

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, February 12, 2024

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Guthrie, Vice Chairman Bernt, Senators Winder, Anthon, Harris, Lee, Toews, Wintrow, and Ruchti

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Guthrie** called the meeting of the Senate State Affairs Committee (Committee) to order at 8:00 a.m.

WELCOME: **Chairman Guthrie** welcomed all to the Committee meeting.

MINUTES APPROVAL: **Senator Lee** moved to approve the minutes of February 2, 2024. **Senator Bernt** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Anthon** moved to approve the minutes of February 5, 2024. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

RS 31273 **Relating to Parental Rights.** **Senator Anthon** stated that **RS 31273** related to the Idaho Parental Rights Act, Idaho Code Ann. §§ 32-1010 through 32-1014. It clarified the rights of parents to obtain the medical records of their children.

MOTION: **Senator Winder** moved to send **RS 31273** to print. **Senator Toews** seconded the motion. The motion carried by **voice vote**.

S 1289 **PUBLIC LIBRARIES - Adds to existing law to establish standards for library materials and to establish procedures for the review and removal of materials, procedures for appeals, and penalties for violations.** **Senator Schroeder** stated **S 1289** required public schools and community libraries to take reasonable steps in restricting children's access to obscene or harmful material. Harmful material is defined in Idaho Code § 18-1514, which incorporated the Miller Test.

He remarked that a material review committee was established which contained no less than three persons, at least one of which was a parent of a minor child. He added that a form was used that referred to the statutory definition of material harmful to minors. Finally, an orderly process was required that determined if the material in question met the definition of material harmful to minors per the Miller Test.

He stated that **S 1289** established the formal process of a hearing and a reasoned, written decision. Materials deemed harmful would be segregated to an adult section of the library.

He remarked that if a library patron believed that the standards were not applied, judicial review of the decision was allowed. He stated that if the review committee ordered materials to be moved, but the library failed to remove the book, then the library patron could seek a private right of action to have it enforced. A county prosecutor could seek conjunctive relief.

Representative Crane, co-sponsor of **S 1289**, added that **S 1289** addressed two concerns from H 314 from 2023. He stated that there would be no frivolous lawsuits, and no library would go bankrupt. The form defined by the process required that specific book concerns referenced Idaho Code § 18-1514. He remarked that damages were lowered from \$2500 to \$250.

DISCUSSION:

Senator Toews asked why **S 1289** used the reasonable adult standard, while a recent case in Illinois used the reasonable person standard. He asked if this needed to be updated. **Senator Schroeder** responded that the Illinois case addressed adults selling adult material to adults. It did not apply to this case. He stated that a more recent case, Ginsburg, related to minors. **Senator Toews** asked what language was used in the Ginsburg decision, and was it applied in **S 1289**. **Senator Schroeder** replied yes, the prevailing language was used in **S 1289**.

Senator Toews asked why language in section A of the code was used, but section B was excluded. **Senator Schroeder** replied that section B went too far, and would allow the State to mandate more restrictive language than that allowed by Ginsburg. **Senator Toews** asked if the legislation went outside of the current definition of what was harmful to minors. **Senator Schroeder** replied that a library must segregate materials that fell under the section A definitions.

Senator Harris asked if libraries currently had policies in place to challenge materials. **Senator Schroeder** replied that yes, most libraries had these policies.

Senator Bernt stated that legislators had received emails regarding censorship and book burning. How would Senator Schroeder reply to that concern? **Senator Schroeder** replied **S 1289** did not ban books; rather, the process asked if books were harmful to minors. He replied that materials were moved to another section of the library. There was a specific statute used to determine if the books were harmful to minors. **Senator Bernt** asked if someone could file a private right of action before judicial review. **Senator Schroeder** stated that judicial review was intended to see if the decision was developed through the exercise of reason. Judicial review was not necessary.

Senator Wintrow stated that she researched the number of complaints received. According to the Idaho Library Association, in 2022 there were 32 challenges to 67 titles. In 2021 there were 3 challenges. She asked what the implications were for the size of the library for staffing and costs. **Senator Schroeder** stated that the implications were minimal. The library complied by taking reasonable steps to prevent access.

Senator Wintrow asked why both public and school libraries were covered by the same legislation. **Senator Schroeder** remarked that school libraries were included because there were continued reports of harmful materials. Idaho Code § 33-6001 allowed parents to restrict access for their own students.

Senator Lee asked to clarify if colleges were not included in this legislation. There were dual credit students using these libraries. **Senator Schroeder** replied that **S 1289** applied to school districts providing education from kindergarten through grade 12. **Senator Lee** stated that universities and colleges were publicly accessible, so she wanted to ensure they were not included. **Senator Schroeder** stated that colleges were not included.

Chairman Guthrie stated that there were people who registered to testify. Written testimony was provided online and in Committee and was appended to these minutes.

- TESTIMONY:** **Robert Wright**, Idaho Falls Public Library, testified in opposition to **S 1289**. He stated that he received 23 challenges in 2023. All but 2 of the challenged titles were in the adult section of the library. He remarked that he preferred a process that enabled the library to move the book without a public hearing. He stated that **S1260** required a public hearing. He wanted this requirement removed. He also preferred removing the option of the private right of action.
- DISCUSSION:** **Senator Winder** thanked Mr. Wright for recognizing that books could be placed in the wrong area of the library. **Senator Wintrow** asked what books were challenged. **Mr. Wright** remarked that two challenged books related to minority holidays. He stated that those who brought the challenge believed the books were un-American. He stated that he believed everyone on both sides of the issue was trying to do the best they could for children. **Senator Winder** asked if the two challenged titles would fall under **S 1289**. Mr. Wright clarified that they did not.
- TESTIMONY:** **Jenny Emery Davidson** testified in opposition to **S 1289**. She represented herself. She stated she had worked at a library for 10 years. She remarked that **S 1289** presented implementation challenges, especially for small libraries. She stated that her biggest concern was dissecting the problem the legislation was trying to solve. She remarked that the problems experienced at her library resulted from a small number of people that labeled a few books pornographic because they contained homosexual characters or people of color. People had the freedom to choose what they read or what was permitted for their own children. She asked the Committee not to legitimize censorship.
- DISCUSSION:** **Senator Wintrow** asked what challenges Ms. Davidson's library had received and how those challenges had been addressed. **Ms. Davidson** replied that she had received no formal requests for reconsideration of titles. She remarked that she had conversations with people to discuss what they read, and issues were resolved at that level.
- TESTIMONY:** **Sarah Bettwieser**, contract lobbyist, Idaho Library Association (ILA), stated that she was neutral on **S 1289**. She remarked that libraries were the front line for vulnerable populations and served all citizens. She remarked that **S 1289** was not necessary. Libraries had policies in place driven by community elected or appointed boards. The ILA had been included as stakeholders in the crafting of the legislation.
- DISCUSSION:** **Senator Lee** asked if anything in **S 1289** prohibited conversation without beginning a formal process. **Ms. Bettwieser** responded that conversations were not prohibited.
- TESTIMONY:** **Jeff Kohler**, testified in opposition to **S 1289**. He served as a trustee on the Meridian Library District (District), but was speaking for himself. He remarked he had concerns about the implementation of **S 1289**. He stated that book review meetings had been vitriolic. He stated that meetings had been politically charged and doubted that volunteers would be willing to become involved. **S 1289** created a legal minefield for library boards. Legal review was already part of the District's process. Adding in an additional review committee complicated the process.
- DISCUSSION:** **Senator Wintrow** stated that this had become a big issue only in recent years, and inquired if people understood and were using the review processes currently in place. **Mr. Kohler** responded that he had been a trustee for 5 years, and the recent focus arose due to groups of people targeting libraries to further their agenda.

- TESTIMONY:** **Heather Stout, Isabella Burgess, Bonnie Shuster, and Martha Williams** testified in opposition to **S 1289**. The overall themes were that the legislation was unnecessary. Access to materials should not be limited. The language of **S 1289** was vague. There was a financial burden on libraries to implement **S 1289**. The legislation led to lawsuits and censorship. Parental responsibility was important to prevent access to harmful materials. More community action and dialog was needed.
- DISCUSSION:** **Senator Wintrow** asked Ms. Williams to share conversations and issues that arose in her library and how they were resolved. **Ms. Williams** replied that many conversations were grounded in misinformation. She stated that the conversations were informative and led to better understanding.
- TESTIMONY:** **Paige Beach, Dorajo Messerly, Mary Ruckh, Destinie Hart, Mike Wade, Kayla Dodson, Marsha Braavo, and Rebecca Proctor** testified in opposition to **S 1289**. The overall themes were that the legislation was unnecessary. It had a significant financial impact to small libraries. Book availability was a local, community issue. The private right of action and penalty components should be removed from **S 1289**. The definitions in the bill were unclear. **S 1289** was an example of government overreach. Parents should monitor their own children's library choices.
- DISCUSSION:** **Senator Wintrow** asked Ms. Proctor what she saw as harmful in these types of policies. **Ms. Proctor** responded that children had different needs. Some children needed to address tough issues that may be inappropriate for other children.
- TESTIMONY:** **Grace Howat**, Policy Assistant, Idaho Family Policy Center (Center), provided a handout to the Committee (Attachment 2). She was concerned with how **S 1289** would function in practice. She remarked she was also concerned about constitutionality. She stated that the Center would support the legislation if the reasonable person standard, and not community standards, was applied to define material harmful to minors. In addition, she recommended removal of the language requiring a parent to obtain permission from the school or library board before they could seek legal remedies.
- Kathy Griesmyer**, Government Affairs Director, City of Boise (City), stated that libraries must remain open and accessible. Libraries were lead by professional and dedicated staff. She remarked that **S 1289** was unnecessary because local policies were in place and working. These policies were crafted with local guidance and community input. The City supported the use of the Miller test in determining materials harmful to minors. The test could be incorporated into existing policies. She remarked that the City was concerned with the inclusion of the word homosexuality and the definition of sexual conduct. She stated that the City was concerned with censorship of the LGBTQ community. She remarked that more definition was necessary.
- DISCUSSION:** **Senator Wintrow** remarked that in the legislation, sexual conduct was defined, and homosexuality was included in the definition. She asked if Ms. Griesmyer's concern was that the issue of homosexuality had not been deleted from the definition of sexual acts. **Ms. Griesmyer** replied that the City was concerned that the definition referenced homosexuality, and that the LGBTQ community should not be censored as a result.
- TESTIMONY:** **Ron Nate**, President, Idaho Freedom Foundation, stated that he opposed **S 1289** because it created a complicated and arduous process for parents seeking to protect their children from being exposed to pornographic materials in public schools and libraries. He remarked that **S 1289** failed to address the underlying problems by including section 6A, but excluding section 6B. He stated that this made some harmful materials accessible, and required complaints from parents to cause the library to remove the materials. Children must be protected.

DISCUSSION: **Senator Toews** asked if **S 1289** wasn't the solution, then what was. **Mr. Nate** replied that because public school libraries serve only minors, all harmful materials should be removed. He stated that the bill should be changed to address all harmful materials, and libraries should follow the law and protect children.

TESTIMONY: **John Howell, Julianne Donnelly Tzul, Megan Larson, Lynn Oliver, Vickie Fadness, and Jessica Dorr** testified in opposition to **S 1269**. The overall themes were that parents and libraries chose materials wisely. **S 1289** was not cost neutral. The legislation had the potential to harm the LGBTQ community. Policy and statutes were readily available and were implemented based on standards. **S 1289** did not define community standards. The legal risks of **S 1289** were significant. The real source of inappropriate material was the internet and streaming. Libraries provided a wide range of materials that addressed the needs of the communities they served. More definition of the language in the legislation was needed.

DISCUSSION: **Senator Wintrow** stated that she visited the library and asked about a book on sexual education that was requested by one parent and challenged by another. She asked Ms. Dorr if that happened regularly and how was it handled. **Ms. Dorr** stated that the book was about health education and one member of the community had specifically requested it and another member had challenged it as harmful. This demonstrated the challenge **S 1289** posed.

Senator Anthon asked Ms. Dorr what her position was and if she was representing the library. **Ms. Dorr** replied that she was representing herself and took a neutral position on the bill.

TESTIMONY: **Brian Almon** testified in support of **S 1289**. He stated that some materials were obscene and harmful to children. He remarked that these materials should be removed from children's access. He stated that this bill was not about First Amendment rights, rather, it was about protecting children. He recommended a balance of community involvement and public hearings. He believed this bill was a good balance between enforcing a basic statute and community involvement.

Sandra Merz, Karen Hansen, Heidi Smith, Zach Borman, Mary Mossley, Jessie Christiansen, and Mary Anne Saunders, testified in opposition to **S 1289**. The overall themes included the liability the legislation created for libraries, and the potential interference of community control. Some children utilized the library to cope with difficult circumstances. **S 1289** opened the door to harassment of librarians. Real solutions were needed. The legislation was an unnecessary, paternalistic bill. Parents should be encouraged to approach libraries with curiosity and become more involved in the process. **S 1289** should require a public meeting, not a public hearing. Censorship stymied curiosity.

Nick Grove, Director, Meridian Library District, stated that library district candidates overwhelmingly won re-election, even though they faced a petition to dissolve the library district. He remarked that only one request for reconsideration was received in 2023, out of 270,000 total items in the collection. The process worked. He stated that growing up, his refuge was in books. He recommended revision of **S 1289**.

DISCUSSION: **Senator Lee** asked Mr. Grove if the issue went away if **S 1289** was not advanced. **Mr. Grove** replied that it did not. He recommended that the legislators meet with library directors to seek resolution.

Senator Guthrie thanked everyone for their testimony.

DISCUSSION: **Senator Schroeder** thanked those who attended and stated that he understood their passion and love for libraries. He remarked something was necessary, and **S 1289** both protected children and protected libraries. He stated that nothing precluded a library from moving or removing materials on its own. Material harmful to minors was defined in the Miller test. **S 1289** did not threaten library staff with legal issues. Library staff or boards could hold meetings as they deemed necessary. The legislation allowed the library boards to establish a review committee, or serve as the review committee themselves. A public hearing was an orderly process that resulted in a conclusion. The process served to educate the community. Prevailing community standards were utilized.

Senator Bernt asked if the language of "made available and restrict access" was enough if minors could still access the material in the adult section of the library. **Senator Schroeder** replied once the process had found that the material was harmful, it would be moved. A form was required to start the process. The process determined if the material was harmful. Nothing precluded a library from moving the material at the request of a patron.

Senator Bernt asked how a "community standard" was determined. **Senator Schroeder** stated that elected representatives of the board, the review committee, testimony, and parents defined the community standards. **Senator Schroeder** requested that, together, the Committee send **S 1289** to the floor with a do pass recommendation, rather than sending it to the amending order.

MOTION: **Senator Anthon** moved to send **S 1289** to the floor with a **do pass** recommendation. **Senator Harris** seconded the motion.

DISCUSSION: **Chairman Guthrie** asked if there was any discussion on the motion.

Senator Toews remarked that he grew up with a love of books, but a few years ago one of his children brought home a sexually explicit book. He asked that it be placed behind the counter, and it was not. He decided not to attend the library anymore. He never wanted books banned; he wanted them out of reach. He was concerned that virtually everyone opposed **S 1289**. One side said it took things too far. The other side stated that it did not take things far enough. He did not support the legislation.

Senator Anthon stated that this was a complex issue, and it was hard to settle on a yes or no vote. Idaho Code § 18-15 stated that the following should be kept away from children: nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that appeals to the prurient interests of a minor as judged by the average person applying our community standards, and as judged patently offensive to the prevailing standards of the adult community. He remarked that it did not apply to material that contained serious literary, artistic, political, or scientific value for minors, according to prevailing standards of the adult community with respect to what is suitable for minors. He stated that the language is clear and specific. He remarked that based on this language, he believed these materials should never be made available to children.

Senator Ruchti remarked that he viewed the debate differently. He stated that the system in place worked well already. Library boards had a process in place. He remarked that we were a pluralistic society. People of different ideologies, religions, cultures, and classes worked together to influence the governing process. This described libraries because many people come together to use libraries. He remarked that libraries were capable of solving problems as they arose. Parents had the right to prevent access to materials for their children, but not to prevent others from accessing those materials. He stated that people could use the existing systems and processes to raise their concerns. He stated that he did not support **S**

1289.

Senator Wintrow underscored Senator Ruchti's comments. She believed that the problem was going away. Last year there were 15 recorded complaints for 137 titles. Sixteen of those were repeat complaints by a small group. The previous year had 32 complaints. She remarked that we should support our libraries. She remarked that 95 percent of libraries had processes to address complaints. She had looked in the libraries and did not see pornography. She was concerned that some people would not understand the Miller test, yet the process would be put in place even if it was not required. She highlighted a long history of community standards that have proved wrong, such as racism. She remarked that Constitutional principles do exist, and this is what decisions should be based on. She was satisfied that this problem had been solved. She remarked that there was a need to protect all children, and some needed education regarding their sexuality. She did not support **S 1289**.

Senator Winder thanked the librarians who testified and the Association of Librarians who were involved in discussions regarding S 1289. He remarked that he did not believe there was a problem until he saw a book that a third grader had brought home from school. He believed the book was inappropriate. He stated that three years ago the legislature introduced a bill that was punitive. **S 1289** included due process and had a system that would work. Age appropriate materials were defined. The issue was real, and laws were made to protect the minority position. The Committee listened to libraries and the community. He stated that this legislation was reasonable and utilized due process.

Senator Bernt thanked all who testified. He remarked that parental control was the most important safeguard in libraries. His family supported the library. He remarked that he was concerned with the private right of action portion of **S 1289**. He stated that it caused more problems than it solved. He supported the bill and looked forward to further debate.

**ROLL CALL
VOTE:**

Chairman Guthrie called for a roll call vote. **Senators Winder, Anthon, Harris, Lee, Bernt, and Guthrie** voted aye. **Senators Toews, Wintrow, and Ruchti** voted nay. The motion carried.

ADJOURNED:

There being no further business at this time, **Chairman Guthrie** adjourned the meeting at 10:41 a.m.

Senator Guthrie
Chair

Peggy Caraway
Secretary