



A project of the **National Coalition Against Censorship**

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Comic Book Legal Defense Fund

February 8, 2019

Senator Susan Deschambault, Chair
Representative Charlotte Warren, Chair
Committee on Criminal Justice and Public Safety
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

Dear Sen. Deschambault and Rep. Warren:

As a coalition of organizations devoted to protecting the right to read, we write to raise some serious concerns about a proposed amendment to MRSA §2911 sub-§2, which will require every “public school, private school or institution of learning” to provide the following written notice to minors and their parents or legal guardians prior to disseminating sexually explicit material: “The material depicts or describes ultimate sexual acts, excretory functions, masturbation or lewd exhibition of the genitals.”

In addition to raising serious First Amendment concerns, the regulation is likely to undermine the quality of education throughout Maine by stigmatizing canonical works of literature for the sole reason that they include sexual content. We strongly urge the Committee to refrain from adopting the bill.

What is to be flagged under the requirement remains vague, over-inclusive, and potentially prejudicial and thus likely to adversely affect the quality of education in Maine. It could be used to describe classic works of literature such as *Romeo and Juliet*, *The Diary of Anne Frank*, *Slaughterhouse Five*, and *Brave New World*. This stigmatizing label relies on the emphasis of decontextualized passages that detract from students’ understanding and appreciation of a work as a whole. Once a book is declared sexually explicit, students will lose sight of the book’s other themes.

For this reason, leading educational associations oppose labeling books. The National Council of Teachers of English notes that “‘red flagging’ is a blatant form of censorship; the practice reduces complex literary works to a few isolated elements.” Similarly, the American Library Association has observed how labels are “prejudicial [and] designed to restrict access” to disfavored books.

Overbroad and prejudicial in its “red flagging” of books, the sexually-explicit notification requirement is likely to generate parental requests that children be given alternative assignments in cases where parents would not otherwise do so. Teachers, concerned about such complaints, may simply decide not to include books with references to sex in the curriculum in the first place.

Likewise, librarians may decide not to include certain books in their school libraries. Labeling sexually explicit books will also invite demands to label books with additional types of “objectionable” content such as violence, LGBT themes, drug use, and profanity. This will ultimately result in an overly expansive and comprehensive regime of labeling that will leave few books unaffected.

Aside from the damage it will potentially do to the curriculum, singling out books with disfavored content raises First Amendment concerns. Schools 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). As stated above, teachers and librarians will be pressured into removing unfavorable content from their classrooms and libraries, which may make schools liable for violating students’ First Amendment rights; *Monteiro v. Tempe Union High School District*, 158 F. 3D at 1028 recognizes the right of students to read books selected for “legitimate educational value.”

However well intentioned, Representative Arata’s bill is a disservice to Maine schoolchildren and we urge you to vote against it. We urge the Committee to oppose it.

Please let us know if we can be of any additional assistance.

Sincerely,



Chris Finan, Executive Director
National Coalition Against Censorship



Charles Brownstein, Executive Director
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