

WRITTEN TESTIMONY IN OPPOSITION
TO HB 1205

Senate Judiciary Committee on House Bill 1205

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My name is Denise Ann Dykeman. I am a resident of North Dakota, a practicing attorney, and a Lutheran. I am also a member of the bar of the Supreme Court of the United States of America and avid reader of books.

This proposed bill would unlawfully censor public libraries.

The right to free speech belongs to every citizen of the State of North Dakota. Our Constitution states: “Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege.”¹ The First Amendment prohibits the abrogation of free speech. Any restriction of free speech must be reasonable, content-neutral, viewpoint-neutral, and narrowly tailored to satisfy a significant institutional interest.²

One of the ten amendments of the Bill of Rights, the First Amendment gives everyone residing in the United States the right to hear all sides of every issue and to make their own judgments about those issues without government interference or limitations. The First Amendment allows individuals to speak, publish, read and view what they wish, worship (or not worship) as they wish, associate with whomever they choose, and gather together to ask the government to make changes in the law or to correct the wrongs in society.

The right to speak and the right to publish under the First Amendment has been interpreted widely to protect individuals and society from government attempts to suppress ideas and information, and to forbid government censorship of books, magazines, and newspapers as well as art, film, music and materials on the internet. The Supreme Court and other courts have held conclusively that there is a First Amendment right to receive information as a corollary to the right to speak. Justice William Brennan elaborated on this point in 1965:

“The protection of the Bill of Rights goes beyond the specific guarantees to protect from Congressional abridgment those equally fundamental personal rights necessary to make the express guarantees fully meaningful. I think the right to receive publications is such a fundamental right. The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers.” *Lamont v. Postmaster General*, 381 U.S. 301 (1965).

The Supreme Court reaffirmed that the right to receive information is a fundamental right protected under the U.S. Constitution when it considered whether a local school board violated the Constitution by removing books from a school library. In that decision, the Supreme Court held that “the right to receive ideas is a necessary predicate to the recipient’s meaningful exercise of his own rights of speech, press, and political freedom.” *Board of Education v. Pico*, 457 U.S. 853 (1982).

Public schools and public libraries, as public institutions, have been the setting for legal battles about

¹ Constitution of North Dakota, Article I Section 4

² NDCC 15-10.4-01(1)

student access to books, the removal or retention of “offensive” material, regulation of patron behavior, and limitations on public access to the internet. Restrictions and censorship of materials in public institutions are most commonly prompted by public complaints about those materials and implemented by government officials mindful of the importance some of their constituents may place on religious values, moral sensibilities, and the desire to protect children from materials they deem to be offensive or inappropriate. Directly or indirectly, ordinary individuals are the driving force behind the challenges to the freedom to access information and ideas in the library.

The First Amendment prevents public institutions from compromising individuals' First Amendment freedoms by establishing a framework that defines critical rights and responsibilities regarding free expression and the freedom of belief. The First Amendment protects the right to exercise those freedoms, and it advocates respect for the right of others to do the same. Rather than engaging in censorship and repression to advance one's values and beliefs, Supreme Court Justice Louis Brandeis counsels persons living in the United States to resolve their differences in values and belief by resort to "more speech, not enforced silence."

By virtue of the Fourteenth Amendment, the First Amendment's constitutional right of free speech and intellectual freedom also applies to state and local governments. Government agencies and government officials are forbidden from regulating or restricting speech or other expression based on its content or viewpoint. Criticism of the government, political dissatisfaction, and advocacy of unpopular ideas that people may find distasteful or against public policy are nearly always protected by the First Amendment. Only that expression that is shown to belong to a few narrow categories of speech is not protected by the First Amendment. The categories of unprotected speech include obscenity, child pornography, defamatory speech, false advertising, true threats, and fighting words. Deciding what is and is not protected speech is reserved to courts of law.³

Please Oppose House Bill 1205

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³ Much of this testimony quotes from "First Amendment and Censorship", American Library Association, June 13, 2008. <http://www.ala.org/advocacy/intfreedom/censorship> (Accessed January 16, 2023)