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December 4, 2023

Re: Implications of Calls to Remove School Library Books

Dear Superintendents, School Committees, and Community Members:

In this open letter to all school superintendents and school boards in New Hampshire, the American Civil Liberties Union of New Hampshire (“ACLU-NH”) and GLBTQ Legal Advocates & Defenders (“GLAD”) write in response to the recent uptick in demands by a vocal minority of individuals that schools remove certain books from school libraries, including in Bow,¹ Milford,² Bedford,³ and Dover.⁴ These demands fray the bonds of trust and cooperation among parents, schools, and students. They track politicized and partisan narratives in the larger culture, and regularly target books that discuss or depict the experiences and history of members of the LGBTQ+ community and/or communities of color. Concessions to these demands—including removal of books and other measures (such as relocating requested titles to segregated

¹ See Mark Hayward, “Bow High School rejects parental challenges to graphic novel with sex images,” *Union Leader* (Mar. 24, 2023) (noting that Bow educators have rejected a request to remove *Gender Queer*), https://news.yahoo.com/bow-high-school-rejects-parental-225700952.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xILmNvbS8&guce_referrer_sig=AQAAAC6VWmaGbhYeDcWMKHiKf1cF7SYH_ioenS119eOZbBWBtBDKGby84E9e1kFruFIn0Evwnf_vfXWe7ZdO4JbRcaV8OFmKY4Qn_qh5H56QqAfo7YA8nBeVmwN981mHg7sn7rGlaKavoqRo1yc0H66Ymrmol3MouFv_BWECukGICYNk.

² See Ethan Dewitt, “How one N.H. school district is rethinking its response to book challenges,” *N.H. Bulletin* (Sept. 24, 2022) (“Last school year [at the Milford School District], a parent raised a complaint about the book ‘*Gender Queer*,’ a memoir by Maia Kobabe about their journey toward identifying as nonbinary. The complainant did not submit a formal request to challenge the book, but amid uncertainty over what the procedures were, Superintendent Christi Michaud removed the book from circulation for ‘less than 30 days,’ she said in an interview. The challenge was later dropped and the book restored.”), <https://www.nhpr.org/nh-news/2022-09-24/milford-new-hampshire-school-district-banned-book-challenges>.

³ See Seneca Baldi, “Bedford’s Experiences with Book Challenges,” *Bedford High School Unleashed* (Oct. 11, 2023) (“At the high school, *Lawn Boy* was challenged. This book is a coming-of-age novel about a man reflecting on his self-discovery that investigates stereotypes about race, class, and LGBTQ relationships. The committee decided to keep the book on the shelves, but the same parent appealed the decision to the School Board. On January 26th, they met with Mrs. Gilcreast and the school board members voted 2-1 to keep the book, agreeing with the committee’s decision, although the School Board members were not required to read the book prior to this determination. One member abstained and one was absent during the vote.”), <https://unleashedmedia.net/2022/02/22/bedfords-experiences-with-book-challenges/>.

⁴ See Ian Lenehan, “8 books in Dover schools challenged. Here are the titles targeted for bans,” *Foster’s Daily Democrat* (Apr. 27, 2023) (“Eight books currently offered to students in the city’s school district have been challenged by a community member and will be reviewed to determine whether they’ll stay on the shelves.”; “The first book to be reviewed will be “Boy Toy” by Barry Lyga, a title that has recently been banned from classrooms and school libraries in Florida, Texas and Virginia school districts, according to New York City nonprofit PEN America.”; “Porter has asked the district and book review committee to also investigate the following seven books: ‘It’s Perfectly Normal: Changing Bodies, Growing Up, Sex and Sexual Health’ by Robie Harris; ‘Identical’ by Ellen Hopkins; ‘Girl in Pieces’ by Kathleen Glasgow; ‘Extremely Loud and Incredibly Close’ by Jonathan Foer; ‘All Boys Aren’t Blue’ by George M. Johnson; ‘Allegedly a Novel’ by Tiffany D. Jackson; and ‘Breathless’ by Jennifer Niven.”), <https://www.fosters.com/story/news/local/2023/04/27/dover-nh-schools-to-review-8-book-ban-requests/70041253007/>; Ian Lenehan, “‘Boy Toy,’ book at Dover High School library, targeted for removal. Board to vote Nov. 1.”, *Portsmouth Herald* (Oct. 31, 2023), <https://www.seacoastonline.com/story/news/local/2023/10/31/boy-toy-book-at-dover-nh-high-school-library-targeted-for-removal/71386092007/>.



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locations or making them available behind a librarian’s desk⁵)—raise serious legal questions and undermine the obligation of our public schools to provide every student with the opportunity to learn.

We applaud the New Hampshire schools and communities that have resisted these demands, have stood with students who deserve to have their experiences represented, and have preserved our National tradition of libraries as places for all young people to learn, imagine, grow, and explore. For those who may be considering future challenges, we urge such districts, in light of the issues detailed below, to reject these politicized efforts and allow age-appropriate and enriching reading materials to remain accessible on library shelves.

Finally, also attached to this letter is our response to the Department of Education’s (“DOE”) September 6, 2023 Technical Advisory entitled “Objectionable Material Policy,” as well as our concerns with the DOE’s recent suggestion that one school district should consider whether or not to ban certain books from a high school library.

Legal Issues

Library book removals are often contrary to an appropriate educational mission, as well as raise serious legal issues of discrimination in education and violation of the right to receive information, which is protected by constitutional and statutory free speech guarantees.

It is also important that schools establish and adhere to uniform, thoughtful, and transparent procedures for evaluating calls to remove books. Such procedures generally include the establishment of a review committee to carefully evaluate the materials at issue, the receipt and consideration of input from stakeholders, and the issuance of written findings. They also ensure that books are not removed until the process is complete. *See, e.g.,* American Library Association Selection and Reconsideration Toolkit, <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/formalreconsideration>.

I. Robust educational opportunities as a bedrock of democracy.

Debates over whether to allow students access to specific books often lose sight of the overarching function of our schools—namely, to train young people to think for themselves. Many parents recognize this and have spoken out eloquently at school committee and other public meetings in favor of leaving books in school libraries so that their children can access a full range of viewpoints and perspectives.

Many years ago, the Supreme Court explained the essential role our schools play in helping young people develop into the reflective citizens that a democracy needs to survive and flourish:

⁵ *See Virden v. Crawford Cnty.*, No. 2:23-cv-2071, 2023 U.S. Dist. LEXIS 161533 (W.D. Ark. Sept. 13, 2023) (allowing claims to proceed against a public library process that separated out LGBTQ-related materials).



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The Nation’s future depends upon leaders trained through wide exposure to [a] robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection.

Keyishian v. Bd. of Regents of Univ. of State of N.Y., 385 U.S. 589, 603 (1967) (cleaned up). And as one federal court said in the 1978 case about book bans:

The fundamental notion underlying the First Amendment is that citizens, free to speak and hear, will be able to form judgments concerning matters affecting their lives, independent of any governmental suasion or propaganda. Consistent with that noble purpose, a school should be a readily accessible warehouse of ideas.

Right To Read Def. Comm. of Chelsea v. Sch. Comm. of City of Chelsea, 454 F. Supp. 703, 710 (D. Mass. 1978). More recently, the Supreme Court emphasized that, in our schools, “learning how to tolerate speech . . . of all kinds is ‘part of learning how to live in a pluralistic society,’ a trait of character essential to ‘a tolerant citizenry.’” *Kennedy v. Bremerton School District*, 142 S. Ct. 2407, 2430 (2022); *see also Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (public education is “the very foundation of good citizenship” and “a principal instrument in awakening the child to cultural values”).

These principles too have been enshrined in New Hampshire law. The New Hampshire Supreme Court noted the following:

Given the complexities of our society today, the State’s constitutional duty [to provide a constitutionally adequate education] extends beyond mere reading, writing and arithmetic. It also includes broad educational opportunities needed in today’s society *to prepare citizens for their role as participants and as potential competitors in today’s marketplace of ideas.*

Claremont Sch. Dist. v. Governor, 138 N.H. 183, 192 (1993) (emphasis added). Consistent with this principle, the legislature has noted that New Hampshire has an overarching policy to provide all public school “students with the opportunity to acquire the knowledge and skills necessary to prepare them for successful participation in the social, economic, scientific, technological, and political systems of a free government, now and in the years to come.” *See* RSA 193–E:1, I. The legislature views “[a] well-educated populace [a]s essential for the maintenance of democracy, the continued growth of our economy, and the encouragement of personal enrichment and development.” RSA 193–C:1.

Furthermore, relevant education administrative rules mandate that social studies programs should give students an opportunity “to acquire the knowledge, skills, and attitudes necessary for effective participation in the life of the community, the state, the nation, and the world.” *See* Ed. 306.46(a)(4). Middle schoolers must also receive “[s]ystemic instruction and activities designed to enable students to . . . [a]cquire and use information to clarify issues and seek solutions to societal problems. . . .” *See* Ed. 306.46(b)(4)(a). And high schoolers must “acquire knowledge and modes of inquiry in the areas of civics, economics, geography, world history, and United States and New Hampshire history. . . .” *See* Ed. 306.46(c)(1). In other words,



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schools cannot do the job that they must do—namely, preparing students to live and thrive in this diverse and ever-changing world—if they are restricting access to ideas.

In sum, students in our diverse society are better prepared to enter and lead in that society when they are able to access a diverse array of literature and informational material—from literature by and about LGBTQ+ people, to examinations of the role of race in society, to religious texts of all faiths, to books about science and art, to comprehensive works of history written from traditional as well as non-traditional perspectives. By contrast, when school officials attempt to “sanitize” the learning space, they undermine students’ ability to critically assess and understand the world around them and to form independent views. And when books can be removed based on community members’ disagreement with the author’s message or point of view, it paves the way for an unending series of attempts to purge a school based on subjective views about what is objectionable. *See Right To Read*, 454 F. Supp. at 714. Our schools are too important to our children’s development and the very future of our country to become another arena for political warfare and intolerance.

II. Equality based on race, national origin, sex, gender identity and sexual orientation.

Removing books that reflect the experiences of LGBTQ+ people or people of color is inconsistent with our state and federal legal protections and may constitute unlawful discrimination. New Hampshire law protects the right to equality in the educational experience. Effective September 17, 2019, state law expressly prohibits discrimination in public schools on account of “age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, [and] religion or national origin.” *See* RSA 354-A:27; *see also* RSA 193:38 (“No person shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in public schools because of their age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or national origin, all as defined in RSA 354-A.”). In addition, federal law, including Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, prohibit discrimination in schools on the basis of race, national origin, or sex, including sexual orientation and gender identity.⁶

Books being targeted for removal are often those that reflect experiences by LGBTQ+ people, of which (of course) students themselves, their family members, and others in their communities are a part. In New Hampshire, these books have included, for example, Jonathan Evison’s 2018 book *Lawn Boy* (in Bedford)⁷

⁶ *See Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020) (under federal law, discrimination on basis of sexual orientation or transgender status constitutes sex discrimination); *see also* Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021) (to be codified at 34 CFR 1.00).

⁷ This book was honored in 2019 by the American Library Association with an “Alex Award” as a text with “special appeal to young adults, ages 12 through 18.” *See* <https://www.ala.org/awardsgrants/lawn-boy>; https://www.ala.org/awardsgrants/awards/231/all_years. The *Washington Post*’s reviewer also states that the author “takes a battering ram to stereotypes about race and class.” The reviewer further comments on how the novel deals with racism in the United States, citing a section of the book to exemplify how the protagonist, Michael Muñoz, is “constantly reminded of what it means to be brown in America.” *See* Carol Memmott, “This lawn boy asks, ‘Where’s my part of the American Dream,’” *Washington Post* (Apr. 10, 2018), https://www.washingtonpost.com/entertainment/books/this-lawn-boy-asks-wheres-my-part-of-the-american-dream/2018/04/10/ed03e7de-3cf9-11e8-a7d1-e4fec6389f0_story.html.



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and Maia Kobabe’s 2019 book *Gender Queer* (in Milford and Bow).⁸ Having access to these books not only helps educate all students about the experiences of others, but also creates a more inclusive and supportive environment for students whose history and experiences are reflected. Nationally, LGBTQ+ youth are far more likely to be bullied and harassed at school, alienated from their families and communities, and suffer from depression and suicidal ideation than their non-LGBTQ+ peers.⁹ For LGBTQ+ youth who are isolated at home, in school, or in their community, access to LGBTQ+ representation or information in books and literature can be a refuge.

Similarly, removal of books documenting the experiences of people of color exacerbates the unacceptable situation in which students of color are already disproportionately subject to ostracism,¹⁰ and it deprives them of the right to an equal educational experience. Removing books that reflect students’ experiences not only removes a form of support, but it also tells a student that they and their community are not accepted by their teachers and peers.

We also ask that schools be mindful that the debates about these books and their subject matter may add to incidents of bullying of children who are members of (or whose family members are part of) the communities discussed in the books. This is particularly the case when proponents of censorship describe the books’ content as obscene, pornographic, disgusting, or otherwise unacceptable as “developmentally inappropriate.” Questioning the inherent morality of LGBTQ+ people leverages a prejudice—a prejudice that was government-sanctioned until recently—to further isolate and alienate LGBTQ+ people from their broader communities. Indeed, our nation has a long history of characterizing the sexuality of LGBTQ+ people as deviant and even criminal. Only in 2003 did the Supreme Court finally rule that state laws

⁸ *Gender Queer* is a 2020 American Library Association Alex Award Winner, as well as a Stonewall Honor Book in Non-Fiction. See <https://www.ala.org/yalsa/2020-alex-awards>; <https://www.ala.org/rt/rrt/award/stonewall/honored>. The School Library Journal, in a starred review, stated that this book is “a great resource for those who identify as nonbinary or asexual as well as for those who know someone who identifies that way and wish to better understand.” See <https://www.slj.com/review/gender-queer-a-memoir>.

⁹ Based on a 2022 survey, 39% of LGBTQ youth in New Hampshire seriously considered suicide in the past year, 10% of LGBTQ youth in New Hampshire attempted 39% suicide in the past year, 72% of LGBTQ youth in New Hampshire reported experiencing symptoms of anxiety, and 55% of LGBTQ youth in New Hampshire reported experiencing symptoms of depression. See Trevor Project, “2022 National Survey on LGBTQ Youth Mental Health: New Hampshire” (2022), <https://www.thetrevorproject.org/wp-content/uploads/2022/12/The-Trevor-Project-2022-National-Survey-on-LGBTQ-Youth-Mental-Health-by-State-New-Hampshire.pdf>. In addition, a 2019 survey showed that more than half of LGBTQ students report feeling unsafe at school because of their sexual orientation, leading to increased likelihood of missing school, lower grade point averages, increased likelihood of discipline at school, and higher levels of depression, with even greater disparities among LGBTQ youth of color. See GLSEN, The 2019 National School Climate Survey (2020), https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web_0.pdf.

¹⁰ As one study has explained, “In New Hampshire, students attending larger urban schools, male students, students of color, students eligible for free and reduced-price lunch, students with disabilities, and homeless students are more likely to experience exclusionary school discipline, although racial disparities appear to stem largely from the greater racial diversity at the urban schools that use this type of discipline at higher rates with all students.” See Douglas J. Gagnon, et al., “Exclusionary Discipline Highest in New Hampshire’s Urban Schools Suspension and Expulsion Found to Disproportionately Affect Disadvantaged Students,” *Carsey Research* (Winter 2016), <https://files.eric.ed.gov/fulltext/ED573170.pdf>.

criminalizing sex between men are unconstitutional. *See Lawrence v. Texas*, 539 U.S. 558 (2003).¹¹ As recently as 1986, the Supreme Court upheld a Georgia law criminalizing sex between men, describing the idea that the Constitution protects the right to consensual private intimacy between two adult men as, “at best, facetious.” *Bowers v. Hardwick*, 478 U.S. 186, 194 (1986); *but see Lawrence*, 539 U.S. at 578 (“*Bowers* was not correct when it was decided, and it is not correct today.”).

Fortunately, we no longer tolerate laws expressly criminalizing the sexual expression of LGBTQ+ people. But the harmful trope that LGBTQ+ people are sexual predators has had a devastating impact on LGBTQ+ people, with gay men and transgender women in particular experiencing the worst effects. For example, research shows that transgender women are especially likely to be victims of police profiling: “Law enforcement officers regularly stop, harass, and demand identification from transgender women, regularly subject them to commands to disperse, and regularly arrest them for low-level offenses tied to suspicions of prostitution.”¹² Today, we are seeing that harm play out in a new way because of the politically motivated characterizations of LGBTQ+ people as “groomers,” which has led to increased harassment and threats against LGBTQ+ people nationally.¹³ We must not allow harmful political rhetoric to seep into our schools and compound the harm to LGBTQ+ students.

In short, while respecting the right of opponents to speak and be heard, schools must take steps to affirm and protect the equality of the experiences of their students and to fulfill their legal duties to ensure a safe, supportive, and equitable educational experience.¹⁴

III. Free speech rights, including the right to receive information.

In addition to protecting the right to equality, our laws protect freedom of speech and the related right of students to receive information. Unreasonable censorship of students’ access to information and to a range of ideas presents profound issues of free expression.

The Supreme Court recognized that students’ freedom of speech incorporates a right to receive information and ideas, which “is a necessary predicate to the recipient’s meaningful exercise of his own rights of speech, press, and political freedom.” *Bd. of Educ., Island Trees Free School Dist. v. Pico*, 457 U.S. 853, 866-67

¹¹Yet even then one Supreme Court justice declared that any legislature’s “belief that certain sexual behavior is ‘immoral and unacceptable’ constitutes a rational basis for regulation” and that a constitutional right to same-sex intimacy amounts to “a massive disruption of the current social order.” *Id.* at 589, 591 (Scalia, J., dissenting).

¹² Leonore F. Carpenter & R. Barrett Marshall, *Walking While Trans: Profiling of Transgender Women by Law Enforcement, and the Problem of Proof*, 24 Wm & M. J. Women L. 5, 6 (2017). Moreover, a 2022 study showed that the criminal justice system treats LGBTQ+ people more harshly with respect to sexual offenses. *See* The Williams Institute, *LGBTQ People on Sex Offender Registries in the US* (May 2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/SORS-LGBTQ-May-2022.pdf>.

¹³ Anti-Defamation League, Center for Extremism, *What is “Grooming?” The Truth Behind the Dangerous, Bigoted Lie Targeting the LGBTQ+ Community* (Sept. 16, 2022), <https://www.adl.org/resources/blog/what-grooming-truth-behind-dangerous-bigoted-lie-targeting-lgbtq-community>.

¹⁴ *See* RSA 193-F:2, I (“All pupils have the right to attend public schools, including chartered public schools, that are safe, secure, and peaceful environments. One of the legislature’s highest priorities is to protect our children from physical, emotional, and psychological violence by addressing the harm caused by bullying and cyberbullying in our public schools.”).



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(1982) (plurality opinion). In the words of the Court’s plurality, “just as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.” *Id.* at 868.

This right to receive information free of censorship holds special importance in the context of school libraries. The Supreme Court has recognized that “the special characteristics of the school library make that environment especially appropriate for the recognition of the First Amendment rights of students.” *Id.* at 868. “A school library, no less than any other public library, is a place dedicated to quiet, to knowledge, and to beauty,” where “students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding.” *Id.* (internal marks and citations omitted). It is a place where a student may “test or expand upon ideas presented to him, in or out of the classroom.” *Id.* at 869 (quoting *Right To Read Def. Comm. of Chelsea v. Sch. Comm. of City of Chelsea*, 454 F. Supp. 703, 715 (D. Mass. 1978)). In light of the special role of the school library, a school district’s “non-curricular decision to remove a book . . . evokes the question whether that action might not be an unconstitutional attempt to ‘strangle the free mind at its source.’” *Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184, 190 (5th Cir. 1995) (quoting *West Va. State Bd. of Ed. v. Barnette*, 319 U.S. 624, 637 (1943)).

Based on these principles, a plurality of the Supreme Court in *Pico* held that the free speech rights of students are violated when a local school board removes books “from school library shelves simply because they dislike the ideas contained in those books.” 457 U.S. at 872 (hearing challenge to a school’s removal of books by Kurt Vonnegut and Langston Hughes on grounds that books were considered by some to be, for instance, “anti-American” and “just plain filthy”). Other courts have more specifically ruled that censoring materials because they express support for LGBTQ+ people is a form of viewpoint-based discrimination prohibited by free speech principles. *See Parents, Fams., & Friends of Lesbians & Gays, Inc. v. Camdenton R-III Sch. Dist.*, 853 F. Supp. 2d 888, 897 (W.D. Mo. 2012) (holding that censorship of LGBT-supportive websites in school library violated First Amendment); *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 532 (N.D. Tex. 2000) (holding that restrictions on access to *Heather Has Two Mommies* in public libraries violated First Amendment); *Case v. Unified Sch. Dist. No. 233*, 908 F. Supp. 864, 875 (D. Kan. 1995) (holding that removal of book depicting romance between two women from school libraries violated First Amendment). The same principles apply to viewpoints on matters of racial justice or history. *See generally Arce v. Douglas*, 793 F.3d 968 (9th Cir. 2015).

Courts too have recognized that the fact that some parents do not want their children to read certain books cannot justify depriving other students of their rights of access. It is a broadly accepted principle embedded in the First Amendment that “[s]peech cannot be . . . punished or banned, simply because it might offend a hostile mob.” *Forsyth Cty. v. Nationalist Movement*, 505 U.S., 123, 134-35 (1992). The Supreme Court is clear that this principle applies to public schools: “Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our constitution says we must take this risk” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 508 (1969). *Cf. Parker v. Hurley*, 514 F.3d 87, 102 (1st Cir. 2008) (“Public schools are not obliged to shield individual students from ideas” that parents may find “religiously offensive, particularly when the school imposes no requirement that the student agree with or affirm those ideas, or even participate in



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discussions about them”); *Tinker*, 393 U.S. at 509 (“In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”).¹⁵

Notwithstanding efforts by opponents to characterize their objections to certain books as rooted in age or “developmental appropriateness” or protection from obscenity or vulgarity, the current calls to remove books that center the experiences of LGBTQ+ people and people of color run parallel to a nationwide political effort to censor more inclusive representations from the marketplace of ideas. Such political and partisan intrusions into the school system run afoul of our constitutions. *See Pico*, 457 U.S. at 870-71 (discretion to control content of school libraries “may not be exercised in a narrowly partisan or political manner” or “to deny [students] access to ideas with which [some] disagree[]”); *id.* at 907 (Rehnquist, J. dissenting) (restrictions motivated by “partisan or political” interests, as well as those based on “racial animus,” are unconstitutional).

Notably, the fact that a book discusses sexuality or sexual conduct does not make it “developmentally inappropriate,” “obscene” or “pervasively vulgar” (in the words of *Pico*), or otherwise justify its removal for that reason alone.¹⁶ In 1978, a Massachusetts federal district court heard a challenge to a decision by the Chelsea School Committee to bar from its high school library an anthology because it featured a poem written by a fifteen-year-old New York City high school student entitled “The City to a Young Girl” and contained graphic descriptions of sexuality. *Right To Read*, 454 F. Supp. at 704–05. The Court enjoined the removal of the book on free speech grounds, finding that “[w]hat is at stake here is the right to read and be exposed to controversial thoughts and language a valuable right subject to First Amendment protection.” *Id.* at 714- 15. As the court explained, the danger is not in the exposure to “a broad sweep of ideas and philosophies,” but instead “[t]he danger is in mind control.” *Id.* at 715.

Process

Many school districts in New Hampshire have policies governing the reconsideration of library materials based on complaints from community members. The New Hampshire School Boards Association has a model policy (KEC) that many school districts have adapted and approved,¹⁷ while other school boards

¹⁵ Parents who do not want their children to have access to these materials can of course instruct their children not to access them. But these parents have no right to cause library resources to be unavailable to other students. *See Parker*, 514 F.3d at 105 (“[T]he mere fact that a child is exposed on occasion in public school to a concept offensive to a parent’s religious [or any other] belief does not inhibit the parent from instructing the child differently.”).

¹⁶ The Supreme Court has held that materials are not “obscene” (so as to fall outside constitutional protection) unless the works “taken as a whole, appeal to the prurient interest in sex [and] portray sexual conduct in a patently offensive way, and [] taken as a whole, do not have serious literary, artistic, political, or scientific value.” *Miller v. California*, 413 U.S. 15, 24, (1973). Nobody can seriously argue that the award-winning literature that is being challenged in schools today lacks any literary merit according to “contemporary community standards” in New Hampshire. *See id.* at 33-34.

¹⁷ *See, e.g.*, Allentown School District, KEC Reconsideration of Instructional Materials (Oct. 2020), <https://sau53org.sharepoint.com/sites/boards/Shared%20Documents/Forms/AllItems.aspx?ga=1&id=%2Fsites%2Fboards%2FShared%20Documents%2FAllentown%2FPolicies%2FKEC%20Reconsideration%20of%20Instructional%20Materials%2Epdf&parent=%2Fsites%2Fboards%2FShared%20Documents%2FAllentown%2FPolicies>.



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have designed more individualized policies.¹⁸ Adhering carefully to written policies can help insulate school districts from legal challenges. Conversely, “disregard of established policy and procedure [is] important evidence of [a school district’s] improper motivation in removing books. *See Case*, 908 F. Supp. at 876.

The American Library Association (“ALA”) provides a robust set of recommendations for reconsidering whether a book should be retained in a school library when there has been a complaint.¹⁹ The ALA sets forth guidelines that include that no passages or parts of a work should be pulled out of context and, during the pendency of a reconsideration process, challenged materials should remain on the shelves. The guidelines also endorse a committee review process, with members of the committee of stakeholders each fully reviewing the material and providing written findings in support of the majority decision and, if any, the minority position of committee members about whether the book should be removed. The ALA also provides a detailed sample process that school districts may readily adopt to ensure that formal complaints are reviewed fairly, quickly, and with attention to the school library’s mission.²⁰ We strongly encourage all school districts to adopt and adhere to rigorous protocols for ensuring that complaints are reviewed through a fair process that meets the constitutional and educational objectives of New Hampshire’s public schools.

Conclusion

The removal of books from school libraries—particularly those that focus on the experiences of historically marginalized communities—often equates to unlawful censorship. Such removals also strike at the very heart of the purpose of a public education in our pluralistic society.

For all these reasons, we ask school-related personnel to take a stand against censorship and protect student access to an equal and safe educational environment by resisting calls to remove books from school libraries.

We stand ready as a resource in this fight for the rights and interests of your students and to protect the role of our public schools as “the nurseries of democracy” where the “free exchange” of ideas, particularly those that may be unpopular among some, “facilitates an informed public opinion.” *See Mahanoy Area School District v. B.L.*, 141 S. Ct. 2038, 2046 (2021). Feel free to contact us if our offices can be of assistance.

Thank you for your consideration.

¹⁸ *See, e.g.*, ConVal School District, KEC—Instructional and Educational Media (Mar. 7, 2023), <https://schoolboard.convalsd.net/district-policies/klb-public-complaints-curriculum-instructional-materials/>.

¹⁹ *See* American Library Association, *Selection & Reconsideration Policy Toolkit for Public, School, & Academic Libraries* (last visited Nov. 13, 2023), <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit>.

²⁰ ALA, *Formal Reconsideration* (last visited Nov. 13, 2023), <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/formalreconsideration>.



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Best,

A handwritten signature in black ink, appearing to read "Gilles Bissonnette".

Gilles Bissonnette
Legal Director
ACLU of New Hampshire

A handwritten signature in black ink, appearing to read "Chris Erchull".

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cc: Frank Edelblut, Commissioner of Education (Louis.F.Edelblut@doe.nh.gov)
Diana Fenton, Esq., DOE Office of Governance (Diana.Fenton@doe.nh.gov)
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