

Chair Larson, Vice Chair Paulson, and members of the Committee:

On behalf of the ACLU of North Dakota, I submit testimony in opposition to HB1205.

Since its founding in 1920, the ACLU has opposed censorship in all its forms. From books and radio to film, television, and the Internet, we have consistently fought to make sure Americans have the right to say, think, read, and write whatever they want, without fear of reprisal. The First Amendment does not allow the government to get rid of or limit the use of books or ideas because they are controversial, unpopular, or offensive. The ACLU has always vigilantly defended the First Amendment and the right to free speech. Throughout our hundred-year history, we have worked to protect the right of individuals to access information, and to make up their own minds.



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Opposition to censorship is especially important in our public libraries, because citizens do not lose their constitutional rights at the front door of a public institution. Libraries have been the repositories of human thought, knowledge, and discourse since ancient civilization. Human sexuality is as much a part of the human experience as theology, sociology, science, art, and music and should be available as part of the discussion and debate which advances ideas among an educated citizenry.

Not everyone is going to agree on the merits of every book on a library's shelf. Some books will make people uncomfortable and question what they know. Some books will make people angry. There are some books people will think children shouldn't read or hope no one will read. But we are steadfast in our belief that we do not get to decide what others read – and neither should the government.

This bill is not only government censorship, it would impose an undue burden and restriction on public libraries, which are already underfunded and understaffed. Curating collections under this proposed law is next to impossible in scope, compliance, and enforcement. In addition, such a state mandate interferes with the local governance of libraries.

If someone does not like a book, then they should not read it. If there is a concern about age appropriateness, libraries already have processes in place to respond to those matters. Not every community across the state is the same and each community is capable of deciding what material is in their public libraries through their trained hired staff and their local democratically elected (or appointed) officials who have been given governing responsibilities by the people. It is not the responsibility of this committee or the North Dakota Senate to make those decisions for local leaders or for individual citizens and parents.

The First Amendment's guarantee of the freedom of speech and the right to access information has created a beautiful marketplace of ideas in our country. Each of us gets to choose what books we read and what information we access — but we don't get to choose for other people. Doing so is un-American and unconstitutional.

Nearly 50 years ago, the Supreme Court set the high constitutional bar that defines obscenity¹ — a narrow, well-defined category of unprotected speech that excludes any work with serious literary, artistic, political or scientific value. And the standards for restraining a bookseller or library’s ability to distribute a book are even more stringent.

Today, you have the opportunity to affirm our shared belief in an educated North Dakotan citizenry and a society where ideas are openly disseminated, discussed, and debated. We urge the Senate Judiciary Committee to give HB1205 a “Do Not Pass” and the North Dakota Senate to follow in defeating this bill.



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¹ Miller v. California, 413 U.S. 15 (1973)