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Sent: Monday, March 13, 2023 1:22 PM

To: Larson, Diane K. <dlarson@ndlegis.gov>; Paulson, Bob L. <bpaulson@ndlegis.gov>; Sickler, Jonathan <jsickler@ndlegis.gov>; Braunberger, Ryan <rbraunberger@ndlegis.gov>; Estenson, Judy <jestenson@ndlegis.gov>; Luick, Larry E. <lluick@ndlegis.gov>; Myrdal, Janne <jmyrdal@ndlegis.gov>; NDLA, S JUD <sjud@ndlegis.gov>

Subject: HB 1205 [23.0407.03003]

Madame Chairman Larson, Vice Chairman Paulson, Vice Chairman Sickler, and Members of the Senate Judiciary Committee:

My name is Andrew Alexis Varvel. I live in Bismarck, District 47.

First of all, please add this email to the Senate Judiciary Committee onto the online record of testimony for the sake of transparency.

Second of all, I would like to express my appreciation to Representative Lefor and Senator Sickler for improving the language of HB 1205. I still don't like it, but it isn't as bad as what I had previously addressed.

Now, to my commentary.

I object to the use of "adult community in North Dakota as a whole" in Section 1, Subsection 1, Subsubsection 2. This language concentrates too much power in the State of North Dakota, while limiting local authority over local community standards. Let's not presume that the local community standards would be the same for Fargo and Velva.

I also object to Section 1 Subsections 3 & 4, because they vastly increase the red tape that already overburdened librarians would need to deal with. It would create a massive regulatory burden for Legislative Management on matters that should not be of its concern. It likely would also create a need for hiring additional staff at the State Library for the purpose of developing model policies for libraries in this state.

In line with this objection to Section 1 Subsections 3 & 4, the best way to implement the Miller test would be to replace this language with a referral mechanism to allow the local adult community to decide on whether a book would be kept at the local library or not. Let's put it to a vote. If a book is patently offensive, and neither the library nor library board is willing to discard such a book – or even put it into an adults-only section – petitioners should have an opportunity to get signatures to put disposal of that book onto the ballot for the next local election.

Such a book referral mechanism has its advantages in a Judeo-Christian community. Objectively speaking, the language "appeals to the prurient interest of minors" would apply to the Song of Songs in the Bible. (Song of Songs, 4:12-16, 5:4, 5:15) From my point of view, teaching healthy sex – and sexual technique – is precisely why this book exists in the Bible. Likewise, the language "patently offensive to prevailing standards" would likely apply to 2 Samuel 6:20-23 and Ezekiel 23:20.

In the case of Genesis 19:30-38, I regard this story to be a raucous satirical commentary on contemporary stories in Mesopotamia about Ishtar getting her uncle Enki drunk, as well as a commentary on the prevalence of premarital temple prostitution in Moab and Ammon. And of

course it's offensive! I think making unflattering remarks about what the neighbors were doing was precisely what this story was about!

On the other hand, if keeping the Bible in the stacks were put to a local referendum, it would be very unlikely that any community would ban it.

Ostracism is a custom that goes back to the very origins of democracy. This proposed amendment would apply ostracism to books. If we truly believe in enforcing the Miller test, then by all means let's enforce it on local libraries by putting it to a vote by the local adult community.

So –

Page 1, line 19, replace “adult community in North Dakota as a whole” with “local adult community”

Replace page 2, lines 9-25, with [language for referral mechanism]

Please note that I am not proposing specific language for a referral mechanism, principally because I think that the Legislative Council would do a better job than I would. My focus in this letter is on getting the basic idea out there so that the Legislative Council can flesh it out.

If this change that I am recommending gets made to House Bill 1205, the committee may wish to consider holding another hearing so people would have an opportunity to express their opinions on this version.

Again, as a matter of transparency, I would like this communication to be made part of the official record of testimony on House Bill 1205.

Thank you, and I am open for any questions that committee members may wish to ask on this subject.

Sincerely,

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