FIRE
Foundation for Individual Rights and Expression

September 2, 2025

School Board of Broward County
600 S.E. Third Avenue, FL 10
Fort Lauderdale, FL 33301-3125

Sent via U.S. Mail and Electronic Mail (schoolboard@browardschools.com)

Dear Board Members,

The Foundation for Individual Rights and Expression (FIRE) writes to express concern over the removal of books from school libraries under Florida law HB 1069 and related state guidance. Removing library books based solely on partisan disapproval violates the First Amendment. So too does the removal of books pursuant to vague or overbroad content restrictions. A recent ruling from the U.S. Court for the Middle District Court of Florida, striking down key provisions of HB 1069, affirms these longstanding First Amendment principles. **We urge you to heed this court ruling and your constitutional duty not to censor or remove books from school libraries simply because district or state officials disapprove of their ideas or seek to impose sweeping content restrictions without regard for a work's overall educational value**.

A school library's purpose is to offer a broad selection of books that provide value to the student body. If every title had to appeal to every student, administrator, or politician, the shelves would be empty. In *Board of Education v. Pico*, a Supreme Court plurality explained that removing books from school libraries "directly and sharply implicate[s]" students' First Amendment "right to receive information and ideas."[1] The Court stressed that "students must always remain free to inquire, to study, and to evaluate, to gain new maturity and understanding," and "the school library is the principal locus of such freedom."[2] While districts "possess significant discretion to determine the content of their school libraries," that discretion "may not be exercised in a narrowly partisan or political manner."[3] Instead, schools must follow "established, regular, and facially unbiased procedures for the review of

[1] 457 U.S. 853, 866–67 (1982).
[2] *Id.* at 868–69 (citation omitted).
[3] *Id.* at 870.

controversial materials."[4] Removing books from school libraries with the intent to deny students access to disfavored ideas exposes the district to constitutional liability.[5]

Florida law provides that parents or county residents may object to any material "made available in a school or classroom library" that contains content which "[i]s pornographic or prohibited under s. 847.012" or, as added by HB 1069, "[d]epicts or describes sexual conduct as defined in s. 847.001(19)..."[6] Once an objection is made on either of these grounds, the material must be removed within five school days and "remain unavailable to the students of that school until the objection is resolved."[7] If a school district, after reviewing challenged material through its statutorily required established process, finds it meets the first condition—that is, the material contains content which is "pornographic or prohibited under s. 847.012" (Florida's "harmful to minors" law)—the district "shall discontinue use of the material."[8] If the district finds that the material is not legally obscene/harmful to minors but contains content which "[d]epicts or describes sexual conduct," the district "shall discontinue use of the material for any grade level or age group for which such use is inappropriate or unsuitable."[9]

The provision of HB 1069 requiring the removal of books that contain content that describes sexual conduct—but is not legally obscene—is "overbroad and unconstitutional," as the U.S. District Court for the Middle District of Florida held on August 13, 2025.[10] In his decision, Judge Carlos Mendoza provided examples of classic titles that have been banned in Florida schools such as *The Color Purple*, *On the Road*, and *Slaughterhouse-Five*, and wrote that "none of these books are obscene."[11] Additionally, Judge Mendoza emphasized that "restrictions placed on

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[4] *Id.* at 874.

[5] *See id.* at 871.

[6] Fla. Stat. § 1006.28(2)(a)2.b. Section 847.012 prohibits knowing distribution to a minor on school property of certain materials that are "harmful to minors," which is defined in section 847.001(7) to include materials "depicting nudity, sexual conduct, or sexual excitement when it: (a) Predominantly appeals to a prurient, shameful, or morbid interest; (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and (c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors." Section 847.001(19) defines "sexual conduct" to include acts such as "actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse," but includes no requirement that the material be legally harmful to minors.

[7] Fla. Stat. § 1006.28(2)(a)2.b.

[8] *Id.*

[9] *Id.* Guidance on HB 1069 issued by the Florida State Board of Education in October 2023 incorrectly states that the law categorically bans school libraries from carrying materials that merely contain content that "[d]epicts or describes sexual conduct." Memorandum from Paul O. Burns, Ed.D., Chancellor, Div. of Pub. Schs., Fla. Dep't of Educ., to Fla. Sch. Dist. Superintendents (Oct. 13, 2023), https://info.fldoe.org/docushare/dsweb/Get/Document-10014/DPS-2023-90.pdf. This is not accurate. HB 1069 directs districts to discontinue use of such materials only "for any grade level or age group for which such use is inappropriate or unsuitable." However, as explained below, even as properly construed to require *temporary* removal of such materials pending evaluation, HB 1069 is unconstitutional.

[10] *Penguin Random House LLC v. Gibson*, No. 6:24-cv-1573-CEM-RMN, 2025 U.S. Dist. LEXIS 163022, at *56 (M.D. Fla. Aug. 13, 2025).

[11] *Id.* at *54.

these books are ... unreasonable in light of the purpose of school libraries," which is to provide students with access to a wide array of subjects and viewpoints.[12]

The court's ruling reaffirms that school districts may exclude library books that meet the Supreme Court's definition of obscenity under *Miller v. California*, as adapted for the perspective of minors.[13] This modified version of the obscenity test asks whether the materials "(a) taken as a whole, and under contemporary community standards, appeal to the prurient interest of minors; (b) depict or describe specifically defined sexual conduct in a way that is patently offensive for minors; and (c) taken as a whole, lack serious literary, artistic, political, or scientific value for minors."[14] The Florida statute's reference to materials prohibited under section 847.012 (as "harmful to minors") properly tracks this standard, and the Middle District held that to survive First Amendment scrutiny, the statute's use of the term "pornographic" must be read the same way. While these provisions are constitutional, note that they require evaluation of a work *as a whole*, meaning a school district may not remove a book simply on the basis of a single sexual passage without considering its broader literary or educational value.

Following this ruling, school districts must not enforce HB 1069's unconstitutional provisions or follow state guidance instructing them to do so. Further, in considering whether a book is legally obscene as to minors and thus devoid of First Amendment protection, the U.S. Court of Appeals for the Eleventh Circuit—the decisions of which bind Florida school districts—held that "if a reasonable minor, including a seventeen-year-old, would find serious value, the material is not 'harmful to minors.'"[15] In other words, older minors' access cannot be restricted based on what is permissible for younger minors.

All districts that have removed school library books pursuant to HB 1069's provision targeting material that "describes sexual conduct"—or under the State Board of Education's insupportably broad reading of HB 1069—must return those books to ensure compliance with the First Amendment. The same is true for books removed for purportedly containing "pornographic" content without applying section 847.012's "harmful to minors" standard, which requires consideration of the value of the work as a whole.

In light of the new federal court ruling, we urge the district to follow the First Amendment, as reinforced by the court, and promptly cease enforcing HB 1069's unconstitutional provisions, which have resulted in the unlawful removal of books from Florida school libraries. Denying students the ability to read and study valuable texts both undermines their education and infringes upon their constitutional rights.

Thank you for your attention and consideration to this important issue.

Sincerely,

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[12] *Id.*

[13] *Miller v. California*, 413 U.S. 15, 23-24 (1973).

[14] *Free Speech Coal., Inc. v. Paxton*, 145 S. Ct. 2291, 2304 (2025).

[15] *Am. Booksellers v. Webb*, 919 F.2d 1493, 1504-05 (11th Cir. 1990).

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