



January 23, 2023

Massachusetts Association of School Superintendents
209 Burlington Road, Suite 113
Bedford, MA 01730

Massachusetts Association of School Committees
One McKinley Square
Boston, MA 02109

Re: Equality, Free Speech, and Democracy-related Implications of Calls to Remove School Library Books

Dear Superintendents, School Committees, and Community Members:

The American Civil Liberties Union of Massachusetts (ACLUM) and GLBTQ Legal Advocates & Defenders (GLAD) write in response to the recent uptick in demands by a vocal minority of parents and other interested parties that schools remove certain books from school libraries. 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 focus on books that discuss or depict the experiences and history of members of LGBTQ+ communities and/or communities of color. Concessions to these demands undermine diversity and inclusion in our schools and raise serious legal questions.

We applaud the 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 young people to learn, imagine, grow and explore. For those who have removed or limited access to books, in light of the issues detailed below, we urge you to reconsider and promptly restore books to library shelves.

Legal Issues

Library book removals are often not only contrary to an appropriate educational mission, they 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.¹

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

Removing books that reflect the experiences of members of LGBTQ+ communities and communities of color is inconsistent with our state and federal legal protections and may constitute unlawful discrimination. Massachusetts law protects the right to equality in the educational experience. Indeed, the Declaration of Rights mandates equal protection of the law, including at all levels of public education. *See Finch v. Commonwealth Health Ins. Connector Auth.*, 459 Mass. 655, 667 (2011) (“Equal protection of the laws is a concept that permeates the Massachusetts Constitution”); *see also Commonwealth v. Carter*, 488 Mass. 191, 202 (2021) (holding equal protection guarantees apply to sexual orientation and transgender status under Declaration of Rights and U.S. Constitution). And state law expressly prohibits discrimination in public secondary schools on account of race, color, sex, gender identity, religion, national origin, or sexual orientation with regard to the advantages, privileges, and courses of study of public schools. G.L. c. 76, § 5. 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.

Books being targeted for removal are often those that reflect experiences by members of the LGBTQ+ communities, of which (of course) students themselves or their family members may be a part. 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.² For LGBTQ+

¹ 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 establishment of a review committee to carefully evaluate the materials at issue, receive input from stakeholders, and make 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>.

² In 2019, 12.5% of students in Massachusetts identified as gay, lesbian, or bisexual, and 2% identified as transgender, with higher percentages reported among non-white students. *See 2019 Health and Risk Behaviors of Massachusetts Youth Survey Highlights*, Massachusetts Department of Education, at 6, <https://www.doe.mass.edu/sfs/yrbs/2019data-tables.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

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—and in some cases lifesaving.

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 ostracism³ and bullying,⁴ and it deprives them of the right to an equal educational experience.⁵ Removing books that reflect students' experiences not only removes a support; it 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 opponents describe the books' content as obscene, pornographic, disgusting, or otherwise unacceptable. 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.⁶

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

of color. GLSEN, *The 2019 National School Climate Survey* (2020), https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web_0.pdf.

³ Data collected by the Department of Early and Secondary Education (DESE) shows that students of color are disproportionately disciplined, including through the use of out-of-school suspensions. <https://profiles.doe.mass.edu/statereport/ssdr.aspx>.

⁴ According to the DESE 2019 Research Brief on Bullying in Massachusetts schools, Black students disproportionately experience feelings of unsafety in schools which is correlated to gaps in achievement. See pages 31-32 of the report which is available at https://www.aclum.org/sites/default/files/bullying_research_brief.pdf

⁵ The push to ban books that explore issues around race or racism parallels the recent partisan movement targeting programs of study designed to promote the identity and development of students of color—a censorship movement that has already been disapproved of in our state as unfairly encroaching upon the legal protections surrounding our schools. *See Declination Letter for 21-19 Initiative Petition for a Law Relative to Our Nation's History*, Office of the Attorney General (Sept. 1, 2021) available at <https://www.mass.gov/doc/21-19-declination-letter/download>.

⁶ G.L. c. 71, § 37O prohibits, and requires schools to address, bullying.

profound issues of free expression.⁷

As the U.S. Supreme Court has recognized, 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 (1982) (plurality opinion). In the words of the Court, "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, 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

⁷ The First Amendment to the U.S. Constitution and Article 16 of the Declaration of Rights protect the free speech rights of students, and Article 16 has been interpreted on multiple occasions to provide more protection for free speech than the First Amendment. Student free speech rights are also protected by state statute, G.L. c. 71, § 82.

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. *See Parker v. Hurley*, 514 F.3d 87, 102 (1st Cir. 2008) (“Public schools are not obliged to shield individual students from ideas which 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 discussions about them”); *Keefe v. Geanakos*, 418 F.2d 359, 361–62 (1st Cir. 1969) (“With the greatest of respect to such parents, their sensibilities are not the full measure of what is proper education”).⁸

Notwithstanding efforts by opponents to characterize their objections to certain books as rooted in age appropriateness or protection from obscenity or vulgarity, the current calls to remove books that center the experiences of LGBTQ+ individuals and individuals 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 “obscene” or “pervasively vulgar” (in the words of *Pico*) or otherwise justify its removal for that reason alone.⁹ 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

⁸ Parents who do not want *their* children to have access to these materials can of course instruct their children not to access them or may, in appropriate circumstances, direct school librarians not to allow their children to check them out. But these parents have no right to cause library resources to be censored for other students.

⁹ The Supreme Court has held that materials are not “obscene” so as to fall outside constitutional protection except where 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).

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.

Diversity in Education 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—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:

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 our local 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, 454 F. Supp. at 710.

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”).

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. *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.

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.” *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.

Sincerely,

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