

October 16, 2023

Spotsylvania County Public School Board C/O
Chairwoman Lisa Phelps
8020 River Stone Drive
Fredericksburg, VA 22407

Dear Ms. Phelps and Members of the Spotsylvania County Public School Board,



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Richmond, VA 23261
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acluva.org

The American Civil Liberties Union of Virginia (“ACLU-VA”) writes once again to express our concerns regarding the recent “23 Book Challenges” memo circulated by Superintendent Mark Taylor on October 9, 2023 indicating that Spotsylvania County Public Schools (“SCPS”) will ban 23 books from school libraries on October 13, 2023.

This decision and the reasons for the banning of an additional 23 books further demonstrates a gross misunderstanding of Virginia Code section 22.1-16.8 (“the Law”). As explained in a letter originally sent by ACLU-VA on April 20, 2023, and attached hereto, Senate Bill 656, which codified the Law, contained an enactment clause clarifying “[t]hat the provisions of this act shall not be construed as requiring or providing for the censoring of books in public elementary and secondary schools.”¹ The automatic removal of challenged library books from circulation, preventing any student’s access, is censorship that contradicts the Law’s express limitations.

Still, Superintendent Taylor continues to ignore these express limitations and interpret policy and law on his own regard. Even though Superintendent Taylor concedes in the memo that Policy IIA-R “distinction is not clear” regarding whether library books constitute instructional materials, he unilaterally interprets SCPS Board policy to stretch its scope of application to fit a political agenda. The memo also references an outdated definition of “sexual conduct” that still includes “homosexuality”, a term that was struck from Virginia Code section 18.2-390(3) this past legislative session.²

The decision to remove these books from the library further ignores the policies and procedures set out by SCPS Board itself. Policy IIA-R establishes SPCS’s instructional materials criteria selection and challenging process. Criteria and procedure for selecting library

¹ Sexually explicit content, S.B. 656, 2022 General Assembly session, available at <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0100>.

² S.B. 1515, 2023 General Assembly session, available at <https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0811+hil>.



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materials housed in SPCS libraries includes an assessment of a material’s appropriateness of level of instruction,³ importance of the subject matter to student interests and curriculum needs,⁴ and representation of differing points of view on controversial subjects⁵. Should a book be challenged, the policy provides a review committee will review the material in its entirety, consider the material for its strength and value as a whole, as well as whether it contains sexually explicit content.⁶ Yet, the memo undermines Policy IIA-R, stating “the [L]aw’s only concern is whether the material includes sexually explicit content.”

Over the summer, a working group was convened by SCPS Board to handle SCPS’s compliance with the Virginia Department of Education’s model policies on sexually explicit content. That working group developed a proposal that resolved any objections, even under the erroneous construction of the Law preferred by Superintendent Taylor. Their proposal was to shelve only the dust jacket corresponding to a challenged book on the shelf, and provide the actual book only after a student checked it out from a librarian, who would then assess the student’s opt-out status. Shortly after the working group made this proposal, it was disbanded without explanation. The recent letter from Superintendent Taylor once again dismisses this solution without explaining why it is unworkable.

Even worse, the school district’s actions violate the rights of the parents of the students who attend SCPS schools. SCPS provided an opt-in/opt-out form to all parents of SCPS students, asking the following question:

- Yes, I want my child to have access to sexually explicit content in the school libraries, OR
- No, I do not want my child to have access to sexually explicit content in the school libraries.”⁷

Despite the leading nature of the question, and the requirement that parents affirmatively opt in to allowing their children access to content covered by the Law — when in fact the Law only requires that the school district provide a means for parents to opt out – approximately 30 percent of all parents (and approximately 50 percent of all parents of

³ Policy IIA-R(D)(3)(f).

⁴ Policy IIA-R(D)(3)(g).

⁵ Policy IIA-R(D)(3)(l).

⁶ Policy IIA-R(G).

⁷ See Julie Carey and Maggie More, *To use Spotsylvania’s school communication portal, parents must decide kids’ ‘explicit material’ access in libraries*, Washington 4, Aug. 4, 2023,

<https://www.nbcwashington.com/news/local/to-use-spotsyvanias-school-communication-portal-parents-must-decide-kids-explicit-material-access-in-libraries/3398253/>.



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high school students) opted in to allowing their children access to the material. In a press release, the SCPS misleadingly referred to the results of this opt-in/opt-out form as a “survey” of parents, characterizing those who opted out as having “expressed their preference against such access.” This characterization ignores the fact that a parent’s choice for their own child’s access says nothing about their preferences regarding whether other children have access to these books.

By ignoring the many parents who opted into their children’s access to this material and instead removing these books, and by refusing to implement a workable solution to their supposed fears of legal liability, Superintendent Taylor and SCPS betray their real priorities: not to comply with the Law, SCPS Policy IIA-R, or to honor parent’s wishes, but to impose one set of values on the entire student population.

The U.S. Supreme Court has been clear that such removals are the kinds of book bans that violate the First Amendment and that school districts and administrators are liable for engaging in them.⁸ This book ban is the result of a manufactured crisis that began in April 2023 and will only worsen, setting a dangerous precedent whereby one community member may submit challenges to any and all books deemed sexually explicit and such books will be swiftly removed.

We urge the SCPS Board to use its authority under current Policy IIA-R(G)(10) to enter a final disposition returning the 23 challenged books to its libraries, in accordance with the recommendation of the review committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Callahan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Matthew Callahan
Senior Supervising Attorney
American Civil Liberties Union Foundation of Virginia

⁸ *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 102 S. Ct. 2799, 2802 (1982).

ATTACHMENT

April 21, 2023

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C/O Chairwoman Lisa Phelps
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Ms. Phelps and the Members of the Spotsylvania County Public School Board,

The American Civil Liberties Union of Virginia (“ACLU-VA”) writes to express our concerns regarding the recent “Memo Regarding 14 Book Challenges” that was circulated by Superintendent Mark Taylor on March 29 indicating that Spotsylvania County Public Schools (“SCPS”) will be banning any books that receive complaints from parents.

Contrary to the representations made in the Memo, the removal of these 14 books and adoption of the proposed policy is neither required by nor consistent with the stated intent of Virginia Code section 22.1-16.8 (“the Law”). Senate Bill 656, which codified the Law, contained an enactment clause clarifying “[t]hat the provisions of this act shall not be construed as requiring or providing for the censoring of books in public elementary and secondary schools.”¹ The automatic removal of challenged library books from circulation, preventing any student’s access, is censorship that contradicts the Law’s express limitations.

Superintendent Taylor has manufactured a crisis by reading the term “instructional material” to include all books even passively available to students in the library rather than, as its plain meaning would suggest, material presented to students *during their instruction* in class. To suggest that “instructional material” includes library books makes the rest of the Law incomprehensible: what would it mean for the school district to “provide, as an alternative, nonexplicit instructional material” for every book in a library as required by section (B)(3) of the Law? Clearly, the decision to remove these books is based not on any requirement in the Law. Not only is the removal of these books not mandated by the Law and in conflict with its enactment clause, such an act violates the entire purpose of the Law. The Law, both in the words of its proponents and by its plain

¹ Sexually explicit content, S.B. 656, 2022 General Assembly session, available at <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0100>.

terms, is designed to *expand* parental choice about what material their students access, not to ensure that a small group of parents can place books beyond the reach of any student.

Even assuming that the Memo’s incorrect interpretation of the law is based in good faith confusion, there is no attempt made in the Memo to quantify the costs of making the challenged books available beyond merely saying that it will be “cumbersome and burdensome.” An SCPS that was truly dedicated to its students’ well-being would be willing to undertake some difficulty to provide its students with books that SCPS’s own review committee recommends should remain in the library. The actual reason for these books’ removal is more likely to be found in Superintendent Taylor’s concession that he does not personally believe that the books in question “truly need to be in the library.”

The Memo also goes to great lengths to deny that these removals are “book bans”—but the Constitution says something different. When books are removed from libraries based on their viewpoint, that removal violates the First Amendment.² By outsourcing the decisions about which books to remove from the library to the general public, SCPS has guaranteed that unpopular books are more likely to be removed than other books. Where a school institutes a system that privileges majority views over minority views, the school violates the First Amendment’s prohibition on viewpoint discrimination.³

The Virginia Administrative Code requires schools to maintain a library that contains “hard copy, electronic technological resources, materials, and equipment that are sufficient to meet research, inquiry, and reading requirements of the instructional program and general student interest.”⁴ Taken to its logical extreme, the superintendent’s proposed policy with no review mechanism whatsoever could lead to very large number – hypothetically even all – of the books in the SCPS libraries being challenged and automatically removed, undermining its above obligation.

Many of the challenged books are books with great educational value for students. To pick just a single example, *Beloved* is written by Toni Morrison, winner of the Nobel Prize for Literature and widely regarded as one of the greatest American novels to wrestle with this country’s legacy of slavery. For SCPS to willingly deprive its students of the opportunity to challenge themselves with great works of literature on timely and urgent social issues is a sad dereliction of duty. We urge SCPS to reject the superintendent’s misguided and unconstitutional proposal to adopt a policy



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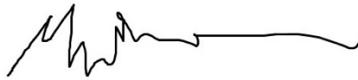
² See *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 102 S. Ct. 2799, 2811–12 (1982) (plurality).

³ See *Bd. of Regents of Univ. of Wisc. Sys. v. Southworth*, 120 S. Ct. 1346, 1357 (2000).

⁴ 8 Virginia Admin. Code 20-131-190.

requiring the automatic removal of challenged books. We further urge the SCPS Board to use its authority under current Policy IIA-R(G)(10) to enter a final disposition returning the 14 challenged books to its libraries, in accordance with the recommendation of the review committee

Sincerely,



Matthew Callahan, Senior Supervising Attorney
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