

Chair Klemin, Vice Chair Karls, and members of the Committee:

On behalf of the ACLU of North Dakota, I submit testimony in opposition to SB2307.

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.

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, but it would also impose an undue burden and restriction on public libraries, which are already underfunded and understaffed. Moreover, it infringes on the local control of library boards and school boards to govern public libraries and school policy. Curating collections and essentially creating “back rooms” under this proposed law is next to impossible in scope, compliance, and enforcement. Furthermore, the Children's Internet Protection Act (CIPA) enacted by Congress in 2000 already addresses online concerns, making a portion of the bill overreach, redundant, and unnecessary.

Throughout the course of the Sixty-eighth and Sixty-ninth legislative sessions, proponents of this bill and similar previous legislation have described materials in public and school libraries frequently as “obscene” and “pornographic” in ways that are highly subjective and unlikely would not meet legal definition.

A definition of pornography does not formally exist in North Dakota Century Code. Most pornography has, time and time again, been proven in courts to be protected under the First Amendment and can be regulated for age appropriateness. The ACLU has yet to be presented with evidence that pornography is present in public or school libraries in North Dakota or that current policies are set to allow minors access to pornography.

Over 50 years ago, the United States Supreme Court set the high constitutional bar that defines obscenity<sup>1</sup>— 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. North Dakota Century Code reflects that ruling in defining obscenity. Material is considered obscene if it meets a three-part test:

1. Appeal to the prurient interest in sex based on contemporary community standards.
2. Depicts or describes sexual conduct in a patently offensive way.
3. Lacks serious literary, artistic, political, or scientific value.

Materials that have been lifted up as examples of obscene materials may or may not pass this three fold test. That is not a question for this committee or the Legislative Assembly. These are decisions left to individual citizens and local communities. The policies and procedures are already in place in North Dakota Century Code and in the policies of local libraries and schools. Because the current policies and procedures have not yielded the results desired by all is not justification or license for government overreach or censorship.

If someone does not like a book, then they should not read it. 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.

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 House Judiciary Committee to give SB2307 a “Do Not Pass” and the North Dakota House of Representatives to follow in defeating this bill.

Submitted by:  
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<sup>1</sup> Miller v. California, 413 U.S. 15 (1973)