

Patrick Sinner – Testimony in opposition to HB 1205

Dear members of the North Dakota House Judiciary Committee:

I write to you today to urge you to give a 'do not pass' recommendation to HB 1205 relating to censoring various materials in public libraries. The four major reasons for this are that it is an overreach by the state government, the definitions contained in the bill are overbroad and unworkable, it unfairly criminalizes public employees, and it contains contradictory enforcement language.

This bill would usurp the rights of local public libraries and the communities they are located in to make decisions regarding the materials they hold in their collections. If a member of the local community finds a particular book to be objectionable, they can bring that up with the library and have a discussion as to what is appropriate for that community. This bill imposes state standards for what is properly a local decision.

Second, the definitions contained in this bill are overbroad and unworkable. First, banned "explicit sexual material" contains a carve out for works of art that "have serious artistic significance" and various scientific works. Sec. 2, subd. 1(a). This creates a judgment call as to what artistic or scientific work is sufficiently significant to justify its inclusion in a local library. There is no direction or definition to assist in making that determination. The subcategories of "explicit sexual material" do not offer any helpful guidance in making that determination. The first six categories (Sec. 2, subd. 1(a)(1-6)) are more or less clear on their face. However, the last six categories (Sec. 2, subd. 1(a)(7-12)) are so broad as to be meaningless. For example, Sec. 2, subd. 1(a)(10) prohibits any visual depiction of sex-based classifications. This could be construed as to prohibit children's books which show the differences between male and female animals. I doubt the legislature intends to criminalize books that show that male lions have manes and female lions do not. This would essentially require every public library to remove every Noah's Ark book from their shelves. Similarly, Sec. 2, subd. 1(a)(7) prohibits any visible depictions of sexual preferences. This would prohibit public libraries from stocking any book that shows a family with a mom and a dad as it would indicate the sexual preference of those parents. Both of these examples are clearly beyond the scope of what the author of this bill intended (which appears to be to censor the depiction of any non-heterosexual relationship in public libraries).

These unworkable definitions become much more serious given the criminal penalties included in this bill. Any librarian who inadvertently includes materials on their shelves which may fall within these if again overbroad definitions may be found guilty of a Class B misdemeanor. This is both patently unfair and raises significant issues with sovereign immunity. Library staff are public employees, not individuals operating a store for their own economic benefit. This would open them to personal criminal liability for performing their public function.

Finally, this bill contains confusing and contradictory enforcement language. Sec. 2, subd. 3 allows any individual who believes a book is in violation of this bill to request the public library to remove it from its inventory. Sec. 2, subd. 4 requires the public library to remove the offending book within 30 days of receiving the request. There is no mechanism for appeal or determination as to whether that book actually violates the law. Rather, any book could be withdrawn at the request of one person, who is not even required to be a resident of the town or state in which the library is located. Sec. 2, subd. 5 gives vague guidance for libraries to create guidelines to evaluate requests to remove offending materials, but does not contradict the above mentioned procedures. These are two directly contradictory

requirements contained in the same bill. Such conflicting enforcement mechanisms make this entire bill unworkable on its face.

Therefore, because this bill is an overreach by the state government, the definitions contained in the bill are overbroad and unworkable, it unfairly criminalizes public employees, and it contains contradictory enforcement language, I strongly urge you to give HB 1205 a 'do not pass' recommendation.

Sincerely,

A handwritten signature in black ink, appearing to read "P. J. Sinner". The signature is stylized with a large "P" and "S".

Patrick J. Sinner