

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Arlen Siegfroid at 1:30 P.M. on February 8, 2007 in Room 313-S of the Capitol.

All members were present except:

Representative Ted Powers- excused

Committee staff present:

Dennis Hodgins, Kansas Legislative Research Department

Mike Heim, Revisor of Statutes Office

Carol Doel, Committee Assistant

Conferees:

Representative Lance Kinzer

John Burford, Ward Parkway Presbyterian Church Pastor

Judy Smith, State Director of Concerned Women for America of Kansas

Phillip Cosby, Executive Director, National Coalition for the Protection of Children & Families

Others attending:

See attached list

The Chairman opened the floor for introduction of bills and recognized Representative Colyer who requested a bill to memorialize the loss of Kansans due to terrorism by naming bridges for them. The Chair made a motion seconded by Representative Peterson. With no objections, the bill will be accepted.

Representative Swenson requested a bill regarding the taxing of water craft. The Chair made a motion seconded by Representative Huebert. With no objections, this bill will be accepted.

Representative Kinzer requested a bill regarding non-partisan election of district court judges. The Chair made a motion seconded by Representative Peterson. With no objections, this bill will be accepted.

The Chair requested introduction of a bill regarding internet access to pornography by minors. Representative Peterson moved the bill seconded by Representative Olson. With no objections, this bill will be accepted.

The Chair requested a bill concerning crimes and punishment and repealing a section having to do with marriage of children under the age of 18. Representative Peterson moved the bill seconded by Representative Olson. With no objections, this bill will be accepted.

The Chairman requested a bill having to do with political taxing of subdivisions and takings of property. The bill was moved by Representative Peterson, seconded by Representative Huebert. With no objections, this bill will be accepted.

Chairman closed the floor for bill introductions and asked Dennis Hodgins, Legislative Research, to do a briefing on **HB 2200** - concerning crimes, punishment and criminal procedure relating to obscenity.

Chairman Siegfroid opened the hearing on **HB 2200** and recognized Representative Lance Kinzer who gave testimony in support of **HB 2200**. Representative Kinzer reported that this bill clearly provides that if materials shown to a K-12 class do in fact meet the criminal definition of obscenity ( which would include a showing that "taking as a whole, a reasonable person would find that the material or performance lacks serious literary, educational, artistic, political or scientific value"), then the mere fact the material was used in an approved course of curriculum at the school would not be a defense in a prosecution for promotion of obscenity. (Attachment 1)

Doctor John Burford, Pastor of the Ward Parkway Presbyterian Church in Kansas City, Missouri addressed the committee supporting the passage of **HB 2200**. Dr. Burford related that his doctoral dissertation involved the assessment of recovery tolls for men addicted to pornography and provided written testimony regarding

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on February 8, 2007 in Room 313-S of the Capitol.

things that he believes are relevant to this bill. It is his opinion that even with this repeal, there will still be immunity from prosecution for those who distribute court-proven obscenity in post-secondary schools or through public libraries, if in accordance with their policies. (Attachment 2)

Next to appear before the committee to support **HB 2200** was Judy Smith, State Director of Concerned Women for America of Kansas. The CWA urges the removal of the exemption from the statutes that gives teachers, educational authorities and others ready access to our children a free pass. Ms. Smith further stated that if we really care about children, we will protect them from material that has such a potential for harm and heartache. (Attachment 3)

Phillip Cosby, Executive Director, National Coalition For The Protection Of Children & Families, spoke in favor of **HB 2200** relating that he certainly supports repealing the existing sections in the Kansas "Promotion of Obscenity" and "Promotion of Obscenity to a Minor" statutes that provide a defense from obscenity prosecution in the K-12 schools. He opined that further generations are dependant on our ability to recognize emerging threats and to have the character to confront that threat. Protecting children is a compelling governmental interest. (Attachment 4) Mr. Cosby provided a copy of twenty-nine indictments of devices by the Dickinson County Grand Jury April 1, 2004. (Attachment 5)

The Chair directed attention to written testimony from David Schauner of the Kansas National Education Association in opposition to **HB 2200**. (Attachment 6)

With no other person wishing to speak to the bill, Chairman Siegfried closed the hearing on **HB 2200**.

The Chair requested a motion for approval of the minutes from February 7, 2007.

Representative Ruiz made a motion that the minutes of February 7, 2007 be approved as read. Representative Olson seconded the motion. Motion passed.

With no further business before the committee, Chairman Siegfried adjourned the committee.

FEDERAL AND STATE AFFAIRS

GUEST LIST

Date 2/18/07

Lakle Jellison	Lacey Lamb
Banca Williams	Kelli
Larice Murphy	Lara Summers
Roma Murphy	Murphy
Sonja Hammer	Katie Askrin
Allie Conley	Cooper
Bekah Patterson	Elaine
Andrea Rasmussen	Rhonda McLavelle
Elizabeth Sheldon	Shannon Ritter
Heather Nelson	Lisa Hammon
Cindy Knapp	Connie Main
AMY MITCHELL	Cathy Cosby
Alex G...	Janet Magnuson
Phillip Cosby	Bill Hansen
John D. Burford	Emily Dietz
Maria Zimmerman	Jessica Speiser
Mandy	Danette Honors
Angela Phillips	Maria Schaefer
Dana Sutz	Antoinette Winters
Bob Ludwig	Shirley A. H. Plannet
Cathy	Kelly House
Jina Whisman	Amanda Hill
Karen Powell	Emilia
C. Bahrock	Melissa West
M. Kempman	Debra



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TOPEKA

LANCE KINZER

REPRESENTATIVE, 14TH DISTRICT

**TESTIMONY REGARDING HB 2200**

COMMITTEE ASSIGNMENTS  
TAXATION  
JUDICIARY  
FEDERAL AND STATE AFFAIRS

Under current Kansas law it is a defense to the crime of promoting obscenity that the obscene material was, acquired by a K-12 school and was thereafter distributed or disseminated by a teacher as part of an approved course of instruction. The practical effect of this defense is that materials that would be illegal if sold at a porn shop may be legal if displayed to a kindergarten class. This is an anomalous situation that deserves correction. HB2200 would retain the current defense to promoting obscenity for post-secondary educational institutions, but would remove that defense for schools at the K-12 level.

In considering HB 2200 it is important to keep in mind that obscene material is not protected by the First Amendment. (*See Roth v. United States*, 354 U.S. 476). Indeed the United States Supreme Court has clearly held that a work or product may be subject to state regulation under the following 3 step test:

- 1) whether the average person, applying contemporary community standards would find that 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;
- 3) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. (*See Miller v. California*, 413 U.S. 15).

The Kansas law generally follows the Miller test, but expands it slightly by adding "educational" to the list of qualifiers under the third prong of the test. While this may be a logical extension of the Miller test it is not a necessary one, especially as it applies to the exposure of minors to obscene materials.

That having been said this bill does not delete the educational prong from the definition of obscenity. As such, materials shown to a K-12 class which have serious educational value are by definition not obscene and fall outside the scope of the criminal obscenity statute in Kansas. This bill in no way changes that fact.

What this bill does do is clearly provide that if materials shown to a K-12 class do in fact meet the criminal definition of obscenity (which would include a showing that "taking as a whole, a reasonable person would find that the material or performance lacks serious

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literary, educational, artistic, political or scientific value”), then the mere fact the material was used in an approved course of curriculum at the school would not be a defense in a prosecution for promoting obscenity.

Thank you for your consideration of this bill. I would be happy to answer any questions.

Proponent testimony

Kansas House Federal & State Affairs Committee  
Hearing on HB 2200

concerning crimes, punishment and criminal procedure; relating to obscenity; amending K.S.A. 21-4301a and 21-4301c and K.S.A. 2006 Supp. 21-4301 and repealing the existing sections.

Proponent testimony by John D. Burford, resident of Mission, Kansas  
and pastor of the Ward Parkway Presbyterian Church in Kansas City, Missouri

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My doctoral dissertation involved the assessment of recovery tools for men addicted to pornography. I found the following things that I believe are relevant to this bill:

Sexual appetite is developed through conditioning that associates pleasure with sexual stimulation. If that stimulation occurs from viewing pornography, then it is pornography for which the subject develops an appetite. For many, the appetite for pornography and the behaviors it depicts becomes stronger than the appetite for a healthy monogamous sexual relationship.

Sex addicts who were not sexually violated as children, can usually point to a moment in their childhood when they were exposed to pornography. They indicate this as the beginning of their downward slide into sex addiction. Especially for those from dysfunctional families or with low self-esteem, pornography became an escape that medicated emotional pain. Sex addicts report that they reached levels of desensitization in which material that initially medicated their pain was no longer satisfying and their viewing habits escalated into more graphic and perverse material. Eventually, viewing erotic material was not enough and they began to act out their sexual fantasies in legal and illegal ways, sometimes with unwilling partners. In my studies of sexual addiction, this scenario was common, not an aberration.

Dr. James Dobson interviewed serial killer Ted Bundy the day before his execution. Bundy points to a day when he was thirteen years old and discovered pornographic magazines in a dump near his home. He was captivated by them. In time, his viewing habits escalated to more violent magazines and then videos. The material he viewed included scenes of women being tortured and murdered. With further escalation, his addiction moved from fantasy to acting out what he had viewed.<sup>1</sup> Admittedly, his is a worst case scenario, but it began with obscene material.

Pornography does not *necessarily* create sex addicts, but sex addicts almost universally begin with pornography. It is a frightening thing to wonder what sexual behavior this generation of children will engage in ten years from now, having been raised on ever-present Internet and PDA pornography. Will they practice what they've watched? If they

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<sup>1</sup> /www.pureintimacy.org/gr/intimacy/understanding/a0000082.cfm. Accessed February 7, 2007.

watch it outside of school, that's one thing, but the school is the *last* place a child should be shown obscenity, especially by school employees entrusted with their care. That is what this bill is about. And let's be clear, we are not talking about *whether* material was obscene. We're talking about an offense that has had the benefit of due process, where a court has determined that the material was *indeed* obscene according to Kansas law. We need to repeal immunity from prosecution for *anyone* who willfully exposes a child to obscene material, *especially* if they do so under the guise of education.

We are very careful in our public schools to teach children the truth. Obscenity is all about lies. Its lies include that sex is acceptable with anyone, at any time, in any place. Obscenity teaches that women are nymphomaniacs who want sex even when they say no. Obscenity teaches that women will eventually enjoy rape if the rapist persists. Obscenity teaches that sex gets better with increased perversity. Obscenity teaches nothing about love or concern for one's partner or for his or her feelings or long-term physical, emotional or relational well being. Obscenity reduces sex to behavior so base that much of it is not even seen in the animal world.

We carry with us into adulthood messages we receive as children. I favor public school education about sex, but I favor *truthful* education. Obscenity is not prone to the truth. Some of us are fortunate enough to unlearn lies that we once believed as children; others are not so fortunate and continue to believe lies.

I remember the first time I was exposed to pornography. I was maybe ten years old. I believed everything the articles in Playboy said about women and what women want. Now that I am older and have learned that those messages were lies designed to sell media. But a child doesn't know that. We must guard what they are exposed to, *especially* if they are exposed to it by those entrusted with their education. The *last* place that should be immune from prosecution for distributing obscenity to children is the schools we charge to teach them the truth.

Children exposed to obscenity as defined by Kansas law will be exposed to messages that will not serve them well as they grow into adulthood. Family health in America is not as strong as it used to be. That means there will likely be more, not fewer, children who seek medication for emotional wounds through increasingly prevalent pornography. If they are exposed to it at home or at a friend's house, that is a problem the legislature can address through enforcement of current obscenity laws. But if they are exposed to it at school, *this* bill provides the tool that is needed. The *last* place a child should be exposed to obscenity is at school, where he or she is sent to learn messages that are true and healthy.

Every day, I entrust my ten and eighteen year old sons to Kansas schools. I could not do that if I did not believe that the teaching staffs and I shared similar values. I cannot imagine what justification a staff member might have to expose my sons to obscenity. What possible reason could there be for *not* prosecuting a school official who showed such poor judgment or outright devious motives?



Even *with* this repeal, there will still be immunity from prosecution for those who distribute court-proven obscenity in post-secondary schools or through public libraries, if in accordance with their policies. So, this is not an unreasonable measure; in fact, it probably doesn't go far enough. We're talking about grade school kids, Middle and High school kids. I can't imagine why anyone would want to make it easy to distribute obscenity to them.

This is a much needed revision to the law. I urge you to support this bill.

Thank you.

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February 8, 2007

Testimony to Kansas House Federal and State Affairs Committee

Chairman Siegfried and members of the committee:

My name is Judy Smith. I am State Director of Concerned Women for America of Kansas. Thank you for the opportunity to testify in favor of HB 2200 today.

Our society has much to say about protecting and providing for children. "It's for the children" is an oft-repeated mantra in the media and in public policy circles. However, despite protestations to the contrary, America's children are suffering the woes of a society that does not care enough about them to protect them from the obscenity and pornography that is all around us.

Community standards have always been the plumb-line for deciding what is obscene and what is not; the courts have used that as part of a three-pronged approach. However, in today's eroticized and sexualized society, community standards are breaking down. What used to be appealing only to prurient interests is now being seen in prime-time television. As a result, children are being harmed not only by society's breakdown, but by those who prey on them as a result of society's plunge into decadence and decay. Children are very susceptible to obscene and pornographic material, not only because it is addictive, but because they do not have the life experiences to process what they see or read and determine for themselves whether it is harmful or not..

Scientific studies have shown that even a casual encounter with erotic or obscene material can imprint the brain. The powerful hormone and neurotransmitter epinephrine surges into the brain as a result of frightening, stimulating or exciting images and imprints the brain, leaving a pathway to more surges. In addition to the powerfully addictive propensities of this flood of epinephrine, the person who has been subjected to this stimulus often has flash-backs (memories) of the imagery they have seen. This is why pornographic "spam" is so dangerous; one look for some people is addictive. Imagine what it does to a child. Pedophiles often use obscene and pornographic materials to desensitize and break down the resistance of their victims to deviant behavior, because they know that the more a child sees the material the more compliant he/she will be. These victimized children often become the victimizers of other children. They equate the obscene and deviant behavior with love. [Victor B. Cline, PhD; "Pornography's Effect on Adults and Children" p. 6]

Add to this volatile mix the fact that teachers and educational personnel are exempt from prosecution. This creates a possible "perfect storm" that will sweep away many children in its fury. Children look upon their teachers and school officials as authority figures; therefore, the state should hold these people as accountable as the rest of society when dealing with obscenity and pornography. If the teacher has legitimized material as being appropriate, the child accepts it because of the authority that teacher has over the child.

Headlines in recent years have shocked many, but understanding the trend toward allowing children to be exposed to more and more lurid and shocking sexual scenarios has led to a literal torrent of stories of

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student-teacher sex. Many of these headlines involve female teachers having sex with pubescent and pre-pubescent boys in their classes.

Considering the addictive nature of obscenity and pornography and the tender age and lack of life experiences of the victims, it is not surprising that these children succumbed to their teacher's advances. Children are steadily being desensitized to this graphic material by continued exposure in the culture. If that exposure is reinforced by an authority figure such as a teacher or educator, the effect on the child is maximized.

As public policy makers, CWA of Kansas urges you to remove the exemption from the statutes that gives teachers, educational authorities and others with ready access to our children a free pass. If we really care about children, we will protect them from material that has such a potential for harm and heartache. Let them explore the educational playground of ideas without exposing them to harmful and exploitive material handed to them by those who exert authority over them.

We urge you to pass HB 2200 out of committee.

Judy Smith, State Director  
Concerned Women for America of Kansas

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NATIONAL COALITION  
FOR THE PROTECTION OF  
CHILDREN & FAMILIES

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*February 8<sup>th</sup> 2007*

Chairman Arlen Siegfried and honorable members of the House Committee on Federal and State Affairs, my name is Phillip Cosby of the National Coalition for the Protection of Children and Families based in Kansas City.

I am honored to have the privilege to speak in support of HB 2200, to repeal existing sections in the Kansas “Promotion of Obscenity” and “Promotion of Obscenity to a Minor” statutes that provide a defense from obscenity prosecution in the K-12 schools.

For the last three and one half years I have spoken to thousands of Kansans concerning the proven, court upheld negative effects that sexually explicit materials inflict upon communities and individuals.

Daily we awaken to and are disturbed by the ever increasing tragic news of child seductions, molestations, abductions, torture and even murder. Law enforcement, the courts and penal institutions are straining under the increasing tempo of sexual crimes. No profession or sector of society is untouched by the addictive nature and depravity of pornography and obscenity. The FBI estimates that only 12% of sexual assaults are ever reported. It is commonly cited that one in six boys and one in three girls are sexually molested by the age of eighteen. If this were a childhood disease it would be classified as an epidemic and all available resources would be brought to bear. The cause and effect of obscenity and deviant criminal behavior cannot be ignored. Pornography and obscenities fuel fantasy driven behaviors.

The Kansas “promotion of obscenity to a minor” law is one tool in extending protection to our children. To allow an immunity defense to the very K-12 sector of our education system that is charged with the daily health and safety of our minor children is beyond regrettable; it is unconscionable, and far beyond what is considered reasonable common sense. There are good guys and bad guys all over the field and no profession is untouched. Government has a compelling interest in protecting children from a threat that is increasingly predatory in nature. No other sector of government or private professions is extended such immunity from the law.

Local District and County Attorneys have the final decision of prosecution on these matters and our local courts are more than competent and capable of discerning between anatomy or sex education classes and promoting obscenity. The accompanying “yellow” sheet will give you a title description taste of what obscenities looked like to the community of Dickinson County, KS. “You will know it, when you see it.”

This is not a question of censorship. Obscenity, like slander and perjury do not enjoy the protection of genuine 1<sup>st</sup> amendment free speech. (1973 USSC “Miller” decision). A K-12 education defense is not provided for in the United States Supreme Court 1973 decision.

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The tsunami of emerging technologies such as I-pods, cell phones with full streaming videos and wireless internet ready portable personal play stations are exacerbating our crisis of character. These devices deliver pornographic images directly to our most vulnerable with no filters or parental supervision. How will we contend on the essentials of personal responsibility, healthy sexuality and character development if our K-12 classrooms need not differentiate? There is no longer any debate about the negative impact of pornography. Pornography encourages young men to think of women as objects and young women get a destructive impression of how they must look and behave in order to be "attractive"! Hoping for the best and waiting for the situation to improve is an unlikely outcome nor is such inaction what our children deserve. The young minds within the K-12 educational system are not a laboratory to push the envelope of sexual expression.

For decades the courts have consistently upheld zoning laws that recognize the right of communities to protect themselves from the "negative secondary effects" of the sex industry. Those negative effects are chiefly, increased crime, increased sexually transmitted diseases, general blight and decreased property values. The deleterious effects of sexually explicit materials on communities are not only proven but as Federal Judge Lundstrom stated recently in a Kansas case "it's not just the evidence it's also a matter of common sense". Why wouldn't we require accountability to the law within K-12 schools and extend equal protection to the most helpless among us?

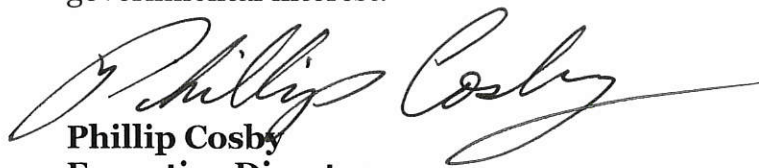
Do you remember when we as children played freely in our neighborhoods without our parents being overly fearful for our safety? Where are those groups of neighborhood children today? Parents rightfully fear to let them out of their sight. Perhaps it is too late to restore the freedom and innocence you and I once enjoyed, but at the very least we are compelled to send a message that we are aware of the growing threat of sexual predators and will extend the protection of the law to the K-12 classrooms in Kansas. By passing HB 2200 legislators are partnering with law enforcement, schools and families to help them say "enough is enough"!

The documented harms of obscenity and the headlines are not conjecture but real! Real victims! Real crimes! A real threat to the safety and health of our children!

Your "Oath of Office" to uphold the Constitution includes:

***"to provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity"...***

Future generations are dependant on our ability to recognize emerging threats and to have the character to confront that threat. Protecting children is a compelling governmental interest.



**Phillip Cosby**

**Executive Director**

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**Below is the list of twenty nine indictments of devices by the Dickinson County Grand Jury April 1<sup>st</sup> 2004. These devices were determined to be in violation of K.S. A. 21-4301 Promotion of Obscenity.**

1. 10" Mega Coxx Dildo
2. Ultra Tech 3000 Dildo
3. Cyber Inflatable Blow-up Doll
4. Julie Ashton Realistic Pussy and Ass
5. Double Dong with Harness
6. Cherry Scented Artificial Mouth
7. Nick Manning's Masturstroke
8. Hustler-Little Pink Pussy
9. Pure Pussy Vibrating Pink Puregel Vagina
10. Auto Suck
11. Stephanie Swift's Vibrating Love Doll
12. The Clone-Life Like Vibrating Vagina
13. The realistic Cock-Molded From An Actual Erect Penis
14. Cyberskin Cyber Cock
15. Thumbs Up-Enhancing Clit Stim
16. Doctor Love's-The Perfect Extension
17. Honey Bee-Vaginal, Anal and Clitoral Stimulation System
18. Hustler Lady Godiva-Bendable Pleasure Dong With Harness
19. Fujiko's Asian Odyssey-Vaginal Clitoral and Anal Stimulation
20. Hustler-My First Clit Kiss
21. My First Sex Kit-Petite Toys for Big Orgasms
22. The Overnighter-Ginger Lynn's Favorite Toys
23. Waterproof Water Penis G
24. Slender G Spot
25. Hustler Cyberskin-Xtasy Vibe
26. Club Jenna-Jenna's Beaver
27. Sensual Clierific
28. Nikki Tyler-Realistic Vibrating Vagina & Anus
29. The Love Machine

Other themes and items common to all pornography outlets are videos and magazines featuring sadomasochistic torture, bondage, "barely legal" teen sex, excrement activities, multiple partners, reenacted gang rape scenes, bondage, auto-erotic displays, anal sex, straight sex, mixed sex, etc...

Often Pornography outlets contain private viewing rooms, or 'peepshow' booths, where patrons engage in masturbation or promiscuous and unsafe sex acts with prostitutes or other patrons. The booths are covered with bodily fluids and sometime have openings to allow anonymous acts of oral and anal intercourse. A woman from Wilson, Kansas upon investigating an "Adult" Bookstore, described eight enclosed booths. "Each booth had a lock on the door, a small chair, a video machine, a trashcan and a roll of toilet paper on a shelf! There are no hand washing facilities in the booth to prevent the contamination of other surfaces. Customers handle money, merchandise, equipment and then head out to their trucks often to deliver our products. Do the employees wear gloves when taking out the trash and handling the money before coming home to Wilson? "

The sexual perversions are shocking to the average Kansan when revealed. These listed perversions lead to even more depravity as sexual appetites are inflamed and demand more.

David Schauner, testimony  
House Committee on Federal and State Affairs  
February 8, 2007  
**House Bill 2200**

Mister Chairman, members of the Committee, as General Counsel for the Kansas National Education Association, I thank you for the opportunity to present this testimony in opposition to **House Bill 2200**.

**HB 2200's** sole purpose is to deprive teachers in the elementary and secondary schools in Kansas of the "educational justification" defense to several criminal statutes addressing "promotion of obscenity." In doing so, the legislature hangs the threat of criminal prosecution over the heads of teachers for books that they may assign their students to read, for plays that they may select for a drama class to perform, for materials that the teacher may use as part of a sex education curriculum, etc. Whether or not it is the intent of this legislation, the practical effect will be to deter teachers in teaching their classes to the best of their abilities.

The purpose of **HB 2200** is censorship, with the role of the censors played by the teachers themselves. It seems clear to me that the intent of this legislation is to deter teachers from assigning certain controversial books for their classes to read, from selecting certain plays for drama classes to perform, from broaching certain subjects or using certain materials in sex education classes; the list is large. It really makes no difference whether a teacher would be prosecuted under this bill, I believe the threat itself is likely to be sufficient. Teachers, I believe, are likely to just play it safe and not venture into the controversial than risk criminal prosecution, their jobs and their teaching licenses. I view this bill as a form of prior restraint that teachers will impose on themselves. Teachers already have much to concern themselves with in carrying out their duties, criminal prosecution under **HB 2200** should not one of them.

For these reasons, I urge you to vote down **HB 2200**.

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