

Written testimony against House Bill 384
Submitted to the House State Affairs Committee
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Respected Mr. Chair and House State Affairs Committee Members,

The ACLU of Idaho **opposes HB 384** because:

1. The protection of minors that HB 384 seeks to create already exists in current state statute,
2. HB 384 requires unconstitutional viewpoint censorship,
3. HB 384 applies three unacceptably vague standards, and
4. HB 384'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 384 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 384 bans is already illegal under Idaho code.
- Schools and libraries already have complaint and review procedures to carefully consider objections raised by community members about materials included in their collections.

HB 384 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 nudity or sex.
- Caging stories, pictures or performances that include references to 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 kids and youth from accessing materials that are not illegal under Idaho statute for them to see.

HB 384 expands the enforcement of existing statute, which is itself **unacceptably vague in three key standards**, risking significant infringement on our freedom of speech enshrined in the constitution.

- All three standards for what constitutes “harmful to children” listed in the existing Idaho statute that HB 384 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.”
- For all three standards, neither HB 384 nor the statute it expands, offer any definition of “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 384’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 384’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 384, 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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