

**TO: ALA Executive Board**

**RE: Update from the Office for Intellectual Freedom**

**ACTION REQUESTED/INFORMATION/REPORT:**

**For information. No action is requested.**

**SUBMITTED BY / CONTACT PERSON:**

Deborah Caldwell Stone  
Interim Director  
Office for Intellectual Freedom

**DATE:**

**March 26, 2019**

**Office for Intellectual Freedom  
Update – April 2019**

This document updates the report filed by Interim Director Deborah Caldwell-Stone on January 11, 2019 (See [EBD 12.19](#)).

**Emerging Issue: Legislation Challenging Schools' and Libraries' Decisions to Collect, Teach, or Retain Constitutionally Protected Materials**

During the 2019 state legislative season, we are observing the introduction of state legislation that, if adopted, would make it possible to criminally prosecute librarians and educators for providing or lending constitutionally protected, mainstream materials to minors. The proposed laws accomplish this by either removing historic legal protections that shielded educators and librarians from prosecution for providing materials containing sexual themes to library users of any age, or by broadening the definition of obscenity and "harmful to minors" materials to encompass mainstream books and digital resources commonly taught or offered by schools and libraries.

Other new bills would allow an aggrieved parent or guardian to sue local libraries, schools, librarians, and content providers for damages, fines, and injunctive relief if the parent alleges that the minor was able to access "harmful to minors" materials via a platform or database provided by the school or library. These bills also include a provision allowing the state attorney general to enforce the law.

Most of these bills are being promoted by conservative groups whose agendas include anti-pornography advocacy. This type of legislation is unprecedented and represents a new, extreme means to achieve these groups' goal of removing materials they deem objectionable from libraries and schools (LGBTQIA+, young adult novels, and sex ed materials are often a target for their challenges.) These legislative initiatives likely reflect a frustration with local reconsideration policies and procedures, which frequently result in a decision by the local board to retain the challenged materials. Passage of these laws would provide a means of threatening and intimidating local librarians, educators, and board members, and limit the ability of local school and library boards to manage their curriculum materials and library collections. As such, they can be compared to recent lawsuits that seek to halt libraries' presentation of Drag Queen Story Hours or that seek an injunction to halt schools' and libraries' use of research databases on the grounds that the databases provide pornography to minors.

These legislative initiatives are described below. Also noted in this report is a recently introduced non-binding resolution that targets a specific work of literature. The report also

includes an update on the lawsuits filed against libraries in Louisiana and Houston and a library consortium in Colorado.

Colorado S.B. 48

- Bill targeting mainstream research database providers and the schools and libraries that acquire those databases for student use. In addition to a "double filtering" requirement, allows a parent or legal guardian to bring a civil action against an entity that provides “electronically accessible educational materials” if the parent or child claims that the child viewed material that is obscene or harmful to minors on the entity's platform or database.
- If the claim is proven, it allows the parent or legal guardian to demand injunctive relief, the imposition of a fine in the range of \$1,000 to \$5,000 for each violation and any actual damages incurred as a result of each violation. The parent can also recover punitive damages, attorneys' fees, and costs.
- If adopted, the law would allow parents to circumvent or avoid reconsideration policies adopted by local school and library boards and sue in a court of law.

Background: Introduced at the behest of the couple who leads “Pornography Is Not Education,” the most recent iteration of an organization that has conducted a years-long campaign to halt the use of EBSCO and other research databases in Colorado schools and public libraries. The couple claims that EBSCO databases contain pornography; their objections center on articles published in Teen Vogue, Time, Cosmopolitan, Men’s Health, and LGBTQIA+ publications. The legislation appears to be a response to the steadfast refusal of the Colorado Library Consortium and many libraries and school districts to end the use of EBSCO databases.

Current status: Killed in committee. The Colorado Association of Libraries and its school library affiliate organized a grassroots advocacy campaign targeting key committee members. CAL also presented testimony opposing the legislation at the bill's hearing. The Office for Library Advocacy and the Office for Intellectual Freedom provided strategic support for their advocacy efforts.

Florida HB 855 / SB 1454

- As introduced, the proposed legislation would make it a felony of the third degree for a public school librarian or educator to loan to a minor, or purchase for loan to a minor, materials containing images of nudity or sexual conduct or containing narrative accounts

of sexual conduct. Those convicted of violating the amended statute are subject to a prison term up to five years and a fine up to \$5000.

- The bill also amends the definition of "harmful to minors" materials and child pornography to encompass materials that the Supreme Court has definitively said are protected by the First Amendment for adults or minors alike. Under the proposed legislation, any narrative work depicting sexual conduct by minors would be classified as child pornography, distribution of which would constitute a felony punishable by up to five years in prison, five years of probation, a \$5,000 fine and registration as a sex offender. These changes in the law are not limited to public school employees, but also apply to public and academic librarians, booksellers, and publishers.
- These provisions are part of an expansive set of bills that would require local school boards to acquire and use instructional materials that promote creationism and climate change denial, add Bible study to the curriculum, and end the ability of local school boards to exercise discretion over their acquisition and retention of instructional materials, including library resources. The bill specifically lets any state resident to appeal a local school board's decision to acquire or retain materials to the State Board of Education. If the State Board of Education upholds the local school board's decision to retain the book, the law permits the citizen to sue in circuit court for removal of the book.

Background: The legislation was drafted by the Florida Citizens' Alliance, whose self-described goal is to "end the political and religious indoctrination of all Florida schoolchildren" by reforming instructional materials through a series of challenges and legislative changes mandating statewide standards consistent with their values and viewpoints. FCA states that it wants to halt "the rewriting of our history, the undermining of our founding values, [and] eliminate the pornography rampant in instructional materials used by K-12 Florida schools."

Books on the group's "objectionable materials list" include *Angela's Ashes*, *Clockwork Orange*, *Beloved*, *The Bluest Eye*, *Dreaming in Cuban*, *The Awakening*, *The Women of Brewster Place*, *Essentials of Oceanography*, and nearly any book with LGBTQIA+ themes. Having failed to persuade school boards to remove the materials they find objectionable and failing to gain seats on school boards via election, the group is now persuading sympathetic state legislators to introduce bills to achieve its agenda.

Current status: After unfavorable news coverage and lobbying efforts by science educators, civil liberties groups, and First Amendment advocates, the bill has been amended in committee to remove the most extreme provisions. It still contains provisions that would limit local control and allow FCA and other groups to intervene in a local school's curriculum and library collection development decisions.

Indiana HB 1481

- Indiana's existing "harmful to minors" statute bars distribution to minors of "obscene-as-to-minors" materials. A violation is classified as a Class 6 felony. The law provides an affirmative defense to public librarians, public school educators, and the institutions that employ them on public policy grounds (the materials are provided for an educational or scientific purpose.)
- The proposed legislation strips these legal protections from public librarians and public educators. If the proposed amendment succeeds, it will allow librarians and teachers to be criminally prosecuted for providing constitutionally protected materials a prosecutor deems "harmful to minors."
- If a librarian or educator is convicted of an offense, the minor victim and the victim's parent or guardian may bring a civil suit to recover actual and punitive damages, demand declaratory and injunctive relief, and recover attorneys' fees and costs.

Background: The national conservative legal advocacy group Liberty Counsel claims that it assisted state legislators in drafting the bill at the behest of their Indiana chapter. According to Liberty Counsel's website, the goal of the legislation is to reverse Indiana's obscenity exemption clause which protects public schools and libraries from prosecution from distributing material harmful to minors. Liberty Counsel claims that the exemption allows libraries and schools to distribute "gutter trash" to minors under the guise of education.

The Indiana chapter of Liberty Counsel is allied with the Colorado parents seeking removal of EBSCO and other research database platforms from Colorado schools and libraries. It is encouraging its members to challenge local schools' and libraries' use of INSPIRE, the EBSCO-provided state research database.

It should be noted that Liberty Counsel has targeted libraries in the past, successfully suing several libraries with inadequate meeting room policies. They have also submitted written testimony in support of efforts to remove LGBTQIA+ materials from public schools and libraries, arguing that such materials are illegal pornography. Liberty Counsel has the resources to expand the effort to reverse educators' and librarians' legal protection from prosecution to other states.

Current status: HB 1481 did not meet the crossover deadline for legislative action. A lobbying effort that included the Indiana Library Federation sought to keep the bill from coming to a hearing before the crossover date. The Office for Intellectual Freedom and the Office of Library Advocacy provided strategic support to IFL's leadership.

Maine HB 80

- Proposed legislation to remove public schools from the institutional exceptions to the law prohibiting the dissemination of obscene material to minors. If signed into law, would allow criminal prosecution of school librarians and educators for loaning or providing books deemed to be obscene or "harmful to minors" by a prosecutor.

Background: The bill's sponsor, Amy Ariata, freshman legislator, challenged the assignment of Haruki Murakami's *Kafka at the Shore* in her son's AP English class two years ago. Despite her complaint, the book was retained by the school, and her son was given an alternate assignment. Per a media interview, she is determined to act to keep *Kafka at the Shore* and other books like it that she considers pornography out of public schools.

Current status: Voted down in committee, following a coordinated lobbying effort led by the Maine Library Association, the school media specialists' organization, the ACLU and other civil liberties and educational groups in Maine. The Office for Intellectual Freedom and the Office of Library Advocacy provided strategic support to MLA and its affiliate.

New Jersey ACR 225

- Non-binding concurrent resolution introduced by two New Jersey state assembly members urging schools to remove *The Adventures of Huckleberry Finn* from the school curriculum. The resolution argues that because *Huckleberry Finn* "requires adolescents to read and discuss a book containing hurtful, oppressive, and highly offensive language directed towards African-Americans" that may make students feel uncomfortable and marginalized, New Jersey schools should be encouraged to eliminate the book from the curriculum.
- While it would not be binding law, the resolution represents a dangerous precedent – having a legislative body designate what is, and is not, acceptable literature, contravening the First Amendment's requirement that government "make no law" concerning speech or belief.

Background: One of the resolution's sponsors says she introduced the resolution after learning about a cyberbullying incident that involved a student who used Snapchat to send racist messages and threats to African-American students. While *The Adventures of Huckleberry Finn* did not have any role in the cyberbullying controversy, she decided to introduce the resolution to create a teachable moment.

Current status: Introduced and referred to Education Committee.

**Follow-up: Lawsuits Challenging Decisions to Retain Library Resources or Continue Library Programs**

As more fully detailed in the report presented at the Executive Board's Midwinter Meeting (see [EBD 12.19](#)) persons objecting to Drag Queen Story Hours filed lawsuits against public libraries in Lafayette, Louisiana, and Houston, Texas after each library's administration refused to halt the Drag Queen Story Hour (DQSH) programming. Both lawsuits were filed by plaintiffs represented by the organization "Warriors for Christ."

Both lawsuits have been dismissed on standing grounds – that is, that neither set of plaintiffs could allege facts demonstrating that their rights had been impaired or that they had suffered damages as a result of the library's hosting the DQSH. Both judges also commented on the plaintiffs' Establishment Clause claims, saying that the plaintiffs never presented any evidence that the DQSH was a secular humanist worship service or that the events were used to proselytize for secular humanism. Despite the dismissal of its lawsuits, "Warriors for Christ" continues to threaten to sue libraries hosting Drag Queen Story Hours, often causing libraries to re-evaluate their plans or to alter strategies for responding to criticism.

A third lawsuit, filed by the two parents leading the group "Pornography Is Not Education," sought actual and punitive damages from EBSCO and the Colorado Library Consortium when neither entity complied with PINE's demands to censor EBSCO's database. In February 2019, the Colorado district court hearing the case dismissed the suit with prejudice. Like the DQSH lawsuits, the court ruled that the plaintiffs had no standing to sue because they could not demonstrate that they had suffered a legal injury. PINE had been using the threat of legal action to pressure Colorado school boards and public libraries to drop EBSCO, Proquest, Gale Centage, and other research databases; this may end the group's ability to use this tactic.