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Legislating Librarianship

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In a country where federal legislators find it within their purview to tell teachers how to teach, it is perhaps not surprising that some politicians now want to tell librarians how to do their jobs. In recent years, there have been a number of incidents in which politicians at the local, state, and federal level went well beyond their usual role of controlling the purse strings; they tried instead to legislate specific library policies and procedures, particularly in the area of collection development. These politicians are trying to enforce their views—or views of certain vocal constituents—via legislation or by the threat of firing, while ignoring library best practices.

Examining a number of these recent cases together may shed light as to whether this is a series of isolated occurrences or a disturbing new trend in legislating librarianship. It can also be instructive to see how each of these cases played out and whether the legislation was ultimately passed or defeated.

Politicizing Library of Congress Subject Headings

One recent case involves Library of Congress subject headings. Rep. Diana Black of Tennessee and the House Appropriations Committee introduced H.R. 4926 in April 2016. The goal of the bill was to prevent the Librarian of Congress from changing the subject heading “illegal alien” to “noncitizen” and “unauthorized immigration” (EveryLibrary, 2016).

Background

“The Library of Congress Subject Headings (LCSH) is perhaps the most widely adopted subject indexing language in the world by libraries large and small. LCSH has been actively maintained since 1898 to catalog materials held at the Library of Congress. Proposals for additions and changes are reviewed regularly at staff meetings in the Policy and Standards Division (PSD) and an approved list is published” (Library of Congress, 2015).

The Executive Summary of the proposed bill explains that the PSD, in response to citizen requests, evaluated the subject heading, “illegal aliens.” Finding the term to be frequently misunderstood and to have a “pejorative nature,” the committee decided that the heading “illegal aliens” will therefore be cancelled and replaced by two

headings, “noncitizens” and “unauthorized immigration.” They further concluded that other subject headings that contain the phrases “illegal aliens” or “aliens” would likewise be changed (Library of Congress, 2016).

The bill

“Stopping Partisan Policy at the Library of Congress Act: This bill directs the Library of Congress to retain the headings “aliens” and “illegal aliens,” as well as related headings, in the Library of Congress Subject Headings in the same manner as they were in effect during 2015” (114th Congress, 2016).

Justifications for the bill

The proponents of the bill cited two major reasons for blocking the Library of Congress terminology change: (1) they believed such a change was only about partisan politics, and (2) they pointed out that such a change would mean that terms used in U.S. legal code and Library of Congress Subject Headings would no longer match. Senator Black released a statement about her reasons for introducing the bill: “This needless policy change by the Library of Congress embodies so much of what taxpayers find enraging about Washington. By trading common-sense language for sanitized political-speak, they are caving to the whims of left-wing special interests and attempting to mask the grave threat that illegal immigration poses to our economy, our national security, and our sovereignty...” (Office of Congressman Diane Black, 2016). Other legislators agreed: Congressman Lamar Smith, Senator Ted Cruz, and Congressman John Culberson sent a letter to the Library of Congress asking them to immediately go back to the “illegal alien” subject headings, because any update “wrongly puts political correctness above the rule of law” (Office of Congressman Lamar Smith, 2016).

Shortly after the bill’s introduction, the Legislative Branch Subcommittee of the House Appropriations Committee countermanded the Library of Congress’ action: “To the extent practicable, the Committee instructs the Library to maintain certain subject headings that reflect terminology used in title 8, United States Code” (Eisgrau, 2016). In other words, the committee decided that current terminology in U.S. legal code should drive the terminology used in Library of Congress Subject Headings.

Objections to the bill

The library's decision to update the subject heading was not, in fact, a policy change. Updating outdated subject headings has been a standard industry practice of the Library of Congress for more than a century. The library advocacy organization EveryLibrary points out that it is common for "archaic" terms such as Negro, Blackface, and Oriental, to be changed to more currently-acceptable terms (EveryLibrary, 2016). The American Library Association (ALA) objected to the Congressional prohibition of the change, pointing out that the system of updating subject heading terms "preserves all prior versions of revised headings" (ALA & ALTCS, 2016). This means that anyone looking up "illegal aliens" would be redirected to the new terms. The ALA also defended the change as a natural evolution that follows common usage, citing a Pew Research Study that showed a decline in the use of the term "illegal aliens" by major U.S. news outlets (ALA & ALTCS, 2016). The ALA also objects to legislators pre-empting library best practices, noting that the process that changed the term was "rigorous, transparent" and "fully consistent with accepted professional cataloging standards and practices" (ALA & ALTCS, 2016).

Resolution

In a variety of media outlets, proponents and opponents of the bill strove to sway opinion and encouraged constituents to write to their Congressmen. The bill was attached to a House Appropriations bill, but ultimately died in the House Committee on House Administration (LegiScan, 2016).

Micromanaging the Public Library's Budget

In another case in 2014, Mayor Jean Stothert of Omaha, Nebraska, wanted to eliminate the local independent library board in order to have mayoral line-item control on how the library's budget is spent.

Background

When Mayor Stothert took office, she began to make good on her promise to cut spending. In a squabble over the library FY 2015 budget, the City Council ultimately sided with the library board in approving the library's request for increased materials funding (Moring, 2014). This affects the city's budget since about two thirds of the library's \$14 million budget is funded through municipal tax revenue (Moring, 2014).

The mayor's perspective

The mayor believes that she—as mayor—should hold ultimate responsibility for finances in any city department, including the library. "You can't have a non-elected group of people who are appointed by the mayor managing taxpayer dollars," according to Stothert. "It's the mayor that's responsible for the taxpayer dollars" (Moring, 2014). The mayor not only wanted cuts to the budget, but also was firm that cuts could not be in personnel or in library hours. As a result, the only segment of the budget that could be cut was materials (Moring, 2014).

The library board's perspective

"Library Board President Mike Meyer said the library system is different from all other city departments for a few reasons: It's the only department with a board of trustees; more of its funding comes from philanthropic support than other departments; state law governs how libraries are run; and the library director isn't listed in the city charter as a Cabinet member" (Moring, 2014). Meyer described the role of a library board member: "As soon as they become a trustee, by the definition of trustee, they have a fiduciary duty to do what's in the best interest of the library," Meyer said. "Not the City of Omaha or the mayor or the City Council" (Moring, 2014).

Resolution

The library board asked for a \$600,000 budget increase for 2015. The mayor said it was \$122,000 too much, and directed the library to make materials cuts. Library supporters protested when the budget came up for vote in City Council, and the Council—in defiance of the mayor—authorized an additional \$175,000 for library materials (Moring, 2014). The mayor, who appoints library board members, stated she will make sure that any future board members are "on the same page" as she is in regard to fiscal responsibility (Moring, 2014).

The battle continued the following year, with the library board saying that a branch might have to be eliminated or hours would have to be cut due to the \$850,000 difference between the library's request and what the mayor was willing to allow for the FY 2016 library budget (KETV7, 2015). The FY 2017 library budget offer from the Mayor included an \$800,000 increase. It was unanimously approved by the library board. After two City Council members unsuccessfully proposed an additional

increase of \$225,000, the City Council also approved the Mayor's original proposal on the library budget (Moring, 2016, July 23).

Censorship of Library Collections

By far, the most common reason that politicians get involved with local library policy is in the area of collection development. The governing bodies want to legislatively censor certain books or types of books, while librarians defend intellectual freedom and the policies already in place for book challenges.

I. Censorship: Parental controls on "explicit" materials

Virginia HB 516, introduced January 9, 2016 by Virginia State Rep. Steve Landis, sought to implement new parent-centered guidelines regarding school materials deemed sexually explicit (Virginia Law Portal, 2016).

Background

"It all started with Laura Murphy, a Fairfax County woman who said she was horrified to discover that one of her sons, a high school senior, had been assigned to read the 1988 Pulitzer Prize-winning novel *Beloved* by Nobel laureate Toni Morrison. Murphy felt that this book, along with *The Bluest Eye*, also by Morrison, *Invisible Man* by Ralph Ellison and *The Road* by Cormac McCarthy, were inappropriate for young readers (Portnoy, 2016).

The bill

"HB 516, Board of Education; policy on sexually explicit instructional material: requires the Board of Education to establish a policy to require each public elementary or secondary school to (i) notify the parent of any student whose teacher reasonably expects to provide instructional material that includes sexually explicit content, (ii) permit the parent of any student to review instructional material that includes sexually explicit content upon request, and (iii) provide, as an alternative to instructional material and related academic activities that include sexually explicit content, non-explicit instructional material and related academic activities to any student whose parent so requests" (Richmond Sunlight, 2016).

Justifications for the bill

In a state where parents can choose to have their children

exempted from sex education, Murphy felt that parents should also have the choice to opt out of explicit reading materials (Portnoy, 2016).

Objections to the bill

In his veto, Gov. Terry McAuliffe's objections included: (1) the characterization of the books as "pornographic" was taking the explicit content out of context; i.e., not recognizing literary merit or the books' value as part of a college preparatory program. (2) Many teachers, librarians, and students objected to the bill. (3) Local boards of education are well qualified to determine what materials are suitable for schools. (4) The bill was unnecessary, because the state board of education was already discussing the matter (WRIC Newsroom, 2016).

One element of the bill would require that teachers provide alternative material for the children of parents who object to the content of assigned books. This makes it more difficult for a teacher to plan, teach, and assess learning, and could double the teacher's workload. It would also mean that students are not exposed to many universally acknowledged great authors and classic works of fiction. Some teachers might find the hassle of multiple book lesson plans too great, and would eliminate any highly-contested books from the curriculum, even if the educators feel that the banned books offer more educational value than the replacement books (Howlett, 2016). This would have the effect of "dumbing down" or "watering down" the curriculum.

Resolution

The bill unanimously passed the state House and Senate. The Governor vetoed it. A subsequent vote to override the veto failed by one vote, so the bill did not become law (LIS.Virginia.gov, n.d.).

Similar cases

Virginia State Senator Amanda Chase, who supported HB 516, continues to fight against what she deems "explicit" materials in schools. The Chesterfield County Public Schools, where Chase's children are students, published a summer reading list of options for middle and high school students. Some parents objected to some of the books as "pornographic," and the offending titles were removed from the lists. However, the lists included links to other book lists such as Scholastic Books and

Read Kiddo Read, which include some of the removed titles. Chase believes the “pornographic” books should be removed from the libraries and any librarians who recommend such books should be dismissed (Griset, 2016).

In addition to numerous local and state cases, there have also been federal bills introduced to give parents more control over materials and policies in their child’s education. In 2005, federal bill HR 2295, the “Parental Empowerment Act of 2005,” was introduced to tie funding to the use of parent review boards that would evaluate all non-textbook materials for schools, including library books and assigned novels for language arts classes (American Libraries Magazine, 2005). It was not passed. In 2007, 2009, 2011, 2014, 2015, and 2016, proposals for a Parental Rights Amendment, recognizing parents as the primary authority in their child’s education, have come before Congress. The most recent bill, S.J. Res. 36, introduced in June 2016, The most recent bill, S.J. Res. 36, introduced in June 2016, was not enacted while the 114th Congress was in session (GovTrack, 2017).

II. Censorship: Prosecuting teachers for using “pornographic” materials

Kansas SB 56 was introduced January 22, 2015 in the Kansas state senate, and proposed removing barriers to prosecution of public, private, and parochial school teachers whose teaching materials are deemed “pornographic” (Lowry, 2015).

Background

Republican state Sen. Mary Pilcher-Cook introduced the bill after a middle school parent complained about a sex education poster with the topic: “How do people express their sexual feelings?” The poster suggested oral and anal sex and intimate touching in response to the question (Ulin, 2005).

The bill

The bill “amends the state’s existing public morals law by striking an exemption that protects teachers from prosecution for exposing students to ‘harmful material’” (Ulin, 2005).

Justifications for the bill

The supporters of the bill do not want children exposed

to pornography (Lowry, 2015). Rep. Joseph Scapa was concerned that books assigned to students, such as novels by Nobel Prize-winning author Toni Morrison, fit the definition of being “pornographic” (Ulin, 2005). “Sen. Forrest Knox ... said that in society, it’s illegal for a person to show children pornography and that parents should be able to expect that same protection when kids are at school” (Lowry, 2015).

Objections to the bill

Those who oppose the bill are afraid that the broad and ill-defined label of “pornography” might be applied to “many legitimate areas of study” (American Libraries Magazine, 2015). They claimed that teachers could be at risk for teaching standard “controversial works of literature or human biology.” Teachers also question who would make the determination on which works would be considered “pornography” (Lowry, 2015).

Resolution

The bill passed the Senate, but died in the House Committee on Judiciary (2015–2016 Kansas Legislative Sessions, 2016).

III. Censorship: Banning gay-themed children’s books in public libraries

In 2005, Alabama State Rep. Gerald Allen introduced HB 30, designed to prevent any public institution, including public, school, and university libraries, from purchasing any new books by or about LGBTQ individuals (American Libraries Magazine, 2005, Feb. 4). While the law initially included colleges and universities, it was later amended to only cover school and public libraries (Holguin, 2005).

Background

Allen found many books promoting what he called the “homosexual agenda,” and claimed, “It’s not healthy for America, it doesn’t fit what we stand for” (Holguin, 2005).

The bill

HB30 would make it a Class A misdemeanor to purchase, produce, or promote “printed or electronic materials or activities that sanction, recognize, foster, or promote a lifestyle or actions prohibited by the sodomy and sexual misconduct laws of the state” (American Libraries Mag-

azine, 2005, Feb. 4). The bill would prohibit “the use of public funds for the purchase of textbooks or library materials that recognize or promote homosexuality as an acceptable lifestyle” (Sexuality Information and Education Council of the United States [SEICUS], 2005).

Justifications for the bill

Allen claims the bill is about “protecting the hearts and souls and minds of our children” (Holguin, 2005). He does not think it’s appropriate for public institutions serving children to have any materials that suggest “homosexuality is natural” (American Libraries Magazine, 2005, Feb. 4).

Objections to the bill

Opponents call the bill censorship and say it infringes on First Amendment rights. Librarian Donna Schrems explained, “...the idea that we would have a pristine collection that represents one political view, one religious view ... that’s not a library.” Mark Potok of the Southern Poverty Law Center compared the idea to Nazi book burning (Holguin, 2005).

Resolution

There were not enough state legislators present when the bill came up for a vote, so the bill automatically died (Holguin, 2005).

Similar case

In 2006, H.B. 2158 in Oklahoma, introduced by Oklahoma State Rep. Sally Kern, proposed that state library funding of public libraries be limited to those with no books in the kids’ or teen sections promoting gay relationships; such books would be required to be kept in a separate collection accessible only to adults. The review board convened to determine what is “unacceptable” would not include any public librarians (American Library Association, 2006).

Conclusion

These cases are by no means the only legal battles between libraries and politicians. Funding formulas for public libraries regularly appear on legislative agendas. Schools have to advocate to municipal councils and state legislatures to keep school librarians. Library gun policies frequently run afoul of state open-carry and con-

cealed-carry legislation.

However, the cases described in this report demonstrate a disturbing tendency among lawmakers to believe that they have the right to create laws specifically designed to circumvent library policies and procedures; such laws also infringe on First Amendment rights that protect access to information and ideas. These governing bodies would seek to ignore the established library budgetary process in order to dictate line-item spending decisions, would try to preempt a standard cataloging practice by labeling it “partisan,” and would bypass existing book challenge procedures by passing laws against specific books or entire categories of books.

In order to be a nonpartisan source for books and information, libraries must be able to continue to operate independently of partisan politics and must be allowed to follow established library best practices in budgeting, cataloging, collection development, and book challenge procedures. This is an obligation as a public institution charged with providing an unbiased, balanced offering of information and materials. This is a right endowed by the First Amendment that guarantees freedom of speech. And this is an established tradition of libraries as the last, best champions of intellectual freedom.

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