

# EveryLibrary Institute Testimony to the Working Group on the Status of Libraries in Vermont

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Intellectual Freedom

John Chrastka, Executive Director, EveryLibrary Institute

# About the EveryLibrary Institute

The EveryLibrary Institute NFP is a non-profit (501c3) public policy, tax policy, and education policy research and training organization dedicated to supporting the future of public, academic, and school libraries and the profession of librarianship in the United States and abroad.

Recent I.F. and access-related activities:

- Extensive legislative monitoring and commentary across dozens of states.
- Ongoing support for open access to Dr. Magnusson's database of censorship activities
- Fielded a national voter-facing polling on book bans, censorship, and anti-access legislation in September 2022.
- Training programs on relevant topics for Delaware Division of Libraries, Idaho Library Commission, Washington State Library.
- Assistance to state library associations writing legislative testimony on anti-access, materials, and criminalization bills.
- Developed model legislation with George Washington University IPIP Clinic to safeguard state library contracts for school library databases.
- Produced unique policy papers and technical assistance on state obscenity statutes for libraries, education, and museums.
- Publishing new issue of The Political Librarian focused on access, censorship, and policy.

# Observations from the Field

# Legitimate Materials Challenges

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

Any petition or challenge process must afford the petitioner 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

- State legislation that regulates procurement by libraries or state agencies.
- 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 which redefines obscene or harmful; moves definitions from criminal code to administrative code.
- State-based ratings systems.

The Five Freedoms are in Conflict

# 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

Vermont's state Constitutional free speech guarantees are coexistent and may be more operative than the First Amendment for libraries in the state.

How do we resolve the conflicts within the First Amendment?



# State Attempts to Broaden 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. Vermont state statute is already in compliance with the Miller Test.

# The First Amendment and Collection Development

The First Amendment is not a collection development rubric. The First Amendment validates is a collection retention rubric. The question “is an item obscene” is material 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.

Vermont’s obscenity laws are substantially similar to the Miller Test (13 VSA § 2802)

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

# Lessons from *In Loco Parentis*

There are only 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.
- Likewise, Title IX of the 1972 Education Amendments protects people from discrimination based on sex in education programs or activities that receive federal financial assistance.

# Population-Focused Collection Development

## Vermont Statutes about Civil Rights and Anti-Discrimination

### 9 VSA § 4502. 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.

### 21 VSA § 495. Unlawful employment practice

(a) 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 - Institutional Focus

Vermont could add a “Legislative Finding” to 13 VSA § 2802:

- (1) Libraries and educational institutions carry out the essential purpose of making available to all citizens, a current, balanced collection of books, reference materials, periodicals, sound recordings and audiovisual materials that reflect the cultural diversity and pluralistic nature of American society.
- (2) It is in the interest of the state to protect the financial resources of libraries and educational institutions from being expended in litigation and to permit these resources to be used to the greatest extent possible for fulfilling the essential purpose of libraries and educational institutions.

- As proposed in Rhode Island’s 2023 HB6066; inspired by Wisconsin at WSA § 944.21 8(a).

# Questions from the Panel

John Chrastka, Executive Director  
EveryLibrary and the EveryLibrary Institute



# Thank You

John Chrastka

Executive Director

EveryLibrary and the EveryLibrary Institute

312-574-0316

[john.chrastka@everylibrary.org](mailto:john.chrastka@everylibrary.org)

# About John Chrastka

John Chrastka is the executive director of EveryLibrary, the first nationwide political action committee for libraries, and the EveryLibrary Institute, a nonprofit research and training organization focused on the future of library funding. Mr. Chrastka is a former president of the Board of Trustees for the Berwyn (IL) Public Library (2006 – 2015) and was the first president of RAILS, the Reaching Across Illinois Libraries System, a multi-type library system (2011). He is the co-author of *Winning Elections and Influencing Politicians for Library Funding* and *Before the Ballot: Building Political Support for Library Funding* with Patrick “PC” Sweeney (ALA / Neal Schuman). He has contributed chapters to *Planning our future libraries: Blueprints for 2025* (2014), and *Re-envisioning the MLS: Perspectives on the Future of Library and Information Science Education* (2018). In 2015, he delivered the McKusker Memorial Lecture, “The Accidental Candidate: Updating Voter Nostalgia about Librarians and Libraries on the Campaign Trail” for Dominican University and has written for numerous trade publications and journals including *Library Journal* and *Library Quarterly*. In 2018 he delivered the keynote “Advocacy and Activism” for CILIP, the Chartered Institute of Library and Information Professionals, in Brighton, England, and in 2020 he was invited by EKZ Group in Hamburg, Germany to present a colloquy on advocacy for their members and the profession. He is a frequent keynoter and speaker at state and national library conferences in the United States and abroad, is a sought-after trainer for state libraries, and is a regular guest lecturer for MLS / MLIS programs where he speaks on the topic of "political literacy". In 2014 he was named a Mover & Shaker by *Library Journal* for his work with EveryLibrary.

# About EveryLibrary

EveryLibrary is the national 501c4 political action committee for libraries. Since 2012, EveryLibrary supports local library funding measures like bonds, referenda, levies, warrants, and parcel taxes along with funding for school libraries. It partners with state library associations to advance their legislative priorities. Since late 2021, our portfolio has included direct supports to organizers and campaigners confronting issues of censorship, access, and free expression in libraries.

## Recent activities:

- Provided technical assistance and pro-bono consulting to dozens of local library “Alliances” focused on anti-access and anti-censorship issues
- Launched Fight for the First campaign organizing platform (with ELI)
- Supported public engagement and constituent outreach for a dozen state library associations on key issues
- Provided expert commentary in national and regional media about key topics