

Written Testimony Against the Passing of HB1205

HB1205 is an unconstitutional infringement upon the rights of North Dakota citizens. Governmental censorship of publicly available books and materials directly violates the First Amendment right to free speech and the Fourteenth Amendment right to equal protection under the law (as decided by court cases such as Board of Education v. Pico, 1982; Counts v. Cedarville School District, 2003; Sund v. City of Wichita Falls, 2000).

HB1205 is a bill that infringes upon the Constitutional right to access materials in public libraries; spaces that are funded by the taxes every citizen pays. No one would dispute the choice of church leaders to create restrictions, based on what they deem is moral, upon what books are made available in their congregation's private library. But it is unconstitutional for those same people to create laws restricting what books are available in taxpayer funded public libraries.

The American Library Association says it best:

“Equity extends beyond equality... to create service delivery models that will make sure that community members have the resources they need. Often these needs are different not only as the result of race and ethnicity but also owing to religious beliefs, sexual orientation, gender identification, socioeconomic status, or physical ability.

Libraries are major sources of information for society, and they serve as guardians of the public's access to information... Core values of the library community such as equal access to information, intellectual freedom, and the objective stewardship and provision of information must be preserved and strengthened, now more than ever.

For intellectual freedom to flourish, opposition to censorship of materials is not enough. Access to materials, without prejudice, to every member of the community must also be assured. As one of the core values of librarianship, ‘Equality of access to recorded knowledge and information’ which involves ‘ensuring that all library resources are accessible to all overcoming technological and monetary barriers to access’ goes hand in hand with democracy and freedom.”

If this bill is passed, it will be faced with numerous legal challenges in the state and federal court systems. Similar laws in other states have been challenged and overturned on the grounds of violating the First and Fourteenth Amendments. If this bill passes, North Dakota's legal system will most surely be flooded with challenges, ultimately wasting time, resources, and taxpayer money.

The Unintended Consequences of HB1205

HB1205 is not only unconstitutional, but it will have disastrous and unintended consequences. The vague language and broad terminology used in this bill will lead to an unquantifiable number of book challenges in the library system. The bill states “public libraries [are] prohibited from maintaining or promoting certain books” containing “explicit sexual

material”, further defining that term as “any pictorial, three-dimensional, or visual depiction, including any photography, picture, or computer-generated image, showing:” “(11) Sexual identity; or (12) Gender identity”.

While it is clear this choice of words are Representatives Lefor and Steiner’s attempt to ban LGBTQIA+ centered literature from public libraries, what they failed to realize are the ways this language can be interpreted. Using this bill, one could challenge and remove any book containing photographs showing sexual or gender identity.

Encyclopedia Britannica defines gender identity as “an individual’s self-conception as a man or woman... or as someone outside those categories altogether.” Using this definition in conjunction with HB1205, one could request a book containing a photograph of any person with a caption containing gendered language (he, she, they) identifying the person pictured. This could be done even if the photo is not logically viewed as being sexually explicit because the language of HB1205 unintentionally classifies and legally redefines gender identity as being something that is sexually explicit.

Using this subsection of the proposed bill, one could submit a request that an illustrated children’s book about the story of Adam and Eve be removed from the public library. For example, the Dickinson Public Library contains a book called *My First Read and Learn Bible* (Moore). On a page showing an illustration of a naked Adam and Eve, the text reads “He made man and woman”; language that indicates the gender identities of those pictured.

Other types of “explicit sexual material” prohibited by HB1205 are images showing “(8) Sexual activity”. The bill does not define or clarify what constitutes as sexual activity, leaving this term open to interpretation. Due to this ambiguousness, one could argue, based on their own moral code, the sight of two adults kissing is a sexual activity. They could legally use this opinion as justification to submit a request to remove any book containing such an image. As public libraries also contain movies in their collections, any movie containing a kiss could be removed from libraries.

The “Anthropological Significance” Clause

HB1205 attempts to create a guideline for exemptions to the law. The bill reads: “‘explicit sexual material’ does not include works of art that, when taken as a whole, have serious artistic significance, or works of anthropological significance”. What this bill fails to do is create parameters for determining what artwork holds artistic and anthropological significance. How many individuals need to consider a book significant before it is exempt? One librarian, or a majority of library board members? We are left without a definitive answer.

Using the framework created by HB1205, one could argue a book containing information about sexual identities and gender identities is in fact anthropologically significant. As defined by National Geographic, “anthropology is the study of the origin and development of human

societies and cultures”. Being able to study the development of each and every human society is important. If HB1205 passes, it will effectively eliminate all literature involving the LGBTQIA+ community, preventing citizens and historians from studying that significant population of humankind.

Why am I giving this testimony?

I am a fourth generation North Dakotan. While growing up in Dickinson, I learned the truly North Dakotan values of kindness, generosity, honesty, and caring for my community. As the years have passed, I’ve become saddened to see other North Dakotans forgetting these core values.

On November 8th, 2022, I attended a library board meeting at Dickinson’s City Hall. Many community members had gathered to give public comment regarding the removal of a sexual education book written for teenagers and young adults. Hearing the words of support for the book from teens and adults alike brought me so much pride for my community. These were people willing to embrace, support, and love everyone in their community; even those who were different from them.

And then the words of the opposition filled the room. Hearing so much hatred and vitriol directed towards LGBTQIA+ community members present at this meeting reminded me of why I moved away from North Dakota in my early twenties. This is not a place where we feel safe and accepted. This is a sentiment shared by so many of my generation, as well as our future generations.

If North Dakotans wish for their neighbors, children, and grandchildren to stay in this state, they must support, respect, and love them, no matter who they are. When legislation infringes upon the rights of a minority group of citizens, the message is clear: “you do not belong here. You are not a member of our community”.

It is imperative our lawmakers protect the rights of all citizens. If we begin to allow our stories to be removed from public libraries, it will be a clear indication that North Dakota is not ready for true progress.