

# Strengthening the Right to Read through Civil Rights Protections

Connections Summit 2023  
SirsiDynix

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# About EveryLibrary and the EveryLibrary Institute

Recent book ban, censorship, and anti-access related activities:

- Fight for the First, an organizing and activism platform to oppose book bans in schools and public libraries.
  - 54 local campaigns to oppose censorship and support librarians
  - Dozens of local library Alliances and Education Coalitions
  - 5 statewide partnerships like FFTR and NJASL Rapid Response
- National parent perceptions surveys with Book Riot, plus other voter-facing polling.
- Assistance for numerous state library associations opposing anti-access and criminalization bills.
- Unique policy papers and technical assistance on state obscenity statutes for libraries, education, and museums.
- Publishing a new issue of The Political Librarian focused on access, censorship, and policy.

# Observations from the Field



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# Legitimate Materials Challenges

The right to challenge materials in libraries is rooted in our Constitutional framework. The Right to Petition guaranteed by the First Amendment.

Any petition or challenge process must respect the legitimacy of the petitioner's intent and respect their due process rights.

Unfortunately, in our experience we are seeing many challenges and petitions originate from less than sincere intents.

When a petitioner neither respects the outcome of the challenge nor participates in the policy framework which is designed to protect minority opinions and due process, the petition is a political action.

# Five Vectors Aligning Around Book Bans, Censorship, and Anti-Access

- Base-Building Political Movements
- Anti-People (LGBTQ , BiPOC)
- Anti-Tax and Anti-Government
- Anti-Public Education and Anti-Union
- Spiritual Warfare or Moral Panic

Dr. Magnusson's Book Ban Database:  
[https://www.everylibraryinstitute.org/  
/book\\_censorship\\_database\\_magnus  
son](https://www.everylibraryinstitute.org/book_censorship_database_magnusson)

## Also Focused Through Legislation

- Legislation allowing for civil and criminal penalties against librarians, educators, board members, and publishers.
- Legislative limits or bans on discussing or teaching certain topics.
- Legislation that pre-empts challenge policies.
- Efforts to reduce or eliminate state aid or budgets for state library agencies.
- Legislation that redefines obscene or harmful; moves definitions from criminal code to administrative code.
- State-based book ratings systems.

# The Fight Over Appropriate or Inappropriate

DEI initiatives in libraries are based in voluntary ethical frameworks and therefore look like opinions.

The word “inappropriate” is coupled with “obscene” in order to allege that the book is somehow criminal.

We are losing battles when would-be banners and censors frame the book as inappropriate.

Any appeal to librarians simply knowing what is appropriate because we are professionals is a weak argument.

# The Five Freedoms are in Conflict



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# Five Freedoms of the First Amendment

- Freedom of Speech
- Freedom of Religion
- Freedom of the Press
- Freedom of Assembly
- Right to Petition the Government for Redress

How do we resolve the conflicts within the First Amendment?

# State Attempts to Safeguard the Right to Read

- Illinois – [HB2789](#) (2023) “Provides that, in order to be eligible for State grants, a public library or library system shall develop a written policy prohibiting the practice of banning books within the public library or library system.”
- Connecticut – [SB2](#) (2023) “Allows a municipality to designate its principal public library as a “sanctuary public library” and makes these libraries eligible to receive certain state library grants.”
- Rhode Island – [H6066](#) (2023) Amends the state penal code to bring it into closer alignment with the Miller Test, which is Supreme Court approved First Amendment doctrine.

# The First Amendment and Collection Development

The First Amendment is not a collection development rubric. The First Amendment validates as a collection retention rubric. The question “is an item obscene” is germane to collection development. However, if the only reason to collect an item is because it is not illegal, then we have Constitutionalized collection development to an absurd point.

Miller Test guidelines for a jury or judge, a finder of fact, to determine if an item is obscene:

- (1) whether the average person applying contemporary community standards would find the work, taken as a whole, appeals to the prurient interest;
- (2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- (3) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

Why Do We Bring the Book into the Library in the First Place?



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# Lessons from K-12: *In Loco Parentis*

From K-12: There are three reasons to bring a book into a **school** setting: relevance to the standards, relevance to the curriculum, or relevance to the unique role of a school library (e.g. health and sex ed, AP and IB classes, art, history and social studies).

Define the **Relevance** of a title as a universal within the standards, curriculum, or school library frameworks?

Define “Appropriate” and “Inappropriate” as particular to a family’s choice.

Is there a model for collection development policies that points to an affirmative rights framework in Public Libraries?

# Equal Protection Under the 14<sup>th</sup> Amendment

Is there a rights-affirmative pathway to collection development?

- Title II of the 1964 Civil Rights Act prohibits discrimination based on race, color, religion, and national origin in places of public accommodation.
- Title VI of the 1964 Civil Rights Act prohibits discrimination based on race, color, and national origin by programs that receive federal financial assistance.
- Title VII of the 1964 Civil Rights Act prohibits discrimination based on race, color, national origin, sex, and religion by state and local government employers.

# State Statutes about Civil Rights and Anti-Discrimination

## **“Public accommodations”**

An owner or operator of a place of public accommodation or an agent or employee of such owner or operator shall not, because of the race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity of any person, refuse, withhold from, or deny to that person any of the accommodations, advantages, facilities, and privileges of the place of public accommodation.

## **“Unlawful employment practice”**

It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental condition.

# For Consideration – “Libraries for All Act”

Place anti-discrimination firmly in library law.

- 1) Affirm that your state constitution’s free speech protections and the First Amendment are operative in public libraries;
- 2) Add “public libraries” to the definition of Places of Public Accommodation in state civil rights law;
- 3) Add a new responsibility in state law that library boards write collection development, display, programming, meeting room use, and other relevant policies in compliance with both the First Amendment and state civil rights protections. Include specific requirements about Equal Employment and harassment-free workplaces.

Can we use this approach to ensure that everyone has access to the full benefits of the library?



# Constitutional Librarianship

Model Legislation Available

“Libraries for All Act” on [EveryLibraryInstitute.org](http://EveryLibraryInstitute.org)



Thank You



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