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## 2023-2024 Legislative Memorandum

**Subject: Freedom to Read Act – A.6873-B (O’Donnell) /S.6350-B (May)**  
**Position: SUPPORT**

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Students deserve to see their experiences reflected in the classroom while learning about diverse communities. But across the country, activists have aggressively challenged books about communities of color and LGBTQIA+ people. During the 2022-2023 school year, PEN America documented 3,362 book banning incidents involving 1,557 books.<sup>1</sup> Thirty percent of these books are about race, racism, or feature characters of color, while over a quarter include LGBTQIA+ characters or themes.<sup>2</sup> New York is no exception: a Journal News investigation found that more than 200 complaints were filed about books in Hudson Valley school districts between 2020 and 2022.<sup>3</sup> Even where complaints are unsuccessful, they may lead educators to avoid teaching or sharing books that address themes of race, gender, and sexual orientation.

The First Amendment protects students’ right to learn free from viewpoint-based censorship.<sup>4</sup> Removing LGBTQIA+ and Black and Brown voices from school curricula and library collections may violate not only the First Amendment, but also schools’ legal duty to cultivate a safe and supportive learning environment for all students.<sup>5</sup>

To navigate book challenges, districts need library selection guidelines that prioritize access to inclusive materials, policies that respect the professional judgment of educators, and clear and fair processes for addressing challenges to curricular and library materials. Yet, many districts have no policies in place and the ones that do exist are often vague and lack necessary safeguards.

**S.6350 (May)/A.6873-B (O’Donnell)** addresses this problem by empowering school library staff to curate collections that provide students access to the widest array of developmentally appropriate materials available. The New York Civil Liberties Union (“NYCLU”) supports this bill and urges its expedient passage.

If passed, the bill would require the Commissioner of Education to promulgate regulations to ensure library collections are vibrant and inclusive. Additionally, school library systems, such as those in New York City, Buffalo, Rochester, Syracuse, and Yonkers, would be required to adopt policies that empower librarians to curate diverse library collections.

This approach will ensure that districts have clear guidelines for how to manage libraries in accordance with state policy and best practice in the field. The American Library’s Association’s Library Bill of Rights

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<sup>1</sup> Kasey Meehan, et al., *Banned in the USA: The Mounting Pressure to Censor*, PEN AM., <https://pen.org/report/book-bans-pressure-to-censor/> (last accessed May 13, 2024).

<sup>2</sup> *Id.*

<sup>3</sup> Gary Stern, *Whose Call Is It? A Glimpse Inside Complaints to Schools About Books, Lessons, Diversity*, J. NEWS (Nov. 30, 2022, 5:00 AM), <https://www.lohud.com/in-depth/news/education/2022/11/30/culture-wars-in-hudson-valley-schools-flared-over-books-lessons/69631121007/>.

<sup>4</sup> Bd. of Educ., *Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 870–72 (1982).

<sup>5</sup> See N.Y. Att’y Gen. & N.Y.S. Educ. Dep’t, *Diversity, Equity, & Inclusion Guidance 3* (Aug. 9, 2023), available at <https://www.nysed.gov/sites/default/files/programs/diversity-equity-inclusion/oag-nysed-dei-guidance.pdf>.

provides that “[l]ibraries should provide materials and information presenting all points of view on current and historical issues” and “[m]aterials should not be proscribed or removed because of partisan or doctrinal disapproval.”<sup>6</sup>

Similarly, New York’s Board of Regents has adopted a culturally responsive-sustaining education framework that prioritizes creating “student-centered learning environments that; affirm racial, linguistic and cultural identities; prepare students for rigor and independent learning, develop students’ abilities to connect across lines of difference; [and] elevate historically marginalized voices.”<sup>7</sup> While the framework primarily focuses on curriculum, these principles are equally applicable to school libraries. Librarians play a critical role in developing diverse library collections: they are trained to curate wide-ranging materials for students and are bound by a code of ethics which includes a commitment to intellectual freedom and racial and social justice.<sup>8</sup>

Codifying these guidelines is particularly important because of the chilling effect that even failed challenges can have. NYCLU has heard from educators across the state that after unsuccessful challenges administrators expressed new reservations about curricular or library materials that include diverse characters or address themes of racial or gender oppression. Administrators rejected book orders containing “controversial” texts, questioned programming for Pride Month, and proposed new parental notification requirements whenever teachers select read-aloud books featuring LGBTQIA+ themes. The Freedom to Read Act will make clear to districts that they have a legal obligation to provide exposure to a wide range of developmentally appropriate materials and they may not limit access because of isolated parent complaints.

The Freedom to Read Act also aligns with model library selection and complaint policies developed by NYCLU as templates for school districts. Our policies include expanded selection criteria, identify librarians as key decision makers, and honor the professional judgment of educators. The policies advocate for the creation of a district-wide committee to review complaints and allow for student and community involvement in the process. No book should be removed before that review process is complete. Model policies like NYCLU’s could serve as a roadmap for both the Commissioner and local districts as they work to protect students’ right to learn.

In *Board of Education, Island Trees Union Free School District No. 26 v. Pico*,<sup>9</sup> Justice Brennan wrote that “[a] school library, no less than any other public library, is a place dedicated to quiet, to knowledge, and to beauty.” “[S]tudents must always remain free,” he continued, “to inquire, to study, and to evaluate, to gain new maturity and understanding. The school library is the principal locus of such freedom.”<sup>10</sup> The Legislature must pass the Freedom to Read Act to protect these critical freedoms for all young New Yorkers.

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<sup>6</sup> *Library Bill of Rights*, AM. LIBR. ASS’N (Jan. 29, 2019), <https://www.ala.org/advocacy/intfreedom/librarybill>.

<sup>7</sup> N.Y. STATE BD. OF REGENTS, CULTURALLY RESPONSIVE-SUSTAINING EDUCATION FRAMEWORK 12, available at <https://www.nysed.gov/sites/default/files/programs/crs/culturally-responsive-sustaining-education-framework.pdf>.

<sup>8</sup> *Professional Ethics*, AM. LIBR. ASS’N (Jun. 29, 2021), <https://www.ala.org/tools/ethics>.

<sup>9</sup> 457 U.S. 853 (1982).

<sup>10</sup> *Id.* at 868–69 (internal quotations and citations omitted).