

ALA American Library Association

As the nation's oldest non-profit, non-partisan organization dedicated to the development, promotion, and improvement of library and information services in the United States, serving members in North Dakota and across the country, the American Library Association opposes HB 1205.

HB 1205 threatens public servants with criminal prosecution for fulfilling their professional responsibility to curate reading materials for a library collection, pursuant to locally approved school or library board policies and in compliance with state and federal laws, including the First and Fourteenth Amendments of the United States Constitution.

The broad restrictions imposed by HB 1205 would prohibit libraries from fulfilling their mission to serve the information needs of their communities and would violate the rights of all North Dakotans to access constitutionally protected materials at their public libraries. They also expose libraries and their governing bodies to potential lawsuits that will consume limited public resources.

The Supreme Court held over 40 years ago that the government “may not remove books from . . . library shelves simply because they dislike the ideas contained in those books and seek by their removal to ‘prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.’” *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 872 (1982) (quoting *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)).

“The principles set forth in *Pico*—a school library case—have even greater force when applied to public libraries.” *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 548 (N.D. Tex. 2000). Local governments “cannot limit access to library materials solely on the basis of the content of those materials, unless the [government] can demonstrate that the restriction is necessary to achieve a compelling government interest and there are no less restrictive alternatives for achieving that interest.” *Id.*

In addition, HB 1205 includes conflicting provisions regarding the removal of materials. The legislation, as proposed, provides no recourse to those citizens who might be opposed to the demand for removal and fails to provide any means to adjudicate the claims of an individual objecting to a book to ascertain whether the book is, in fact, in violation of local policy or the law. While Section 2.5b requires libraries to establish policies and procedures for reviewing challenged material, Section 2.4, as written, does not allow the library to apply its policies, or allow the elected or appointed library board any role in the removal process. Best practice supports the development of policies and procedures that are followed when a person raises a concern about a library book to ensure transparency, consistency, conformity with the rule of law, and preservation of the right of each reader to decide what is appropriate reading for themselves and their families. The vast majority of North Dakota libraries already have these policies in place.

Finally, HB 1205 falsely conflates the presence of any image relating to sex, sexuality, sexual orientation, or gender identity with a work being inappropriate for readers. This is simply not the case, and would disqualify classic and contemporary works of literature, or works addressing topics related to the sciences, health, and wellbeing, based on the objections of a single person.

As community institutions, libraries take seriously their responsibility to avoid bias and ensure that their materials and programs represent a variety of viewpoints and encompass all topics of interest, including those that might be controversial or even objectionable to some in the community. In addition, public libraries have a particular responsibility to operate in accordance with the First Amendment, which protects the right of every person to access and receive information in the public library, free from any government censorship.

The American Library Association strongly affirms the right to read and urges the judiciary committee to recommend "do not pass" on HB 1205.

Respectfully submitted.
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