



Written testimony against House Bill 710  
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Respected Mr. Chair and Senate State Affairs Committee Members,

The ACLU of Idaho **opposes HB 710** because:

1. The protection of minors that HB 710 seeks to create already exists in current state statute,
2. HB 710 requires unconstitutional viewpoint censorship,
3. HB 710 applies three unacceptably vague standards, and
4. HB 710's private cause of action enforcement mechanism, turning over enforcement with vague standards to the public, is a recipe for incoherence and ceaseless litigation.

HB 710 is a **solution looking for a problem**:

- Distribution of "material harmful to minors" is already banned by Idaho Code § 18-1515 (making it a misdemeanor to distribute "material harmful to minors"). What HB 710 bans is already illegal under Idaho code.
- Schools and libraries already have locally developed complaint and review procedures to carefully consider objections raised by community members about materials included in their collections.

HB 710 creates **viewpoint censorship**:

- The First Amendment protects the right to receive and share information and ideas. This holds true in schools and especially in libraries, which exist to enable people to encounter and explore different ideas, topics, and viewpoints.
- The books on library shelves don't necessarily reflect the views of a particular library or school district—they offer access to the entire spectrum of human knowledge, art, and ideas. Through the library shelves, young adults can explore ideas and learn to think for themselves.
- We all, including young adults and kids, have a right to read about the spectrum of human knowledge, including knowledge about sexuality, free from viewpoint-based censorship.
- With respect, the Legislature shouldn't attempt to suppress the right to read free from viewpoint censorship by creating "adult only," identity-document checked zones within public libraries for material that contains any reference to homosexuality, nudity or sex.

- Caging stories, pictures or performances that include references to homosexuality, sex or nudity behind an identity-document checkpoint for age removes thoughts about how to make sense of relationships, feelings and sex from individuals who want to learn about them. Having a government organization checking and tracking identities of people looking at materials will discourage youth from accessing materials that are not illegal under Idaho statute for them to see.

HB 710's restatement of the **Miller test is unacceptably vague for libraries or the public to understand what material must be age-restricted.**

HB 710 expands the enforcement of existing Idaho statute, and restates the United States Supreme Court Miller test. The Miller test was developed through a series of Supreme Court cases, each providing definitions and context to standards laid out in a few phrases. The Miller test phrases without the hundreds of pages of Supreme Court analysis and context are not straightforward, and can be interpreted in many ways by members of library communities.

- All three standards for what constitutes "harmful to children" listed in the existing Idaho statute that HB 710 expands, are vague, overbroad, and reference values that are different among the many people that live in any given Idaho community. First, what "appeals to the prurient interests of minors" is defined by "contemporary community standards." Second, What is "offensive" is defined by "prevailing standards in the adult community." Third, the exceptions to both prohibitions is defined as "matter which, when considered as a whole, and in context in which it is used, possesses serious literary, artistic, political or scientific value for minors."
- What are "community standards?" No geographic community has a single mind or single set of values. "Community standards" are ethereal, shared by an unspecified number of people in an unspecified place. There are likely nearly as many interpretations of prurient, offensive and literary / artistic / political / scientific value, as there are individual people in any given community in Idaho.

HB 710's **private cause of action** enforcement mechanism, turning over enforcement with **vague standards** to the public, is a **recipe for incoherence and ceaseless litigation.**

- HB 710's private cause of action, hands interpretation of vague standards to every member of a school or library's community. Every Idaho library and school will have to respond to and try to anticipate and accommodate opposing beliefs among and between their community members.
- Where there is no singular value held by all the public, it is impossible for a library or school to build coherent and consistent practices, as they will have to comply with widely different interpretations of the same statute from constituents with a wide spectrum of different perspectives.
- Libraries will be tied up on ceaseless litigation on what does and does not constitute harmful material.

In conclusion, the ACLU of Idaho strongly opposes the passage out of committee of HB 710, and any substantially similar bill. Idaho youths' constitutionally protected free speech should not be curtailed when youths' safety is already protected by existing law and practice.

Respectfully submitted,

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