

**National  
Coalition  
Against  
Censorship**

House Education Committee  
New Hampshire House of Representatives  
107 North Main Street  
Concord, NH 03301

**By electronic mail: [HouseEducationCommittee@leg.state.nh.us](mailto:HouseEducationCommittee@leg.state.nh.us)**

January 10, 2017

Dear Members of the New Hampshire House Education Committee,

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 oppose HB 103, which 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 such legislation 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.

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**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 oppose 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

