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By Email and Certified Mail

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**RE: Equality, Free Speech, and Democratic Implications of Removing School
Library Books**

Dear Superintendents, Librarians, and School Board Members:

The American Civil Liberties Union of Maine and GLBTQ Advocates and Defenders (GLAD) write in response to ongoing demands in communities and the Legislature for schools to remove or limit access to certain library books. These efforts at censorship erase the stories of LGBTQ+ communities and communities of color; they tell those students and their families that they don't belong to the school community; and they foster distrust among parents, schools, and students. These demands to suppress information threaten students' legal rights and politicize school libraries. And these campaigns undermine a core purpose of public education: to provide students the freedom to learn about our shared history and diverse stories, and to teach students to think for themselves.

We applaud the schools and communities that have stood with students who have the right to have their and their families' experiences represented, whatever their faith, nationality, or identity. Doing so preserves our national tradition of libraries as places for young people to learn, imagine, grow, and explore. But because these demands for censorship continue, we write to urge those schools who *have* removed books to reconsider their decisions; to encourage those

who have resisted bans to continue to do so; and to outline what the law says about how schools should review book removal requests.

Removal of Books from School Libraries Raises Serious Legal Concerns.

The removal of books from our public school libraries threatens critical legal protections, including students' right to equal educational opportunity and their right to speak and receive information. All students must feel welcome at school so they can learn and grow.

Book removal undermines equality based on race, national origin, sex, gender identity, and sexual orientation.

Removing books that reflect the experiences of LGBTQ+ communities and communities of color contradicts our state and federal legal protections against unlawful discrimination. Maine law and the Maine Constitution protect equality in the educational experience. 5 M.R.S. § 4601; Me. Const. Art. 1, §§ 1, 6-A. In addition, federal law prohibits discrimination in schools on the basis of race, national origin, sex, sexual orientation, gender identity, or religion. 42 U.S.C. § 2000d *et seq.*; 42 U.S.C. § 2000c *et seq.*; 20 U.S.C. § 1681; U.S. Const. Amend. XIV.

The books targeted for removal overwhelmingly reflect experiences within LGBTQ+ communities and families with LGBTQ+ members. Access to these books provides an opportunity to learn about experiences through the eyes of LGBTQ+ people, and creates a more inclusive and supportive environment for students who see their own history and experiences reflected on library shelves. It can be devastating for young LGBTQ+ students to lose access to these books and watch their school communities debate whether stories of their lives and families are “unsuitable” for their peers. No parent wants to see any child bullied, but nationally, LGBTQ+ students are far more likely than their non-LGBTQ+ peers to be bullied and harassed at school and suffer from depression and suicidal ideation.¹ These disparities are all amplified for LGBTQ+ youth of color.² All students, including LGBTQ+ students, deserve an educational environment that acknowledges and embraces them so they can have the equal educational opportunity the law requires schools to provide for all. For LGBTQ+ youth who are isolated, access to LGBTQ+ representation and information in the school library can be a refuge, if not a lifesaver.

Similarly, historically sound and age-appropriate books that document the experiences of people of color or tell stories through the lens of a person of color are enriching experiences we want all young people to enjoy, including students of color. Students of color are disproportionately subjected to racist or xenophobic bullying, and are disproportionately disciplined, suspended, and expelled.³ Book removals exacerbate this already difficult

¹ GLSEN, *The 2019 National School Climate Survey* (2020), https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web_0.pdf .

² *Id.*

³ American Civil Liberties Union of Maine, *We Belong Here: Eliminating Inequity in Education for Immigrants and Students of Color in Maine* (Oct. 2017), https://www.aclumaine.org/sites/default/files/webelonghere_report.pdf.

educational environment. When this behavior is tolerated, every student's learning environment worsens and anxiety rises: "Am I next?" Removing books that reflect the experiences of students of color is exactly the opposite of what students need and the law requires: support and acceptance from their community, teachers and peers.

Schools must remain mindful that the debates about these books and their subject matter may increase bullying in schools, including bullying of children who are members of (or whose family members are part of) the communities reflected in the books targeted for removal. This is particularly true when opponents describe the books as obscene, pornographic, disgusting, or otherwise unacceptable. For anyone, let alone students who are figuring out who they are in the world, it is exceedingly difficult to be told that stories depicting their existence are unfit for public consumption. While respecting the right of opponents to speak and be heard, schools must affirm and protect a learning environment where *all* students belong. Schools are legally obligated to ensure such a safe, supportive, and equitable educational experience. 20-A M.R.S. § 6554.

Book removal threatens free speech rights.

In addition to protecting the right to an environment where all students can learn and grow, state and federal law protect students' right to free speech and their related right to receive information. Unreasonable, viewpoint-based censorship of students' access to information presents profound free expression issues under the First Amendment and the Maine Constitution. Me. Const., Art. 1, § 4; *Sheck v. Baileyville Sch. Comm.*, 530 F.Supp. 679, 684 (D. Me. 1982). Maine has expressly recognized that "the public school remains a most important public resource in the training and development of youth for citizenship and individual fulfillment." *Sheck*, 530 F.Supp. at 686.

The U.S. Supreme Court held over 40 years ago that "local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books." *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 872 (1982) (plurality opn.). "[T]he special characteristics of the school library make that environment especially appropriate for the recognition of the First Amendment rights of students." *Id.* at 868 (emphasis original). Given "the special role of the school library as a place where students may freely and voluntarily explore diverse topics, [a] School Board's non-curricular decision to remove a book well after it had been placed in the public school libraries evokes the question whether that action might not be an unconstitutional attempt to "strangle the free mind at its source.'" *Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184, 190 (5th Cir. 1995) (quoting *W.V. Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)).

The First Amendment prohibits censorship of library books based on the viewpoint of the messages they express, and that includes viewpoint-based censorship of books because they express support for lesbian, gay, bisexual, and transgender people. *See Parents, Fams., & Friends of Lesbians & Gays, Inc. v. Camdenton R-III Sch. Dist.*, 853 F. Supp. 2d 888, 897 (W.D. Mo. 2012) (holding that censorship of LGBT-supportive websites in school library violated First

Amendment); *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 532 (N.D. Tex. 2000) (holding that restrictions on access to HEATHER HAS TWO MOMMIES in public libraries violated First Amendment); *Case v. Unified Sch. Dist. No. 233*, 908 F. Supp. 864, 875 (D. Kan. 1995) (holding that removal from school libraries of book depicting romance between two women violated First Amendment). These same principles apply with equal force to viewpoints on matters of racial justice or history. *See generally Arce v. Douglas*, 793 F.3d 968 (9th Cir. 2015).

Courts also recognize that even when parents may not want their children to read certain books, this objection cannot justify depriving other students and families of their constitutional right to access information. *See Parker v. Hurley*, 514 F.3d 87, 102 (1st Cir. 2008) (“Public schools are not obliged to shield individual students from ideas which parents may find religiously offensive, particularly when the school imposes no requirement that the student agree with or affirm those ideas, or even participate in discussions about them”); *Keefe v. Geanakos*, 418 F.2d 359, 361-62 (1st Cir. 1969) (“With the greatest of respect to such parents, their sensibilities are not the full measures of what is proper education”); *Sheck*, 530 F.Supp. at 686. Parents are on both sides of these disputes.

The current calls to remove books that center experiences of LGBTQ+ and people of color also parallel national political efforts to censor the stories of people who have long been ignored or excluded from the marketplace of ideas. Such political and partisan intrusions into the public school system violate our constitutions. *See Pico*, 457 U.S. at 870-71 (discretion to control content of school libraries “may not be exercised in a narrowly partisan or political manner” or “to deny [students] access to ideas with which [some] disagree[.]”); *id.* at 907 (Rehnquist, J. dissenting) (restrictions motivated by “partisan or political” interests, as well as those based on “racial animus,” are unconstitutional).

To be clear, the mere fact that a book discusses sexuality or sexual conduct does not make it “obscene” or “pervasively vulgar” (in the words of *Pico*) or otherwise justify its removal. The Supreme Court has held that materials are not “obscene” (so as to fall outside First Amendment protection) unless the words “taken as a whole, appeal to the prurient interest in sex [and] portray sexual conduct in a patently offensive way, and [] taken as a whole, do not have serious literary, artistic, political, or scientific value.” *Miller v. California*, 413 U.S. 15, 24 (1973). Although books discussing or portraying LGBTQ+ people may not be part of every parent’s experience, the mere discussion or representation of diverse sexual orientations is not an “appeal to the prurient interest.”

Book Removal Undermines Diversity in Education as a Bedrock of Democracy.

Debates over whether to allow students to access specific books often lose sight of the overarching function of our schools: to train young people to think for themselves. Many parents recognize this and have spoken out eloquently at school committee and other public meetings in favor of leaving books in school libraries so that their children can access a full range of viewpoints and perspectives. And of course, parents can and often do know what their children are reading and share their own values with their children.

The Supreme Court has long recognized the essential role our schools play in helping young people develop into the reflective citizens that a democracy needs to survive and flourish: “The Nation’s future depends upon leaders trained through wide exposure to [a] robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative election.” *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967) (cleaned up). As the U.S. Supreme Court recently noted, in our schools, “learning how to tolerate speech . . . of all kinds is ‘part of learning how to live in a pluralistic society,’ a trait of character essential to ‘a tolerant citizenry.’” *Kennedy v. Bremerton Sch. Dist.*, 142 S.Ct. 2407, 2430 (2022); *see also Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (public education is “the very foundation of good citizenship” and “a principal instrument in awakening the child to cultural values”).

Students in our communities are better prepared to join and lead in our society when they can access a diverse array of literature and informational material—from literature by and about LGBTQ+ people, to examinations of the role of race in society, to religious texts of all faiths, to books about science, art, and history. By contrast, when school officials attempt to “sanitize” the learning space, they undermine students’ ability to critically assess and understand the world around them and to form independent views. And when books are removed because community members disagree with the author’s message or point of view, that paves the way for an unending series of attempts to deny *all* children access to information based on personal views about what is objectionable for some children. Schools are too important to children’s development and the future of our country to become an arena for political intolerance.

Where do schools go from here?

This does not mean that schools may *never* remove a book from library shelves, or that schools must ignore community concerns about library books. We acknowledge that parents and community members who demand removal of books with LGBTQ+ representation may have genuine concerns over the content of those books, and schools need a fair and transparent process for hearing and evaluating those community concerns.

To ensure that books are only removed for proper educational reasons and that removal is not motivated by censorship, it is imperative that schools establish and adhere to uniform, transparent, and thoughtful procedures for evaluating calls to remove books. *Pico*, 457 U.S. at 874-75 (stating that schools can avoid violating the First Amendment by following “established, regular, and facially unbiased procedures for the review of controversial materials” and criticizing school’s “highly irregular and ad hoc” book removal process). These procedures should include establishing a review committee to evaluate the book at issue, receiving input from stakeholders, and issuing written findings. Schools need not start from scratch in creating this process—the American Library Association has created a publicly available guide.⁴ A

⁴ Am. Library Ass’n, *Formal Reconsideration*, <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/formalreconsideration>.

school board in Alaska recently used just such a process to guide its decision to keep fifty-five challenged books on the shelves.⁵ Schools should also be mindful that parents are always at liberty to instruct their children not to access certain materials, and should be guided by the well-established law that one family’s concern over a book does not override students’ right to access information.

Conclusion

A positive school climate in which all people are welcomed, supported, and safe—socially, emotionally, intellectually, and physically—is critical for student learning. By contrast, removing books from school libraries because of who wrote them or who they portray harms all students and can constitute unlawful censorship. These removals strike at the very heart of a public education in our pluralistic society. For all these reasons, we ask school board members, superintendents, and librarians to take a stand against censorship and protect student access to an equal and safe educational environment by resisting calls to remove books from school libraries.

Sincerely

/s/ Mary Bonauto

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GLBTQ Legal Advocates & Defenders

/s/ Carol J. Garvan

Legal Director
American Civil Liberties Union of Maine

⁵ Desiree Hagen, *Homer’s Library Advisory Board upholds decision to keep LGBTQ books in children’s section*, Alaska Public Media (Jan. 20, 2023), <https://alaskapublic.org/2023/01/20/homers-library-advisory-board-upholds-decision-to-keep-lgbtq-books-in-childrens-section/>.