



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

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Parkersburg City Council
City of Parkersburg
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Sent via e-mail

Re: Proposed Resolution to Censure the Parkersburg and Wood County Public Library

To the Members of the Parkersburg City Council:

I am writing to you regarding a proposed resolution to censure the Parkersburg and Wood County Public Library. It is the understanding of the American Civil Liberties Union of West Virginia that the Council intends to consider censuring the Parkersburg and Wood County Public Library for allowing minors to access and take out the book *Gender Queer*, declaring the book to be “obscene” and “pornographic.”

The ACLU-of WV urges the Parkersburg City Council to reject this resolution. It is well established that the Constitution “protects the right to receive information and ideas.” *See e.g. Stanley v. Georgia*, 394 U.S. 557, 564 (1969). Any restriction of access violates the First Amendment by placing an unconstitutional stigma on library patrons and community members who wish to read the book.

The Council would be well-advised to review the decision by the United States Supreme Court in *Board of Education, Island Trees Union Free School District No 26 v. Pico*, 457 U.S. 853 (1982). In *Pico*, the Court held that the First Amendment does not permit the government to remove books that are already on the library shelves based on the viewpoints that the books contain.

The proposed assertion that the book is “obscene” and “pornographic” have no merit. To declare this book “obscene” is to strip it of its First Amendment protections. The Supreme Court has ruled that obscenity is not subject to the full protection of the First Amendment. *Alberts v. California*. 354 U.S. 476, 485 (1957). For this reason, the Court has long held that there must be procedural safeguards to prevent curtailment of constitutionally protected expression. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 65 (1963). Fiat by city council certainly falls short of these safeguards.

While asserting the need for safeguards, Courts have long struggled to create a black-letter definition of obscenity, and one point even famously declaring “I know it when I see it.” More recently various legal tests have emerged, looking at several factors, which are common among the tests.

One major consideration is whether the work, as a whole appeals to a prurient interest in sex. *See Memoirs v. Massachusetts*, 383 U.S. 413, 420 (1966); *Miller v. California*, 413 U.S. 15, 24 (1973). Of the 240 pages in the graphic

novel "Gender Queer" very few panels are sexual in nature at all, let alone "prurient". Clearly this is not work whose primary purpose is titillation.

A second consideration, phrased various ways, is whether the work in question work, "taken as a whole, lacks serious literary, artistic, political, or scientific value". *Miller* at 26. "Gender Queer" is a critically- acclaimed, award-winning graphic novel. It clearly has artistic and literary value. It is also the story of a young person struggling with their gender identity. Sharing this journey in an entertaining and accessible manner has clear social value.

Taken as a whole, there is simply no way to credibly claim that this book is so obscene as to strip it of the full protection of the First Amendment. In fact, this August a Virginia Beach judge dismissed a suit claiming exactly this. *In re A Court of Mist and Fury*, City of Virginia Beach City Court, Case No. CL22-1984 (August 30, 2022).

The content in "Gender Queer" is no more explicit than other literary works accessible to the general library population. "Gender Queer" is a young adult novel, and like many young adult novels, it occasionally deals with themes of such as menstruation, masturbation, sexual fantasies, or sexual exploration. Not only are these works not "pornographic" they are important resources for adolescents looking to contextualize their own feelings and experiences.

There are two ways in which "Gender Queer" stands out from many other literary works. First, it is a graphic novel. Second, it deals with issues of gender identity. Depicting the content in a visual medium does not make it any more "obscene" or "pornographic" than similar, or more explicit, written work. The cruel attempts of a few to label any depiction or recognition of transgender and non-binary people as "obscene" is all the more reason it is important that people who are coming to terms with gender identity be able to freely access stories and accounts of others.

The ACLU of WV urges the City Council to reject this proposed resolution to censure the library, and to uphold the constitutional rights of Wood County library patrons. ACLU-WV will continue to monitor this situation and consider next steps depending on the outcome.

If you have any questions or concerns, I can be reached at ebaumwell@acluwv.org.

Regards,



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he/him/his

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