



December 29, 2023

By Email

Timothy J. Shugrue
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Paul E. Storti
Chief of Police
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Re: Law Enforcement Search for and Investigation of Book at W.E.B.
Du Bois Middle School

Dear District Attorney Shugrue and Chief Storti:

We write on behalf of the American Civil Liberties Union of Massachusetts, Inc. (“ACLUM”) and GLBTQ Legal Advocates & Defenders (“GLAD”) to express deep concern about your offices’ responses to a complaint about a book in a classroom at the W.E.B. Du Bois Regional Middle School in Great Barrington in which the complainant purportedly described the book as containing “pornography.”

While we are gratified to see that Chief Storti has reportedly said in an on-line post that he “apologize[s] to anyone who was negatively affected” by this unprecedented law enforcement action, we remain concerned that there has been no acknowledgement that what occurred was unwarranted and unauthorized by law. Instead, in public statements and media reports, your offices have asserted that they had an obligation and no choice but to take criminal investigatory steps in response to this complaint. In your statements, you seem to be defending the fact that a police officer went to the school, visited a teacher’s classroom, questioned the teacher, looked for the book and possibly even suggested a search of the entire school might be

appropriate—as well as the fact that a criminal investigation was opened by the District Attorney’s office when the matter was referred by the police.

Contrary to your defenses of what occurred, under the laws of the Commonwealth, discussed below, no criminal investigation was warranted. Instead, your offices should have advised the complainant to raise their concerns with the school.

We ask that you take immediate steps to instruct your staffs—and inform the public—that law enforcement responses to concerns about books in schools and other educational programs are not appropriate and should not and will not happen again. Failure to take affirmative and prompt action could mislead law enforcement elsewhere in the Commonwealth into thinking such action is lawful—when it is not—and will leave unredressed the chilling effect of your offices’ actions on the constitutionally protected rights of students in the Commonwealth to receive (and of educators to share) information without unwarranted censorship, to enjoy an educational environment free of discrimination based on gender, and to freely exercise their rights without threats, intimidation or coercion from law enforcement.¹

Controlling Statutory Provisions

Massachusetts Gen. Laws c. 272, § 31 defines unlawful “obscenity” as material “*taken as a whole*” that “(1) appeals to the prurient interest of the average person applying the contemporary standards of the county where the [alleged] offense was committed; (2) depicts or describes sexual conduct in a patently offensive way; and (3) *lacks serious literary, artistic, political or scientific value.*” (emphases added).

The statute defines material that is “harmful to minors” as either material qualifying as obscenity or material that “if *taken as a whole*, [] (1) describes or represents nudity, sexual conduct or sexual excitement so as to appeal *predominantly* to the prurient interest of minors; (2) is *patently* contrary to prevailing standards of adults in the county where the [alleged] offense was committed as to suitable material for such minors; and (3) *lacks serious literary, artistic, political or scientific value for minors.*” (emphases supplied).

Strict adherence to these statutory boundaries is necessary to “limit[] the reach of the statute to material outside the First Amendment’s protection with respect to minors.” *Commonwealth v. Mienkowski*, 91 Mass. App. Ct. 668, 674 (2017).

¹ An open letter we previously sent to school officials throughout the Commonwealth with regard to calls to remove book from schools sets forth the details of the laws through which these rights are established and is available [here](#). We also direct your attention to the Massachusetts Civil Rights Act, which prevents interference or attempted interference with secured rights by threats, intimidation or coercion. Mass. Gen. L. c. 12, §§ 11H and I.

Under these definitions, the book at the heart of the complaint clearly does not qualify as obscene, pornographic, or material harmful to minors, due, among other things, to the literary value of the award-winning, coming-of-age book at issue, which a simple on-line search would have revealed. Such literature can be vital for young people who are coming of age and may benefit from seeing themselves and others they know represented. But, regardless, the Legislature has specified its intent that law enforcement in Massachusetts has no role in policing materials made available by schools, teachers or school librarians.

Specifically, the law provides an absolute defense to any charges of distributing obscene or allegedly harmful material to minors where the accused is “a bona fide *school, museum or library, or was acting in the course of employment as an employee of such organization*” Mass. Gen. L. c. 272, §§ 28 and 29 (emphasis added).

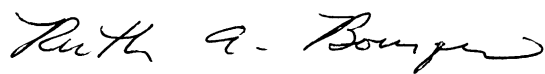
By enacting this language, the Legislature clearly established that law enforcement has no role in enforcing these statutes as to any materials provided by schools or other educational programs and their personnel acting in the scope of their employment.

Conclusion

In light of the above, we ask that you take immediate steps to make clear to your employees, the schools, and the larger community that you recognize law enforcement had no role here and that an incident like this will not happen again.

Although we will likely be in contact again after we finish review of the public records we recently received in response to our request to the Police Department, we write now because prompt action is required to remove the unlawful chilling effect that has been created by your offices with regard to fundamental civil rights and civil liberties.

Sincerely,



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