topics that can't be brought up. You say the wrong word and you lose your job, you lose your company. You are taken to task on social media and there's no way to even defend yourself. So when I'm looking at the code of ethics and, and so we relate that to journalists today. And so I'm just going to pick out a few that I've highlighted here is-- first one is to take responsibility for the accuracy of their work, verify the information before releasing it, and use original sources when possible. Well, today's media world, everybody wants to be first. They don't go for accuracy. They want the headline that grabs your attention, sucks you in, gets you to read the story. And in the end, you find out they have no facts in the story. It's just the lead to grab you and drag in. And so again, you-- if you're going to follow this code of ethics, let's, let's start with some of that. Remember that neither speed nor format excuses inaccuracy. Well, everybody that's read the papers these days can find all sorts of examples of that. Identify sources clearly. The public is entitled to as much information as possible to judge the reliability and the motivation of the sources. How many times today do you-- in a day do you read a newspaper where they have anonymous sources? People don't quote anybody anymore. Everybody says well, you can, you can say what I said, but you can't say who said it. I'll just be anonymous and I can throw all sorts of grenades out there and see what happens, but don't quote me. Another one is support the open and civil exchange of views, even views they find repugnant. Not in today's cancel culture. So this is the code of ethics we're supposed to be following. You're supposed to balance the public's need for information against the potential harm or discomfort. The pursuit of the news is not a license for arrogance or undue intrusiveness. I don't know of any journalist today that follow most of those

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

recommendations. So I still think this high school section needs to come out. With that, I'll yield the rest of my time to--

**FOLEY:** One minute.

**FRIESEN:** --Senator Bostelman.

**FOLEY:** Thank you, Senator Friesen. Senator Erdman.

**ERDMAN:** Thank you, Lieutenant Governor. Good morning again. I was--

**FOLEY:** Excuse me, Senator Erdman. Had you finished, Senator Friesen? Senator Friesen, had you finished?

**FRIESEN:** I sent-- I yielded my time to Senator Bostelman.

**FLOOD:** Oh, I'm sorry. Senator Bostelman, 1:00.

**BOSTELMAN:** Thank you. I'll quickly finish the story. Another student alleges Hays cornered her on the stairwell and looked down her shirt. She said she told college officials about it and-- but nothing was done until the third article about Professor Hays was published detailing the incident. Hays is alleged-- alleging-- is face-- facing Title X [SIC] investigation. Hays responded by filing a defamation lawsuit in DuPage County Court against the college, the newspaper, the, the school's president, the faculty advisor, and a student journalist. Hays accused the articles painting him in a bad light and damaging his reputation. In a statement released to the attorney, he said he felt compelled to file the defamation lawsuit in order to clear his name and protect others from similar treatment. In his complaint, Hays alleges the student journalists and faculty adviser acted reckless and disregarded for the truth in publishing the three articles about him in the student newspaper, which act-- which actually leads to an interesting legal question. "While journalists are expected to conduct thorough research before publishing articles, especially those which could be damaging to public figures, are student journalists held to the same standards? Should they be?" Furthermore, professional journalists are most often writing--

**FOLEY:** That's time.

**BOSTELMAN:** --about public figures--

**FOLEY:** That's time, Senator.

**BOSTELMAN:** --who have as much higher burden to bear.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

**FOLEY:** That's time, Senator.

**BOSTELMAN:** Thank you, Mr. President.

**FOLEY:** Thank you, Senator Bostelman. Now Senator Erdman.

**ERDMAN:** OK, thank you. Thank you, Lieutenant Governor. So yesterday you may have heard-- Senator Flood had made a comment about the five foot, 100 pound football player. And if you haven't, you may have him tell the story. But I told him this morning in the hallway about a guy that was five foot two and weighed 100 pounds that played football and that was me and I was a, a country school graduate and I went to high school and thought football would be a great sport to participate in, weighing 100 pounds. The-- I weighed 99 and the coach said be OK if we put 100 on the program? I said that'll be fine. Anyway, the first week of practice, about the third practice, one of the big linemen ran over me and broke my arm. And so I understand the consequences you make when you're young that don't make a lot of sense later. But anyway, I have survived and, and I'm OK. So Senator Arch had pointed out things that I had spoke about yesterday about giving feedback and I think that's something that we need to make sure that you understand. Feedback is not what we think it is. It's saying hey, I don't know that you should do that, but I don't know if it has any authority. And so those are the things that we're going to grant. So let me, let me share a few more things from the study that the University of Nebraska had concluded after they talked about local control in education. It goes on to say that "proponents of local control sometimes complain about the scope of the power that resides with the state." But in fact, much discretion about how much-- how to accomplish the educational mission of the state resides with the local school boards and their administration. Most, most truly good ideas-- listen to this-- most truly good ideas in education are generated at the local level and are not killed by the mandates of the state control. In general, the state has been supportive of local initiatives. Ideas of real merit usually will thrive. The challenge is to generate such ideas in a diverse way to implement them and implement them on a local level. Proliferation of statutes and regulations directly limits local control of education. However, there is a less obvious, but quite adverse, effect on governance administration at the local level that is seldom considered. As a number of the complexity of the laws increase-- as the number of complexity and the laws increase, boards that administrators must devote an ever greater amount of time and attention to the task of complying with local-- with legal requirements. The diversions of the financial resources to attorneys fees and other costs associated with legal matters is obvious.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

However, the diversion of professional time and attention from the most important matters of education to be a greater problem. So what we're saying-- what they're saying there is when the state passes more laws and more statutes that they have to adhere to, then the local administrators and school board have to pay more attention to those statutes to make sure they're comp-- they're in compliance. And so when we allow young people, as Senator Hughes very aptly described why 12-year-olds don't drive, young people who have written something that is going to cost the school money to defend itself, those are things and statutes that the state is putting in place that force the local administration and local school boards to make decisions about how they spend the resources and the time they spend, taking away from the actual fact that they are there to instruct the students. And so we're going to give another opportunity for another statute, for another unfunded mandate, if you will, and we do that all the time--

**FOLEY:** One minute.

**ERDMAN:** --here. Thank you, sir. Unfunded mandates are quite common. And so consequently, then the school has to make a decision. Shall I continue the local newspaper and open myself up to something that may cost me a lot of money and spend a lot of my time doing that or do I just eliminate it? Now I know I've gotten an email saying that that's absurd that someone would want to eliminate a school newspaper, but I'll tell you what, when it comes to the point where it gets cost prohibitive to continue to do that because of the liability problems, that's exactly what will happen. So I think what we have now is quite-- well, quite-- functions quite well and I think if you want to pass LB88, then attach AM690 and then we'll move forward. Thank you.

**FOLEY:** Thank you, Senator Erdman. Senator Clements, you're recognized for your third opportunity.

**CLEMENTS:** Thank you, Mr. President. I've been reviewing the Supreme Court-- well, the-- several court cases, the way it went from district to appeals to Supreme Court and I'd like to finish up with that commentary. This is now not opinion of the court, but commentary about the decision. The Hazelwood case established the standard that school personnel must meet to limit students' freedom of expression in secondary schools. As representatives of the state, school administrators-- administrators can censor, restrain, or refuse to publish school-sponsored student expression if it interferes with the requirements of school discipline, interferes with other students' rights, interferes with academic propriety, generates health or welfare concerns, or is deemed obscene or vulgar. And those items are



Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

not exceptions in LB88 and I am here speaking to try to keep them as available to administrators. This extends to theatrical productions, public speeches in assembly environment, and publications produced as part of curricular activity, such as a student newspaper. So the, the Supreme Court was pretty broad in what areas of speech this can be used to control. Supreme Court majority termed these reasons legitimate educational concerns. The standard does not, however, apply to personal or non-school- sponsored communication, such as off-campus publications-- and that's what we've been also talking about, the number of places that students have ability to express their opinion without censorship, unless that communication interferes with school discipline or the rights of others. The Hazelwood case established the student newspapers as limited public forums. This means schools may exercise prior restraint regarding the style and content of a student newspaper so long as their action is not unreasonable, whereas there previously had to be compelling evidence to warrant censorship. Excuse me. Separate cases also established what constituted school activities, such as in-class parties and art created by students at the behest of teachers. In response to the Hazelwood ruling, some students created web-based publications not subsidized by the school. And we're not trying to challenge those sorts of publications. Some individual states have also responded with laws designating student newspapers as public forums and offering them greater First Amendment protection. In 2013, the Student Press Law Center launched a nationwide censorship awareness campaign "Cure Hazelwood" that ignited, quote, New Voices-- which had been referenced-- the New Voices campaign had been referenced before-- to reform movements across the country seeking to enact-- excuse me, enact state legislation affording the students enhanced press freedoms. So this has been going across the country with this Student Press Law Center and New Voices campaign and we've heard 14 states--

**FOLEY:** One minute.

**CLEMENTS:** --were mentioned-- thank you, Mr. President-- were mentioned as adopting this standard. However, Kansas was quoted and it did not specify that it was a public forum. Colorado was mentioned. It's not a public forum. Arkansas was referenced by Senator Bostelman and I have the Arkansas bill here, which in 2019, amended the Arkansas Student Publications Act where it allows each school local control with the district board of directors being able to adopt rules. And I think I'm about out of time, so I'm going to hold off and discuss that one in more detail. They, they go into quite a few items of control that they're still leaving up to the--

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

**FOLEY:** That's time, Senator.

**CLEMENTS:** Thank you.

**FOLEY:** Senator Bostelman, you're recognized for your third opportunity.

**BOSTELMAN:** Thank you, Mr. President. I'm going to read a transcript from the judiciary hearing. I am here-- I'll, I'll quote this out of the transcript. I am here representing the Nebraska Council of School Administrators and I am also the president of our state principals group as well. I have a strong belief in relationships, impact culture in a-- that relationship impact cultures in the building and that culture impacts the ultimate results for students. In any school, we try to put in types of preventive measures. So maybe not in COVID times, but in most times, we love to have guests. We love to have speakers and military recruiters and college recruiters and parents to come into our building, but we still screen them. We still have locks on our doors and we allow people in. We have sign in and sign outs. We escort people around the buildings. So constantly as a building principal, you know, we're putting in protective measures for our students at all times. One of the things, and I'm not a legal expert at all, but one of the things you learn very early on in your principal preparation is the Tinker standard or the Tinker case and the Tinker case basically, what it means to a principal is I can intervene in advance if there's reasonable likelihood of a disruption of the operation of a school. And because we're trying to prevent-- to make sure the culture-- that culture is protected and prevent to make sure our kids are protected as much as we possibly can. I would much rather prevent and try to put to-- rather try to prevent and put toothpaste back in the tube. So we've heard some about the provisions. And the exceptions and I think some of the exceptions, one in particular, draw my attention. Clearly, if the story is libelous or slanderous, then that's an exception that can be-- that the story can be stopped, right? However, like, I'm not legally trained. I don't know if I know what the libelous and slanderous actually might mean. Somebody probably does. That would mean I-- I'd have to maybe work with an attorney to figure that out. If the story is unwarranted or invase-- or invasion of privacy, again, that probably requires me to do some legal analysis. And that's not necessarily my forte. One of the exceptions-- I do not need to go through them all, but one exception, I think, is the biggest difference or biggest challenge for me as a building principal or my colleagues, is it-- it's on the last page, line 3 and line-- and 4 of the bill. If the punishment or the publishing is shown to cause-- or the publishing is shown to "cause

**Rough Draft**

material and substantial disruption." So if you compare that to the Tinker language that says reasonably likely that it could cause a disruption, that allows me to prevent the language it says causes material and substantial disruption. Again, it sounds to me like I have to wait for it to cause material or substantial disruption. And now I'm cleaning up the toothpaste that's already out of the tube. So from a concept of what a school principal deals with, I would much rather keep the cap on, if I can, to protect kids versus trying to clean up the mess of the tooth-- toothpaste that's out of the tube. So that would be why I'm opp-- in opposition to LB88 and I'm-- and he goes on, I'm certainly happy to answer any questions from a perspective of, of a building principal.

**FOLEY:** One minute.

**BOSTELMAN:** That's end quote to what he says. I will speak real briefly on Nevada. Nevada prohibits without limitation the following-- and there's-- subparagraph 3 says expelling, suspending, or otherwise disciplining a pupil for engaging in conduct in accordance with a policy, unless, unless such conduct substantially disrupts the ability of the public school to perform its educational mission and the disruption was intentional. As I spoke before, of the 14 states that's been referenced, only one, only one references it makes it a public forum. Local control, principals, administrators, faculty trying to protect their students, trying to work with their students, trying to help their students, trying to teach their students, trying to do the best they can for the students they have in their classrooms.

**FOLEY:** That's time. Thank you, Senator Bostelman. Senator Lowe.

**LOWE:** Thank you, Lieutenant Governor. I would like to ask Senator Clements if he would yield to a question?

**FOLEY:** Senator Clements, do you yield, please?

**CLEMENTS:** Yes.

**LOWE:** Senator Clements, I was listening to you earlier and you said you had more to say. Would you tell me what more you were going to say?

**CLEMENTS:** Thank you, Senator Lowe. Yes, I was-- I had quoted that Kansas was not a public forum in their bill and Colorado wasn't either and I was especially wanting to review what the state of Arkansas, just in 2019, allowed for their local control, which it says each school district board of directors shall adopt rules and regulations

**Rough Draft**

in the form of a written student media policy. So they required them to create a policy, but they're not going as far as we are. It says developed in conjunction with the student media advisers and their appropriate school administrators, consistent with the other provisions of this subchapter, which shall include reasonable provisions for the time, place, and manner of distributing school-sponsored media. Student media policy shall recognize that students may exercise their right of expression, guaranteed, guaranteed by the First Amendment to the Constitution of the United States. And AM690, which we're discussing, has that same wording, guaranteed by the First Amendment to the United States Constitution, but we still are wanting to have local control and follow the Hazelwood standard. This right includes expression in school-sponsored media, whether such student media are supported financially by the school or by use of school facilities or produced in conjunction with a class. Expression made by a student journalist in student media is not the expression of a school district's policy and the-- they also then have some ex-- exemptions for who is not responsible for criminal action, which is a public school district official or the school board-- they exempt them, but they're-- and are the prohibited publications. They do oversight-- retain this oversight in their policy. Student publication policy shall recognize that truth, fairness, accuracy, and responsibility are essential to the practice of journalism and that the following types of student media by student journalists are not authorized, such as number one, student media that are obscene as to minors as defined by state law, student media that are libelous or slanderous as defined by state law. And our bill talks about libelous or slanderous, but it doesn't-- [RECORDER MALFUNCTION] --require the media adviser to direct the student. It says they don't-- let's see, it's a negative, that it shall not prevent them, but I would rather say that they shall make sure that students are doing that. Let's see. The next one is publications that incite students to-- as to create a clear and present danger, the commission of unlawful acts on school premises, or a violation of lawful school regulations, or the material and substantial disrupt-- disruption of orderly operation of the school, and student media that harasses, threatens or intimidates a student. And I think if we have a public forum that we're not able to--

**FOLEY:** One minute.

**CLEMENTS:** -- edit that content, whether it could harass, threaten or intimidate a student. We're worried a lot about bullying in classes and disruption and chaos. Then they have additional sections that student media means any comm-- any means of communication that are

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

prepared and substantially written, published or broadcast by a student and prepared under the direction of a student media adviser. So they're restricting this to students who are in a journalism-type class and no other students in Arkansas are even given this much latitude, whereas in LB88 includes all students in a public school that would be able to produce whatever they want.

**FOLEY:** That's time. Thank you, Senator Clements and Senator Lowe. Senator Murman.

**MURMAN:** Thank you, Lieutenant Governor. This morning I had a Zoom with my superintendents, most of my superintendents in-- or a good share of the superintendents in my local school district and-- or my local district. And of course, we did discuss LB88. And I heard loud and clear, they're opposed to it. They are very concerned that there would be lawsuits as a result of this bill. And they were very-- I can't speak for all of them, but the ones I heard from were very supportive of Senator Halloran in this amendment, because this amendment does give the local school district control of-- the district can opt out of the effects of LB88. And just as a student, you know, can-- is allowed now in our state to opt out of a public school and go to another school, the local district can opt out of the effects that, the very negative effects that would happen because of this bill. So there are very appreciate, appreciative of having that option. And I was going to continue kind of what Senator Clements was talking about in this, the Student Journalism Protection Act, LB88, it does not authorize or protect the expression by a student journalist. And kind of the, the last three bullet points on that are that if the journalists incite students to create a clear and present danger on the commission of an unlawful act and another-- the next point is in violation of the policies of the institution. And then the final point is it departs from journalistic standards. Well, it does not protect the student journalists. So if something was published in a local newspaper or a school student newspaper or in a play, I guess, could happen, in the yearbook, that the community was very upset about, the, the patrons of the district, very upset about, there could certainly be a lawsuit. I guess one example that I could mention, you know, that we've all seen the-- or most of us, I'm sure, have seen the health standards that are being put out by the Department of Education to, to get comments on as to whether those would be accept, accepted in the curriculum in our schools. You know, things like that could be published in the local newspaper. And, you know, just an example of kind of an extreme that could happen. And that could result in a lawsuit. You know, the student actually following these standards that are very anti-health, actually. I could easily see some kind of a

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

lawsuit involving that, and the school itself would be sued, because as a minor, the student couldn't be sued and there would be very little direction on what the, the student could actually put in this public forum.

**FOLEY:** One minute.

**MURMAN:** Thank you, Mr. Lieutenant Governor. So, so they're concerned about that. And by the way, Zoom is a good thing in certain situations. Like here in the Legislature, you know, your senator is in these sacred halls. And, and if he doesn't get back, he or she doesn't get back to the school, the, the local district that he represents, he doesn't hear about-- as well about what the constituents are actually concerned about. And, and although Zoom isn't ideal, you know, it's better to meet face-to-face, of course, but that can be the next best thing in this situation. So to to keep in contact with your constituents and know what they're thinking. Thanks a lot.

**FOLEY:** Thank you, Senator Murman. Senator Groene. It's your third opportunity, Senator.

**GROENE:** Thank you, Mr. President. You know, I'd like to focus back again on some of this has been focused on the situation that happened back in North Platte in North Platte Public Schools. And I had said in the past that we had handled well. The young student who wrote that article that was rejected by the paper was the editor of the paper. And I actually read her article. Very well written, good verbiage, good use of words. That's fine. But the school board said no-- not the school board, excuse me, the principal said it needed work, and that was not relayed to the student. And then everything went a different direction and it was written-- it was published in a local newspaper because it was a quality article. That isn't the argument here. The argument is one publication said it needs work. Probably one of the things-- I haven't had a chance to talk to the principal yet, been trying, but is the length of it. If any of you have written an op-ed piece, you're limited this-- or an editorial, you're writ-- you're limited normally the 500 to 700 words. And to train an individual to do that, it takes precise use of language. And this article the young lady wrote was really long. It was more of an exposition than a, than an article. It could, it could have been as simple as that. But it was not relayed to the young lady because one individual, the journalist teacher, decided to take it in their own hands and not-- to represent the student without relaying back to the student what the principal said and then things happened. But this bill puts total charge of one individual. One individual who may have their own personal-- we all

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

have our one, one thing that hits the top of our list that will go to the carpet on. Senator Geist, it's abortion. A lot of us, that's one that's right at the top. So what if this adviser has one issue that just burns inside of him and it comes up in the national news, in the national discussion and encourages kids to follow up on that? Article after article about pro-abortion or anti-abortion, article after article about death penalty, parole or no, parole or for or against, excuse me. Nobody can put an end to that. In most of the other states, they have a student editor who is responsible for everything, which is in the normal press, is they're responsible for everything. Not here. Now, I know some of you are going to vote for closure on this because collegiality. You think it's nice, and mainly because you have blinders on and you want your bill-- them to support your bill. But that isn't good government. That isn't good government. We need to send a message to the people of Nebraska that we won't tolerate bad bills that are well-researched. This bill wasn't well-researched. We heard that 14 states did exactly this, and we're finding over and over again that that's not true. Reason enough to reject this bill. Reason enough. To send a message, do better work, do better research, don't get too passionate about your issue and put blindfolds on because you want it to work, that you won't look at the reality of the facts. You see that a lot in the press. You can read it between the lines when they don't like somebody. I've witnessed it, it's happened to me where a reporter does not like me and then he twists the words. That's normal. And that gives me another point. If you're teaching them to be a part of the free press, here's what the free press has to come up against. Advertisers pulling their ads if they don't like the content. Readers not subscribing if they don't like the content. Owners of the paper telling you, you're going to do this, my viewpoint. That happens every day. Not here. No oversight, no free-market pressures, nothing. Just print what you want. Is that what we want to teach these kids, unfettered ability to write anything you want and try to influence others without any repercussions? That's what this bill does. I like Senator Mosher-- I mean, I like him, too, but I like Senator Morfeld, and him and I have supported bills of each others and that will happen again. This is not personal. But some of you, I believe, are thinking about your friend and helping your friend. We're not friends on this floor. We are senators representing the state of Nebraska.

**FOLEY:** That's time, Senator.

**GROENE:** Thank you.

**FOLEY:** Thank you, Senator Groene. Senator Albrecht.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

**ALBRECHT:** Thank you, President Foley. Good morning, colleagues. I rise today in support of AM690, Senator Halloran's amendment. And again, being the first time up for this, I know, Senator Morfeld is in the building and I do have a question. But I'll get to that question and then I'll ask if he could research that for me while I'm speaking and then possibly get me an answer. Senator Morfeld, I'd like to know how many of the 14 states that have enacted this bill have high schools included? If you could get me that information, that would be great. And I'll ask for him to yield when I get finished here. Again, rising to support AM690, Senator Halloran's. I know Senator Clements read word for word what that particular amendment said, but I think it's right that the public who is watching knows and understands why he wants to eliminate what's currently in the bill and replace it with his amendment. So, if my colleagues would like, they could turn to page 4, line 10 through 16, and I'd like to read that into the record so that the people of Nebraska know what we're discussing here and why. On line 10 of page 4 of the bill, Senator Halloran would replace what I'm going to read to you right now. All school-sponsored media are deemed to be a public forum. Subject to subsection (3) of this section, excuse me, the 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 public high school, supported by the use of the facilities of such school, or produced in conjunction with a class in which the student journalist is enrolled. And again, that versus Senator Halloran's amendment, which says: Pursuant to the Constitution of the United States and the Constitution of Nebraska and subject to subsection (3) of this section, a school district shall protect a student journalist's right to participate in the school's freedom of the press in school-sponsored media. Such right shall be limited only by the constitutionality [SIC] allowable infringements of speech or by editorial oversight of the press by the school district. A school district may choose to designate some or all of its school-sponsored media as a public forum. In the case of the media so designated, the scope of the permitted infringements and the editorial oversight shall be determined in accordance with case law regarding public forums generally. For media not so designated, the case law applicable to school-sponsored media shall apply. I just think it's important for, for all of us to understand that not everyone wants to see this happen in our high schools and we are absolutely having a debate on this. And we are obviously going the full eight hours--

**HILGERS:** One minute.



Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

**ALBRECHT:** -- on this particular topic because it means so much to the the students in our state to be protected by what they may write today that they might have to help explain later in life. It might be something that somebody has put them up to, something that they think is interesting today. But what you put out there, whether it's in the social media or a newspaper, stays with you for a lifetime. And I don't believe that, that people today, even if you're in a college setting and, and you're on Facebook, you know, your employer or the one that may very well employ you, is going to go out and look at all the content that you have out there on Facebook. So I want to caution people that be careful what you put out there, because it will be something that you'll have to explain.

**HILGERS:** Time, Senator.

**ALBRECHT:** Thank you.

**HILGERS:** Thank you, Senator Albrecht. Senator Lowe, you are recognized, and it's your third opportunity.

**LOWE:** Thank you, Mr. Speaker. I'm again reviewing where this legislation comes from. It's called New Voices. And New Voices is a student-powered, nonpartisan grassroots movement of state-based activists who seek to protect student press freedom with state laws. These laws will counteract the impact of the 1988 Hazelwood v. Kuhlmeier Supreme Court decision. So looking at that, I went to the Supreme Court and I found the facts and case summary of Hazelwood-- Hazelwood v. Kuhlmeier. The facts and case summary for Hazelwood v. Kuhlmeier, 484 U.S. 260. It happened in 1988. "The First Amendment rights of student journalists are not violated when school officials prevent the publication of certain articles in the school newspaper." The decision was January 13, 1988. And it lists the background. The students and the Journalism II class at the Hazelwood East High School in St. Louis, Missouri, wrote stories about their peers' experiences with teen pregnancy and the impact of divorce. When they published the articles in the school-sponsored and funded newspaper The Spectrum, the principal deleted the pages that contained the stories prior to the publication without telling the students. Claiming that the school violated their First Amendment rights, the students took their case to the U.S. Supreme Court for the, for the east district of Missouri in St. Louis. The trial court ruled that the school had the authority to remove the articles that were written as part of a class. The students appealed to the U.S. Court of Appeals for the Eighth Circuit, which reversed that lower court's decision, finding that the paper was a public forum that extended beyond the walls of the school. It decided

**Rough Draft**

that the school official could censor the content only under extreme circumstance, extreme circumstances. The school appealed to the Supreme Court of the United States. The decision and reasoning. In a five to three ruling, the U.S. Supreme Court held that the principal's actions did not violate the students' free speech rights. The court noted that the paper was sponsored by the school and as such, the school had a legitimate interest in preventing the publication of articles that it deemed inappropriate and that might appear to have been an imprimatur of the school. Specifically, the court noted that the paper was not intended for the public forum in which everyone could share their views. Rather, it was a limited forum for journalism stool-- students to write articles subject to school editing, that met the requirements of their Journalism II class. So school papers are subject to school editing. And it's for the journalism classes. That's an important point. It's education. It's being taught the proper ways to do things.

**HILGERS:** One minute.

**LOWE:** Thank you. You still have the ability to write and you still have the choice of what you're write. But that doesn't always make it proper. And that's where education comes from. Education teaches you the proper places to do things and the proper ways to write, to do math, to do art, to do many things. That's why we have mandatory education in the United States, we want to make sure everyone is well-educated. And by taking it into your own hands, that's not proper education. Thank you, Mr. President.

**HILGERS:** Thank you, Senator Lowe. Senator Albrecht, you are recognized.

**ALBRECHT:** Thank you, President Hilgers. Would Senator Morfeld be in the house that he could yield to a question?

**HILGERS:** Senator Morfeld, Morfeld, would you yield to a question? I don't see them on the floor, Senator Albrecht.

**ALBRECHT:** OK. He's probably looking up the question I had for him, how many of the 14 states that have enacted this bill have included high schools is my question. I believe Senator Bostelman answered the question for me of how many actually have public forums. Of the 14 states, he says it's just Washington. So, again, is this right for Nebraska? Is this truly what we want in our high schools? You know, once you move on to college, it's-- to me, it's a whole different game. But it is our responsibility as legislators to do our utmost to

**Rough Draft**

take care of the children K-12 and make certain that they do not get into situations where-- certainly they wouldn't want their school to be sued or another student to sue someone or a teacher or a business, even, from the outside. So I feel like this bill does need to be slowed down and does need to be looked at. And we do need to pay attention to what Nebraska is telling us. I have several letters that we can read until 1:30 today from people in opposition of this bill for the very reason that we've all stood up and talked about why we feel that this isn't right for Nebraska. It isn't right for our high schools, it isn't right for the superintendents, principals or advisers to have to tackle every one of these situations and hope that they are not going to have an issue with this or a problem. So, again, I'm hoping that he is, is finding out for me exactly how many of the 14 states actually have it in the high schools. I did have a gal from Seward, Nebraska, send a note today, several letters today voting no on LB88. This gal says: And retain adult journalistic oversight in our schools. While cleverly disguised as a bill to protect the freedom of press in the First Amendment, this bill does anything but that. It instead categorizes all school-sponsored media as a public forum. It also removes the role of the student media adviser who may enforce journalistic standards, but it also not allows-- it, but it also not allowed to be retaliated against by the school administration if they do not. In effect, the school can be sued, but students are allowed to steer the ship. In designating school-sponsored media as a public forum, this opens the doors for groups like Planned Parenthood and gives free rein to begin pushing ads in school media or on school websites or social media. Another one. I'm writing in opposition to LB88. While cleverly disguised in a bill to protect the freedom of press in the First Amendment, this bill does anything but that. Again, instead, the groups-- all school-sponsored media is a public forum. It almost removes the role of a student media adviser who may enforce journalistic standards. In designating school sponsored media as a public forum--

**HILGERS:** One minute.

**ALBRECHT:** -- this opens the door again, she says, as the first lady did, for Planned Parenthood to reign and begin pushing ads in their school media and on their websites. Again, please vote against and retain the journalistic oversight in our schools. I have another one writing in opposition. While cleverly disguised in the bill to protect freedom of press and the First Amendment, this bill does anything but that instead categorizes all school-sponsored media as the public forum. It also removes the role of a student media adviser who may enforce journalistic standards but is also not allowed to retaliate

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

against the school administration if they do not. In fact, the school could be sued. But the students are allowed to steer the ship. In designating school-sponsored media in a public forum, this opens the door again for groups like Planned Parenthood to reign and begin pushing ads in the school media or on school websites or social media. I guess I don't understand--

**HILGERS:** Time, Senator.

**ALBRECHT:** Thank you.

**HILGERS:** Thank you, Senator Albrecht. Senator Moser, you're recognized.

**MOSER:** Thank you, Mr. Speaker. I think our discussion has shown that this can be a complicated issue. There are various court cases and laws that have been quoted throughout the debate. But when it comes down to the bottom line, the school newspaper is a school newspaper and it should be controlled by the school, by the superintendent, by the principal, by the school board, the people who were elected by the local citizens to run their school. Tastes are going to vary from school to school throughout our state. I know some feel that champion-- championing this extra freedom for journalists in schools is a way to affect change in the political spectrum of what's happening in Nebraska, and I challenge that to say that it could be more liberal or more conservative. Maybe you would have people who would write articles that would be almost reactionary on the right end and, and you may have some that are really liberal. But again, I think that we're sticking our fingers into the business of the school where we don't need to. We tell them what to do quite often and we don't give them enough money sometimes to run their schools. And yet we're going to do something that could create more lawsuits, could create more expense, could create more ill will in the community between the school and the community. I think we should stay out of it, let the schools run their newspapers. You know, 50 years or 100 years from now when scholars are looking back over our accumulated work, is this going to be a high point of the laws that we've discussed or passed or did not pass? I don't think this will even be a footnote. I mean, it's just, it's just one little clod of dirt in a huge field. And I think we should vote this down, move on to something that's more important, something that helps us run our state more efficiently and, and stay out of the hair of the schools. Thank you.

**HILGERS:** Thank you, Senator Moser. Seeing no one else in the queue, Senator Groene, you're recognized to close on AM690.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

**GROENE:** Thank you, Mr. President. And I'm honored that Senator Halloran is allowing me to speak for his intent. One thing we all know about Senator Halloran, he loves the constitution. It is his guideline and he believes the guideline as his-- and I do, too, as what we do here. He has LR14 as his priority again, the convention of states, Article V, for that very purpose. Just by that purpose, which I have supported him and many others have, says you don't change the constitution by culture. You don't change the constitution by local statute. You don't change the constitution by a local school board. And this body does not change the meaning of freedom of press with a statute. If you want to change the constitution, do a convention. You don't change the constitution because you don't want to hurt somebody's feelings and vote for a bill you know in your heart is wrong. You know the majority of your constituents think it's wrong. The more we debate this, the more the emails come in and phone calls come in. A lot of them said, boy, I really want to support this, but after listening to the debate, this is not the answer. This is serious business, this is, this is in the adult world. But we are debating a bill that makes a definition to our young of the press that is not accurate, that somehow it's a public forum. It is not. Senator Halloran understands that and he understand it in his amendment. Local control. If you want to keep a public, public high school newspaper and call it the press, you can and you should. If you want to eliminate your local school newspaper like Washington State did and create a public forum like Twitter or Facebook or a blog or anybody in the school, because it's not-- this bill does not limit who in the school can have their stuff printed, does not limit, it does not put a gatekeeper, a student editor in for, like many of the state statutes do. Or remember, 36 states, including us, do it the right way. You might want to note of the ten top we talked about and I've heard, we are limiting expression. Well, there's waiting-- there's a waiting list to get into the top journalist schools, colleges in this state. When you get into that college and you major in journalism, then you become a student journalist if you're on that paper. Not because you took a journalism class. Boston College is number 10. Massachusetts does have a statute that-- not similar, but has an effect on the free press in the schools. North Carolina is number nine, they have none. University of Georgia is number eight, they have none. Syracuse University, New York, has none. University of Southern California Annenberg School of Communication, yes, California has one. It's number six. Arizona State University Cronkite School of Journalism is rated number five, no. Stanford University, of course, they're in, in California. But as we all know, like Creighton, most of the students at Stanford didn't grow up in California. University of Texas at

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

Austin Moody's College of Communication, no. They're number three. Number two, University of Missouri School of Journalism, which a lot of Nebraska kids with very good grades and really passionate for journalism go to. Northwestern University Medic School of Journalism--

**HILGERS:** One minute.

**GROENE:** -- Northwestern. Yes, Illinois does have a bill. I haven't had a chance to look at it. The system works now, children are taught about the free press. I understand I've seen some hairs raised when I said the term "teenybopper." That's a term we all were called back when we were kid, maybe my generation now maybe we're all equal all the way down. We're all considered the same knowledge, wisdom and life's experience doesn't play into it about the ability to do things in life. If you stay at a Holiday Inn, you can do surgery. But anyway, I use the term Senator Bost-- Joni said, Albrecht, said gal. I seen the culture critics-- cancer culture [SIC] people hackles raising back of their hair. It's OK. That's called free speech. Is it OK to call somebody a gal in a newspaper article? Probably not. Or a teeny bopper?

**HILGERS:** Time, Senator.

**GROENE:** Probably not, it wouldn't be professional. Anyway, I encourage a green vote--

**HILGERS:** Time, Senator.

**GROENE:** -- on AM690--

**HILGERS:** Time, Senator.

**GROENE:** -- and a no vote on LB88.

**HILGERS:** Thank you for closing, Senator Groene. The question before the body is the adoption of AM690. All those in favor vote aye, all those opposed vote nay. Request, there's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**ASSISTANT CLERK:** 13 ayes, 5 nays to go under call.

**HILGERS:** The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel,

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

please leave the floor. The house is under call. Senator Walz, please check in. Senator McKinney, please check in. A roll call vote has been requested. Which order, Senator Groene? Did you say which order? Regular order. Senator Geist, please check in. Senator Wayne and Hilkemann, the house is under call, please return to the Chamber. Senator Groene, we're waiting on Senator Wayne, how would you like to proceed? All unexcused senators are present and accounted for. A roll call vote in regular order has been requested. The question before the body is the adoption of AM690. Mr. Clerk, please call the roll.

**ASSISTANT CLERK:** Senator Aguilar voting no. Senator Albrecht voting yes. Senator Arch voting yes. Senator Blood voting no. Senator Bostar voting no. Senator Bostelman voting yes. Senator Brandt not voting. Senator Brewer voting yes. Senator Briese not voting. Senator John Cavanaugh voting no. Senator Machaela Cavanaugh voting no. Senator Clements voting yes. Senator Day. Senator Day voting no. Senator DeBoer voting no. Senator Dorn. Senator Dorn not voting. Senator Erdman voting yes. Senator Flood voting no. Senator Friesen voting no. Senator Geist. Senator Geist not voting. Senator Gragert not voting. Senator Groene voting yes. Senator Halloran. Senator Ben Hansen voting yes. Senator Matt Hansen voting no. Senator Hilgers not voting. Senator Hilkemann not voting. Senator Hughes voting yes. Senator Hunt voting no. Senator Kolterman voting no. Senator Lathrop. Senator Lindstrom. Senator Linehan voting yes. Senator Lowe voting yes. Senator McCollister voting no. Senator McDonnell voting no. Senator McKinney voting no. Senator Morfeld voting no. Senator Moser voting yes. Senator Murman voting yes. Senator Pahls not voting. Senator Pansing Brooks voting no. Senator Sanders. Senator Slama voting no. Senator Stinner. Senator Stinner voting no. Senator Vargas voting no. Senator Walz voting no. Senator Wayne voting no. Senator Williams voting no. Senator Wishart voting no. Senator Friesen voting yes. Vote is 14 ayes, 23 nays, Mr. President.

**HILGERS:** The amendment is not adopted. I raise the call. Mr. Clerk for an amendment.

**ASSISTANT CLERK:** Mr. President, Senator Albrecht would move to amend with AM660.

**HILGERS:** Senator Albrecht, you're recognized to open on AM660.

**ALBRECHT:** Thank you, President Hilgers. And again I rise with AM660 and asking for everyone to turn to the page 4. We're just asking that on line 19, take out sports and advertising and just insert sports. So my quest is to take the advertising portion of this out of the bill.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

I've handed out a map for everyone to take a look at the 14 states-- still awaiting an answer on how many of the 14 states, number one, have the ability for the high schools to have it within their bill. I think most of them are just college. And again, Senator Morfeld, this isn't a friendly amendment, but this is a filibuster, as you know. And to those of us who feel passionate about the bill, this isn't something that, that we're going to take lightly. We want the public to know how we feel, we want the schools to know how we feel, we're fighting for the children as well. So I wanted to take time this morning, and it is still morning, we get to be here till 1:30. I'm going to read directly from an opinion of Planned Parenthood v. Clark County Public Schools [SIC]. Planned Parenthood charges that the school district refused to publish Planned Parenthood's advertisement in school-sponsored publication, which violates its right of freedom of expression guaranteed by the First Amendment. Following a trial stipulated facts, the district court ruled in favor of the school district. The court concluded, because we conclude that public-- "the publications are a nonpublic forum and the restrictions on Planned Parenthood's advertisements are reasonable, we affirm" the decision in favor of the school district's refusal to publish it. Bottom line, if we make school media an, a public forum, the schools no longer have protection and will have to accept advertising from Planned Parenthood or other organizations if they take advertising from anyone else. The court, the court pointed out the school district authorizes its high schools to publish newspapers, yearbooks and athletic event programs. High school newspapers and yearbooks are published as part of the school district curriculum. Newspapers are published as a part of the Journalism I and Journalism II courses. Yearbooks are published in Publications I and Publications II courses. These courses are taught by school district faculty members and students receive grades and academic credit upon their completion. Athletic events are not published as part of any course curriculum. The school district does not require its publications to contain advertising. Instead, it authorizes each of its high school principals to decide which publication at his or her school will accept advertising. The school district also grants high school principals discretion, both to set guidelines for publishing advertising and to determine whether a proposed advertisement satisfies those guidelines. The school district's policy toward its publication is reflected in the following memorandum circulated to all high school principals by Daniel Hussey. His memorandum says: A school has an important interest in avoiding the impression that it has endorsed a viewpoint at variance with its educational program. It is not at all unlikely that an advertisement may be viewed as a school's endorsement of its contents. This is the



Rough Draft

Ninth Circuit Court of Appeals, not binding on Nebraska, but persuasive to other courts. The Ninth Circuit Court is the most liberal appellate court. And if this reached the Eighth Circuit Court here in Nebraska, it would very likely be able to hold the same view. Again, if you take a look at the advertisements that, that I've provided for you, these things can start to happen in our schools throughout the state of Nebraska. Again, the public forum, if we're going to have this and, and the advertising has to have some guidelines, some, some rails to, to hold onto here, because if we don't, we are going to have situations in our state, with our schools, with the children, with the advertisers. We have the responsibility on this floor to make the right decision about this bill. Again, I'm waiting to find out how many of these schools are actually putting their, their arms around this bill, and did they or did they not include high schools. I mean, we're, we're putting ourselves out there, folks, to, to have some major problems with, with what's going on. I want to take a look at the map, too, that I provided. If some of you want to obviously investigate, I had lots and lots of phone calls in my office from these folks. New Voices is the group that is trying to push these bills through in the various states. Again, those in the green are areas where this law has passed. And this is where I want to know how many of these states actually include high schools in their bill. The states in the yellow are active, actively have this bill in their state, in their decision making process this year. And in the white, there are no voices or active campaigns in these states. So, again, I think it's prudent for us to, to take a look at who these folks are, what is their goal, why do they feel a need throughout our country to change the laws of the land for public forum? You know, it may very well have a lot to do with social media, because right now that's where you may be able to put something out there, you may not. They may take it down, they may not. But we're talking about schools right now and what they can and can't do. And I think it's prudent on our part to do what we need to do to stay focused on whether this is right for Nebraska or not. I do have some information here that talks about-- I'm going to switch to colleges now, who regulates advertising in college and underground publications. With only a handful of cases dealing specifically with advertising in public colleges or independent student press, those decisions suggest that the First Amendment still provides important protection for commercial speech. At a Michigan college, this is a good case illustration. A federal court, district court judge ruled that a state college official acted illegally when he told the school student newspaper editor that she could no longer publish an advertisement for a Canadian nude dancing club. The ad noted that the Canadian drinking age was 19, Michigan's

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

drinking age is 21. And the law prohibited totally nude dancing. The school claimed that it had banned the ad because it was degrading to women, promoted underage drinking, and conflicted with the school's educational mission and values. The court applied the Central Hudson test. First, it found that the ad concerned lawful activity as long as it took place in Canada, as the ad suggested, and was not misleading. Second, the court did not dispute the school's claim that it had a substantial interest in protecting women from degrading and students from underage drinking. Turning to the final--

**HILGERS:** One minute.

**ALBRECHT:** -- two prongs of the Central Hudson. However, the court ruled that the school's regulation of advertising was not narrowly tailored to severe-- to serve those interests. The court found that the school attempts to regulate advertising was anything but carefully designed. With no advertising guidelines in place, school officials subjected the student newspaper to virtual unbridled regulatory authority and made no effort to distinguish harmful speech. This, the court concluded, violated the newspaper editors' free press rights. We're going to have all kinds of opinions if this should pass, whether this it's right, wrong or indifferent to do what we're, we're doing. And I can see that I'm up on time here, so I'll be back with you. Thank you.

**HILGERS:** Thank you for your opening, Senator Albrecht. Debate is now open on AM660. Senator Erdman, you are recognized.

**ERDMAN:** Thank you, Mr. Speaker. Good morning again. Senator Albrecht, thank you for bringing this amendment. I would ask her to yield to a question or two if she would.

**HILGERS:** Senator Albrecht, would you yield?

**ALBRECHT:** Yes.

**ERDMAN:** Thank you, Senator Albrecht. Senator Albrecht, your amendment strikes "sports, and advertising" and reinserts "sports" only, is that correct?

**ALBRECHT:** That's correct.

**ERDMAN:** So these states that you have sent us on this map, the green ones, they're the ones that have adopted this?

**ALBRECHT:** Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

**ERDMAN:** So, so I thought I heard earlier that 14 states had adopted this.

**ALBRECHT:** Correct.

**ERDMAN:** I see on this map, unless my math is wrong, maybe it's modern math that I'm using, I only counted 12 green ones. I didn't see 14. But, but so those states have already adopt this, do you know in those states, and you mentioned something about lawsuits because of advertising, do you know any of those states that do not allow any kind of advertising?

**ALBRECHT:** That's a good question. No, I don't.

**ERDMAN:** OK. All right. Thank you, I appreciate that. So what Senator Albrecht had mentioned earlier when she spoke on the last amendment is on page four and online 10 and talked about all school-sponsored media are deemed to be public forums. And if, in fact, this bill declares all school media to be public forms, it would be an opportunity for the public to use that to do whatever they would be desiring to do. And if they took advertising from anyone, they would have to take advertising from everyone. And this bill, as Senator Friesen has alluded to, would give more latitude and more protection to student journalists than any other journalist in America today. And let me clarify why I say that. If you're a newspaper editor or you own a newspaper or you own a radio station and you are the sole proprietor and you have no board of directors to answer to, you can print or you can say whatever you would like to say. What will happen if you say something that those people who advertise with you don't like, they will cease advertising with you and your revenue will decrease. If you print something that's unacceptable in your community and those people who have subscribed to your paper or tune into your radio station decide that they're no longer going to subscribe to your paper or they're no longer gonna listen to your radio station, your ratings go down on your, on both and you wind up suffering some kind of financial consequences. But in this case, we're going to protect these young people to say and do and put out there whatever they want. And because they are not adults, so they won't be charged, the charge or the liability is going to drop back to the school. And if you do not think that if this passes there won't be school newspapers eliminated, you need to think again. Because that's exactly what will happen. As I had shared with you earlier in my testimony about the university's research on local control, when we began to put statutes in place and laws in place that cost school districts money, they are not interested in having unfunded mandates. And they're going to stop the

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

issue of having a lawsuit or a libel claim because of some paper that the students have printed. So, Senator Albrecht, I appreciate you bringing this. I think if it is going to be a public forum, it ought to be controlled in a way that we don't get advertising there that we don't want. And I appreciate you bringing this and I will be voting for--

**HILGERS:** One minute.

**ERDMAN:** -- AM660. Thank you.

**HILGERS:** Thank you, Senator Albrecht and Senator Erdman. Senator Bostelman, you are recognized.

**BOSTELMAN:** Thank you, Mr. Speaker. I stand in support of AM660 and I want to thank Senator Albrecht for bringing this amendment. I have a strong concerns with the near-free reign of advertisements within school newspapers. We heard on the mike yesterday that just because it offends you, does not mean it shouldn't be published. Just because it offends you, doesn't mean it shouldn't be published. Does that same standard apply to advertisements? You see the handout that was given. Would this bill allow advertisements for Planned Parenthood to publish advertisements for abortion services? Or on the other side, would it be on pro-life groups publishing where to come in support of mothers? Would this bill allow for advertisements for a religious group or a church? Or perhaps target some group, demographic group within society that you may or may not agree with? Would this allow for an advertisements about some of the groups that protested, that rioted over the summer and after the first of the year? Would they be able to advertise then, in these publications? In Planned Parenthood versus Clark County School District, the Ninth Circuit Court ruled that, quote, because both are school cases and the publications are school-sponsored, we do not write on a clean slate. Hazelwood instructs that we are to invest high school educators with greater control over expressive activities that bear the schools' imprimatur that other forms of speech or use of government facilities. Thus, in striking a balance between the school's interests and Planned Parenthood's, we must assume that school-sponsored publications are nonpublic and that unless underscored, unless the schools affirmatively intend to open a forum for indiscriminate use-- that's emphasized-- restrictions reasonably related to the school's mission that are imposed on the content of school-sponsored publications do not violate the First Amendment. Under LB88, we would be declaring that our school media is in fact a public forum. Many of the smaller schools around the state actively rely on advertisements to support

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

their school media. If a community actively shows their displeasure with the advertisements in their local school media, the school will or may ultimately face the backlash. Recently, we saw Lincoln Pius issue a public apology for an article critical of abortion. This bill would not protect the schools from the court of public opinion. If the backlash from the public is strong enough, the administration may just decide to draw away-- to do away with it altogether. Then we'll have, then we will have taken a step back in the overall access for students and journalism. I want to go back to the story I was reading to conclude it. Again, this was a Chicago business litigation lawyer blog. And at the end of it--

**HILGERS:** One minute.

**BOSTELMAN:** -- in his complaint, Hayes alleges the student journalism and faculty adviser acted with reckless disregard for the truth in publishing the three articles about him and the student newspaper, which actually leads to the interesting legal question. While journalists, journalists are expected to conduct thorough research before publishing articles, especially those which could be damaging to public figures, are student journalists held to the same standards or should they be? Furthermore, professional journalist, journalists are most often writing about public figures who have a much higher burden to bear when it comes to proving they were deliberately defamed. But a college professor might not be public, not be a public figure, but he could become a limited-purpose public figure due to all the publicity, some of which he arguably engaged in too. At the same--

**HILGERS:** Time, Senator.

**BOSTELMAN:** -- time, articles in the student newspaper--

**HILGERS:** Time, Senator.

**BOSTELMAN:** -- can and clearly did--

**HILGERS:** Time, Senator. Time, Senator. Thank you, Senator Bostelman. Senator Groene, you are recognized.

**GROENE:** Thank you, Mr. President. To the public out there listening, I'm not running a filibuster here, I just like to talk more than most. Anyway, as you notice, to the people in Nebraska, there has no been-- not been any IPP motions, any emotions to return back to committee. As you remember, a senator that used to be here used a lot, because he was the only one doing the filibuster. This is a legitimate debate, legitimate debate that is taking place here. And every one of these

**Rough Draft**

amendments have great context. This one is very critical. I just read the Iowa bill law to myself, and it states that, well, if I remember where I put it. But anyway, Iowa's bill is specific to student editors of official school publications shall, shall assign, as I would pointed out before, we're just free-range chaos in LB88 who writes. At least most of the other states assign authority and responsibility to the student editor. I know a lot of editors lose a lot of sleep in the free enterprise system because what they have to make those hard decisions. But they are the gatekeeper. There is no gatekeeper in LB88. But they might edit the news, editorial and feature content of their publications subject to the limitations of this section. Advertising isn't in there. I can't find the word advertising in any of them so far. Once you open up that advertising, where do you stop? Is it free enterprise, I know we think these young people are equal to adults in their decision making. And I know Nancy Pelosi wants in the vote to right bill, wants 16-year-olds to vote. But are they, I mean, now all of a sudden they take-- they're really fired up about a candidate and they take a political ad. Statutes say that you have to give equal, equal access to all political candidates or none. Well, no, I don't think you have to. If you're selling ads, you have to take that ad. So what ad do they turn down. Now they can, because it is a class, it is a journalism class and one of their exercises is to run a make-believe paper. And they can do sports locally of their teams and cover the, most of them cover their student council issues around town that affects youth. Now we're opening it up, as Senator Albrecht said, to anybody who wants to buy an ad. As long as it isn't obscene, breaks the United States and Supreme Court's rules on obscenity, that ad is in the paper. I don't know if they could turn it down. That needs to be clarified before we change their-- affect the constitutional rights of our children, the ability to free speech or the free press. Sounds nice encouraging these young people to participate in life. I don't think they need it. I think the human intellect, and some are stronger than others. They strive for knowledge, they strive to expand their experiences. It's what humans do. And the ones who fall in love with writing will either become a novelist--

**HILGERS:** One minute.

**GROENE:** -- sports writer, and they will pursue the best education they can get at Northwestern or the University of Missouri, or another reputable, good-rated journalism college. Do we really want them worrying about the ads and the pushback they're going to get from the ads that are in the paper and the immediate reaction of a school board to cancel the school paper? Because it isn't necessary, it isn't necessary. You can have a journalism class and the instructor can have

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

you write an article, give you a deadline and say, you get-- you're limited to this many words and you can write an article, and you can write it on anything you want, because that's called free speech in the school. And then the teacher grades it. We don't need that paper. You don't need that thrill of victory. And I know why that paper's there, the same reason we have basketball games and football games for kids, the thrill of victory and see your name. It's the same emotional response that a, that a young person would have after a lot of work on a basketball court practicing to win.

**HILGERS:** Time, Senator.

**GROENE:** Same thing with a kid who writes a nice article--

**HILGERS:** Time, Senator Groene. Yeah, that is time. Thank you, Senator Groene. Senator Friesen, you are recognized.

**FRIESEN:** Thank you, Mr. President. Again, this amendment here doesn't do anything to bring my support to the bill. So I'm still looking totally at taking the high schools off the, off the bill completely. Probably the only way that I'm going to be satisfied with this bill. There are some other changes that possibly could be made when you're talking about the adviser and how much immunity you're giving them for making some decisions. With that, I'll yield the rest of my time to Senator Groene.

**HILGERS:** Senator Groene, 4:30.

**GROENE:** I wasn't expecting that. But I don't know if I went over the Iowa law. My hair is white and it's been more than 20 minutes, so I [INAUDIBLE] entertain myself again with the same information. But I don't think I have. Student exercise of free expression is what they call their statute. Except as limited by this section, students of the public schools have the right to exercise freedom of speech, including the right of expression in official school publications. Their bill covers everything. What I just said about the individual who writes an article in their composition class or the journalism class, they can-- free to write what they want and the teacher is free to, what you would think, free to grade it. Not on the content, but I know that doesn't happen. I hear stories in colleges all the time. They get judged on their content, if you happen to be a conservative student, versus the wordage they use, the verbiage they use, the grammar. They have freedom of speech. They have it in the school now. They just don't have the right to profess their beliefs in a publication that's read by all without oversight by adults. And then Iowa gives them

**Rough Draft**

freedom of speech, which in Nebraska, we don't have to put that in statute. I think that's done in most cases. And then it goes on to say: Each board of directors of a public school shall adopt the rules in the form of a written publication code, which shall include reasonable provisions for the time, place and manner of conducting such activities within its jurisdiction. The board shall make the code available to the students and their parents. This thing isn't clear if it's about journalism. The student editors, as I said earlier, the student editor is responsible for the content of the paper. The journalism adviser, the students producing the official school publications shall supervise the production of the student staff to maintain professional standards of English and journalism and to comply with this section. You know, I don't know who helped write this bill, but they've seen all of this. When they, when it stood up and said they have 14 states that have similar bills, they don't. Only Washington has something similar. But the language I see in LB88, a lot of it has come right out of some of these other, other statutes. So that it was read and it was-- knowledge was known of the different bills. That's fine. I am known, all of us are known to kind of exaggerate the facts when we want something really bad. But of those 14 states, there's nothing close to this. This is wide open. LB88 is wide open. We're getting emails from parents, school board members, administrators that just heard about this bill like we did the first day of debate. Sounded nice, something we could offer the youth, expand their experiences, until we've delved into it. And now we're getting, oh, wait a minute. I didn't think it was that, I just thought it was a protection of freedom of speech-- of press, which--

**HILGERS:** One minute.

**GROENE:** -- has restrictions on it now. This is just a public forum. It needs to go away. If you want to-- I don't believe, I haven't been able to completely research it, but I don't believe there's any mention on standards of the, of a school newspaper in our education statutes anyway. And I'm wondering why this bill didn't go to the Education Committee. But it doesn't need to be, because it fits under all of our standards, our regulations to school districts about conducting courses. It's a course that gets credits. It's not a paper. It's an exercise of a journalism class. Thank you, Mr. President.

**HILGERS:** Thank you, Senator Groene and Senator Friesen. Senator Clements, you are recognized.

**CLEMENTS:** Thank you, Mr. President. This amendment makes a small correction. I think it would help a little bit in this bill. But the



Rough Draft

previous vote defeating Senator Halloran's amendment is a real problem for me. That was going to make it more acceptable and give local control to the schools. And so I'm still going to oppose the bill. I would probably-- I would vote yes for this amendment, but it wouldn't turn me around to be able to support the bill. I wanted to read some testimony from an educator who came to the hearing on this bill in January. Her name was Mary. She said: I'm Mary and I'd like to thank you, Senator Lathrop, and the committee for giving me the chance to speak today. I'd also like to thank the students for speaking out. I think that's very brave of them. Anyway, I'm a K-12 educator, educator in Nebraska. I'm licensed in Nebraska, and I'm just here to speak out against, in opposition to LB88 because I think it could lead to disruption of the classroom and the learning environment. And there are many other issues that could come from allowing young students to publish articles without the guidance and oversight from the administrators. I think this is a teacher who has been there and done that and realized what the public forum is going to do. She goes on. This could not only lead to disruption of a learning environment, but also lead to the bullying of others. And I know that we have had many issues with that in our classrooms. And by allowing any type of speech without oversight, it could give the possibility of weaponizing our children when they are sent to school to concentrate and learn. When I send my children and my grandchildren, I have six grandchildren in the LPS system right now, I expect that they receive guidance in their writing processes and not to worry about what is getting published. There are so many places for a student to express themselves through social media platforms such as Facebook, Instagram, Snapchat, Twitter, YouTube, Messenger and Reddit, just to name a few. I thought it was funny she just named a few. It was-- I couldn't have named that list and I'm a grandfather. Pretty good for a grandmother to be that aware. She says, the Supreme Court determined that students' freedom of speech and press must be balanced against the interests of the schools in maintaining institutional order and good learning environment. I want to keep our learning environment for Nebraska students safe by voting against LB88, and I just want to thank all of you again for allowing me to speak out. Thank you for the opportunity because I haven't really done this before. I just felt compelled to do it today. So I thought that was important to let the senators know that we had an educator, educator who is not a professional lobbyist, been in the classroom and has this much concern to come down to testify on this bill.

**HILGERS:** One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

**CLEMENTS:** Thank you, Mr. President. Then I also-- has been mentioned we've been receiving emails. Just in the last three days, I've counted, just counted that I had 15 emails in opposition that I've, that I've noticed. And there may even be more. I've got one from a constituent of mine. I'll start reading, I may run out of time. But this says, Dear Senator Clements, today I'm writing as a constituent, I'm asking you to oppose LB88. LB88 designates school-sponsored media as a public forum. There are very few limits on speech in a public forum. I'm glad to see that the general public has been educated. Our debate here, I think, has highlighted why I originally tried to exempt--

**HILGERS:** Time, Senator. Thank you, Senator Clements. Senator Hughes, you're recognized.

**HUGHES:** Thank you, Mr. President. Good afternoon, colleagues. I do want to take a moment to kind of help people understand why I'm helping to filibuster this bill. I'm always amazed when I go home or when I talk to my constituents. How many people do tune in and listen to what we say? You know, sometimes I get emails from them saying, you know, man, I agree with your position, Senator. Or, you know, what are you thinking? You know, why would you be doing that? So I just wanted to be very clear about why I am extending debate on LB88. The fact sheet that Senator Morfeld passed out, "the Student Journalist Protection Act does" and one of the bullet points underneath of that deems all school-sponsored media public forums in which student journalists have the right to exercise freedom of speech and the media, or freedom of the press. Now, on the surface, that, that sounds yeah, that could be all right. But there are consequences. You know, we've got some, some questions about what that actually means. And it's been proven many times that the use of media, whether it's published media, private or public, or social media, can be extremely damaging to someone's reputation or to some-- to their mental state. So we need to be extremely careful about giving authority, if you will, without guidelines to individuals who don't have the benefit of life's experience to truly understand what is acceptable and what is crossing a line. And we've all seen it. And especially with the explosion of social media, it's incredible, some of the nasty things that are put out there. And we as senators, when we take positions that individuals do not care for, it can be, it can, it can be hurtful. Now, we as politicians or elected officials, as I like to refer to us, have to have thick skin. You know, there's no question about that. We are elected to represent the people and that comes with good and bad. But when we take a position or support a bill or push for a bill that is unpopular with a certain group of individuals, it

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

can be difficult to read those emails, to see those posts, you know, to read that blog telling people how terrible you are and what were you thinking. And we're, we're mature adults on this floor, you know, from Senator McKinney to I think-- I don't know who's the oldest, maybe it's Senator McCollister or Senator Hilkemann. It does challenge what you do. And to allow our young people to do that to each other, I think is very detrimental. I think there has to be guidelines--

**HILGERS:** One minute.

**HUGHES:** -- and guardrails that are maintained by an adult in the system that has been trained and hired to do that job and someone who is accountable for the content of that school newspaper. So protecting the free speech and the freedom of the press are critical to the freedoms we have in the United States. But there is a point that those do have to be earned and they do have to come with a certain amount of responsibility. One of the things I jot down on my notes is, you know, freedom of speech, there are, there are guidelines. You know, you can't yell fire in a crowded theater. I mean, there are consequences to that.

**HILGERS:** That's time, Senator.

**HUGHES:** Thank you, Mr.--

**HILGERS:** Thank you, Senator Hughes. Senator Erdman, you're recognized.

**ERDMAN:** Thank you, Mr. Speaker. I appreciate the opportunity to speak again. I appreciate Senator Hughes' comments. I think you can take those to heart with what he said. If you don't think that the media can destroy you, ask Governor Cuomo what he thinks today. And so what has happened in America is we have now been guilty until proven innocent, and I have no idea whether Governor Cuomo is guilty or not. I don't know. But the media seems to paint the picture that he is and he hasn't had an opportunity for due process. So who actually knows? I guess the media will tell us if he is or not. So that's the kind of thing we're going to open our schools up to, because when it comes to public form, that's what will happen. And, and the student will not be liable, it will be the administration, the school board and those that pay the taxes. And so take that into consideration when you get ready to vote for this. I was wondering if Senator Albrecht would yield to a question.

**HILGERS:** Senator Albrecht, would you yield?

**ALBRECHT:** Yes, I'd be happy to.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

**ERDMAN:** Thank you, Senator Albrecht. Senator Albrecht, the map you sent out, and at the bottom, it says-- there are three charts there and it says: New Voices law passed are in green, active New Voices campaign are in yellow, and then the no, no Voices law in active campaign is white. So can you tell me, do you know anything about this New Voices agency or organization?

**ALBRECHT:** Well, I had asked my staff to find out who the states were that were actually having this conversation. And New Voices of Nebraska came up on a Facebook page and they're basically folks that-- New Voices of Nebraska is working to protect the rights of student journalists, to gather information and share ideas fearlessly is what came along with the map.

**ERDMAN:** I see. Do they have a physical location, physical location here?

**ALBRECHT:** That I couldn't answer for you. I don't know that.

**ERDMAN:** OK.

**ALBRECHT:** It was founded in 2015.

**ERDMAN:** OK, so perhaps this is a part of a bigger, what should I say, organization or proposal to spread this to all states. And they have, they have-- it looks to me like they have about 10 that are in, in flux right now that are, that are considering adopting such legislation. We don't know what that legislation is as broad as ours, but that's a very interesting map that you've shown to us. So maybe this isn't just a local issue. I can't tell for sure whether it is or not. Obviously, we haven't had any of those people come and testify yet, but we'll have to see what happens going forward. I think Senator Groene brought to mind a question that I had early on, is why didn't this go to the Education Committee? And maybe someone knows exactly why it didn't go there and can tell me why it was referenced where it was. But that would have made sense to me. Deals with education. Looks to me like that would have been the committee to send it to, but it didn't go there. And so that's kind of water under the bridge. But I appreciate Senator, Senator Groene's comments about this is becoming a public forum. And, and Senator Albrecht alluded to it as well on, on page 4. So if you're at all concerned about voting for this bill, if there's any concern you have about it, that's the one that you should be concerned about.

**HILGERS:** One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

**ERDMAN:** Because if it becomes a public forum, who is going to be in control of that? And so consequently, the adviser can advise them, but that's all they can do. They have-- really I don't see anything in the bill that gives them authority to stop anything from being printed. So I appreciate the opportunity again. And thanks for the time.

**HILGERS:** Thank you, Senator Albrecht and Senator Erdman. Senator Blood, you are recognized.

**BLOOD:** Thank you, Mr. Speaker. Fellow senators, friends, all. I would like to say that I stand against this amendment, but in full support of LB88 and sincerely was not going to speak on the mike today. But after hours and hours of listening, I want to take this opportunity to reflect back some of what I heard on the mike today for a particular reason and to maybe get some people thinking about what they have said and how it might apply to what I'm going to discuss. So it was brought forward that just because you're offended by it doesn't mean it shouldn't be printed. To several of the senators, they've said it multiple times over the last two days. And so they're claiming that it should not be because it might be offensive or inappropriate. And then it would be my expectation when I hear those words that all who are riding this bandwagon will now sign on to LB8, my effort to cut dark money out of elections here in Nebraska. Because as I just heard, words have consequences, it can be damaging to one's reputation. So I should see everybody running up front to tell Patrick and Carol, hey, please add me onto Senator Blood's bill, LB8. I want to be a co-sponsor because there are consequences when people use bad words and try and ruin people's reputation. One of the senators said it was incredible, some of the nasty things out there because they're hurtful. But, you know, as, as policy makers we're supposed to have thick skins, but we are considered guilty when dark money comes into any election in the last 30 days because they get to hide because they say they're an educational nonprofit. And so the voters don't know if it's a Texas millionaire that comes in to try and influence our election in the last 30 days. The candidate doesn't get to, to fight back in the last 30 days. If you read the Omaha World-Herald, you need to read it today. There's an editorial about this bill that starts with the word "shameful" and ends with the word "shameful" because we can't get it out of committee for this body to debate. So if you're standing on this microphone and you are talking about how words matter and how you can ruin somebody's reputation and how important transparency is and how false narratives and misinformation can happen, why aren't you supporting LB8? Why aren't you going up to the Government Committee and asking why this bill isn't coming out? I think we all know why. Why would we want dark money out of Nebraska

**Rough Draft**

elections? Gee, I don't know, because it helps people get elected that aren't willing to knock on the doors and do the work? Because it's easier to ruin somebody's reputation in the community that they live in than it is to pick up the phone and call your constituents?

Because, you know, all's fair, we don't need to have an even playing field. Let's not close this loophole ever. And then we can continue to have people that come in here that are minions to a certain cause, to a certain public figure, as opposed to the voice of the people. Our voters deserve to know who and why that person is being elected and what money is behind them. And in Nebraska, we don't care. We don't care that any of our voters know where this money comes in at the last 30 days. We don't care if we ruin somebody's reputation and that they had the right to know who this person or persons or organization is that come in--

**HILGERS:** One minute.

**BLOOD:** -- with this money at the last minute. But as Senator Erdman says, you know, you're guilty until proven innocent. Well, guess what? We don't even do that for our own candidates here in Nebraska. I go back to the story of this last election cycle where a dark money organization came in and said somebody was not pro-life when that individual had unfortunately become impregnated in college and gave her own child up for adoption. But, you know, she's not pro-life. I can go to story after story after story. I expect to see everybody I've heard on the mike talking about transparency, talking about right and wrong and consequences, and what's offensive and what's not offensive. I expect them to come and co-sponsor LB8. I expect those that refuse to vote it out of committee to vote it out of committee if they've been on this mike. And you can't say, well, one is children and one is adults, because you know what?

**HILGERS:** Time, Senator.

**BLOOD:** Eventually those children grow up. Thank you, Mr. Speaker.

**HILGERS:** Thank you. Thank you, Senator Blood. Senator Bostelman, you're recognized.

**BOSTELMAN:** Thank you, Mr. Speaker. I have some questions on, on my mind as we continue to discuss this bill, debate the bill. And really it comes back to some things we've talked about before, is liability issues. We still do not have an answer on a very important question. That question is, who is liable if someone is defamed under LB88? Who is liable if someone is defamed under LB88? I don't know the answer to

**Rough Draft**

that question. What is that answer? What about if an advertisement published contains false and misleading information? Who's publishing these, who's putting these? And if it's a public forum, anyone can. School has no control. So what if there's false or misleading information? What then? Is it like, I think it was referenced just a few minutes ago about a local school who had to apologize or retract some information that they didn't, they didn't support, didn't believe in? I'd venture to say that most media advisers are not attorneys, and that kind of goes back to the principal that was talking before. And he said, you know, when we look at this, I'm not an attorney. So how am I going to know whether or not the material is, is defaming, is offensive, is slanderous and libelous? So then it is, what he was talking about, it is-- and the biggest differences or biggest challenge for him as a building principal or his colleagues, it's on page, it's on the last page, line 3 and 4 of the bill, the punishment of-- or the publishing is shown to cause material substantial disruption to the school, what can they do? Would the Attorney General have to defend the student as a student journalist? Does the Attorney General have to defend the adviser? Again, since it's a minor, is a minor able to be sued? Is the school's administration, the adviser, who is it? Would the taxpayers have to pay for the defense of that individual? So on advertising, not only-- I think I talked about the other day and print material that goes outside the walls of the school, if you think about it, if you go to a baseball game or softball game, oftentimes in the outfield, you have advertisements. Paid advertisements by local businesses, companies, individuals. And if you go into a gymnasium a lot of times at a school, watch a basketball game or a volleyball game or wrestling, the scoreboards and the gyms had advertising on them. Who has control over that advertising, I think is very important that the administration must be able to have the say is what you can, what you may and what you may not be able to advertise, what that looks like and where it is appropriate for the school and for the students.

**HILGERS:** One minute.

**BOSTELMAN:** Principal also said, and because we're trying to prevent, to make sure that culture is protected and prevent-- to, to make sure our kids are protected as much as we possibly can, I would, I would much rather prevent and try to put to-- to prevent and rather than to try to put the toothpaste back into the tube. Their concern is being able to protect the student in order to provide them the right instruction and make the right decisions. And that student may or may not always appreciate it or agree to it, but I think the intent of the administration or the adviser is the same as for the betterment, the

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

best for the student and best for the school that they attend and the community because it's local control again. Remember, of the 14 states, only one, Washington, has it in statute--

**HILGERS:** Time, Senator.

**BOSTELMAN:** -- that it's a public forum. Thank you.

**HILGERS:** Thank you, Senator Bostelman. Senator Ben Hansen, you're recognized.

**B. HANSEN:** Thank you, Mr. Speaker. I know I haven't spoken a whole lot on this bill a couple of times before, but just listening to debate and going through emails from my constituents, which I have gotten a lot more recently because of the debate that's going on, I did at first have a lot of emails in favor of the bill. Now from my constituents in my district are starting to get a lot more emails against the bill and some of their concerns, which are legitimate. And I talk with my colleagues and investigating a little bit on my own, trying to disseminate all the arguments. But I just have a couple concerns of my own that I'd just kind of like to bring up. And one of them has to do with my concern that I've raised before, too, about current journalistic standards. And the code of ethics that they're supposed to follow, and if we're seeing that now currently in the national and state level, do we expect the same if we open it up to our youth? And one of the examples I give, because I know people have probably all heard multiple examples about maybe dishonesty or misquotes or mistakes in the media, one of them is a Washington Post. I seen-- this is just recently, this is a Washington Post article that recently got retracted against President Trump. And I, I bring this up-- I know people have varying opinions of President Trump. And so I just don't want that to take the focus here, this is more about kind of what's going on with just the story. Because if it was against any other president, our current president, President Obama, I would have the same notions. But I just want to read a little bit about what they did and the retraction that-- because this is actually a very big retraction. Again, this kind of just-- this all kind of correlates to current journalistic standards. The Washington Post admitted in a correction that it had misquoted former President Donald Trump telling Georgia's top election investigator to, quote, to find the fraud. I think a lot of us heard that in Georgia when the vote was coming up for the presidential election, that he specifically mentioned that the secretary of state has to go find the fraud and find evidence of election fraud. Whether you believe there was or not. The correction ran atop an online version of the updated original story that had



Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

quoted an anonymous source about a phone call Trump made to Georgia's top elections investigation official shortly before Christmas. Quote-- this is from The Washington Post, quote, Correction. Two months after publication of the story, the Georgia secretary of state released an audio recording of President Donald Trump's December phone call with the state's top elections investigator. The recording revealed that the Post misquoted Trump's comments on the call, they say misquoted, based on information provided by a source. The correction published Thursday began. Quote, Trump did not tell the investigator to, quote, find the fraud or say she would be a national hero if she did so. And so mistakes do happen, and when some of these mistakes do happen, they do have pretty big consequences. Whether we're talking about just a school newspaper, which again, is something that I will discuss again a little bit in a little bit here. But the headline and the text of the story have been corrected to remove quotes misattributed to Trump. So they did do their job. And my opinion, they did retract the story probably too late. But just the effect that it did have on the-- whether the election, the senate election race in Georgia and elsewhere did make a pretty big difference. And so this kind of in a nutshell is why we have guidance and guardrails, and like I mentioned before, regulatory supervision. This is why we need to make sure that stories can be stopped if they deem them-- that they're going to have--

**HILGERS:** One minute.

**B. HANSEN:** -- negative effects, not just maybe what's going on locally, but, but to the psyche also of students. And that's something I will touch on again a little bit, just one other concern that I had. And so basically this, this first concern that I have is, again, the standards that we're seeing currently in other forms of media and publications concerns me that we might start to see that in our school newspaper if we open this up again and become more like them, which I think is what this bill kind of does. And so I'll get on the mike again in a little bit, or someone can yield me some time too, to discuss my second concern. Thank you, Mr. Speaker.

**HILGERS:** Thank you, Senator Hansen. Senator Albrecht, you're recognized.

**ALBRECHT:** Thank you, President Hilgers. I wanted to address, I believe it was Senator Erdman had a question about where I received the map. And it did look like they have a-- they do have a Washington, D.C. address, and if you go on to their site, you can find out who sits on their board. And it's much more broad than just the state of Nebraska,

Rough Draft

obviously. Also, I do have other things that have come before me of people wanted to know where our information or these ads were coming from. We simply went to the Planned Parenthood site and asked for high school ads, and that's what popped up. So that's where they came from. Whether they were from a different campaign or not, I don't know that. But it was obviously in somebody's school newspaper. Again, I think it's important that Nebraska is listening. They are watching. They are concerned. I'm very, very perplexed on why we didn't hear from more principals or superintendents on this issue, because if lawsuits start to come in and flow in, because high schools are going to be responsible for the content of what goes out, it would be interesting to me to, to hear from a few more of those, if at all possible, before 1:30 today. Again, I have a gal that just currently put out a little note to me, 11:37 today. She says that: I'm writing to you as a constituent. LB88 designate, designates school-sponsored media as a public forum. There are very few limits on speech in public forums. This allows the school paper to be treated more like a social media site or a street corner than a newspaper. Adult professional and journalists do not have this level of "unfretted" reign over publishing and are ultimately accountable to their bosses and/or owners. This allows journalism students "unfretted" publication ability without adult oversight. It restricts the editorial oversight power of media adviser or school to have any control over the publication. It limits the ability of the school to oversee the potential legally problematic and life-changing mistakes that minors could make in the content that they publish. It leaves it unclear as to who is legally culpable for any damages incurred by the actions of a student journalist. In short, the freedom of press, according to the First Amendment, does not imply that everyone, let alone every minor, is entitled to having their own press. I also want to share that over 30 years ago I took a journalism class. We had a wonderful teacher who gave me oversight to us and things that at times rejected for good reason, because students can attempt to do something that would not be a reflective or a good journalism. Students need to be steered so that they can learn. Yes, students have other platforms where they don't have much oversight, which is also has a lifelong consequences. And students do not need to have their own press. They're still learning. Another one from Peru, Nebraska. She says that she's writing again to ask us to oppose LB88. Usually the stated intent of a bill gives me a reasonable idea as--

**HILGERS:** One minute.

**ALBRECHT:** -- to both what and why of it. But in this case, I feel that the what is stated but the why is never made clear. My attempts to get

Floor Debate March 18, 2021

**Rough Draft**

solid answers from senators has been fruitless. If LB88 were to pass, it would actually weaken the First Amendment protections rather than strengthening them. It is not at all made to be clear in this bill as deemed necessary, nor why it is believed that these First Amendment protections belong in our taxpayer-funded public education institutions, which are not public forums. It has also not been explained by those who think this bill is necessary, why it is that they exclude journalism students in a nonpublic educational institution from the bill. To clarify my position, the bill is a bad one, and it would not be improved by expanding the scope of protection to private school journalism students. The bill should--

**McKINNEY:** Time.

**ALBRECHT:** Thank you.

**McKINNEY:** The chair recognizes Senator Murman.

**MURMAN:** Thank you, sir. Senator. I would like to talk also about the emails that have been coming in. Senator Morfeld did do a great job in rounding up support early for this bill. In the last week, I've gotten a lot of emails, most of them in support of LB88. But just in the last, especially in the last day here, my emails have completely turned around and they are almost 100 percent against LB88. I think the emails I'm getting now are more representative of the general public. You know, there are some people that listen to our debate here in the Legislature, even on, on the Internet and TV. So, but I would just like to read one of the emails that I got recently that I think is really good. While cleverly disguised as a bill to protect the freedom of the press and the First Amendment, this bill does anything but that. It instead categorizes all school-sponsored media as a public forum. It also almost removes the role of the student media adviser who may enforce journalistic standards. But is also not allowed to be retaliated against by the school administration if they do not. And in fact, the school can be sued. And I talked about that earlier, and that's a big fear of local school districts from, from what I've heard from my district. But students are allowed to steer the ship. In designating school-sponsored media as a public forum, this opens the door for groups like Planned Parenthood for a free rein to begin publishing ads in school media or on school websites or social media. So that's exactly-- that last sentence there goes exactly to the point of this amendment by Senator Albrecht. So with the remaining of my time, I would like to give it to Senator Ben Hansen, who has asked for more time.

**HILGERS:** Senator Hansen, 2:05.

**B. HANSEN:** Thank you, Mr. Speaker. Thank you, Senator Murman, for that time. It's better than 15 seconds, the last time you yielded me, so I appreciate it. Just to kind of further expound on a little bit of some of my concerns that I had, the other one that I had while I was talking about current journalistic standards and my concern about how that might filter down to our schools, it is also about suicide rates in teenagers. And it's kind of, I know, a weird topic in bringing up journalistic integrity and expanding, expanding journalism in high school. But my concern is about not so much bullying, but opening up opinions, sometimes maybe not fact, but opinions about other students or about political views without having some kind of restraint or guardrails in place to maybe understand-- an adult maybe understanding the consequences or unintended consequences some of the language might have or the story might have on--

**HILGERS:** One minute.

**B. HANSEN:** -- the behaviors of other teens. And so on in a little bit, I'll kind of start this now and then hopefully another senator can yield me some more time. But just a little bit on an article. Social media use may play important role in youth suicide. And social media will also pertain to this bill a little bit, and I'll explain that. But Doctor Zelazny, an assistant professor at the University of Pittsburgh, noted that suicide is the second leading cause of death among individuals aged 10 to 24 years, the second leading cause of death. Further, suicide rates have tripled among youth aged 10 to 14 years old, as well as among girls. And suicide rates are significantly higher among African-American children younger than 13 years of age. And when somebody else yields me some time, I'll kind of explain a little bit kind of where I'm going with this with some more time. So thank you, Mr. Speaker.

**HILGERS:** Thank you, Senator Hansen and Senator Murman. Senator Clements, you're recognized.

**CLEMENTS:** Thank you, Mr. Speaker. Well, back to this amendment, AM660 would remove advertising. Excuse me. I need to get that. The section (2)(b) says each student journalist is responsible for determining the news, opinion, feature, sports and advertising content. And, of course, the section before that deemed the media to be a public forum. And when Senator Albrecht brought out the problem that could be caused by the student having determination over advertising, I was thinking of a couple of different things that might be advertised. We have a

**Rough Draft**

bill coming up, LB474, one of these days. It's the medical cannabis bill. And I'd like to quote from it and, well, I'm concerned as to whether that advertisement would be included here. It does say no producer, processor, dispensary or laboratory may operate in any location within 1,000 feet of a public or private school existing before the date of the initial registration of the producer. Except that the department may reduce the distance to 500 feet in instances where it is allowed by local law and reasonably necessary to provide access to certified patients. A producer, processor, dispensary or laboratory shall comply with reasonable restrictions set by the department relating to signage, marketing, display and advertising of cannabis and shall comply with local zoning regulations. Well, they're-- so they're giving ability to do marketing and advertising of cannabis. And the question is whether the public forum with the Supreme Court creates any ability for the school to eliminate or censor cannabis advertising. Another item I was concerned with regards vaping. And I found the American Association of Pediatrics had a article August of 2019 study. Teens are more likely to vape after seeing store ads. Adolescents exposed to e-cigarette ads in retail stores are twice as likely to start vaping within several years, according to a new study. E-cigarette use has been skyrocketing among teens, despite evidence they are addictive, harmful to developing brains and contain toxic chemicals. In recent weeks, they've also been linked to 193 reports of severe pulmonary illness. So again, researchers from the University of Texas and the University of North Texas set out to look at the impact of e-cigarette advertising, which is unregulated. And this is as of 2019. And like public forum publications, in my interpretation of this bill, its advertising is unregulated. It says they use data on 2,888 adolescents ages 12 to 17 and 2,423 young adults aged 18 to 29 who had never used e-cigarettes. At the start of the study, participants were asked about e-cigarette ads they had seen or heard on TV, radio, billboards, retail stores, the Internet.

**HILGERS:** One minute.

**CLEMENTS:** How frequently they had seen or heard them. Over the course of two and a half years, they were asked about their e-cigarette use. The results are reported in Electronic Nicotine Marketing and Initiating Among Youth and Adults [SIC] paper, which I'm not going to read all of that. But about 58 percent of the adolescents said they had seen e-cigarette ads in retail stores, 44 percent on TV. And over the course of the study, 14 percent started vaping. And adolescents were twice as likely to use e-cigarettes if they had seen ads in retail stores. And so if we put them in school newspapers, school

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

publications, these, again, addictive, harmful to developing brains, toxic chemicals, pulmonary illness products could result--

**HILGERS:** Time, Senator.

**CLEMENTS:** -- in a problem. Thank you, Mr. President.

**HILGERS:** Thank you, Senator Clements. Senator Erdman, you are recognized. This is your third opportunity.

**ERDMAN:** Thank you, Mr. Speaker. I listened to Senator Blood talk about the dark money that's in the, in the elections, and I hadn't thought about that bill, because when I first got here in '17, I used to try to read all the bills to figure out what they do. And then I found out the majority of them don't ever see the light of day. And so I spent all my time reading that didn't count. So what I basically do is wait till they get on the agenda and then try to figure out exactly what the bill does. So I haven't seen her bill. And maybe it's something we need to look at. But I appreciated Senator Clements's comments and, and he's a very thorough researcher and he gets good information that we need to be cognizant of and be aware of as we move forward with making this a public forum. And so with that said, I would yield the rest of my time to Senator Ben Hansen.

**HILGERS:** Senator Hansen, 4:00.

**B. HANSEN:** Thank you, Mr. Speaker. Thank you, Senator Erdman, for that time. I just wanted to kind of continue on a little bit about one of my, one of my points I was trying to make about the increase or so much the dramatic increase we're seeing in teen suicide rates and the use of social media. And I was kind of giving off some, some statistics a little bit about the increase in it. So a lot of studies that-- other studies' results suggest that social media use among teens is linked to low self-esteem, poor body image and risk-taking behaviors. Moreover, social comparison and cyberbullying have been associated with depression, anxiety and suicidal ideation among adolescents. And I wouldn't say anybody is going to be bullying anybody in a school newspaper, because Senator Morfeld also pointed out that there are some restrictions in place that the school puts on that, that it makes a good point. And I do appreciate Senator Morfeld sitting here listening to all of this for so long. He makes some good points as well. And I appreciate his passion for this bill. And so where I was kind of trying to wrap this all up is that do we, do we really want our school newspaper to be more like social media? If this bill passes, could school newspapers be more like social media? They

Rough Draft

could. It's a, it's a definite possibility. I mean, we're opening up the the floodgates to, you know, maybe more opinion news, comparison news that teens especially seem like have a harder time dealing with and coping with in, in some aspects, girls more than boys. And it was a comment that my colleague, Senator Pansing Brooks mentioned yesterday in the context of gambling and-- youth and gambling. She made a pretty good point that I'm going to try to relate to this as well. She said, These are just kids. We all know the brain doesn't fully develop until age 26. She was using that reference to a different bill, not to this. I just thought she was making a good point, that sometimes teens have a hard time dealing with different opinions. And now if we're making up our school newspaper to not be fact-checked, or not even so much fact-checked, but controlled or supervised more because of the content that it's putting out and we have a principal, we have adults who who've been through certain things, who maybe have a better viewpoint of the world because of history understand sometimes the content that's put out might be harmful to the psychology of other students. And so those are the type of guardrails I'm saying when I talk about we should--

**HILGERS:** One minute.

**B. HANSEN:** -- put in place, we should make sure that are there. The type of supervised control or regulatory supervision is what I appreciate that we currently have right now. And that's something that does concern me, that if this bill does pass, we'll get rid of that. And so, like, like I said before, words do matter and we do want, we do want our students questioning authority, right? I think that point has been brought up before. We want them to, we want them to question authority, we want them to investigate. We want them to learn about journalism, to potentially become a journalist, which Senator Groene said is a very admirable profession, but just with some, just with some guidance, some oversight and regulatory supervision, which is what we have now. Which I think is one of the reasons why I am not in support of LB88, because of the two concerns I laid out and other ones before. So thank you, Mr. Speaker.

**HILGERS:** Thank you, Senator Erdman and Senator Hansen. Senator Groene, you're recognized.

**GROENE:** Thank you. A lot of questions, a lot of questions yet. I'm probably going to not vote on AM660 because it infers that I, that if that passes, I would support the bill. Every one of these amendments that we had needed to pass, every single one of them, to make the bill better, to make it-- to basically rewrite the bill. But until I-- the

**Rough Draft**

public forum is removed, I can't support this bill. Until there's an immunity clause for school boards and school and personnel, I can't support this bill. Until the school employees is held accountable for their actions and approval of decisions in their classroom, it's a classroom. It's not a school paper, it's a journalism classroom, I can't support this bill. Until a student editor, as now, is appointed and has responsibilities, I can't support this bill. If you can prove to me a child did not pass the class, did not get the correct grade for the class that they were, that they were worthy of, I can't support this bill. We're talking about a classroom. We talking about a journalism class. The activities in there are to teach about the profession of journalism. I haven't heard anything from anyone who said children were harmed in their educational process because they did not receive a proper grade for their work or proper direction from the instructor on how to improve their presentations and their compositions so that maybe they can decide if they want to further pursue a career in journalism. I haven't heard any of that. We've been diverted by this school newspaper and freedom of press, freedom of speech. Children have freedom of speech, which I reiterated earlier. They can write about anything they want. For most instructors. Most liberal colleges, now, you can't. You got to watch what you write because you get graded on your content, not your ability to write. But this is high school, and I believe there's enough checks and balances in a public high school from this admin-- from the school board to the superintendent to the principal to the classroom teacher. Most of those checks and balances are removed in LB88. In fact, all of them are, all of them are, even the student adviser is not given much power over the content of the paper, of this publication. I have a hard time calling it a newspaper, because it is no longer freedom of press. It is a public forum where anything goes, anything goes. So I can't support this. It's a direct attack. If any of you have read Saul Alinsky, this is a right out of there-- culture putting the youth ahead of the adults, idealistic ideals, untested by life's experiences, untested by age ahead of rational thinking. You know why youth make good soldiers? They think they're invincible. That's why old men don't go to war. They got experience. That's why we mentioned about the honorable profession--

**HILGERS:** One minute.

**GROENE:** -- of journalism, why most of them wash out. It's a hard profession, it's like milking cows. You got to show up. You got to be there for that-- that city council meeting at night, you got to be for that traffic accident. It's a hard profession and it's an honorable one, and you don't see many of them hang in there very long. So as



Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

Senator Hansen said, there's-- hope this debate, nobody out there took it-- this bill is an attack on the honorable profession of journalism. You do know that. It's trying to take a paper and call it a public forum, which it never was, never will be. So I'm going to sit on AM660 and I will-- I am not for-- I was hoping there was some major improvements. This has been really good debate. But as you see, the room is empty. People have closed their minds for most of this debate. I'm going to try not to do that this year. I appreciate the senators--

**HILGERS:** Time, Senator.

**GROENE:** Thank you.

**HILGERS:** Thank you, Senator Groene. Senator Matt Hansen, you're recognized.

**M. HANSEN:** Thank you, Mr. President. And I'll be brief. I just wanted to rise and let the supporters of the bill know that their advocacy, their, their reaching out to the senators is what's really making the case. That it's been a little silent today in the sense of this is very clearly a filibuster and there's often the principle of you don't help the opponents talk, so this is why I punched in at the end. I'll just say very briefly, to frame this as an attack on the First Amendment or attack on the journalist profession is absurd. It's absurd. It's wrong. It's incorrect. I get why you might want to oppose this bill, but that's for censorship and control of the local school boards, and that's fair. But don't wrap yourself in the First Amendment as an opponent of this bill. With that, I'll yield the rest of my time to Senator Morfeld.

**HILGERS:** Senator Morfeld, 4:10.

**MORFELD:** Thank you, Mr. President. And thank you, Senator Hansen. I want to thank everybody for their questions and for the debate today. I have been listening the entire time and talking to other people and addressing concerns. I talked to Senator Albrecht off the mike, we are going to have our folks look into her question on how many of the 14 states applied to high schools. So we'll get back to her on that. Won't be able to do it today, but hopefully between now and Select File. In addition, I want to talk about just a few other things. In terms of liability and who's liable, it's essentially the same way as it is now. And the reason why is because the schools still have the ability to stop publication of anything being said that's libel or slander, and that's really the only liability you have. Those suits are actually incredibly rare for a lot of different reasons we can go

**Rough Draft**

into. But the bottom line is, is that that's just actually demonstrating that the schools still do have significant power and control, much to the contrary opinions of, of the opponents of this bill, is that they still can stop libel and slander. And really, that's the only liability that you're going to have when you're printing or publishing something, libel in particular. And so the school still has the duty and still has the ability to stop those things. Which shows that really when the opponents get up on the mike and say this is going to be a free-for-all, that's just simply not true because it's literally one of the exemptions or limitations in the bill. So it's pretty simple on the liability issue. It's the same as it is now. In terms of New Voices, I'll be honest with you, I introduced this bill because Senator-- former Senator Al Davis introduced it my first year and I thought it was a good idea. And then he let the Legislature and I picked it up. And, yeah, there's a bunch of groups out there that support different bills like all of ours. They don't all come and ask us, but once they like our bill, they come and talk to us and support it. So I don't know much about New Voices. I asked around. I've talked and worked with some of their members. Apparently they're an all volunteer grassroots organization of student journalists and media advisers in the state that just want to see more protections and higher standards for student journalism. And so beyond that, I don't know. It sounds-- some people were trying to make it sound like there's some kind of conspiracy and they're some mysterious group. It's just a group of people that are passionate about this bill. No conspiracy. In terms of the public forum, I-- listen, I mean, I can repeat myself probably a few different times on this, but this is a limited public forum. It's limited because there's specific limitations. It makes it very clear in the bill that, yes, it's a public forum, but there are very specific limitations. Just because you say public forum doesn't mean it's a free-for-all right after you say public forum. Because if you have specific limitations after you say public forum, they have to follow those specific limitations. And it's pretty clear in the bill. So I've heard a parade of horrors on the floor all morning and now afternoon, but the bottom line is each one of those parade of horrors can easily be addressed by the plain language of the bill. And I did that for about four and a half hours yesterday. And I'm happy to talk to anybody off the mike over the next 20 or so minutes until we get to a cloture vote here. But the bottom line is, is that--

**HILGERS:** One minute.

**MORFELD:** -- this is a narrowly tailored bill that provides greater protections than what we have now, but has clear limitations and

**Rough Draft**

guardrails and allows the schools to stop publication of anything that would cause liability to either the school or the student, thus the limitation on this not pertaining to things that are libel or slander. But I think that there's a, there's a group of folks here that want to either not listen to me or read the plain language of the bill, and they still have concerns no matter what. And that's OK. I mean, I get it. But I just want to make clear, if anybody has a concern about that, I can point to the specific language that would address any of the concerns that was brought up by anybody that brought those concerns up here today. I did that for four and a half hours yesterday, and I'm happy to do it for the next 20 minutes. Thank you, Mr. President.

**HILGERS:** Thank you, Senator Morfeld and Senator Hansen. Senator Lowe, you are recognized.

**LOWE:** Thank you, Mr. Speaker. On page 4 of the bill, starting at line 10, (2) (a): All school sponsored media are deemed to be public forums, subject, subject to the subsection (3) of this section, a student journalist has a right to exercise freedom of speech and of the press in school-sponsored media. You know, we just had a bill not too long ago. Oh, wait a minute, it was yesterday, LB561, and the word "all" was brought up many times. All means all. So then I started thinking about school media, what could school media mean. We've been talking about newspapers and yearbooks. But there might be a radio station that a school tries to educate students on becoming radio broadcasters or a TV, it could deal with broadcasting a TV station. All right, that's, that's quite nice, but then they could also be trying to train students in a locked-- electronic media, other forms of media that you might put out on your phone or your laptop computers. And then I also thought, well, media, what about our programs for the events that happen in our schools? Does a student get to say what goes on that program? You know, it won't be libel or slanderous, but you might not like what is put on that if there's not supervision. And then I went to maybe the electronic sign outside of a school. You have an electronic sign outside the school that says what the school is going to be doing for the day. Well, maybe the students don't want to have that on there, maybe they want to put something else on that's not libel or slanderous. Maybe your school mascot is a bearcat like Kearney has, but you have a student that's kind of disgruntled with the high school and they want the Grand Island Vikings to be on that sign and promoting them that day. That's not libel or slanderous, but that's not a good image for the school. This bill will allow that. So you have to think about our actions and what we do and why we do them and why we need people in charge that say no, we don't need to be

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

doing that right now, and this is why, and so that's why we're not going to allow you to do that. We like your ideas, we support you not going for what we're doing today, but, but we're just not going to do that. And with that, I'd like to yield my time to Senator Albrecht, if she would take it.

**HILGERS:** Senator Albrecht, 1:45.

**ALBRECHT:** Thank you very much. Appreciate that, Senator Lowe. There was a letter that I had was reading and one of the-- and it did say something about clarifying that private school journalism students are not involved in this bill. And that is correct, they are not. She said the bill should, shouldn't-- should be done away with that entirely, which it already has been. So I wanted to clarify that for this person that wrote in. And she says any legislation that defers to prevailing journalistic ethical standards is dangerous in its scope. For many examples can be given which demonstrate that many in the media seem to find it increasingly acceptable to abuse those ethical standards. So please vote no. Again, it's not in the private schools and--

**HILGERS:** One minute.

**ALBRECHT:** -- I do appreciate this time. I know we're getting close to the close and I can-- I'll just wait to, to be able to visit with you about that. But as Senator Groene stood up to say how and why he couldn't support it, and I think I'm going to speak on behalf of those of us that have run the filibuster this afternoon and this morning, is due to the fact that it's in our high schools. I did pass Senator Morfeld and asked him, you know, I think that this would go a lot further if it was not in high schools. And he said, but that's the reason we're doing it. So it's very apparent that, that the movement is there to get this in the high schools. It's very concerning to me. And unless the amendments don't make it better and we're not getting any action on those, there's really no sense--

**HILGERS:** Time, Senator.

**ALBRECHT:** Thank you.

**HILGERS:** Thank you, Senator Albrecht and Senator Lowe. Senator Friesen, you're recognized.

**FRIESEN:** Thank you, Mr. President. Again, when we, we talk about the high schools and, and what can go wrong when we unleash, I guess, what we'd call totally free press, which we don't have in this country, really. Everyone has to answer to somebody. There's always rules to

**Rough Draft**

follow. There's things you don't publish, there's things you do. And when you're in a high school and your, your impulses to grab some of these stories that no one wants to touch and you want to put them out there, you want to have that discussion. And in high school, feelings are hurt and people have to learn to live with that. I mean, that's part of socializing when you get into kindergarten, feelings get hurt. You learn to play, you learn to interact. But when you publish something and it's put out there in a newspaper and in small communities and in large communities, doesn't matter where you're at, people take great pride in their school. They really take ownership in it. And you can see it in the support for, for education, you can see it in the following of the sports. And when we take out the administration's ability to at least somewhat control some of this that might be put in the press, I think we take away something important from that learning process and some of the damage that could happen if the wrong thing gets out. And that's my opposition to this. I think when we get to the university level or higher education level, I have no problem with this. I think at that point they're, they're going to be old enough there going to be under enough instruction earlier that they're going to understand. But when we're talking about high school minds and how they work sometimes, that's when I have a lot of problem dealing with this bill. I just don't think that what we have right now is broken. I think it works. People are-- different schools are working through it in different ways. They're getting it accomplished and I don't think it's, it's hurting anybody what's going on. There is a process. And I think as, as they move through those processes and define their own rules and regs, they're going to define what that community is willing to have published and what's not. And so I, I stand opposed to the bill until the high school portion is taken out. And I know that's important to Senator Morfeld, but that's, that's where I currently stand. With that, I'll yield the rest of my time to Senator Albrecht.

**HILGERS:** Senator Albrecht, 2:20.

**ALBRECHT:** Thank you very much, Speaker and, and Senator Friesen. Again, we are all up here debating this because of the children. You know, they need to be taught, they need to be guided. They need to know that we are with them, you know, we will help them through this. But to put something like this in a bill that, that makes demands of our schools and, and the-- from the superintendent to the principal to their advisers on down to not have the ability to stop some of these things from happening, I do have, you know, some concerns that, you know, obviously this is moving through our country. But until I really know that these schools, these high schools are in all 14 states,

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

that, that this is the push to get this in our high schools, I'm certain, Senator Morfeld, that we will continue on Select talking about this. Because unless it is, it is like lockdown, that it will be limited public forum, then we have an out, that we, we still have choices, that we don't have to take everything. But it's evident that you want to be all in--

**HILGERS:** One minute.

**ALBRECHT:** -- or nothing, and that does not help. It does not help our school system throughout the state of Nebraska. Some will, some won't. Some people can-- some of the youth could be coerced into different agendas that they might want to carry. They might be coached from the outside instead of, you know, being taught from the inside of the school walls. And I just think that we are, are going down a very slippery slope here by doing something like this. I don't believe that our children should be the ones that, that people are using to make this happen. And, you know, with social media today, that's the direction it's going. It's not all about school newspapers. That's, that's not just what we're talking about here. It can be anybody putting something out on a site that maybe didn't get permission or somebody didn't look it over. Even if they do look it over, they can still do it. So--

**HILGERS:** Time, Senator. Thank you, Senator Albrecht and Senator Friesen. Senator Bostelman, you're recognized.

**BOSTELMAN:** Thank you, Mr. Speaker. We haven't talked, I haven't talked about Section 1 all that much, but I do want to talk about Section 1, colleges and universities. Colleges and universities may or may not be different. The Seventh Circuit Court of Appeals extended Hazelwood School District analysis of whether there is a public forum to col-- to colleges and universities in that district in the 2005 case of *Hosty v Carter*. While the Supreme Court has not weighed in directly regarding college cases, in other cases the court has indicated the importance of free speech on college campuses. So does LB88 violate the Nebraska Constitution under *Board of Regents v. Exon*? LB88 takes control of the ability of the University of Nebraska to direct its own journalism program by making the journalism student the one to determine what is news and what is opinion, etcetera. It further undermines the authority of the university administration to direct its faculty in areas related to educational goals for students and publications that reach on-- that, that reflect on the university and may affect the education mission. I want to repeat what I talked about before. Out of the 14 states, only Washington, only one makes

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

school-sponsored media a public forum. Only one. The current high school-sponsored publications are not public forums, they can be if the school specifically states that they are. The United States Supreme Court made it clear that although students and teachers do not lose their First Amendment rights to free speech and free expression at the schoolhouse door, students' rights when in school are not the same as the rights of adults outside of the school environment. Page 4, lines 17 and 18, each student journalist is responsible for determining the news, opinion, feature, sports and advertising content. Our principals say that is something that is very disturbing and should not happen. So I ask, I do support AM660 and I yield the rest of my time to Senator Clements.

**HILGERS:** Senator Clements, 2:33.

**CLEMENTS:** Thank you, Mr. President. I received a email letter from somebody who works on First Amendment rights in Nebraska and Nebraskans for Founders' Values state that they're guardians of our First Amendment rights and, hearing some of our debate, sent me this information. Nebraskans for Founders' Values members are guardians of the First Amendment rights of speech-- freedom of speech in all 93 counties. All speech is free speech protected by the First Amendment of the Constitution except for slander, libel, defamation of character and obscenity. Our current system of students learning the lines of acceptability from their teachers or professors has been working well for decades. However, I'm concerned this bill will remove the proper oversight needed by colleges and universities and high schools as student journalists write articles for publication while using the name and logo of the school. Nonsupervised youth journalists, which I believe this bill allows those who are nonsupervised as well as supervised in a class, they could easily cause significant or irreparable damage, whether intentional or unintentional, to the reader or the institution in which their article is published. How many times the parents or guardians heard their teenagers say, "I didn't realize that what I was doing--

**HILGERS:** One minute.

**CLEMENTS:** -- would cause an accident?" One minute?

**HILGERS:** One minute.

**CLEMENTS:** OK, thank you. The time to secure the barn door is when the horse is in the barn, not after the stallion escaped and is down the road causing havoc on your neighbor's property. And yesterday I had

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

another concerned citizen write to me, which had one interesting thing. From the looks that appears to be a good bill protecting First Amendment rights, but with-- as with nuclear power, which has potential for great good, it also has potential for great destruction were-- via weapons of mass destruction. There are two sides to carefully consider. And jour-- goes on to say journalism students need supervision to protect from bullying. And again, a concerned citizen writing to say that you should oppose LB88. I also in opposition of LB88 urge your red vote. Thank you, Mr. President.

**HILGERS:** Thank you, Senator Clements and Senator Bostelman. Mr. Clerk for a motion.

**ASSISTANT CLERK:** Mr. President, Senator Morfeld would move to invoke cloture on LB88 pursuant to Rule 7, Section 10.

**HILGERS:** It is the ruling of the chair that there has been full and fair debate afforded to LB88. Senator Morfeld, for what purpose do you rise?

**MORFELD:** Thank you, Mr. Speaker. Call of the house and the roll call vote in reverse order.

**HILGERS:** Colleagues, there's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**ASSISTANT CLERK:** 20 ayes, 7 nays to go under call, Mr. President.

**HILGERS:** The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. The house is under call. Senator Walz, please check in. Senator Slama, please check in. Senator Wayne, the house is under call, please return to the Chamber. All unexcused senators are now present. Colleagues, the motion is the motion to invoke cloture. A roll call vote in reverse order has been requested. Mr. Clerk, please call the roll.

**ASSISTANT CLERK:** Senator Wishart voting yes. Senator Williams voting yes. Senator Wayne voting yes. Senator Walz voting yes. Senator Vargas voting yes. Senator Stinner voting yes. Senator Slama voting yes. Senator Sanders. Pansing Brooks voting yes. Senator Pahls voting yes. Senator Murman voting no. Senator Moser voting no. Senator Morfeld voting yes. Senator McKinney voting yes. Senator McDonnell voting yes. Senator McCollister voting yes. Senator Lowe voting no. Senator Linehan voting yes. Senator Lindstrom. Senator Lathrop voting yes.



Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

Senator Kolterman voting yes. Senator Hunt voting yes. Senator Hughes. Senator Hilkemann voting yes. Senator Hilgers voting yes. Senator Matt Hansen voting yes. Senator Ben Hansen voting no. Senator Halloran. Senator Groene voting no. Senator Gragert voting yes. Senator Geist voting yes. Senator Friesen voting no. Senator Flood voting yes. Senator Erdman voting no. Senator Dorn voting yes. Senator DeBoer voting yes. Senator Day voting yes. Senator Clements voting no. Senator Machaela Cavanaugh voting yes. Senator John Cavanaugh voting yes. Senator Briese voting yes. Senator Brewer voting no. Senator Brandt voting yes. Senator Bostelman voting no. Senator Bostar voting yes. Senator Flood-- Senator Blood voting yes. Senator Arch voting no. Senator Albrecht voting no. Senator Aguilar voting yes. Vote is 33 ayes, 12 nays, Mr. President.

**HILGERS:** Cloture is invoked. The next-- we're still under call. The next vote is on AM660. All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk.

**ASSISTANT CLERK:** 15 ayes, 25 nays on the adoption of the amendment.

**HILGERS:** The amendment is not adopted. The next vote is on the underlying bill. Senator Morfeld, for what purpose do you rise?

**MORFELD:** Roll call vote, reverse order, please.

**HILGERS:** We're still under call, colleagues. A roll call vote in reverse order has been requested. Mr. Clerk, please call the roll.

**ASSISTANT CLERK:** Senator Wishart voting yes. Senator Williams voting yes. Senator Wayne voting yes. Senator Walz voting yes. Senator Vargas voting yes. Senator Stinner not voting. Senator Slama voting yes. Senator Sanders. Senator Pansing Brooks voting yes. Senator Pahls not voting. Senator Murman voting no. Senator Moser voting no. Senator Morfeld voting yes. Senator McKinney voting yes. Senator McDonnell voting yes. Senator McCollister voting yes. Senator Lowe voting no. Senator Linehan voting no. Senator Lindstrom. Senator Lathrop voting yes. Senator Kolterman voting yes. Senator Hunt voting yes. Senator Hughes. Senator Hilkemann voting no. Senator Hilgers voting no. Senator Matt Hansen voting yes. Senator Ben Hansen voting no. Senator Halloran. Senator Groene voting no. Senator Gragert voting yes. Senator Geist voting yes. Senator Friesen voting no. Senator Flood voting yes. Senator Erdman voting no. Senator Dorn voting yes. Senator DeBoer voting yes. Senator Day voting yes. Senator Clements voting no. Senator Machaela Cavanaugh voting yes. Senator John Cavanaugh voting yes. Senator Briese voting yes. Senator Brewer voting no. Senator

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2021

Rough Draft

Brandt voting yes. Senator Bostelman voting no. Senator Bostar voting yes. Senator Blood voting yes. Senator Arch voting no. Senator Albrecht voting no. Senator Aguilar voting yes. Vote is 28 ayes, 15 nays, Mr. President.

**HILGERS:** LB88 advances. Raise the call. Mr. Clerk for items.

**ASSISTANT CLERK:** Thank you, Mr. President, your Committee on Enrollment and Review reports LB324 to Select File with amendments. A series of amendments to be printed. Senator Friesen to LB233, Senator McDonnell to LB250, Senator John Cavanaugh to LB507, Senator Erdman to LB88, Senator Murman to LB88, Senator Wayne to LB218. A series of name adds. Senator Machaela Cavanaugh and Senate Day, Senator John Cavanaugh, all to LB8. Senator Day to LB64, Senator Linehan to LB236, Senator McCollister to LB241, Senator Blood to LB322, Senator Brewer to LB661. An announcement. The Transportation Committee will hold an executive session in Room 1113 immediately upon adjournment. Finally, a priority motion. Senator MacDonnell would move to adjourn until Monday, March 22nd, 2021 at 10:00 a.m..

**HILGERS:** Thank you, Mr. Clerk. Colleagues, you've heard the motion. All those in favor say aye. Opposed say nay. We are adjourned.