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TESTIMONY: Document 5269
BEFORE THE HOUSE REGULATIONS AND ADMINISTRATIVE PROCEDURES COMMITTEE

April 10, 2024

I am Dr. Janelle Rivers, representing the League of Women Voters of South Carolina. I am a retired educator and administrator with four grandchildren who attend South Carolina public schools. Although most of my career was spent overseeing assessment programs, accountability reporting, and program evaluation, I also have certification and experience in secondary school guidance and elementary education.

I am concerned that the prohibitions in Document 5269 related to sexual content are overly broad. The current draft regulations state:

Instructional Material is not “Age and Developmentally Appropriate” for any age or age group of children if it includes descriptions or visual depictions of “sexual conduct,” as that term is defined by Section 16-15-305(C)(1).

This broad definition of sexual content would eliminate virtually all instructional materials that reference sexual intercourse or sexual activity. I will reference two relevant sections of the statute, which are copied at the end of my written testimony for your convenience.

Applying the referenced definition of “sexual conduct” as a criterion for prohibition of instructional materials and library resources may be appropriate for very young students, but it is not appropriate for middle and high school students. The definition in the current draft regulation would remove access to many works of literature that have long been considered classics, including the Bible (e.g., Ezekiel 23:1-49 and Song of Solomon 7:2-10).

A viable solution could be substituting Section 15-16-305(B)(1) of the South Carolina Code of Laws, which immediately precedes the section referenced in the current draft, as the criterion for prohibiting material in middle schools and high schools. That change would prohibit any material that is “obscene” under a definition that already exists in South Carolina law.

Without that revision, Document 5269 would virtually eliminate secular sex education from public schools, leading to ignorance that can have life-altering consequences for young people. Withholding information about human relationships and the biological processes of reproduction will lead to uninformed or misinformed students and eventually to increased teen pregnancies.

Students deserve access to accurate information about how their bodies function. They deserve access to literature that can help them understand themselves and the importance of managing sexual feelings responsibly. Sexuality is an important part of human experience. As such, it should not be a completely prohibited topic for literature that is accessible to middle and high school students. Responsible descriptions or depictions of human sexual conduct are appropriate for inclusion in materials used for instruction in health education, biology, and psychology, as well as in materials selected as examples of literature for high school students and even in some materials for middle school students.

Over thirty years ago, I worked in a middle school counseling program in a rural county in South Carolina where we had eighth graders who were sexually active. Today's curious youth have much more access to information about sex through electronic sources than they did thirty years ago. Parents cannot reliably shield students from all references to sexual conduct. Young people will find and share information, as well as misinformation.

The recent and dramatic increase in complaints about inappropriate instructional materials and access to library books has been associated with extremist political interest groups (Baeta, 2024, Friedman, 2022; Pendharkar, 2022). Years of casual criticism of teachers, administrators, and public schools have damaged the reputation of the education profession. As a result, most of today's brightest and most capable college and university students are unwilling to enter the profession. The staffing shortage has become critical, as South Carolina schools began the current academic year with over 1,600 vacant teaching positions—more than in any previous year (CERRA, 2023).

The General Assembly can support educators by altering the proposed process to allow reasonable access to a broad range of materials about reproduction and responsible human relationships. We urge you to revise the regulation to allow appropriate references to sexual content while prohibiting materials that qualify as “obscene” under current state law.

Baeta, S., & Meehan, K. (2024). *Spineless Shelves*. Retrieved January 2024, from PEN America:
<https://pen.org/spineless-shelves/>

CERRA. (2023). *2023-24 Educator Supply and Demand Report*. Retrieved January 2024, from Center for Educator Recruitment, Retention, & Advancement: <https://www.cerra.org/supply-and-demand.html>

Friedman, J., & Johnson, N.F. (2022, September 19). *Banned in the USA: The growing movement to censor books in schools*. Retrieved January 2024, from PEN America:
<https://pen.org/report/banned-usa-growing-movement-to-censor-books-in-schools/>

Pendharkar, E. (2022, September 19, updated 28). Who's behind the escalating push to ban books? A new report has answers. *Education Week*.

South Carolina Code of Laws, Title 15 Section 16, provided as an Appendix to this document.

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APPENDIX:

Obscenity, Material Harmful to Minors, Child Exploitation, and Child Prostitution

SECTION 16-15-305. Disseminating, procuring or promoting obscenity unlawful; definitions; penalties; obscene material designated contraband.

(A) It is unlawful for any person knowingly to disseminate obscenity. A person disseminates obscenity within the meaning of this article if he:

(1) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, digital electronic file, or other representation or description of the obscene;

(2) presents or directs an obscene play, dance, or other performance, or participates directly in that portion thereof which makes it obscene;

(3) publishes, exhibits, or otherwise makes available anything obscene to any group or individual; or

(4) exhibits, presents, rents, sells, delivers, or provides; or offers or agrees to exhibit, present, rent, or to provide: any motion picture, film, filmstrip, or projection slide, or sound recording, sound tape, or sound track, video tapes and recordings, or any matter or material of whatever form which is a representation, description, performance, or publication of the obscene.

(B) For purposes of this article any material is obscene if:

(1) to the average person applying contemporary community standards, the material depicts or describes in a patently offensive way sexual conduct specifically defined by subsection (C) of this section;

(2) the average person applying contemporary community standards relating to the depiction or description of sexual conduct would find that the material taken as a whole appeals to the prurient interest in sex;

(3) to a reasonable person, the material taken as a whole lacks serious literary, artistic, political, or scientific value; and

(4) the material as used is not otherwise protected or privileged under the Constitutions of the United States or of this State.

(C) As used in this article:

(1) "sexual conduct" means:

(a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted, whether between human beings, animals, or a combination thereof;

(b) masturbation, excretory functions, or lewd exhibition, actual or simulated, of the genitals, pubic hair, anus, vulva, or female breast nipples including male or female genitals in a state of sexual stimulation or arousal or covered male genitals in a discernably turgid state;

(c) an act or condition that depicts actual or simulated bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;

(d) an act or condition that depicts actual or simulated touching, caressing, or fondling of, or other similar physical contact with, the covered or exposed genitals, pubic or anal regions, or female breast nipple, whether alone or between humans, animals, or a human and an animal, of the same or opposite sex, in an act of actual or apparent sexual stimulation or gratification; or

(e) an act or condition that depicts the insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

(2) "patently offensive" means obviously and clearly disagreeable, objectionable, repugnant, displeasing, distasteful, or obnoxious to contemporary standards of decency and propriety within the community.

(3) "prurient interest" means a shameful or morbid interest in nudity, sex, or excretion and is reflective of an arousal of lewd and lascivious desires and thoughts.

(4) "person" means any individual, corporation, partnership, association, firm, club, or other legal or commercial entity.

(5) "knowingly" means having general knowledge of the content of the subject material or performance, or failing after reasonable opportunity to exercise reasonable inspection which would have disclosed the character of the material or performance.

(D) Obscenity must be judged with reference to ordinary adults except that it must be judged with reference to children or other especially susceptible audiences or clearly defined deviant sexual groups if it appears from the character of the material or the circumstances of its dissemination to be especially for or directed to children or such audiences or groups.

(E) As used in this article, "community standards" used in determining prurient appeal and patent offensiveness are the standards of the area from which the jury is drawn.

(F) It is unlawful for any person knowingly to create, buy, procure, or process obscene material with the purpose and intent of disseminating it.

(G) It is unlawful for a person to advertise or otherwise promote the sale of material represented or held out by them as obscene.

(H) A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars, or both.

(I) Obscene material disseminated, procured, or promoted in violation of this section is contraband and may be seized by appropriate law enforcement authorities.

HISTORY: 1987 Act No. 168 Section 3; 1995 Act No. 7, Part I Section 13; 2001 Act No. 81, Section 7.