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OPPOSED SB2360

SB2360 is a thinly veiled attempt to again change the obscenity statute and remove public libraries from the exemption list; thereby opening the door for censorship at every level to commence. If this bill was really about strengthening digital / internet security filters and requiring compliance from database vendors as described in the title, there would be no need to change the rules by which obscenity is defined.

Miller v. California 1973 has been the standard for coming on 50 years when trying to define and measure obscenity. SB2360 tries to skirt the high court's ruling by eliminating the words contemporary and prevailing for community standards and removing political for the work taken as a whole. You can expect immediate court challenges, thus wasting valuable tax dollars that could have been spent educating people how to evaluate information, a skill many young people perform very poorly because they are only allowed to investigate information in agreement with standards set by a very small, conservative group. A lack of analytical skills when evaluating information puts them at a disadvantage as they compete on the global stage for employment.

On the university sponsored website, First Amendment Encyclopedia, David L. Hudson Jr. explained, "Writing for the majority, Chief Justice Warren E. Burger established a three-part test for juries in obscenity cases: 'Whether the average person, applying contemporary community standards, would find that the work taken as a whole, appeals to the prurient interest; whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.' The three parts of the test soon became known, in short, as the prurient interest, patently offensive, and SLAPS prongs." (<https://www.mtsu.edu/first-amendment/article/401/miller-v-california>)

My questions for the writers of this bill and this judiciary committee are the following. I have noted the page and line numbers to facilitate the exact sections.

In Section 5 a. Why does it only apply to what is "used in this chapter?" Previously Sen. Beard when introducing SB2123 claimed he was removing language as obscenity was defined in another place within the North Dakota Century Code. If that is the case, why again is this bill trying to change the definition? Second, why would it be necessary to remove 'contemporary' when applying the standards? Who then will determine what are the current standards by which we should be judging material? Additionally, why change ordinary to reasonable adults? This again is an attempt to change the Supreme Court's ruling with language by which there is no way to measure who could be deemed "reasonable."

Page 1. Lines 7-21

5. **As used in this chapter**, the terms "obscene material" and "obscene performance" mean material or a performance which:

- a. Taken as a whole, the average person, applying ~~contemporary~~ North Dakota standards, would find predominantly appeals to a prurient interest;
- b. Depicts or describes in a patently offensive manner sexual conduct, whether normal or perverted; and
- c. Taken as a whole, the reasonable person would find lacking in serious literary, artistic, ~~political~~, or scientific value.

Whether material or a performance is obscene must be judged with reference to ~~ordinary~~ **reasonable** adults, unless it appears from the character of the material or the circumstances of its dissemination that the material or performance is designed for minors or other specially susceptible audience, in which case the material or performance must be judged with reference to that type of audience.

Again, under the following section, why remove “prevailing” as the modifier for how standards are measured? Will some archaic language be resurrected to define which standards we have to abide by? This wording change makes no sense.

Finally, I cannot fathom any reason to remove political from the list of what should be considered as having value in the whole. Is this another way to block all others of a differing opinion from being able to challenge anything in the statute? Please explain what is gained by removing political.

Page 2. 12.1-27.1-02. Promoting obscenity to minors - Definitions.

Lines 9-12

- b. Is patently offensive to **prevailing** standards in the adult community in North Dakota as a whole with respect to what is suitable material for minors; and
- c. Considered as a whole, lacks serious literary, artistic, **political**, or scientific value for minors.

Lastly, what I feel is the real objective of this bill – to remove the exemption for public libraries in connection with the display of obscenities to minors. Why in the recently introduced SB2123 remove exemptions for every institution listed but in this bill, from the very same section of statute, ONLY remove bona fide school and public library? I can only surmise the target is public libraries for censorship purposes.

Line 18 Definitions - Penalty

Line 26

2. As used in this section:

- c. The above **shall may** not be construed to include a **bona fide school**, college, university, museum, **public library**, or art gallery.

Finally, Page 3. Lines 5-14

SECTION 4. AMENDMENT. Section 12.1-27.1-11 of the North Dakota Century Code is amended and reenacted as follows:

12.1-27.1-11. Exceptions to criminal liability.

Sections 12.1-27.1-01 and 12.1-27.1-03 shall not apply to the possession or distribution of material in the course of law enforcement, judicial, or legislative activities; or to the possession of material by a bona fide school, college, university, or museum, ~~or public library for limited access for educational research purposes carried on at such an institution by adults only.~~ Sections 12.1-27.1-01 and 12.1-27.1-03 shall also not apply to a person who is returning material, found to be obscene, to the distributor or publisher initially delivering it to the person returning it.

Not every adult has access to a college or university’s research materials contained in online databases. By disallowing public libraries from having such content, you are depriving individuals from the opportunity to complete personal or educational research. Not all learning takes place in a school. Many self-directed learners exist and access to subscription-based materials is only affordably available through a source like a public or state library.

Ironically, Linda M. Thorson in her testimony in favor of this bill, SB2360, references the National Library of Medicine. She said, “Numerous pieces of literature are available in the National Library of Medicine on the topic of compulsive sexual behavior, sexual addiction, sexual compulsivity, and sexual impulsivity showing pornography is addictive.” Should SB2360 pass, access to the all-important National Library of Medicine’s information would likely be restricted because it contains many references to subjects deemed pornographic by many who have testified in other hearings.

For all the above reasons and several more, I adamantly OPPOSE SB2360. Please DO NOT PASS.