



HB 900 Promotes Book Bans and Undermines Students' Constitutional Right to Access Ideas

IDRA Testimony Against House Bill 900, submitted by Paige Duggins-Clay, J.D., to the Senate Education Committee, May 10, 2023

Dear Chair Creighton and Honorable Members of the Committee:

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

We submit this testimony opposing HB 900, which creates an expansive and costly bureaucracy of book censorship at the state and local levels, requiring school libraries, private companies, and TEA to each review books and rate them based on vague and undefined standards.

HB 900 creates several categories of books and library materials that would either be completely banned in school libraries or would be subject to unnecessary restriction. Many of these categories are either undefined or overbroad, and restrictions based on the categorization scheme could easily result in the violation of students' First Amendment right to receive information.

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).

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%), and 247 directly address issues of race and racism (22%); 379 titles (33%) explicitly address LGBTQ+ themes or have protagonists or prominent secondary characters who are LGBTQ+" (Friedman, 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).

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*). Broad bans on vague and overbroad “sexually relevant” content for students violate this long-held principle.

HB 900 does far more than simply restrict or limit sexually explicit books. Notably, “sexually explicit” content is already prohibited under Texas law, and that definition is tied to bedrock First Amendment principles. HB 900 would permit school libraries to ban books that contain even a passing reference to sexuality or are “educationally unsuitable” in any way – without providing any guidance or standards on how to assess materials flagged as “unsuitable” consistent with students’ First Amendment protections.

It is worth emphasizing that states and schools do not have unfettered discretion to censor curriculum for students. As the U.S. Supreme Court stated in *Island Trees v. Pico*, the U.S. 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.*).

Since at least 1968, the Court has been clear that a state cannot “impose upon the teachers in its schools any conditions that it chooses” and cannot prohibit teaching a “theory or doctrine where that prohibition is based upon reasons that violate the First Amendment” (see *Epperson v. State of Arkansas*, invalidating law prohibiting teaching the concept of evolution).

Similarly, 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*). This includes discomfort or disagreement with books and materials discussing age-appropriate sexual health, activity and relationships.

All students deserve access to culturally relevant teaching, equitable resources, and a safe learning environment. LGBTQ+ students, just like everyone else, deserve to learn in settings that are inclusive of their experiences and provide information that is relevant to their health and lives.

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. IDRA 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>

Friedman, J. (September 19, 2022). Banned in the USA: The Growing Movement to Censor Books in Schools. PEN America. <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.