

April 3, 2017

Governor Christopher Sununu
107 North Main Street
Concord, NH 03301

By fax: 603-271-7680

Dear Governor Sununu,

As a coalition of nonprofits concerned with the freedom to read, the integrity of the public education system, and the application of First Amendment law and principles in public institutions, we strongly urge you to veto HB 103, which passed the House on February 2 and the Senate on March 30. The bill would require school districts to provide two weeks' advance parental notification about "curriculum course material used for instruction of human sexuality or human sexual education." We believe that it would encourage challenges to educationally valuable material, undermine the quality of public education in New Hampshire, and implicitly encourage schools to avoid material with pedagogical merit simply because it might elicit objections.

In 2015, when Governor Hassan vetoed HB 332, an identical bill, she pointed out that the bill would not only "create an even greater stigma concerning sex education and lead to fewer students having access to important health education," but that it is also likely to "affect a wide range of curricula—including science and the study of important literature."

Indeed, while HB 103 is intended for material used in sexual education classes, the singling out of sexual content as potentially objectionable could open the door to challenges to other types of educational material, including literature. Titles as varied, valuable, and time-honored as Anne Frank's *The Diary of a Young Girl*, Geoffrey Chaucer's *The Canterbury Tales*, and most works by William Shakespeare could be flagged for "sexual" content. HB 103 is likely to generate continuing controversy; it takes only one person to file a challenge and launch a battle that can last for months and disrupt an entire school system.

Instructional materials are selected for a number of reasons, including but not limited to their suitability to a given course of study, their educational merit, and their ability to connect instruction to human experience in a broader sense. Singling out a certain type of content for parental notification inevitably creates a biased perspective and casts a negative light on the material regardless of its educational value. HB 103 is thus likely to privilege the concerns of parents who wish to shield their children from sexual content over other parents and the professional judgment of educators.

Joan E. Bertin
Executive Director

NCAC PARTICIPATING ORGANIZATIONS

Actors' Equity Association
American Association of School Administrators
American Association of University Professors
American Association of University Women
American Booksellers for Free Expression
American Civil Liberties Union
American Ethical Union
American Federation of Teachers
American Jewish Committee
American Library Association
American Literary Translators Association
American Orthopsychiatric Association
American Society of Journalists & Authors
Americans United for Separation of Church & State
Association of American Publishers
Authors Guild
Catholics for Choice
Children's Literature Association
College Art Association
Comic Book Legal Defense Fund
The Creative Coalition
Directors Guild of America
The Dramatists Guild of America
Dramatists Legal Defense Fund
Educational Book & Media Association
First Amendment Lawyers Association
Free Speech Coalition
International Literacy Association
Lambda Legal
Modern Language Association
National Center for Science Education
National Communication Association
National Council for the Social Studies
National Council of the Churches
National Council of Jewish Women
National Council of Teachers of English
National Education Association
National Youth Rights Association
The Newspaper Guild/CWA
PEN American Center
People For the American Way
Planned Parenthood Federation of America
Project Censored
SAG-AFTRA
Sexuality Information & Education Council of the U.S.
Society of Children's Book Writers & Illustrators
Student Press Law Center
Union for Reform Judaism
Union of Democratic Intellectuals
Unitarian Universalist Association
United Church of Christ
Office of Communication
United Methodist Church, United Methodist Communications
Women's American ORT
Woodhull Sexual Freedom Alliance
Writers Guild of America, East
Writers Guild of America, West

Worse, by its focus on the vague, subjective, and overbroad category of “objectionable” materials,” the bill is likely to invite a multitude of challenges, thus wreaking havoc on the entire curriculum.

Finally, the proposal invites confusion about the First Amendment obligations of public school officials, who are prohibited from discriminating against “the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989); see also *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853, 872 (1982): “[L]ocal school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books...” If the proposed legislation results in the removal of material solely to satisfy those who object to its content, it could inadvertently expose school districts to liability for violating the First Amendment. See *Monteiro v. Tempe Union High School District*, 158 F. 3d 1022, 1028 (9th Cir. 1998) (rejecting students’ First Amendment right to access books selected for their “legitimate educational value”).

This legislation would present obstacles to quality education in the state of New Hampshire. Schools would do better to foster trust between parents and educators and emphasize that all parties are doing their best to promote high quality education. Focusing on the educational criteria for curricular selections would provide a meaningful, sound, and defensible way to evaluate material and serve the educational needs of all students. On the basis of these constitutional and educational concerns, we strongly urge you to veto HB 103.

Sincerely,



Svetlana Mintcheva, Director of Programs
National Coalition Against Censorship



Devon Chaffee, Executive Director
New Hampshire Civil Liberties Union



Charles Brownstein, Executive Director
Comic Book Legal Defense Fund



Millie Davis, Director
Intellectual Freedom Center
National Council of Teachers of English



Chris Finan, Director
American Booksellers for Free Expression



Mary Rasenberger, Executive Director
Authors Guild



Fatima Shaik, Co-Chair
Children’s and Young Adult Book Committee
PEN America