



School Libraries Must Be Reflective and Inclusive of All Students

IDRA Testimony against SB 13, submitted by Paige Duggins-Clay, J.D., to the Texas Senate Education Committee, March 29, 2023

Dear Chair Creighton and Honorable Members of the Committee:

My name is Paige Duggins-Clay, J.D., and I am the chief legal analyst at IDRA, an independent, non-partisan non-profit committed to achieving equal educational opportunity for every child through strong public schools that prepare all students to access and succeed in college.

IDRA opposes Senate Bill 13 because it creates processes that would permit schools and communities to ban books inconsistent with individual personal or political values, simply because they do not like the perspective or content of the material. It also eliminates well-settled protections for speech and expression for materials with scientific, educational and governmental justifications, and instead limits protections against criminal prosecution to government-sanctioned speech.

Irresponsible calls to censor books because they do not align with certain individuals' personal views is a misguided use of political power and plainly violates constitutional law. Eighty years ago, the U.S. Supreme Court laid out a simple, common-sense principle: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion" (*West Va. State Bd. of Educ. v. Barnette*).

Allowing state and local governmental officials to ban books because they are "inconsistent with local community values," as SB 13 would do, violates this long-held principle. Similarly, allowing board members, with input and assistance from board-appointed community members, to cherry pick books to be removed from library materials creates a dangerous opportunity for censorship.

Free societies do not ban books or censor perspectives or materials with which they merely dislike or disagree with.

It is worth emphasizing that states and schools do not have unfettered discretion to censor curriculum or library materials. As the U.S. Supreme Court stated in *Island Trees v. Pico*, the Constitution "does not permit the official suppression of ideas" based upon "narrowly partisan or political" interests or a desire to deny access to ideas with which school officials merely disagree (*Bd. of Educ. Island Trees Union Free Sch. Dist.*). Similarly, courts have repeatedly affirmed that students "may not be regarded as closed-circuit recipients of only that which the State chooses

to communicate,” and “school officials cannot suppress ‘expressions of feeling with which they do not wish to contend’” (*Tinker v. Des Moines*).

These constitutional mandates are designed to protect all viewpoints – including and especially minority and historically-marginalized individuals and communities – as part of our democratic values and commitment to free speech and expression.

To date, thousands of books by or about Black, LGBTQ+ and other systemically-marginalized groups have been banned from our nation’s schools. The American Library Association recently released a report finding that book bans have increased dramatically across the country and the “most targeted books were by or about Black or LGBTQIA+ persons” (2022). Unfortunately, Texas has become the epicenter of this book banning epidemic.

Additionally, a recent review by PEN America revealed that of books recently banned by U.S. school libraries and classrooms, “467 contain protagonists or prominent secondary characters of color (41%), 247 directly address issues of race and racism (22%); and 379 titles (33%) explicitly address LGBTQ+ themes or have protagonists or prominent secondary characters who are LGBTQ+” (2022).

Banned books include materials discussing the United States history of racism; prominent books by Black women authors with themes of race and racism; anti-Black police brutality; and fiction centered on Black, Latino and LGBTQ+ characters and plotlines (Duggins-Clay, 2022). These regressive censorship policies are being used as a pretext to target primarily Black and LGBTQ+ writers, educators, scholars and students (Reiling, 2022).

SB 13 contains no protections to ensure that state and local officials are not engaging in intentional or implicit discrimination or bias in their decisions on which books are worthy of our school libraries and which books should be excluded.

To the contrary, SB 13 eliminates current legal protections against prosecution under state obscenity laws for materials that have scientific, educational or governmental value. The bill as filed repeals this language, which is aligned with our nation’s First Amendment law, and limits the statutory affirmative defense to materials that have “a bona fide judicial, law enforcement, or legislative” purpose. In other words, the only speech protected by the statutory affirmative defense would be speech the government has sanctioned. This is dangerous and undemocratic.

All students, including Black students, other students of color, and LGBTQ+ students, deserve access to culturally relevant teaching and library materials, equitable resources, and a safe learning environment. This committee should reject SB 13, and any effort to censor information, materials, and resources that support and affirm students from diverse backgrounds.

IDRA is available for any questions or further resources that we can provide. Thank you for your consideration. For more information, please contact Paige Duggins-Clay, J.D., at paige.duggins-clay@idra.org.

Resources

ALA. (April 2022). State of America's Libraries Report – Special Report: Pandemic Year Two. American Library Association. <https://www.ala.org/news/sites/ala.org.news/files/content/state-of-americas-libraries-special-report-pandemic-year-two.pdf>

Bd. of Educ. Island Trees Union Free Sch. Dist. No. 26 v. Pico, 457 U.S. 853 (1982).

Duggins-Clay, P. (May 5, 2022). Letters Demand Books Returned to Shelves in Four School Districts. Knowledge is Power. <https://www.idra.org/resource-center/letters-demand-books-returned-to-shelves-in-four-school-districts/>
Epperson v. State of Arkansas, 393 U.S. 97 (1968).

IDRA. (April 7, 2022). Students Deserve Access to Books and Curricula that Reflect Their Experiences – IDRA Statement on U.S. House Hearing “Free Speech Under Attack: Book Bans & Academic Censorship.” <https://www.idra.org/resource-center/students-deserve-access-to-books-and-curricula-that-reflect-their-experiences/>

Reiling, E. (July 5, 2022). Are Texas’ Efforts to Censor “Obscene” Books and CRT Based on a Pretext? What Does the First Amendment Have to Say About It? Villanova Law Review. <https://www.villanovawlawreview.com/post/1582-are-texas-efforts-to-censor-obscene-books-and-crt-based-on-a-pretext-what-does-the-first-amendment-have-to-say-about-it>

PEN America. (September 19, 2022). Banned in the USA: The Growing Movement to Censor Books in Schools. <https://pen.org/report/banned-usa-growing-movement-to-censor-books-in-schools/>

Tinker v. Des Moines Indep. Cmty. Sch. Dist. 393 U.S. 503 (1969).

West Va. State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943).

IDRA is an independent, non-profit organization led by Celina Moreno, J.D. Our mission is to achieve equal educational opportunity for every child through strong public schools that prepare all students to access and succeed in college. IDRA strengthens and transforms public education by leading policy analyses and advocacy; dynamic teacher training and principal coaching; useful research, evaluation and frameworks for action; and innovative student, family and community engagement.