

January 16, 2023

To Members of the House Judiciary Committee:

As a North Dakotan, a library patron, a reader, a parent, and a taxpayer, I must add my voice in strong opposition to HB 1205 – a bill that is a prime example of a solution in search of a problem that does not exist.

HB 1205 may appear to be limited in scope but looks are very much deceiving. HB 1205 seeks to wage war on obscenity but, as the late Supreme Court Justice Potter Stewart noted, obscenity cannot be defined. Obscenity, like beauty, is very much in the eyes of the beholder.

As written, HB 1205 would have four immediate impacts on our state's public and school libraries.

First, HB 1205 fails to account for the research value of materials it seeks to ban. The overwhelming majority of materials subjected to banning under HB 1205 are reference in nature. These materials aim to provide essential information on human sexuality, psychology, and sociology. Most often, these materials are checked out by patrons conducting academic research or parents wanting information on issues pertaining to changes and challenges a child may be experiencing.

Second, HB 1205 is a gross overreach of state power. If enacted, it would take power away from local entities that oversee public and school libraries. HB 1205 imposes a one-size-fits-all approach on all libraries which is the very definition of government overreach and antithetical to the nature of true conservatism, which so many legislators purport to be dedicated to.

Third, HB 1205 would have a chilling effect on libraries. The proposed law would subject librarians to scrutiny and possible harassment by individuals in search of materials the individuals deem as obscene but that, in fact, serve a specific academic or reference purpose. Subsection 3 creates a "heckler's veto" for any patron, an outcome that courts have ruled as unconstitutional in many cases, most notably in *Sund v. City of Wichita Falls, Texas (2000)*.

This leads me to the final point: HB 1205 is blatantly unconstitutional. The sponsors' motivation for banning these materials are based on their own disapproval of the ideas contained in such materials. Several court rulings extending back to the 1940s find this to be censorship and a clear violation of the First Amendment. As such, if passed and signed into law, HB 1205 would subject the state to extensive litigation, which would cost North Dakota taxpayers hundreds of thousands of dollars in defense of a law that is by every reasonable and historical definition unconstitutional. In short, it's a waste of state government resources.

The legislature should leave this matter to where it belongs: With parents, local public and school libraries, and the professional librarians who are trained and dedicated to the impartial distribution of information as requested by patrons and the protection of intellectual freedom.

Sincerely,

A handwritten signature in black ink that reads "Jason Matthews". The signature is written in a cursive, flowing style.

Jason Matthews

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