

How "Parental Rights"
Legislation Undermines
the Freedom to Read,
Learn, and Think



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# **Key Findings:**

In the past three years, PEN America has witnessed the spread of state-level legislation whose provisions are best understood as forms of educational intimidation.

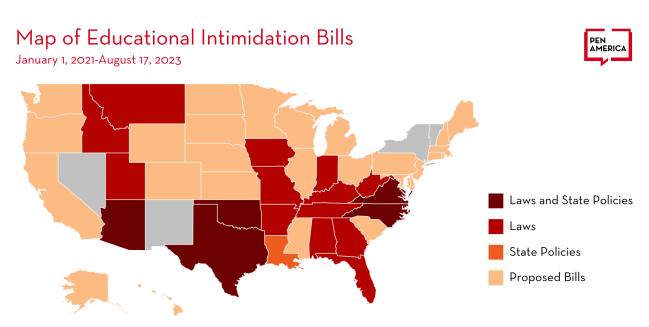
These educational intimidation bills do not constitute direct forms of censorship or curricular prohibitions. But they facilitate the conditions for a chilled climate in public education by radically expanding avenues for parents, government officials, and citizens to intervene in curricular and extracurricular decisions in public K-12 schools.

The opportunity for parents to inspect and object to school curricula is already commonly granted in public school systems, but the current spate of provisions enhances or widens these opportunities in ways that are designed to spur schools and educators to engage in self-censorship.

These bills enable blanket restrictions on books or curricula for  $\alpha ll$  students—and ultimately empower an ideological assault on public education while effectively disempowering other parents and overriding their preferences.

A growing subset of educational intimidation bills aims to restrict LGBTQ+ representation and expression in public schools in particular, by discouraging discussions of gender and sexuality, banning preferred pronoun use, and instilling mandatory reporting mechanisms for parents to be alerted of perceived changes to students' gender identity or sexual orientation. This places pressure on educators to monitor and police students' expression.

Educational intimidation bills are part of the broader, ongoing "Ed Scare"—a nationwide effort documented by PEN America to foment anger and anxiety about public education; to restrict or prohibit instruction about race, sexuality, and gender; and to ban books that address these topics.



Data from PEN America Index of Educational Intimidation Bills, January 1, 2021-August 17, 2023

# INTRODUCTION

ear is the new watchword in public education. Across the country, teachers, librarians, and school administrators are attesting to a chilled climate, in which they are more concerned with running afoul of new censorious laws than with educating their students. This climate is the product of two forces: (1) a coordinated campaign on the ground to challenge curricula and ban books and (2) the spread of state legislation that enables and emboldens these local challenges and exerts broader ideological control over schools. These forces are increasingly operating in tandem.

PEN America has previously documented the introduction and spread of "educational gag orders," explicit prohibitions on materials and content that can be taught in classrooms.¹ But in 2023, it has become clear that the range of state-level bills that can have censorious implications for schools, colleges, and libraries is expanding rapidly. Increasingly, bills that exert direct censorship on public educational institutions by prohibiting specific topics or content are being complemented by a different kind of bill—one whose provisions do not censor schools *directly* but rather cast a chilling effect that creates the conditions for censorship *indirectly*, threatening the freedoms to teach and learn with death by a thousand cuts.

The provisions of this second category of bills pressure educators to be more timid in the content they teach, pressure librarians to be more restrictive in the books they make available to students, and pressure students to limit their self-expression, without imposing direct prohibitions. Put simply, these "educational intimidation" provisions, as we dub them, empower the use of intimidation tactics to cast a broad chilling effect over K-12 classrooms by mandating new and intrusive forms of inspection or monitoring of schools, as well as new ways for members of the public—including, in some cases, citizens with no direct connection to the schools—to object to whatever they see that they do not like.

While threats of punishment and intimidation have undoubtedly been part of the efforts to censor educators directly, we call these proposals forms of "educational intimidation" precisely because they are motivated by the goal to exert new ideological control over schools by using fear rather than direct prohibitions on content.

PEN America considers a piece of legislation an educational intimidation *bill* if it contains at least one educational intimidation *provision*, which we define as specific and recurring legal mechanisms with the foreseeable effect of chilling expression in educational settings. A handful of these bills apply to higher education or contain provisions targeting public libraries, but the vast majority target K-12 schools.

Bills with these provisions are frequently being cast as advancing "parental rights" or "curriculum transparency." There is no doubt that parents, and the public, are crucial stakeholders in each student's

<sup>1</sup>PEN America, Educational Gag Orders: Legislative Restrictions on the Freedom to Read, Learn, and Teach, November 2021, pen.org/report/educational-gag-orders/

education. Under federal law, there are guarantees for individual parents to inspect learning materials for their own children under the Protection of Pupil Rights Amendment (PPRA) (1978), and to opt them out of participating in some surveys that collect personal information. The Family Educational Rights and Privacy Act of 1974, better known as FERPA, guarantees that "a parent or eligible student must be given the opportunity to inspect and review the student's education records." Many states have also adopted laws to allow parents to opt out of sex education, and local school districts also set some of their own policies for collecting parental input on curriculum or instruction.<sup>3</sup>

#### What Is the PPRA?

Under the federal Protection of Pupil Rights Amendment (1978), certain rights are guaranteed to parents:<sup>4</sup>

the right to consent prior to their child taking any survey regarding protected topics, including religious beliefs, political affiliations, sexual behavior, and family income

the right to opt their child out of invasive physical exams that are not necessary to protect the immediate health of the student

the right to opt their child out of data collection for marketing purposes

the right to inspect instructional materials, excluding exams, upon request the right to inspect surveys or data collection activities, as described above

While policies like the PPRA and those enacted locally were developed to provide parents with information and specify arenas in which they could exercise discretion over their own children's education, the bills sweeping statehouses now represent something much more radical: expanding mechanisms of curricular inspection and control in ways that undermine and chill public education for all, effectively disempowering the majority of parents. Further, while transparency for public institutions and the promotion of parental involvement in schools are common sense propositions, these bills have an ulterior motive driving them: to empower a vocal and censorship-minded minority with greater opportunity to scrutinize public education and intimidate educators with threats of punishment. Introduced alongside educational gag orders and widespread efforts to ban books, these bills can limit educators' ability to utilize their professional judgment

<sup>2</sup> Family Educational Rights and Privacy Act (FERPA), August 21, 1974, www.ecfr.gov/current/title-34/subtitle-A/part-99

<sup>3 &</sup>quot;The SIECUS State Profiles," SIECUS: Sex Ed for Social Change, accessed July 12, 2023, siecus.org/state-profiles/

<sup>4 &</sup>quot;Protection of Pupil Rights Amendment," Protecting Student Privacy, U.S. Department of Education, accessed July 12, 2023, studentprivacy.ed.gov/resources/protection-pupil-rights-amendment-ppra-general-guidance

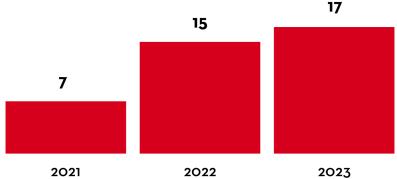
and create an antagonistic learning environment that impedes children's education. The Supreme Court has held that while local education agencies can set curricular standards, public schools must operate "in a manner that comports with the transcendent imperatives of the First Amendment." These bills undermine such imperatives. They can also effectively disempower the majority of parents, by imposing the preferences of a censorious minority on everybody.

In this report, PEN America focuses on state-level educational intimidation bills introduced and passed in the past three years.

In our Index of Educational Intimidation Bills that accompanies this report, we have compiled and categorized these bills—392 of them introduced between January 2021 and June 2023, 39 of which have passed into law. An additional nine policies have been adopted via executive order or incorporated into state-level policy as regulatory measures. At least 19 states have passed educational intimidation legislation or have adopted them via state policy. Importantly, while we have cataloged state-level legislation, many, perhaps hundreds, of local districts are experimenting with similar ideas. While most proposed bills have not become law, their breadth demonstrates the spirit of experimentation increasingly common in state legislatures. Bills that fail during one legislative session are likely to be reintroduced or recycled in the next. And while some of these provisions have greater potential than others to intimidate teachers and chill education, in the current political climate, even provisions that are less extreme in their wording can be interpreted or applied in ways that advance censorship.







Data from PEN America Index of Educational Intimidation Bills, January 1, 2021-August 17, 2023

<sup>5 &</sup>quot;Board of Education, Island Trees Union Free School District No. 26, et al. v. Pico, by His Next Friend Pico, et al.," FIRE, accessed July 12, 2023, www.thefire.org/supreme-court/board-education-island-trees-union-free-school-district-no-26-et-al-v-pico-his-next

The volume and pace of these proposals represents a startling uptick in this ideological attack on public education. And it is ideological: these bills are overwhelmingly being introduced by the political right, with a staggering number of bills being introduced over the same time period as educational gag orders. All but 15 of the 392 bills introduced since January 2021 were sponsored exclusively by Republicans, and both Florida governor Ron DeSantis and former president Donald Trump have touted these educational policies on the presidential campaign trail.<sup>6</sup>

This report begins with an exploration of the history and organizations behind these bills, before offering a comprehensive taxonomy of recent educational intimidation bills and related policies. It concludes with an analysis of how educational intimidation bills have evolved over the past three state legislative sessions, as well as the impact these bills could have, and in some cases are already having, on public education. This impact includes a small number of individual ideologues filing hundreds of book challenges, teachers and librarians self-censoring to avoid legal liability, and LGBTQ+ children fearing for their health and safety.

Our analysis focuses on three principal dangers that these bills, either separately or in combination, present:

- I. These bills spur self-censorship by making certain forms of instruction more burdensome, costly, or risky. Some do so by imposing requirements to notify parents ahead of mentioning concepts like "sexuality" and "gender stereotypes." Others facilitate cautious curation of libraries by expanding definitions of obscenity, or by creating new processes that make objections from parents, citizens, activists, and legislators easier to lodge (and more likely to result in binding prohibitions). In each case, the bills need not include explicit prohibitions to nonetheless create conditions for educators to be incentivized to narrow the range of topics, ideas, and even specific content they discuss in school. These bills ultimately empower would-be censors to impose new control on public education by intimidating educators into self-censoring, taking a wide berth around any topics that could incur controversy or conflict.
- II. Many of these bills not only chill formal teaching by educators but also make schools a less welcoming place for students to freely express themselves. This is especially true for LGBTQ+ students, who are explicitly and increasingly targeted in legislative texts. However, these rules ultimately impact the climate for learning and expression for everyone. Under the guise of looking out for students' safety and well-being, for example, many bills require teachers and administrators to actively monitor students' expression in ways that will encourage students to self-censor their personal expression at school.
- III. Many of these bills enable one parent to make decisions about what can be taught or read not just for their own child but for all children in a school or district. As such, despite the common usage of "parental rights" rhetoric, these bills actually disempower the majority of parents and empower an activist minority to make curricular decisions for all students in a school or district.

<sup>6</sup> Trip Gabriel, "Education Issues Vault to Top of the G.O.P.'s Presidential Race," New York Times, February 6, 2023, www.nytimes.com/2023/02/06/us/politics/education-republicans-elections.html

# PART I: THE RISE OF EDUCATIONAL INTIMIDATION BILLS

Beginning in January 2021, a wave of educational gag orders began to sweep state legislatures with the goal of exerting ideological control over educational institutions and prohibiting from both classrooms and trainings specific content related to race, gender, and sexuality. This wave of bills was part of a broad backlash against the racial reckoning within institutions that ensued after the murder of George Floyd in 2020. The movement was also fueled by a negative reaction to the widely cited New York Times' 1619 Project—developments chronicled in PEN America's 2021 report Educational Gag Orders: Legislative Restrictions on the Freedom to Read, Learn, and Teach. Also taking into account local efforts that gained steam in 2021 to challenge library books and curricula in school board meetings, PEN America has characterized the resulting movement as the "Ed Scare," a campaign to foment anxiety and anger with the goal of suppressing free expression in public education, one that echoes the Red Scares of the past.

As part of this Ed Scare, some political activists have used the language of "parental rights" and "curricular transparency" to advance a series of bills and policies that, by design, lay the groundwork for educational intimidation. In particular, these terms have been widely adopted within the Republican Party, which appears to believe that championing measures under the banner of "parental rights" is an electoral winner—particularly after Glenn Youngkin was elected governor of Virginia in November 2021 after utilizing that rhetoric. 9

This belief was quickly adopted by national GOP leaders; Missouri senator Josh Hawley introduced a federal Parents' Bill of Rights Act just two weeks after Youngkin's election. During the closing weeks of the 2022 midterm election, the Republican National Committee circulated a memo urging its candidates to shift away from discussing critical race theory (described in the memo as motivating only "the GOP base") and emphasize instead "parental rights" and "parental involvement." By all accounts, that message was received.

Elsewhere on the political right, educational intimidation provisions have been framed less in terms of "parental rights" and more as a way of resisting supposed liberal "indoctrination," sometimes invoking conspiracy theories about sexual "grooming." In March 2022, Christina Pushaw, then the press secretary for Florida governor Ron

<sup>7</sup> PEN America, Educational Gag Orders: Legislative Restrictions on the Freedom to Read, Learn, and Teach, November 2021, pen.org/report/educational-gag-orders/

<sup>8</sup> Jonathan Friedman, "Goodbye Red Scare, Hello Ed Scare," Inside Higher Ed, February 23, 2022, www.insidehighered.com/views/2022/02/24/higher-ed-must-act-against-educational-gag-orders-opinion

<sup>9</sup> Lisa Lerer and Jeremy W. Peters, "Republicans Seize on Schools as a Wedge Issue to Unite the Party," New York Times, November 3, 2021, www.nytimes. com/2021/11/03/us/politics/school-republican-campaign-issue.html

 $<sup>10\</sup> U.S.\ S.\ 3218, 117 th\ Congress, November\ 16, 2021, www.congress.gov/bill/117 th-congress/senate-bill/3218/text$ 

<sup>11</sup> Republican National Committee, "2022 Research—Messaging on Education, Energy, and the Environment," September 13, 2022, prod-static.gop.com/media/documents/RNC\_Data\_Issue\_Memo\_1663072983.pdf

<sup>12</sup> Ashley Parker, Laura Meckler, and Colby Itkowitz, "Republicans Focus on 'Parental Rights' in Closing Days of Campaign," Washington Post, November 4, 2022, www.washingtonpost.com/politics/2022/11/04/republicans-parents-rights-gender



A sign at a 2022 rally headlined by Governor Glenn Youngkin in Annandale, Virginia. Youngkin ran his 2021 gubernatorial campaign using "parental rights" rhetoric. (Photo courtesy of Ellie Ashford/Annandale Today)

DeSantis, argued that DeSantis's Parental Rights in Education bill "would be more accurately described as an Anti-Grooming Bill. If you're against the Anti-Grooming Bill, you are probably a groomer or at least you don't denounce the grooming of 4-8 year old children." Other prominent conservative organizations and commentators, from the Heritage Foundation and the American Principles Project to Fox News host Laura Ingraham and former host Tucker Carlson, have leveled similar charges. In these unfounded accusations, "grooming" refers not only to pedophilia but to LGBTQ+ teachers and librarians who are falsely purported to be "indoctrinating" children into an LGBTQ+ "lifestyle"—a charge rooted in homophobia. Is

It is also important to note that these bills come at a time of increased tumult and politicization in public schools, with teachers and librarians bearing the brunt of the crisis. According to a January 2023 RAND / Center for Reinventing Public Education survey, 31 percent of school district leaders nationally report that their teachers have received verbal or written threats related to politically controversial topics during the 2021–22 school year. Forty-six percent say that their ability to educate students has been compromised because of political polarization over LGBTQ+ issues, and 41 percent say the same about the debate over critical race theory. These problems are especially acute in suburban school districts, where 43 percent of educators have received threats and 42 percent have had someone challenge a book. These measures are taking a toll on educators.

School librarians have become particularly frequent targets of abuse. To news sources, many describe facing streams of insults from elected officials and feeling reviled by their neighbors. In Louisiana, one middle school librarian explained how her decision to speak out against a local book ban proposal resulted in months of online harassment. Strangers called her a "pedophile" and a "groomer." One person filed a public records request for

<sup>13</sup> Christina Pushaw, "The Bill That Liberals Inaccurately Call 'Don't Say Gay' Would Be More Accurately Described as an Anti-Grooming Bill," Twitter, March 4, 2022, twitter.com/ChristinaPushaw/status/1499886619259777029

<sup>14</sup> Jay W. Richards and Jared Eckert, "Florida's Parental Rights in Education Bill Hits Target: Gender Ideology Harms Kids," Heritage Foundation, February 14, 2022, www.heritage.org/education/commentary/floridas-parental-rights-education-bill-hits-target-gender-ideology-harms-kids; "The Left Wants to Sexualize YOUR CHILDREN—Even in the Classroom," American Principles Project, February 7, 2023, archive.is/w2zKR; "Fox News Chyron: 'Liberals Are Sexually Grooming Elementary Students," Media Matters, March 9, 2022, www.mediamatters.org/laura-ingraham/fox-news-chyron-liberals-are-sexually-grooming-elementary-students

Katherine Tangalakis-Lippert, "Tucker Carlson Blasted Teachers Who Discuss Gender Identity and Said Anyone Talking to Kindergartners about Sex 'Should Be Beaten Up," Business Insider, April 10, 2022, www.businessinsider.com/tucker-carlson-blasts-teachers-talking-gender-identity-is-abuse-2022-4

<sup>15</sup> See, for example, "Digital Hate: Social Media's Role in Amplifying Dangerous Lies about LGBTQ+ People," Center for Countering Digital Hate and Human Rights Campaign, 2022, hrc-prod-requests.s3-us-west-2.amazonaws.com/CCDH-HRC-Digital-Hate-Report-2022-single-pages.pdf

<sup>16 &</sup>quot;Navigating Political Tensions over Schooling: Findings from the Fall 2022 American School District Panel Survey," Center on Reinventing Public Education, January 2023, crpe.org/asdp-2023-politics-brief

her employment history. Another sent her a message saying, "You can't hide, we know where you live. You have a target on your back. Click click." She said she could no longer sleep and feared leaving her house.<sup>17</sup>

Moms for Liberty, the activist group that has been the most high-profile purveyor of both "parental rights" and "groomer" rhetoric, gave an official response to this librarian's story on Twitter: "She should be crying in bed for days. If she had any conscience at all, her own shame should have her inconsolable. Cry more."<sup>18</sup>

Such demonization of teachers and librarians—treating them as a profession not of educators but of potential criminals—has real effects. It is no coincidence that Florida, the site of the nation's most punitive educational intimidation bills and educational gag orders, also leads the country in terms of teacher vacancies.<sup>19</sup> At the start of 2023, teacher vacancies in Florida stood at nearly 5,300, more than double the number in January 2021.<sup>20</sup> And in Texas, 77 percent of teachers have considered leaving the field—and 72 percent have taken steps toward that goal—citing not only low pay but a lack of respect from parents, community members, and state legislators.<sup>21</sup> Given the continuing effects of these restrictive laws and policies, the crisis will likely worsen.

Most educational intimidation bills are based on model legislation prepared by a small collection of conservative think tanks and activist groups, including the Manhattan Institute, the Goldwater Institute, and No Left Turn in Education.<sup>22</sup> Each of these organizations has also either developed or promoted model educational gag order legislation and/or bills that facilitate or encourage the banning of books. New model educational intimidation bills have also been developed by the Parental Rights Foundation, founded in 2007 by homeschooling advocate Michael P. Farris to mobilize parents against "expert' agents of the state"—namely, teachers, librarians, and principals.<sup>23</sup>

Manhattan Institute senior fellow Christopher Rufo, a leading proponent of educational gag orders, has explicitly, publicly explained how all these types of bills are linked, saying in January 2022:

<sup>17</sup> Erica Hellerstein, "America's Culture Warriors Are Going after Librarians," Coda, December 21, 2023, codastory.com/rewriting-history/war-on-librarians-united-states/18 Moms for Liberty, "You Want to Groom Our Children and We're Supposed to Give You Love?," Twitter, January 3, 2023, twitter.com/Moms4Liberty/status/1610268250952065025

<sup>19</sup> Caleb Ecarma, "I Can't Teach Like This': Florida's Education Brain Drain Is Hitting Public Schools Hard," *Vanity Fair*, May 22, 2023, www.vanityfair.com/news/2023/05/florida-education-brain-drain-hitting-schools-hard; Khaleda Rahman, "Florida Combats Colossal Teacher Shortage," *Newsweek*, April 12, 2023, www.newsweek.com/florida-combats-colossal-teacher-shortage-1793928; Steven Greenhouse, "The Point Is Intimidation': Florida Teachers Besieged by Draconian Laws," Guardian, May 13, 2023, www.theguardian.com/us-news/2023/may/13/florida-teachers-woke-law-ron-desantis. See also Tuan D. Nguyen, Chanh B. Lam, and Paul Bruno, "Is There a National Teacher Shortage? A Systematic Examination of Reports of Teacher Shortages in the United States," Brown University, August 2022, edworkingpapers.com/sites/default/files/ai22-631.pdf; Hannah Natanson, "Never Seen It This Bad': America Faces Catastrophic Teacher Shortage," *Washington Post*, August 3, 2022, www.washingtonpost.com/education/2022/08/03/school-teacher-shortage/.

<sup>20</sup> Leslie Postal, "Florida Teacher Vacancies Soar to Nearly 5,300 in January," Orlando Sentinel, January 13, 2023, www.orlandosentinel.com/news/education/os-ne-florida-teacher-shortage-2023-20230113-gtotfwmxdralnjsw65ynv4dhae-story.html.

<sup>21 &</sup>quot;The 2022 Texas Teacher Poll: Persistent Problems and a Path Forward," Charles Butt Foundation, accessed July 12, 2023, charlesbuttfdn.org/what-were-learning/2022txteacherpoll/.

<sup>22</sup> Christopher F. Rufo, James R. Copland, John Ketcham, "A Model for Transparency in School Training and Curriculum," Manhattan Institute, December 1, 2021, manhattan-institute.org/transparency-school-training-curriculum; "Academic Transparency Act," Goldwater Institute, June 8, 2022, www.goldwaterinstitute.org/wp-content/uploads/2022/07/Academic-Transparency-Act-2022-Model-Legislation-6-22.pdf; "Model Legislation," No Left Turn in Education, 2021, www.noleftturn.us/wp-content/uploads/2021/06/NLTE-Model-Legislation.pdf

<sup>23 &</sup>quot;Parental Rights Resolutions," Moms For Liberty, momsforliberty.org/parent-resolutions/; the site is archived at archive.ph/5xlZb. Suzanne Nossel, "Parents Should Have a Voice in Their Kids' Education but We've Gone Too Far," *Time*, September 20, 2022, time.com/6215119/parents-rights-education-gone-too-far/; "Removing Parents from Public Schools," Parental Rights Foundation, accessed June 14, 2023, parental rightsfoundation.org/removing-parents-from-public-schools/

The Left will expect that, after passing so-called "CRT bans" last year, we will overplay our hand. By moving to curriculum transparency, we will deflate that argument and bait the Left into opposing "transparency," which will raise the question: what are they trying to hide? . . . The ultimate goal [of these bills] is to shift incentives: we will empower parents over the bureaucracy and put a price on promoting racialist abuse in public schools. That's how we fight CRT, that's how we continue to build the parent movement, and that's how we win. 24

As with many proponents of educational intimidation bills, Rufo's strategy depends on the public misunderstanding what this legislation would do. By framing such bills in terms of "curriculum transparency" and "parental rights," supporters hope to make them appear benign—as simple common sense. They are not.

# The History of "Parental Rights" Rhetoric

"Parental rights" rhetoric and the "parental rights" movement are not new. They have appeared, in various forms, throughout the past half century. These older framings feature their own concerning aspects, but the new post-2020 parental rights movement represents an escalation from its predecessors in its desire to impose a wide-ranging chilling effect on public schools.

In the 1970s and 1980s, religious and social conservatives sought to remove certain books from school curricula on the grounds that they offended families' religious beliefs. "Parents everywhere are fighting for their children," declared presidential candidate Patrick J. Buchanan in 1995, before promising to make "parental rights . . . prevail in our public schools again." But when a series of court decisions, most prominently *Mozert v. Hawkins* (1987), frustrated these book-banning efforts and declared that teachers could assign materials that expressed controversial views on religion so long as those teachers did not endorse specific beliefs, many "parental rights" advocates shifted tactics, abandoning public schools and becoming homeschooling advocates—seeking to be "left alone by the government" to educate their children as they saw fit. "Parental rights" advocates thus came to focus on constraining the child welfare system and undermining policies that might restrict parents' authority over their children's education at home. For instance, Michigan adopted a law in 1976, and Texas in 1995, affirming the right of parents "to direct the moral and religious training" of their children.

<sup>24</sup> Christopher F. Rufo, "The Strategy Here Is to Use a Non-threatening, Liberal Value—'Transparency'—to Force Ideological Actors to Undergo Public Scrutiny," Twitter, January 7, 2022, web.archive.org/web/20220107230551/twitter.com/realchrisrufo/status/1479515716822781952

<sup>25</sup> Patrick J. Buchanan, "Announcement of Candidacy," March 20, 1995, CNN AllPolitics, www.cnn.com/ALLPOLITICS/1996/candidates/republican/withdrawn/buch.announcement.shtml; Jennifer C. Berkshire, "The GOP Has Revived Its Obsession with Parents' Rights," New Republic, December 9, 2021, newrepublic. com/article/164648/gop-obsession-parents-rights

<sup>26</sup> Mozert v. Hawkins, 827 F.2d 1058 (1987), users.soc.umn.edu/~samaha/cases/mozert\_v\_hawkins\_schools.html

<sup>27</sup> Jeffrey Shulman, "The Parent as (Mere) Educational Trustee: Whose Education Is It, Anyway?," Nebraska Law Review 89, no. 2 (2010): 290-357, scholarship.law. georgetown.edu/cgi/viewcontent.cgi?article=1696&context=facpub

<sup>28</sup> Texas Family Code § 151.001 (2022), law.justia.com/codes/texas/2022/family-code/title-5/subtitle-b/chapter-151/section-151-001/; Revised School Code (Excerpt) § 380.10 (1976), legislature.mi.gov/(S(ocr1bvqwgj3lhodkul15nt21))/mileg.aspx?page=getObject&objectName=mcl-380-10.

Troxel v. Granville (2000), a Supreme Court decision affirming the "fundamental" right of parents to "make decisions concerning the care, custody, and control of their children," represented a victory for this movement and led to a raft of further state laws like those in Texas and Michigan.<sup>29</sup> As a rule, however, these legislative texts do not enumerate specific rights regarding public education or explain how they will be enforced or applied. Their main function, beyond placating activists, was to strengthen "parental rights" arguments in the courts—to establish these rights as legally "fundamental" and thereby require states that wish to promote policies found to violate these rights to demonstrate a compelling overriding interest.<sup>30</sup>

Seen in this context, the 2021 state legislative sessions marked the beginning of a dramatic increase and change in legislation promulgated under the banner of "parental rights"—and in many ways a trumped-up return to the movement's initial strategy: legislating ideological control over the public school system.

<sup>29</sup> Troxel v. Granville, 137 Wash. 2d 1, 969 P.2d 21 (2000), www.law.cornell.edu/supct/html/99-138.ZD1.html

<sup>30</sup> Margaret Ryznar, "A Curious Parental Right," SMU Law Review 71, no. 1 (January 2018): 127-58, scholar.smu.edu/cgi/viewcontent.cgi?article=4718&context=smulr

# PART II: DEFINING EDUCATIONAL INTIMIDATION PROVISIONS

or the past three years, significant state-level legislative energy has been channeled into proposals related to education, including passing explicit curricular prohibitions into law. These educational gag order bills aim to censor education about race, sex, gender, and history primarily, and have come in many forms.<sup>31</sup>

But alongside bills that propose explicit gag orders has been a wave of proposals that are the focus here—those that do not necessarily include curricular prohibitions on what can be taught but instead chill public education in other, less direct ways. Rhetoric related to "parental rights" or "school transparency" has been attached to a wide range of these policy proposals.

Though there are some broad similarities among the bills of this set as a whole, there has also been great variation, as legislators have borrowed provisions from one another and combined them in different ways. The national climate is best understood as one of experimenting and copycatting, as new ways of intimidating teachers and librarians are being proposed in different states, or new combinations are emerging based on elements from multiple templates.

PEN America has classified 12 types of educational intimidation provisions, each of which has been included in bills introduced or passed into law between January 2021 and June 2023, and each of which can create the conditions for suppressing teaching and learning, without including direct prohibitions on content. The different types often work together, and many bills contain multiple provision types: 174 bills contain two or more of these provision types, and 99 contain three or more. In addition, depending on its wording, a single provision may fall under several categories simultaneously.

Below is a glossary of these 12 types of provisions that have been proposed in state legislatures across the country. PEN America's Index of Educational Intimidation Bills offers a visual illustration of how each bill contains provisions of the various types listed below. The reader is encouraged to examine the Index in its entirety, as a companion to the following descriptions. We do not claim that all of these categories are equally problematic, or that every last measure described is inherently problematic of its own accord. But the widespread pattern of layering on multiple intrusive, burdensome, and intentionally chilling measures bears the unmistakable mark of a campaign of intimidation targeting educators.

## Glossary of educational intimidation provisions:

#### · Enhanced curriculum inspection provisions

These provisions directly increase access to, or open the door for increased access to, instructional materials or classroom library books, either for parents or for the public. They frequently require educators or districts to provide a burdensome amount of information, and may mandate such information be posted to a public website or to a statewide portal.

#### · Library inspection or removal provisions

These provisions can facilitate either book banning or a more cautious approach to library curation, including by introducing new objection procedures, new political bodies or processes for acquisition and removal, or book labeling requirements. Some bills include provisions that effectively ban books throughout a state if they are banned in one district. Others give parents greater ability to monitor or control their own children's library activity, potentially limiting some students' access to the library as a whole.

#### Teacher inspection provisions

These provisions grant public access to either individual lesson plans or professional development materials for educators. In some cases, they require schools to publicly identify teachers who created certain instructional materials that have been posted online. These provisions go well beyond existing mechanisms for parents or members of the general public to examine instructional materials, requiring a level of public access that may impose substantial burdens on educators and chill the professional environment; for example, some include requirements to allow all professional development sessions to be open for public attendance.

#### • Education à la carte provisions

These provisions make it easier for parents to limit their children's education by creating new opt-ins or opt-outs for specific content. Some of these provisions flip existing opt-outs to opt-ins, meaning that where parents used to be able to remove their children from certain kinds of instruction, they now have to proactively opt them in—making restrictions on learning the default standard. Others allow parents to opt their children out of being exposed to broad, vaguely defined concepts, forcing teachers to guess whether their instruction crosses a fuzzy line; for example, some of these bills would allow parents to specify any topic that violates their moral or religious beliefs, with no limits. A subset of provisions would require parental consent for library use, having the effect of limiting students' library access.

Opting one's child out of some types of instruction is neither a new phenomenon nor an inherently unreasonable one. But existing opt-outs have generally been narrowly tailored: many states and school districts allow parents to opt their children out of animal dissection units in biology, for example, or from physical or sex education requirements.<sup>32</sup> In contrast, many of these new opt-out provisions in proposed laws appear aimed at allowing parents to reject any introduction of any concept to their children. This

<sup>32</sup> Sexuality Information and Education Council of the United States, "Policy Brief: Sex Ed and Parental Consent: Opt-In vs. Opt-Out," siecus.org/wp-content/uploads/2018/09/Policy-Brief-Opt-in-v-Opt-out-Redesign-Draft-09.2018.pdf.

broad-spectrum approach would limit what teachers can safely cover in the classroom, allowing a single parent to exercise outsized influence on what all can learn.

#### Harmful to minors provisions

Often working in tandem with library inspection/removal provisions, these provisions work to expand the definition of what is considered "harmful to minors" or "obscene"; to remove exemptions from these definitions for library or public school personnel; or to criminalize educators who violate the new, vague definitions.

#### Anti-LGBTQ+ provisions<sup>33</sup>

These provisions explicitly target LGBTQ+ expression at school—by students or teachers—by mandating that schools and educators monitor students' gender identity or sexuality, limiting students' ability to freely join certain clubs, or placing restrictions on pronoun usage. Some bills with these provisions specifically include content restrictions on classroom instruction or teacher training related to LGBTQ+ topics, and some allow parents to object on this basis; others classify instruction related to gender identity and sexual orientation as obscene.

#### Student monitoring provisions

These provisions give parents greater access to information about their children's library activity, or enable them to monitor clubs their children can join. This category also includes provisions that require teachers or administrators to monitor a student's gender expression or sexual orientation and report it to their parents. In this way, there is overlap between these provisions and anti-LGBTQ+ provisions, with student monitoring frequently being the tool used to foster anti-LGBTQ+ environments in schools and chill student expression.

#### · Classroom surveillance provisions

These provisions permit the direct surveillance, via online video feed or in person, of classrooms or classroom instruction by persons outside the school. While these provisions are rare and none have yet been enacted, their extreme nature, and the ways they can infringe on the privacy rights and security of students, teachers, and parents, merit special mention.

#### · Parental rights enforcement provisions

These provisions facilitate enforcement of other provisions, including by creating tip lines or complaint policies that make enforcement of educational intimidation provisions widely accessible, such as by introducing new complaint processes.

#### Educational gag order enforcement provisions

These provisions create tip lines or complaint policies tied to specific, enacted educational gag order laws that facilitate their enforcement. While many of the provision types listed above help enforce educational gag orders, by allowing parents to either search through instructional materials or watch professional development sessions, these provisions do so explicitly.

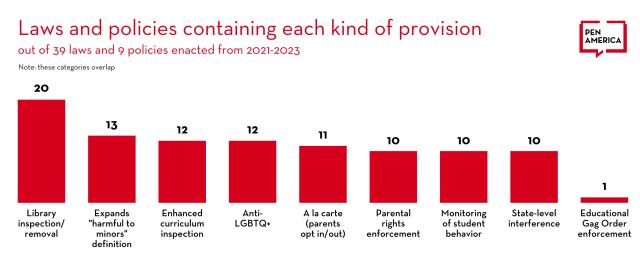
<sup>33</sup> The Index of Educational Intimidation Bills does not include so-called "bathroom bills" or bills that restrict transgender students' participation in school sports, as we consider these bill types to be outside the scope of this report. Rather, the Index includes only anti-LGBTQ+ bills that specifically relate to an educational setting or that belong to another one of the categories below.

#### · State-level interference provisions

These provisions require schools to report material or book challenges to the state, set up public portals to compile information for all districts in the state, and/or include gag order tip lines that specifically go to a state entity. Provisions of this type frequently call for the state to take over procedures currently under local control, or expand the state's role in district-level decision-making

#### · Anti-DEI provisions

These provisions specifically increase scrutiny over broadly or poorly defined diversity, equity, and inclusion (DEI) materials, either in the classroom or in teacher training. Like anti-LGBTQ+ provisions, numerous anti-DEI bills have been proposed that would apply in a variety of settings; PEN America includes such provisions here only if they also fall into another educational intimidation category.



Data from PEN America Index of Educational Intimidation Bills, January 1, 2021-August 17, 2023

# Anatomy of an Educational Intimidation Bill

In sum, it is critical to see how the range of provisions detailed above can work in tandem to facilitate a chilling environment. Many of the bills introduced in the past three years incorporate both direct and indirect forms of intrusion and intimidation together, making it clear that the provisions rationalized as serving "parental rights" or "school transparency" have a different purpose: to encourage censoriousness and intimidate educators.

Kentucky's HB 173 illustrates how these provisions can be combined to form a censorious whole.<sup>34</sup> The bill, which was introduced in 2023 but failed to become law, incorporates the following provisions:

1. **Educational gag order component:** Teachers in public K-12 schools may not discuss or offer any instruction related to sexual orientation, sexual preference, or "gender expression inconsistent with

biological sex" to students in grades K-8, or thereafter, unless required to do so by official school curricula. Teachers may not endorse, support, or oppose any public official, candidate for public office, law, bill, court decision, or executive action from either the present or any period of American history.

- 2. Curriculum inspection provisions: Schools must automatically provide to parents a course syllabus and reading list for each class in which their child is enrolled, and make available upon request all curricular documents, books, and other educational materials used in their child's education. Upon request, schools must also inform parents of any people or materials to which their child was "exposed" while on school property.
- 3. **Anti-LGBTQ+ and student monitoring provisions:** Schools are required to alert parents of any "significant changes" to their child's gender expression. The educational gag order component also targets gender identity and sexual orientation.
- 4. Parental rights and educational gag order enforcement provisions: Parents who believe that any part of this act has been violated may lodge a complaint with their school board, which must have a formal process and designated official tasked with receiving these complaints. All complaints must be resolved within 60 days. If a parent is unsatisfied with the resolution of their complaint, they may file suit against the school board and receive injunctive relief, damages, and compensation for legal expenses. If they are unsuccessful, they may not be required to pay any legal expenses incurred by the school district.

Each of these components works in conjunction with the others to achieve a collective effect of censorship and the chilling of speech. By banning particular ideas and publications, the bill would restrict free expression within public schools. By requiring schools to post a list of all instructional materials on a publicly accessible website, the bill would ensure that anyone, regardless of their connection (or lack thereof) to the school, can launch a hunt for violations—going beyond the rights to such inspection already guaranteed to parents and guardians under the PPRA. By throwing open the doors to objections from all comers, the bill would hand activists the tools to hunt down alleged violations of these newly restrictive laws. And by saturating the legislative text with penalties, the bill would incentivize school districts to err on the side of caution and self-censorship, prioritizing the prudent management of risk over intellectual freedom or their judgment of what is best for students. The unmistakable aim is to create a broad chilling effect in schools, above and beyond even the restrictions spelled out in the legislative text.

While each of these elements is not necessarily censorious standing alone—for example, public school materials are generally available via public records requests, some teachers offer some of their curricular materials online for parents, and children are certainly welcome and encouraged to discuss and share what happens in the classroom at home—taken together, they present a significant burden on teachers and administrators, severely limiting the free exchange of ideas and information in the classroom and generally "cast[ing] a pall of orthodoxy" over the educational environment, in contravention of established Supreme Court jurisprudence.<sup>35</sup>

# PART III: POTENTIAL IMPACT OF EDUCATIONAL INTIMIDATION PROVISIONS

Since 2021, 39 of the educational intimidation bills PEN America has tracked have become law. An additional nine intimidation policies have been adopted via executive order or incorporated into state-level policy as regulatory measures. In all, 19 states, home to 140 million Americans, have one or more educational intimidation provisions in force. As of June 2023, the only states that have not had an educational intimidation bill introduced are Nevada, New Mexico, New York, and Vermont. Even in states where no educational intimidation bill has become law, like California and New Jersey, numerous school districts have experimented with similar policies, making the full scope of the problem difficult to quantify.<sup>36</sup>

The argument that these bills are innocuous, good faith efforts to improve school operations, foster parental engagement, or further student learning falls apart upon deeper examination. Below, we detail three observations about these bills' collective impact—that they (1) spur censorship of curricular materials and the chilling of instruction, (2) chill students' self-expression, and (3) effectively disempower rather than empower the majority of parents.

#### CENSORING MATERIALS AND CHILLING INSTRUCTION

As discussed above, educational intimidation bills introduced in the past three years exhibit great variety, but they collectively place new pressures on public schools that will chill the educational environment. These bills do this either by empowering ideologically motivated actors with new ways to scrutinize or monitor public education and challenge components of it with which they disagree, or by creating conditions under which educators will self-censor to avoid potential controversy, conflict, or punishment. The result is a spate of bills that claim to work in service of parents or public transparency but actually serve to constrict curricular materials and chill instruction. Because many bills have numerous components that are mixed and matched in different ways, we focus herein on common types of *provisions* rather than on whole bills.

## Curriculum and Library Inspection

The first group of provisions that have the foreseeable impact of empowering ideologically motivated challengers are those related to "curriculum inspection" or "library inspection." Over the past three years,

<sup>36</sup> Blake Jones, "Religious Rights Gets Blindsided by Angry Parents in Southern California School Districts," POLITICO, July 9, 2023, www.politico.com/news/2023/07/09/culture-clash-religious-right-california-00105259; Eric Scott, "Parental Rights -vs- Transgender Policy in NJ Tools," New Jersey 101.5, May 31, 2023, nj1015.com/parental-rights-vs-transgender-policy-in-nj-schools/;

PEN America has counted 228 bills with curriculum inspection provisions—by far the most common provision type—and 116 bills with library inspection or removal provisions.

These provisions rely on the rhetoric of "school transparency" but take such a concept to new extremes. While parents do have the right to inspect instructional materials upon request under the PPRA, many of the bills containing these provisions propose a requirement to make all this information publicly available by default, not solely for parents. Such bills also frequently would require extensive documentation of all materials, instruction, and books teachers present to all students to be shared via publicly accessible online databases, where teachers could be penalized for not keeping them completely up to date. The extensive demands these provisions would put in place, regardless of whether any parent has expressed concern, suggest they are meant not to serve actual parents interested in what their own children are learning but to provide a way for ideologically motivated actors, including those with no connection to the school, to comb through this data to hunt for material to which to object.<sup>37</sup>

Missouri's SB 4—which passed the state senate in 2023 before ultimately failing to become law—is a representative example of a curriculum inspection bill.<sup>38</sup> It would have required public K-12 schools to post on a publicly available website the full-text versions of all curricula, textbooks, sourcebooks, and syllabi, provided doing so complied with relevant intellectual property protections. This material, the bill specified, would have to be displayed in an "easy-to-search" format.

SB 4 contained not just a set of curriculum inspection provisions but also an educational gag order disguised as a prohibition on compelled speech, whereby teachers would have been prohibited from "compelling" students to believe in ideas such as "the notion that individuals of any race, ethnicity, color, or national origin are inherently superior or inferior to others." As PEN America has covered at length in its other reports, such gag order constructions stifle classroom teaching on history, immigration, and race issues.

The debate over SB 4 in the Missouri House of Representatives was telling, revealing an effort to police certain ideas and theories and prevent them from being taught. Senator Andrew Koenig, who sponsored the bill in the Senate, testified before the House that he had a friend whose son was taught about racial oppression in class in ways he found objectionable, and that this bill was intended to stop such lessons.<sup>39</sup> In other remarks, Koenig was even more explicit, saying, "The people that are concerned about [critical race theory] are concerned about having access to what's being taught. So to me, [the bill] was a perfect fit."

The ultimate effect of curriculum inspection provisions is the facilitation of government censorship.

<sup>37</sup> It should also be noted that some proposed curriculum inspection bills may violate copyright laws, particularly if they require posting content to a public website. While many contain clauses specifying that copyrighted material does not need to be displayed in full, this is not true for all such inspection bills.

<sup>38</sup> Missouri SB 4, legiscan.com/MO/text/SB4/2023

<sup>39</sup> Annelise Hanshaw, "Missouri House Hearing on 'Parent Bill of Rights' Centers on Diversity Education," Missouri Independent, April 12, 2023, missouriindependent.com/2023/04/12/missouri-house-hearing-on-parents-bill-of-rights-centers-diversity-education/

<sup>40</sup> Annelise Hanshaw, "Missouri Republicans Renew Early Focus on Parental Rights, Critical Race Theory," Missouri Independent, January 17, 2023, missouriindependent.com/2023/01/17/mo-gop-renew-critical-race-theory-discussions/

Consider the following school board-level example of how these policies work in practice. A school board in Lansing, Kansas, passed a district-level parental bill of rights in 2022 after a state-level version was vetoed by the governor. The bill of rights included expanded curriculum inspection rights for parents, as well as greater power to object formally to material—an example of how curriculum inspection and parental rights enforcement provisions can work together. One parent immediately filed a formal objection to two senior English courses, claiming that the inclusion of works by Oscar Wilde, Chimamanda Ngozi Adichie, and others represented "indoctrination" into a "socio-political agenda" and that teachers sought to "groom" her daughter into accepting "moral relativism." Over the objections of its own review committee, the school board responded to this one parent's objection by removing the challenged works from the English curriculum, caving—as one parent put it—to the "extreme forces trying to denigrate quality public education in Lansing." <sup>43</sup>

As this example illustrates, curricular inspection can be a tool for parents aiming to suppress certain ideas. A vice principal in Carlsbad, California, was caught on tape admitting as much; he encouraged members of his church to tell the school district that they want "transparency about the school curriculum" and that "curriculum, clubs, and celebrations involving sexual orientation or gender identity should not be allowed on school campuses."<sup>44</sup>

Education experts agree that parental involvement in a child's education is key to success. As outlined above, laws and policies have long provided expansive avenues for such engagement. Parent-teacher conferences, parent-teacher associations, back-to-school nights, and other commonplace programs provide opportunities for a robust interchange between parents and schools. But in this political moment, expanded curricular inspection powers are designed specifically to empower an activist minority of parents or community members to keyword-search out-of-context passages in assignments and textbooks, potentially leading to censorious outcomes such as that in Lansing. As one Lansing high school student said, "I used to want to be a teacher. And things like this, where I'm seeing teachers losing their ability and their right to teach and my right as a student to learn, doesn't make me want to do that."

Florida, perhaps the country's greatest laboratory for educational censorship, has already demonstrated the dangers posed by such measures. HB 1467, enacted in 2022, requires school districts to take actions that sound reasonable on their face: to post online, in a "searchable format," a list of all instructional materials

<sup>41</sup> Jonathan Shorman and Katie Bernard, "Kansas Gov. Laura Kelly Vetoes Ban on Transgender Athletes, Parents' 'Bill of Rights," Kansas City Star, April 15, 2022, www.kansascity.com/news/politics-government/article260448997.html

<sup>42</sup> Kirsten Workman, "Request for Review of a Textbook, Instructional Material, or Media Center Material," accessed June 14, 2023, go.boarddocs.com/ks/usd469/Board.nsf/files/CLTLZ3583216/\$file/12-12-22%20%20Senior%20Literature%20and%20Senior%20Curriculum.pdf

<sup>43</sup> Sarah Ritter, "After 1 Mother Complains, Kansas City Area School Board Removes Social Justice Lessons," Kαnsαs City Stαr, January 25, 2023, www.kansascity.com/news/local/education/article270239527.html

<sup>44</sup> Shandel Menezes, "Students at 2 High Schools in Carlsbad Walk Out in Protest of Vice Principal's Anti-LGBTQ Curriculum Rant," NBC 7 San Diego, May 30, 2023, www.nbcsandiego.com/news/local/students-at-2-high-schools-in-carlsbad-walk-out-in-protest-of-vice-principals-anti-lgbtq-curriculum-rant/3237129/

<sup>45</sup> Maša Đurišić and Mila Bunijevac, "Parental Involvement as a Important Factor for Successful Education," Center for Educational Policy Studies Journal 7, no. 3 (2017): 137-53, accessed July 5, 2023, files.eric.ed.gov/fulltext/EJ1156936.pdf

<sup>46</sup> Sarah Ritter, "After 1 Mother Complains, Kansas City Area School Board Removes Social Justice Lessons," Kansas City Star, January 25, 2023, www.kansascity.com/news/local/education/article270239527.html

used in the district and a list of all library materials and mandatory reading lists.<sup>47</sup> Rules from the Florida Board of Education clarified that this law extends to classroom libraries, meaning educators have to include all books in one's classroom in a search database as well.<sup>48</sup>

The law also contains a guarantee that both parents and residents of a district can lodge formal objections on any instructional material. A report on these objections is compiled by the school district and submitted to the Department of Education, which distributes the report to every other school district in the state for consideration when selecting its own educational materials. Additionally, the law requires school officials to follow new library selection guidelines when selecting materials and responding to objections, one of which is to always "err on the side of caution." <sup>49</sup>

In Florida and across the country, many school districts already make their library catalogs available to parents or members of the public. But in legislating them to do so, especially when in conjunction with reinforcing citizens' rights to lodge objections and requiring objections to be reported to the state, the true intent of the law becomes clear: to encourage ideologues to use the law to scan school collections and protest inclusion of any books to which they object, and to mobilize state pressure on local school districts. Indeed, the net effect of the bill has been to prompt librarians and educators to take the most risk-averse approach possible toward potentially controversial books. Reports out of Florida's Manatee and Duval Counties have detailed the near total suspension of students' access to classroom libraries while collections underwent new processes of review in response to the law.<sup>50</sup>

HB 1467 has also made it easier for censorship-minded activists to use school districts' published lists of instructional materials and library resources as targets for their ideological offensives. In Clay County, Bruce Friedman, leader of the local chapter of No Left Turn in Education, has been successful at getting hundreds of books temporarily or permanently removed from school library shelves, and has told journalists he has a list of thousands of titles to challenge. The same scenario is playing out in Florida's St. Lucie County, where Dale Galiano, a local retiree with no children in the school system, has made it her mission to challenge what she considers inappropriate books. In Martin County, Julie Marshall, a parent who leads the local chapter of Moms for Liberty, has gotten over 100 books removed from school libraries since February, including 20 novels by Jodi Picoult, 8 by Nora Roberts, and 9 that make up the Maximum Ride series by James Patterson—among dozens of others.

<sup>47</sup> Florida HB 1467, legiscan.com/FL/text/H1467/id/2545742

<sup>48</sup> Leyla Santiago and Jack Forrest, "Florida School District Begins 'Cataloging' Books to Comply with DeSantis-Backed Law," CNN, January 25, 2023, www.cnn. com/2023/01/25/politics/florida-school-library-books-law-desantis/index.html

<sup>49</sup> Leslie Postal, "New State Rules Tell School Librarians to 'Err on Side of Caution' When Picking Books," South Florida Sun Sentinel, January 18, 2023, www. sun-sentinel.com/2023/01/18/new-state-rules-tell-school-librarians-to-err-on-side-of-caution-when-picking-books/

<sup>50</sup> Julia Reinstein, "Florida's School Book Bans Have Teachers 'Walking on Eggshells," BuzzFeed News, February 22, 2023, www.buzzfeednews.com/article/juliareinstein/florida-school-book-bans-teachers-confusion

<sup>51</sup> Judd Legum and Rebecca Crosby, "How to Ban 3600 Books from School Libraries," *Popular Information*, December 12, 2022, popular.info/p/how-to-ban-3600-books-from-school

<sup>52</sup> Nikki Ross and Alia Wong, "PEN America Report Shows Florida Has 2nd Highest Number of School-Related Book Bans," News-Press, September 26, 2022, www.news-press.com/story/news/education/2022/09/26/school-book-bans-florida-2nd-highest-nation-pen-america-report-banned/10428021002

<sup>53</sup> Greg Sargent and Paul Waldman, "Florida's Book-Ban Frenzy Targets Nora Roberts, and She's Not Happy," Washington Post, April 28, 2023, www. washingtonpost.com/opinions/2023/04/28/ron-desantis-book-ban-nora-roberts-florida/

Beyond these efforts to invite new levels of curriculum and library inspection, another, related set of bills has also relied on the rhetoric of "school transparency" to require that cameras be installed in classrooms for parents or members of the public to watch instruction live. One Indiana bill proposed in 2022 went so far as to propose permitting any taxpayer to sit in on any class in a public school at any time they wished.<sup>54</sup> Over three years, six such classroom surveillance bills have been introduced in state legislatures, and all have failed. While these represent a small subset of bills, they are worth noting because of the clear and serious safety and privacy concerns they raise.

At least 24 bills go further in spelling out how their push for "parental rights" or "transparency" is aimed at censorship within schools and libraries, by creating government tip lines or complaint policies that make it easier for parents or sometimes any citizen to allege that teachers or librarians are violating educational gag orders. Such reporting procedures usually have teeth—with district attorneys or other state entities empowered to investigate and punish the offending districts, including in some cases by withdrawing funding

### Educational Intimidation, Obscenity, and Book Bans

In conjunction with greater scrutiny over library collections, some legislators have also endeavored to make it easier to intimidate schools, teachers, and librarians to remove books either by stretching the definition of what constitutes "obscenity," and thereby opening educators up to criminal prosecution, or by creating new political bodies with the power to ban books on a wide scale.

At least 68 bills introduced in the past three years would change or expand definitions of "obscene," "harmful to minors," and "sexually explicit" in educational contexts, and they all facilitate censorship in schools. These bills are all best understood as book-banning efforts—and at least 13 have become law since 2021, and an additional 4 have been implemented via policy.

One example is lowa's SF 496.<sup>55</sup> The brainchild of Governor Kim Reynolds, this bill, which was signed into law in May 2023, states that school libraries must develop "age-appropriate" collections—which, by the law's definition, would exclude any book that contains sexual content, regardless of grade level. Such a broad definition could serve to block a wide array of literature. SF 496 also makes it easier for parents to request the removal of a book or material they deem objectionable for any reason, empowering even a single parent to limit the library collection and classroom experience of all students. In lowa, high school librarians caught shelving any book with a "sex act"—be it J. D. Salinger's *The Catcher in the Rye*, George Orwell's 1984, or Toni Morrison's *The Bluest Eye*—now risk disciplinary action. This is hardly hypothetical: in one lowa district, these titles are among nearly 400 that district administrators instructed teachers to remove from their classrooms to comply with the law ahead of the new school year.<sup>56</sup> In an official statement, the district defended their decision by saying that in the absence of official state guidance, they "had to take a fairly broad interpretation"

<sup>54</sup> Indiana HB 1231, legiscan.com/IN/bill/HB1231/2022

<sup>55</sup> Iowa SF 496, legiscan.com/IA/text/SF496/id/2794529

<sup>56</sup> Tim Webber and Chris Higgins, "See the List of 374 Books an Iowa School District Has Flagged as Banned under New State Law," Des Moines Register, July 31, 2023, www.desmoinesregister.com/story/news/education/2023/07/31/see-374-banned-books-school-district-urbandale-under-iowa-law-sex-acts-lgbtq-gender-identity/70497230007/

to protect teachers and librarians from disciplinary action.<sup>57</sup> Following public pressure, the district dropped their objections to most of the books on the list, but 65 titles remain banned in the district.<sup>58</sup>

Montana passed a similar bill, HB 234, into law in May 2023. This bill allows school districts to tailor the state's definition of obscenity to be more restrictive, and removes a long-standing exemption from obscenity laws for educational institutions—including universities. Supporters of the bill, as it was making its way through the Montana state legislature, repeatedly cited the presence of books featuring messages of LGBTQ+ acceptance as evidence of the content they were hoping to prevent, making it clear the actual



These books were among the 400 banned in Urbandale, lowa under a broad interpretation of SF 496. The district has since dropped their objections, instead identifying 65 books that remain banned from school shelves.

target of this expanded definition of obscenity. One supporter of the bill was quoted suggesting that Montana needed "some book burning." <sup>59</sup> In practice, these provisions strip public school educators (and professors) of their ability to assign books containing sexual content (including for sex ed) of any kind to minors, even if done so under the guidelines of their local school district. The consequence for a single misstep could be up to a \$1,000 fine or six months in jail. <sup>60</sup>

This year, the Florida legislature also passed HB 1069, and among other censorious elements, it includes a provision that *any* book in a school challenged for containing "sexual content" must be removed from shelves within five days for review. 61 HB 1069 also specifies that any decision about a book by a school board can be appealed to a special magistrate, whose judgment will then be binding, and school districts will bear the costs of these proceedings. This provision is yet another form of intimidation: districts wary of incurring such costs will be more likely to simply preemptively remove from their collections any books that might be remotely controversial—or that contain any kind of "sexual content."

These and other laws tend not to directly prohibit specific books or content so much as they empower censorious actors with new tools to press for book removals, or introduce new threats of punishment that compel teachers, librarians, and school administrators to preemptively pull books that have any chance of landing them in hot water. While most librarians take seriously their ethical commitments to supporting intellectual freedom and providing students with diverse literary collections, they clearly feel intimidated into removing books for the sake of their own employment—or, in some cases, their freedom. Under Missouri's 2022 law SB 775, public and private

<sup>57</sup> Urbandale Schools, "Please See Our Statement regarding the Development of a Quarantined Book List in Accordance with Senate File 496," Twitter, July 31, 2023, twitter.com/UrbandaleCSD/status/1686148127244357632

<sup>58</sup> PEN America, "These Books Are Banned in Urbandale, Iowa School District," August 4, 2023, pen.org/iowa-book-bans/

<sup>59</sup> Alex Sakariassen, "Senate Passes Montana's Hot-Button 'Obscenity Bill," Montana Free Press, April 19, 2023, montanafreepress.org/2023/04/19/legislature-senate-passed-obscenity-bill

<sup>60</sup> Montana HB 234, legiscan.com/MT/text/HB234/2023

<sup>61</sup> Florida HB 1069, legiscan.com/FL/text/H1069/id/2798335

school employees caught furnishing sexually explicit material to minors could face up to a year in jail.<sup>62</sup> According to one school librarian operating under SB 775, "You second-guess everything that you're purchasing so you wind up self-censoring, even though that's not our goal. But you're fearful."<sup>63</sup>

In response to Missouri's law, two library associations filed suit with the ACLU, citing SB 775 as unconstitutionally vague. "Librarians have been undermined politically in this state for long enough," said Joe Kohlburn of the Missouri Library Association's Intellectual Freedom Committee, "and the fear of prosecution is an ongoing issue for keeping qualified professionals in Missouri, as well as bringing new people into the profession." <sup>64</sup>

A related law passed this year in Texas. HB 900 requires private vendors to rate books prior to selling them to school libraries, identifying books that are "sexually explicit" and those that are "sexually relevant." Books in the former category are to be prohibited, and those in the latter will require parental permission for students to access. Meanwhile, vendors who fail to rate their books according to the state's vaguely defined preferences will not be able to sell to any school district in Texas. Some educators have expressed fear regarding how this law will censor books with sexual content, and that such a labeling system could ensnare books about LGBTQ+ topics, regardless of content, given how frequently such books are being labeled "pornographic" or "sexual" by anti-LGBTQ+ campaigners. Business owners, meanwhile, have expressed concern that complying with the law may be financially and logistically impossible; each vendor must rate the books individually, which could result in different ratings for the same book, and most do not have the time or staff to read each book, as the law requires. To avoid these burdens and complications, many will stop selling to Texas schools at all. This incursion into private businesses in the name of public school transparency and parental involvement represents a dangerous escalation in the national movement to ban books, which will empower censors and seeks to intimidate not only teachers and librarians but book publishers and vendors.

Bills that facilitate book bans under allegations of constituting obscenity may also be applied in discriminatory ways, particularly when it comes to LGBTQ+ content. An example is Arkansas's SB 81, which was passed into law this past March. SB 81 creates criminal penalties for librarians or teachers who knowingly allow access to materials that include "nudity, sexual conduct, sexual excitement," or other content that the bill classifies as obscene or harmful. State senator Dan Sullivan, the bill's chief proponent, previously led the charge to cut funding to a local library system after he objected to a Pride Month display in one library's children's section. In the public hearing for the bill before the senate, one Arkansas parent said she objected to having books like *The Handmaid's Tale* and *This Book Is Gay* available in libraries, giving a vivid demonstration as to what types of books could find themselves on the chopping block. State senator Dan Sullivan, the bill before the chopping block. State senator Dan Sullivan, the bill before the senate, one Arkansas parent said she objected to having books like The Handmaid's Tale and This Book Is Gay available in libraries, giving a vivid demonstration as to what

<sup>62</sup> Missouri SB 775, legiscan.com/MO/text/SB775/id/2585012

<sup>63</sup> Erica Hellerstein, "Missouri Librarians Are Risking Jail Time—for Doing Their Jobs," Codα, March 30, 2023, codastory.com/rewriting-history/missouri-libraries-book-ban/

<sup>64</sup> Margaret Stafford, "ACLU, Missouri Library Groups Sue over New School Book Law," AP News, February 24, 2023, apnews.com/article/legal-proceedings-american-civil-liberties-union-missouri-kansas-city-education-ac339bcd44c0eb0ddo2d7b0e1fd2ab50

<sup>65</sup> Sneha Dey, "Texas House Passes Bill That Aims to Keep Sexually Explicit Materials out of School Libraries," *Texas Tribun*e, April 29, 2023, www.texastribune. org/2023/04/19/texas-libraries-books-schools-legislature/; Nadia Bidarian, "A New Texas Law Forces Vendors to Rate Sexual Content in Schoolbooks. They're Not Happy about It," CNN, July 4, 2023, www.cnn.com/2023/07/04/business/texas-sexually-explicit-books-law/index.html

<sup>66</sup> Arkansas SB 81, legiscan.com/AR/bill/SB81/2023

<sup>67</sup> Austin Bailey, "Senate Committee OKs Bill Allowing Government Censorship, Criminal Charges for Teachers and Librarians," Arkansas Times, February 20, 2023, arktimes.com/arkansas-blog/2023/02/20/senate-committee-oks-bill-allowing-government-censorship-criminal-charges-for-teachers-and-librarians

According to one Boston University study, which performed a statistical analysis of library purchase orders in 82 schools across 43 districts, schools where a member of the public had filed a book challenge in the 2021–22 school year were 55 percent less likely to purchase books with LGBTQ+ themes the following fall.<sup>68</sup> That likelihood dropped even further with each additional challenge. Surveys of educators and panel data confirm that such objections, even when unsuccessful, can have a powerful chilling effect on what books are made available.<sup>69</sup> The threat posed by bills that make it easier to object to material on ideological grounds is clear.

Another set of laws compels censorship not through the threat of criminal charges or efforts to redefine "obscenity" but by creating political bodies with the power to ban books. For example, Tennessee's SB 2247, which was signed into law by Governor Bill Lee in June 2022, effectively takes decisions about school libraries away from individual educators in local communities. Instead, it directs a 12-member commission made up of school leaders, teachers, and citizens "knowledgeable of education issues in this state"—all of whom are appointed by the state's political leaders—to craft library selection guidelines and resolve parental objections to library content.<sup>70</sup> The commission has the power to overrule decisions by local districts and issue statewide bans of certain books, all without any option to appeal.<sup>71</sup> Commission members do not even



Students in Spotsylvania, Virginia protest the removal of sexually explicit books from their schools in 2021. (Photo courtesy of Adele Uphaus.)

have to read books in their entirety first.<sup>72</sup> "This essentially opens up opportunities for one parent or one person to dictate what is in all school libraries in our state," warned a Nashville librarian.<sup>73</sup>

Virginia's unsuccessful HB 1032, introduced in 2022, offers a similar and especially egregious example.<sup>74</sup> Under the bill, the parents of all students who attend a school would have been drafted into a Parental Review and Approval Committee created by the bill. Whenever the school wished to purchase a new book, magazine, or any other educational resource that might wind up in front of a child, it would have been required to present that item to the committee for approval. If a majority of parents voted in favor, the

<sup>68</sup> Kirsten Slungaard Mumma, "Politics and Children's Books: Evidence from School Library Collections," Wheelock Educational Policy Center, Boston University, Fall 2022, wheelockpolicycenter.org/wp-content/uploads/2022/12/School-Libraries\_WP-2022-5.pdf

<sup>69</sup> John Rogers and Joseph Kahne, "Educating for a Diverse Democracy," UCLA Institute for Democracy, Education, and Access, November 2022, idea.gseis.ucla. edu/publications/files/diverse-democracy-report; Laura Beth Kelly, Laura Taylor, Cara Djonko-Moore, and Aixa D. Marchand, "The Chilling Effects of So-Called Critical Race Theory Bans," Rethinking Schools, rethinkingschools.org/articles/the-chilling-effects-of-so-called-critical-race-theory-bans/

<sup>70</sup> Tennessee SB 2247, legiscan.com/TN/text/HB2666/id/2593633/Tennessee-2021-HB2666-Chaptered.pdf; Tennessee Code  $\S$  49-6-2201, State Textbook and Instructional Materials Quality Commission, law.justia.com/codes/tennessee/2016/title-49/chapter-6/part-22/section-49-6-2201

<sup>71</sup> Marta W. Aldrich, "After Book Burning Comment, Tennessee Lawmakers Vote to Let State Veto Library Materials," Chalkbeat Tennessee, April 28, 2022, tn.chalkbeat.org/2022/4/28/23047535/book-ban-tennessee-textbook-commission-legislation-age-appropriate

<sup>72</sup> Marta W. Aldrich, "Tennessee Textbook Panel Says It's III-Equipped to Manage Library Book Appeals," Chalkbeat Tennessee, December 16, 2022, tn.chalkbeat. org/2022/12/16/23511115/school-library-book-bans-appeals-tennessee-textbook-commission

<sup>73</sup> Marta W. Aldrich, "After Book Burning Comment, Tennessee Lawmakers Vote to Let State Veto Library Materials," Chalkbeat Tennessee, April 28, 2022, tn.chalkbeat.org/2022/4/28/23047535/book-ban-tennessee-textbook-commission-legislation-age-appropriate

<sup>74</sup> Virginia HB 1032, legiscan.com/VA/text/HB1032/id/2473479

item would have been eligible for purchase. If not, purchase would have been denied. The law would essentially subject every library purchase to a parental veto, rather than allowing librarians to exercise their professional discretion to curate a collection that has something for everyone, suiting a range of interests and needs.

This type of facilitated book banning is illustrative of what many educational intimidation provisions do: in the name of "parental rights," they strip power from local communities, parents, educators, and students and hand it to the state government or to politically appointed commissions. These bills also create situations where a single individual can prompt restrictions on the education of large swaths of students. During the debate over SB 2247 in Tennessee, state representative Jerry Sexton, a supporter of the bill, was asked what he would do with the books the new body deemed "inappropriate." Sexton's response? "I would burn them."

A final example of this trend is Arizona's SB 1700, which was passed by the Arizona state senate in 2023 before failing to pass the house, and which would have allowed the parent of any student to object to a library book or instructional material that the parent believed to be "lewd or sexual in nature, to promote gender fluidity or gender pronouns or to groom children into normalizing pedophilia." These objections would then be conveyed to the Arizona Department of Education. If upon review the department found that the objection was valid, the book or instructional material would then be banned from use in all public schools in the state—again, granting sweeping power to the state to issue book bans, regardless of local community preferences.

# Teacher Inspection Bills

Some educational intimidation bills have targets outside the curriculum or the library. Take, for instance, teacher inspection bills. Some of these bills propose to allow members of the public to attend and observe any staff and teacher workshops or trainings they wish. This was the intent of Missouri's HB 2189 and SB 645, two unsuccessful bills introduced in 2021. Under SB 645, schools would have been required to allow the public to attend "all administrator, teacher and staff professional development and instructional programs offered to schools that are paid for with state funds, whether offered directly by the department of elementary and secondary education, another state agency, or by a third party contractor." Under both bills, schools would also have been required to record these sessions and make them available to Missouri residents for at least three years after each session.

Bills like this have yet to pass in any state (one, HB 2786, was vetoed in Arizona).<sup>78</sup> But at least 67 have been introduced that would facilitate an exceptional degree of public scrutiny of teacher training and place onerous administrative burdens on schools. One example is Minnesota's HF 3436, which failed to advance in the 2021 legislative session.<sup>79</sup> Had it done so, it would have required public schools to place on the school's

<sup>75</sup> Kelly Jensen, "Tennessee Lawmaker Suggests Burning Banned Books," Book Riot, April 28, 2022, bookriot.com/tennessee-book-ban-bill/

<sup>76</sup> Arizona SB 1700, legiscan.com/AZ/bill/SB1700/2023

<sup>77</sup> Missouri HB 2189, legiscan.com/MO/text/HB2189/id/2464797; Missouri SB 645, legiscan.com/MO/text/SB645/id/2453210

<sup>78</sup> Arizona HB 2786, legiscan.com/AZ/bill/HB2786/2023

<sup>79</sup> Minnesota HF 3436, legiscan.com/MN/text/HF3436/id/2515298

website "all instructional or training materials and activities used for staff and faculty training" within 14 days of the training's occurrence. Bills proposed in other states would impose an even stricter time limit, setting deadlines of 10 or even 7 days. <sup>80</sup> A few actually require advance notice; for example, Arizona's unsuccessful HB 2370 would have had school districts alert the public at least three days *before* offering a training material or activity to their staff. <sup>81</sup> Violations would have been punishable in civil court with fines of up to \$15,000.

At least 16 of these bills also contain provisions that would require schools to disclose to parents or the general public who among their staff created certain instructional materials. Unsuccessful examples include Missouri's HB 2827 and SB 740, Alaska's SB 196, and Oklahoma's HB 4328. In Oklahoma's bill, for instance, a school would have been obligated to place on a publicly accessible website the full text or copy of any material they planned to share with students, as well as "the identity of the teacher, staff member, school official, or non-school-affiliated presenter who created it, the full name of the person who created it and his or her position and qualifications." It is unclear what purpose this requirement was intended to serve, but in a political environment that has seen efforts to demonize and harass teachers and librarians, such information could make educators even more vulnerable to abuse. 83

The time and effort necessary to comply with such provisions would also be significant. Consider, for example, Missouri's HB 2827. Had it passed, this bill would have required schools to post online at the start of each school year the following items: all professional development or training materials to be used in the coming year by faculty or staff; all curricula and course syllabi; full access to texts or recordings of all instructional materials or activities, along with a brief description or summary of their contents; and a copy of any procedures used by the school for the review or approval of the foregoing materials. The bill, and many others like it, would also require public posting of lesson plans, which are typically developed to aid teachers and are not directly part of a student's classroom readings or assignments.

As with curriculum inspection provisions discussed above, requiring this arduous reporting and publishing will discourage teachers from adapting their lessons as they go—from responding to student needs or interests or incorporating emergent news items relevant to the course material—something that many educators recognize is a critical approach for both ensuring and enhancing student learning. Even bills that enable after-the-fact changes to published lesson plans or syllabi would create additional administrative work every time a teacher deviated from their publicized plans, thereby limiting flexible and responsive teaching styles.

<sup>80</sup> South Dakota HB 1310, legiscan.com/SD/text/HB1310/id/2502188/South\_Dakota-2022-HB1310-Introduced.pdf; Oklahoma SB 1149, legiscan.com/OK/text/SB1149/2022; Rhode Island S 2441, legiscan.com/RI/text/S2441/id/2533535/Rhode\_Island-2022-S2441-Introduced.pdf; South Carolina S 982, legiscan.com/SC/text/S0982/id/2473194/South\_Carolina-2021-S0982-Introduced.html

<sup>81</sup> Arizona HB 2370, legiscan.com/AZ/text/HB2370/id/2477671

<sup>82</sup> Missouri HB 2827, legiscan.com/MO/text/HB2827/id/2531581/Missouri-2022-HB2827-Introduced.pdf; Missouri SB 740, legiscan.com/MO/text/SB740/id/2453684/Missouri-2022-SB740-Introduced.pdf; Alaska SB 196, legiscan.com/AK/text/SB196/id/2578430/Alaska-2021-SB196-Comm\_Sub.pdf; Oklahoma HB 4328, legiscan.com/OK/text/HB4328/id/2488711/Oklahoma-2022-HB4328-Introduced.pdf

<sup>83</sup> Tanya Basu, "The Book Ban Movement Has a Chilling New Tactic: Harassing Teachers on Social Media," MIT Technology Review, July 15, 2022, www. technologyreview.com/2022/07/15/1055959/book-bans-social-media-harassment/

<sup>84</sup> Missouri HB 2827, legiscan.com/MO/text/HB2827/id/2531581

<sup>85</sup> Erin Nerlino, "Making Curriculum Matter to Students," Educational Leadership, February 1, 2023, ascd.org/el/articles/making-curriculum-matter-to-students

Some heightened inspection provisions specifically target materials or teacher trainings related to "diversity, equity, and inclusion" initiatives. While these 15 bills constitute only a small number of the total PEN America has identified for this report, the inclusion of DEI as a specific concern aligns with the increased scrutiny it has received in 2023 legislative sessions more broadly, particularly in the higher education sector. <sup>86</sup> Critically, these bills often include little to no definition of these terms; in many educational settings, efforts that could be construed as advancing or fulfilling DEI obligations vary, and can include curricular or extracurricular programs, professional development initiatives, or mandates from school administrators. Which programs and initiatives would be targeted by these prospective laws is therefore often unclear.

If publishing this material was truly necessary to ensure parents understood what their children were learning in school, perhaps the additional administrative burden could be justified. But as mentioned earlier, under the federal PPRA, parents already have the right to view their children's learning materials.<sup>87</sup> These are mandates without a practical purpose, except to make material accessible to those ideologues seeking to dilute and restrict the educational experience of all.

As yet, these teacher inspection provisions have not passed into law in any state—perhaps as legislators have realized that they go too far in chilling the climate for educators. The variety of proposals and widespread nature of their introduction, however, make clear that they are being entertained as potential policy proposals, which could, under the right circumstances, garner support. Another concern is that, once proposed, these provisions could lead to copycat proposals at the district level.

#### Education à la Carte Provisions

A second category of educational intimidation bills—those with "opt-out" and "opt-in" provisions—would facilitate an "à la carte" approach to education, with parents picking and choosing acceptable topics of instruction for their children in ways that could make it effectively impossible for teachers to do their jobs. Such bills raise concerns similar to those surrounding curriculum inspection provisions. And they have been popular: 120 have been proposed in the past three years.

The current crop of à la carte bills would exert indirectly censorious effects on schools by increasing the administrative and notification burdens on educators who seek to teach even remotely controversial subjects. These can be achieved through either "opt-in" clauses or "opt-out" clauses—both of which can be damaging in subtly different ways. Of the 120 à la carte bills, PEN America has tracked over 90 bills containing new opt-outs.

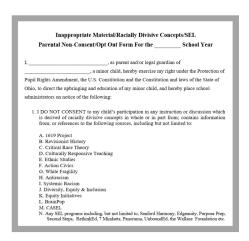
Opt-out educational clauses themselves are not a new phenomenon. The majority of states already have

<sup>86</sup> Jeffrey Sachs and Jeremy C. Young, "More than Meets the DEI," PEN America, May 25, 2023, pen.org/more-than-meets-the-dei/87 Cornell Law School, "20 U.S. Code § 1232h—Protection of Pupil Rights," Legal Information Institute, www.law.cornell.edu/uscode/text/20/1232h

them for more limited categories, such as for sex education. These more traditional opt-out strictures are not without their own problems: if abused, they can overburden teachers and deny students a well-rounded education. Nevertheless, traditional, narrowly defined opt-out provisions regarding specific materials or lessons can be a reasonable means of balancing the interests of parents, students, teachers, and schools. They also generally limit the opt-out to a discrete set of lessons, whereas many new provisions propose opting students out of learning about broad sets of concepts that could come up at any time.

At least 26 bills—representing over 20 percent of all introduced education à la carte bills—would allow parents to opt their children out of any material that goes against their moral or religious beliefs, or that they deem inappropriate—a standard that makes it impossible for teachers to predict when a parent might choose to opt out of a lesson or assignment. Opt-out bills that are this broadly defined can also easily be deployed in prejudicial ways, as in recent cases in Indiana and Florida where schools prompted parents to opt their children out of Black History Month lessons and the singing of a civil rights anthem, respectively. Several states already have such broad opt-outs enshrined in law, including Texas, Pennsylvania, and Idaho, but the introduction of a glut of new laws in their image at this political moment is troubling and ripe for abuse.

One group, Protect Ohio Children, illustrates the challenge presented by such broad opt-outs in public education. Citing their right to direct the education of their children, they circulated a form to parents encouraging them to opt their children out of concepts including "critical race theory," "revisionist history," "ethnic studies," "action civics," "diversity, equity, and inclusion," and "white fragility"—without defining these terms. <sup>90</sup> How a teacher is meant to manage such vague and disparate requests does not appear



Excerpts from 'Protect Ohio Children' proposed Opt-Out forms

- I DO NOT CONSENT to my child participating in any Social Emotional Learning (SEL) or Sexuality/Gender Discussions including the following...
  - A. Any referral of my child to a counselor, medical professional, social worker, within or outside the school for purposes of discussing SEL, or any of the topics listed herein
  - B. Any reference to or participation in a personal analysis, evaluation or survey that reveals or attempts to affect my child's attitudes, habits, traits, opinions, beliefs or feelings concerning: political affiliations; religious beliefs or practices; mental or psychological conditions; or illegal, antisocial, self-incriminating or demeaning behavior:
  - C. Any advertisement of or participation in any group, organization, club, entity or activity that discusses or addresses sexual activity, sexual orientation or gender identity, including pronoun use or new names, under the guise of inclusion, "bullying" or other rationals."

<sup>88 &</sup>quot;Public School Opt-Out Forms Content," Pacific Justice Institute, accessed July 12, 2023, pacific justice.org/resources/for-parents/public-school-opt-out-forms/public-school-opt-out-forms-content/

<sup>89</sup> Elisha Fieldstadt, "Indiana School Counselor Tells Parents Their Kids Can Opt Out of Black History Month Lessons," NBC News, February 16, 2022, www. nbcnews.com/news/us-news/indiana-school-counselor-tells-parents-kids-can-opt-black-history-mont-rcna16540; Brian Didlake, "Marion County School Sparks Controversy with Permission Slip for Black National Anthem," Click Orlando, January 13, 2023, www.clickorlando.com/news/local/2023/01/14/marion-county-school-sparks-controversy-with-permission-slip-for-black-national-anthem/

<sup>90 &</sup>quot;Protecting Ohio Children Opt Out Form," Lobbyists for Citizens, August 23, 2022, lobbyistsforcitizens.com/2022/08/23/protect-ohio-children-opt-out-form/

to concern Protect Ohio Children, but it could require the creation of several different lesson plans or alternate instruction for each student, a tremendous administrative burden. Instead, a teacher's safest and most manageable option in the face of such requests is broad self-censorship both in lesson planning and in responding to student questions, narrowing the scope of education for all students and posing a threat to the freedom to learn.

Some of the lawmakers behind these bills have been open about their goal of censoring entire areas of study. Kansas lawmaker Michael Murphy, who supported a bill that would allow parents to withdraw their children from any material they find objectionable, privately told supporters that it was "kind of a slick little way" of preventing critical race theory from being taught in public schools, despite an absence of evidence that this is happening to begin with.<sup>91</sup>

Michigan offers an example of how ideological actors are gaming the opt-out system to impose their views on schools. Current Michigan statute allows parents to opt their children out of sex education classes, which by law cover topics like abstinence, sexual health, and consent. But a newly formed conservative group called the Great Schools Initiative (GSI) wants to redefine "sex education" to incorporate far more than the typical stand-alone course. Prize Every time a teacher discusses "gender/sexuality activism" in any class, or a school recognizes Pride Week, GSI encourages hundreds of parents to file forms opting their children out of what it calls "rogue sex ed." Its explicit strategy is to overwhelm the system with paperwork until the administrative burden becomes "too much for [schools] to handle," ostensibly with the hope that most schools will instead choose to cut the offending lesson or activity. Ostensibly with the hope that most schools will instead choose to cut the offending lesson or activity.

Despite this potential for abuse, a 2022 survey by the USC Dornsife Center for Economic and Social Research found "considerable" support among parents for opting children out of school lessons to which they object, with the practice enjoying majority support "from all racial, income, education, and household makeup subgroups examined." The idea of opting out of some lessons is not problematic on its own, and the practice is an attempt to balance the needs of parents, students, and educators in service of a healthy and diverse public school community. But when these provisions are stretched so broadly, they can threaten the fabric of public education. The USC report authors note particular support for the practice among Republican parents, and that widespread embrace of the practice would make everyday teaching more complicated and more politically polarized:

A plausible result of the widespread acceptability of opting out over content is that parents might try to "optimize" their child's classroom learning by blocking views they find objectionable. If the practice were equally popular on the left and right, the result would be further political polarization, as parents would

<sup>91</sup> Rachel Mipro, "Church and State: Kansas Republicans Justify Private School Handouts with Fear of 'Woke Ideology," Kansas Reflector, May 17, 2023, kansasreflector.com/2023/05/17/church-and-state-kansas-republicans-justify-private-school-handouts-with-fear-of-woke-ideology/

<sup>92</sup> Judd Legum, "Inside the Audacious New Scheme to Erase LGBTQ People from Michigan Schools," *Popular Information*, January 30, 2023, popular.info/p/inside-the-audacious-new-scheme-to

<sup>93</sup> Popular.Information, "Michigan GSI," YouTube, 2023, www.youtube.com/watch?v=RsrXgESoEQo&t=42s

curate educational experiences for their children that they found agreeable. But the practice was much more popular among Republicans (81% in support) than Democrats (46% in support—the only subgroup where we found less-than-majority support). Given this lopsidedness, it is likely that Republican parents will opt their child out of left-valenced content at far greater rates than Democrat parents do the opposite. 94

This is in fact what appears to be playing out, as the political momentum behind these bills continues to be propelled by some GOP politicians. Many of the proposed provisions could just as widely be used to opt students out of any subject, however, thereby challenging the basic operation of public schools. In this way, they abuse the existing methods of parental involvement and actually make it harder for most parents to be a part of their children's education, by eroding trust between educators and communities; removing broad swaths of content based on individual objections; and making school a less hospitable place for LGBTQ+ students and students of color, whose identities may be reflected in the materials being called out as controversial or objectionable.

# Opting Out of LGBTQ+ Books in Montgomery County, Maryland

Until recently, schools in Montgomery County, Maryland, allowed opt-outs for instruction that would "impose a substantial burden" on a family's religious beliefs. 95 But after the district added six new books that included LGBTQ+ content as supplemental curriculum in January—meaning teachers can choose to teach it but are not required to—the district revoked the opt-out option two months later, claiming the volume of opt-outs became too much to handle. In response, three families filed a federal complaint arguing that the removal of the opt-out provision infringes on their religious liberty. 96 In a statement, the district's associate superintendent said that the administrative legwork required to comply with the opt-out provisions had caused "significant disruptions to the classroom environment and [undermined] MCPS's educational mission." This litigation is ongoing and may be the first of several contemporary cases where opt-out policies are litigated in federal court.

In a related effort to impose à la carte education, many recent bills present opt-in provisions—which far exceed opt-out provisions in their censoriousness. In essence, these provisions attempt to level a blanket ban on a topic first, then require parents who want their children to hear the lesson or read the book to opt out of the ban and into the learning opportunity at hand. This may seem a cosmetic change, but its impact can be significant.

<sup>94</sup> Morgan Polikoff, Daniel Silver, Amie Rapaport, Anna Saavedra, and Marshall Garland, "A House Divided? What Americans Really Think about Controversial Topics in Schools," University of Southern California, October 2022, www.ednc.org/wp-content/uploads/2022/10/House\_Divided.pdf

<sup>95 &</sup>quot;Guidelines for Respecting Religious Diversity," Montgomery County Public Schools, accessed July 2023, www2.montgomeryschoolsmd.org/siteassets/schools/high-schools/k-q/poolesvillehs/uploadedfiles/about/religiousdiversityguidelines1.pdf

<sup>96</sup> Nicole Asbury, "Families Sue Montgomery County Schools over LGBTQ-Inclusive Books," Washington Post, May 26, 2023, www.washingtonpost.com/education/2023/05/25/lgbtq-montgomery-books-lawsuit-opt-out/

<sup>97</sup> Em Espey, "Volume of LGBTQ+ Opt-Out Requests Caused 'Significant Disruptions,' MCPS Says in Legal Filing," MoCo360, July 20, 2023, moco360. media/2023/07/20/volume-of-lgbtq-opt-out-requests-caused-significant-disruptions-mcps-says-in-legal-filing/

For example, current law in Oklahoma already allows parents to opt their children out of sex education. But a failed bill, SB 866, would have reversed the administrative burden, denying by default any instruction or access to library materials related to sex, sexual orientation, or gender identity without explicit parental permission.<sup>98</sup>

Similarly, under Mississippi's unsuccessful SB 2679, students would have been prohibited from attending any class that explored or provided information about "gender roles or stereotypes, gender identity, gender expression, sexual orientation, or romantic or sexual relationships," unless the students had parental permission. Unlike permission slips for sex education, which are narrowly tailored to apply to one specific subject, this bill would have potentially been applied to all course content, including books in English classes with LGBTQ+ characters, themes from world history concerning changing gender roles, or certain anatomical concepts in biology.

Other proposals have been more creative. Indiana's unsuccessful SB 167 contained the most far-reaching optin provision: requiring a school website that would list curricular materials and educational activities identified by an advisory committee for special parental scrutiny. The website would have included a functionality tool allowing parents to opt their children into or out of each lesson or activity identified by the committee as they saw fit. The bill—which also mandated that teachers remain "impartial" when teaching political philosophies—died after the bill's author, state senator Scott Baldwin, made comments appearing to indicate that he thought the bill would prevent teachers from condemning Nazism, a statement he walked back after substantial public criticism. To

Schools struggle to comply with such procedures when enacted. This is already playing out in Florida, as a consequence of HB 1467, which requires schools to post instructional and library materials online for the public and creates new objection policies that have in some cases hastened book-banning efforts. School officials in Citrus County, Florida, in their efforts to implement provisions in the law, decided that beginning in the 2022–23 school year, all students in their schools should be blocked by default from checking out books from the library. To gain access, their parents must complete a form opting them into the library checkout system.



Protests erupted in Montgomery County, Maryland following the removal of an opt-out policy for LGBTQ+ content. (Photo courtesy of MICHAEL REYNOLDS/EPA-EFE/Shutterstock)

<sup>98</sup> Oklahoma SB 866, legiscan.com/OK/text/SB866/id/2650351

<sup>99</sup> Mississippi SB 2679, legiscan.com/MS/text/SB2679/id/2482281

<sup>100</sup> Indiana SB 167, legiscan.com/IN/text/SB0167/id/2462721

<sup>101</sup> Arika Herron, "Indiana Bill That Sparked Nazi Comment Won't Move Forward. Companion Legislation Might," *Indianapolis Star, January 14, 2022, www. indystar.com/story/news/education/2022/01/14/indiana-education-bill-167-nazi-senate-house-state-legislation-2022/6530374001/* 

Predictably, many parents forgot or did not know to complete this form, and as of January 2023—that is, halfway through the school year—over 4,000 Citrus students could not check out a book, forcing librarians to turn students away. Only 84 of these students had parents who actually completed the form opting their children out of library access; the others were denied access simply because their parents did not complete the new paperwork allowing them to use the library. The opt-in policy has thus denied library access by default, limiting student access to ideas through the choke point of a permission slip.

#### Parental Notification Provisions

Closely related to the push to allow parents to opt out of school lessons is a set of proposals to widen requirements for providing parents special notification ahead of a topic being taught. Such requirements are already being enforced in several states, to censorious conclusions. In Tennessee, for example, under 2021's HB 529, parents must be notified 30 days prior to instruction related to "sexual orientation or gender identity." Of course, there is nothing inherently problematic with informing parents about upcoming units of study in their children's classrooms. This is a common practice and a reasonable way to encourage parental involvement in student learning. The problem comes when schools are required by law to notify parents about lessons on specific or even broad topics. Inherently, that involves selecting certain topics for special scrutiny, and the act of notification itself can serve as an invitation to demands for censorship.

Consider what happened recently in Tennessee under HB 529. A Hamilton County librarian complied with the law, alerting parents that as part of her Mother's Day lesson for kindergarten and first- and second-grade classes, she planned to read two picture books aloud—one about a girl who doesn't know how to approach Mother's Day as a child with two dads, and another about a bear who is seen as a mother figure by goslings. After alerting parents, local members of Moms for Liberty rallied people to oppose the lesson. The librarian faced a torrent of abuse, and her superintendent canceled the lesson. 104

Interestingly, Tennessee's HB 529 also includes a carve-out allowing educators to respond to student questions or give necessary context about a historical figure's gender identity or sexual orientation without requiring prior parental notification or consent; Tennessee's SB 623, an educational gag order, contains a similar carve-out, allowing for the "impartial discussion of controversial aspects of history." But in practice, such clauses rarely work. In an interview with PEN America, Kathryn Vaughn, an educator in Tennessee, said that to explain that the artist Keith Haring died of AIDS would "open up a whole problem with parents," so she just stopped teaching his art altogether. Vaughn has claimed in a lawsuit against SB 623, known as the Prohibited Concepts Law, that she no longer includes lessons about artists such as Haring and Frida Kahlo, despite their popularity with prior classes, because their sexual orientation and gender identity are

<sup>102 &</sup>quot;Parental Restrictions on Library Access," Florida Freedom to Read Project, October 20, 2022, www.fftrp.org/parental\_restrictions\_on\_library\_access 103 Tennessee HB 529, legiscan.com/TN/text/HB0529/id/2390069

<sup>104</sup> Greg Sargent, "A Tennessee Teacher Planned a Mother's Day Class. Then Came the MAGA Tage," Washington Post, May 9, 2023, www.washingtonpost.com/opinions/2023/05/09/moms-for-liberty-book-bans-maga-culture-war/

<sup>105</sup> Tennessee SB 623, legiscan.com/TN/bill/SB0623/2021

too important in contextualizing their work.<sup>106</sup> Clearly, it would be naive to believe that such clauses in laws otherwise designed to suppress teaching about LGBTQ+ identities would be effective at countering their overall intent. In our increasingly chilled climate for public education, teachers have already gotten the message that they are on notice about teaching any topics even approaching those that might require parental notification, regardless of the context.

At least 65 bills would impose similar parental notification requirements on broad and ill-defined swaths of content. For instance, in Montana, SB 99, in force since 2021, requires schools to be notified of instruction related to "human sexuality" two weeks in advance. 107 This is defined broadly in the law as "teaching or otherwise providing information about human sexuality, including intimate relationships, human sexual anatomy, sexual reproduction, sexually transmitted infections, sexual acts, sexual orientation, gender identity, abstinence, contraception, or reproductive rights and responsibilities." Over 30 bills have been introduced that mirror this language; most are similarly broad as to how they define "human sexuality"—or forgo defining it altogether. 108 In Montana, the passage of the law spurred districts to consult with attorneys and comb through curricula to consider what could meet the law's broad definition. The school district in Billings, Montana, sent out a notice to parents featuring a laundry list of assignments that may relate to human sexuality, including Romeo and Juliet and The Great Gatsby in English classes and nonhuman sexual reproduction in biology classes. The notice reflects the vagueness and fruitlessness of the law, notifying parents of large swaths of the US History curriculum "regarding civil rights," and that "other electives such as Art, Music, or Theatre don't have anything specifically written into the curriculum, but they might have performances or products that have related themes." <sup>109</sup> In Kalispell, Montana, the school district "determined that the law applied to health classes; science lessons that involve anatomy, genetics, or reproduction; advanced psychology courses whose curriculum includes human development; certain social sciences classes; and many more."

In other words, these and other districts sought to protect themselves by notifying parents of any content that has anything to do with sexuality whatsoever. They also have instructed teachers to be careful not to "stray" into discussing any topics that might require advance parental notification if none was given. This could mean simply not answering student questions if, say, a discussion of a novel or current event might touch on any of these broad topics—even "intimate relationships."

Micah Hill, the Kalispell superintendent, noted, "Frankly, it's a pain to have to send out notices to parents of students in courses like biology where there may be a lesson taught on genetics because the lesson mentions

<sup>106</sup> Marta W. Aldrich, "Teachers Sue over Tennessee Law Restricting What They Can Teach about Race, Gender, and Bias," Chalkbeat Tennessee, July 26, 2023, tn.chalkbeat.org/2023/7/26/23808118/tennessee-teachers-lawsuit-tea-prohibited-concepts-crt-bill-lee-race-gender-bias

<sup>107</sup> Montana SB 99, legiscan.com/MT/bill/sB99/2021

<sup>108</sup> Indiana, as of this writing, chose to forgo a definition in their newly passed gag order, HB 1608. The ACLU is suing on behalf of a teacher who says it is "next to impossible" to know how to comply with the law, which instructs schools to ban instruction on "human sexuality" in grades K-3.

<sup>109</sup> Carly Graf, "New Sex Ed Law Ensnares English and History Lessons, Too," Montana Free Press, December 1, 2022, montanafreepress.org/2022/12/01/new-montana-sex-ed-law-ensnares-english-and-history-lessons-too/

<sup>110</sup> Carly Graf, "New Sex Ed Law Ensnares English and History Lessons, Too," Montana Free Press, December 1, 2022, montanafreepress.org/2022/12/01/new-montana-sex-ed-law-ensnares-english-and-history-lessons-too/

testes, ovaries, sperm, egg, fertilization, etc.," and "It feels like an unnecessary layer of bureaucracy and overreach by the state to insert itself into locally controlled and elected school boards." 111

As in Tennessee, critics in Montana have rightly noted how SB 99 is a recipe for stifling classroom teaching, even though it does not explicitly or directly prohibit these curricular topics. And it's not hard to imagine how similar laws would produce similar results elsewhere. Recall Mississippi's failed SB 2678 and its required alerts for "gender roles or stereotypes, gender identity, gender expression, sexual orientation, or romantic or sexual relationships"; a similar measure failed in Oklahoma. This could clearly implicate a great deal of curriculum, yet failure to offer advance notice of materials that fall under these categories could trigger financial penalties or loss of accreditation for the entire school.<sup>112</sup>

A proposed law in Missouri, SB 810, enveloped an even broader array of topics beyond gender and sexuality. Schools would have been required to offer parents up to two weeks' notice before any instruction involving "a divisive or controversial topic that may conflict with a parent's belief that all persons, regardless of race, ethnicity, color, national origin, or ancestry, should be treated equally." How a teacher is expected to interpret this language or predict parents' beliefs is unclear, but failure to guess correctly could result in fines of up to \$10,000 per violation.



Georgia teacher Katie Rinderle was fired after reading My Shαdow is Purple by Scott Stuart.

Given such vague language and excessive penalties, the prudent Missouri school could decide to prohibit or discourage all teachers from discussing any topic that can possibly be viewed as divisive, controversial, or related to race, sex, or gender, regardless of how important the topic is or how responsibly it is broached. Anything less would, from a purely fiduciary point of view, be an unnecessary risk to the school. A recent incident in Cobb County, Georgia, illustrates the risks educators are facing: there, a teacher has been fired for reading a book to fifth graders about gender stereotypes called *My Shadow Is Purple* by Scott Stuart. This was based on a complaint, which came from a single parent, who wrote, "I would consider anything in the genre of 'LGBT' and 'Queer' divisive." And it was possible because of a set of laws in Georgia that make it easier for parents to see and object to material that they deem to be obscene or divisive.

<sup>111</sup> Carly Graf, "New Sex Ed Law Ensnares English and History Lessons, Too,"  $Montana\ Free\ Press$ , December 1, 2022, montanafreepress.org/2022/12/01/new-montana-sex-ed-law-ensnares-english-and-history-lessons-too/

<sup>112</sup> Oklahoma SB 131, legiscan.com/OK/text/SB131/id/2623206; Mississippi SB 2679, legiscan.com/MS/text/SB2679/id/2482281

<sup>113</sup> Missouri SB 810, legiscan.com/MO/text/SB810/id/2454092/Missouri-2022-SB810-Introduced.pdf

<sup>114</sup> Jeff Amy, "A Georgia school board fires a teacher for reading a book to students about gender identity," AP News, August 17, 2023, apnews.com/article/georgia-teacher-fired-reading-book-gender-identity-64f8428af86ed47bea093fba5167506a

<sup>115</sup> Greg Sargent and Paul Waldman, "A Georgia Teacher's Plight Exposes the Essence of Anti-woke MAGA Fury," Washington Post, July 5, 2023, www. washingtonpost.com/opinions/2023/07/05/georgia-teacher-termination-gender-identity-maga-desantis-trump/

<sup>116</sup> Georgia HB 1178, legiscan.com/GA/text/HB1178/id/2563247; Georgia SB 226, legiscan.com/GA/text/SB226/id/2326810; Georgia HB 1084, legiscan.com/GA/text/HB1084/id/2565991

In this way, curriculum inspection provisions suppress public education not through explicit bans but through intimidation, spurring administrative responses designed to manage risk by avoiding certain topics altogether. As seen in Hamilton County, Tennessee, these provisions risk the possibility that the most sensitive and ideologically extreme parent could use these notifications, or other inspection powers, to challenge all kinds of routine lessons and effectively narrow the educational experience of every student. Many teachers and districts will have little choice but to cater to that one parent's biases, or simply to what they imagine could be the most extreme possible biases, on any end of the political spectrum—even when doing so would erode every student's freedom to learn.

# **Budgetary Impact**

Provisions targeting learning materials or lesson plans do not just intimidate individual teachers; they can also create expensive and typically unfunded mandates that pose risks for the entire K-12 education sector. The nonpartisan lowa Legislative Services Agency calculated that the state's educational intimidation bill, HF 2577, would have cost school districts in the small state an additional \$16.9 million. Much of this cost was associated with the need for each district to purchase a web portal to host and display all curricular materials, and the cost of substitute teachers to replace existing full-time teachers while the latter laboriously prepared all of their materials for display. And as the volume and granularity of information that schools must post online increases, so does the cost.

As is typical among such bills, lowa's HF 2577 did not include any funding to cover these costs; had it passed, they would have been borne exclusively by school districts, as well as by teachers who would be expected to publish the required materials on top of their existing workloads, with no additional pay. Given that educational systems in this country are routinely underfunded, the budgetary impact of many of these bills will only further strain districts and educators and force them to reduce their educational offerings and materials to children.

#### CHILLING STUDENT EXPRESSION

In addition to their impact on teachers, librarians, and curricular materials, many educational intimidation bills will also have the foreseeable effect of intimidating students, chilling not only their freedom to read and learn in schools but even their personal self-expression. In particular, many educational intimidation bills have an explicit focus on policing gender expression or turning classrooms and school hallways into surveilled areas where teachers are required to report on their presumptions about students' sexuality. It is not just LGBTQ+ students who will suffer from that kind of forced, hostile monitoring. If in-school expression is monitored

<sup>117</sup> Lora Vargason, "Fiscal Notes," Iowa HF 2577, Legislative Services Agency, legis.iowa.gov/docs/publications/FN/1289515.pdf; Iowa HF 2577, legiscan.com/IA/text/HF2577/id/2559728

excessively and subject to outside objection and interference, educational spaces will become less open, welcoming, and free spaces for all.

### Student Monitoring and Anti-LGBTQ+ Provisions

In the previous section, we have already discussed a wide range of "inspection" provisions that can have the effect of chilling teachers and librarians and thus the education of students. Legislative proposals to insert video cameras in classrooms or invite members of the public to observe any classroom instruction represent the most extreme ideas that have been circulated, which would significantly intrude on students' educational experiences and privacy rights.

Other proposals being floated for what we dub "student monitoring" are less overtly threatening but still insidious. These provisions propose to deputize teachers to monitor students' gender expression, typically through the lens of requiring them to report to parents on "student well-being." That language seems innocuous enough—indeed, parents should undoubtedly be involved in their children's care and be informed of developments affecting their children's health, such as an accident or injury taking place at school. For young children, changes in behavior, opinions, or relationships would be regular subjects of discussion between parents and teachers. But these bills appear intended to achieve a particular goal: forcing schools to out LGBTQ+ students to their parents.

PEN America's Index of Educational Intimidation Bills includes nearly 90 bills that aim explicitly to force educators to monitor students' gender expression through language involving students' "health and wellbeing," explicit outing, or policies related to pronoun usage. Some bills use euphemistic language to describe this monitoring; others are more explicit. Alabama SB 184, which became law in 2022, stipulates that no teacher or administrator at any school, public or private, may withhold from parents that their child has a "perception that his or her gender or sex is inconsistent with his or her sex." And in Indiana, under HB 1608, signed into law this year, parents must be notified within five days of a student requesting to use a different name or pronoun. 119

In the abstract, the idea of notifying parents of these requests or changes may not seem alarming. Parents, as primary caregivers, ought to have a prominent role in their children's upbringing, as has been repeatedly affirmed by the courts. If minor children are making major changes in their lives, ideally their parents would be aware and informed. But legislating these requirements of teachers as strict statutory rules leaves no room for professional discretion or judgment. There will unquestionably be situations where students ask teachers or administrators not to notify their parents, or where educators assess it may be unwise to do so, because it might make students unwelcome or even unsafe at home. It is also unclear if teachers are to treat a student's request or behavior differently if they are in second grade versus twelfth.

Educational Intimidation: How "Parental Rights" Legislation Undermines the Freedom to Read, Learn, and Think

<sup>118</sup> Note: This law also contains provisions related to gender-affirming care. Those provisions have been blocked by a court, and the educational intimidation provisions remain in effect. Alabama SB 184, legiscan.com/AL/text/SB184/id/2566425; Eknes-Tucker v. Marshall, GLBTQ Legal Advocates & Defenders, www.glad.org/wp-content/uploads/2022/05/eknes-tucker-ruling-on-pi-5-13-22.pdf

<sup>119</sup> Indiana HB 1608, legiscan.com/IN/text/HB1608/id/2790220

The ideal learning environment is one in which educators and parents are working collaboratively for students' benefit. But these bills ignore the ways in which schools can be havens for students who may lack safe or supportive home situations, and they can have the effect of hemming in educators and denying students their autonomous rights. In the course of PEN America's work on book bans and other forms of educational censorship targeting LGBTQ+ books, we have heard repeatedly from librarians and educators about how, for some students, books featuring such narratives can be a lifeline. Students who are isolated, afraid of telling their families, or socially conditioned to believe

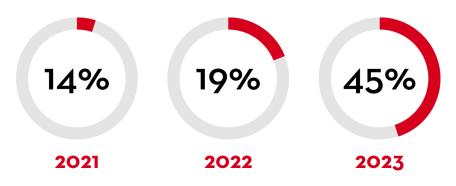


In 2022, Pasco County administrators instructed teachers to remove space stickers like this one under their interpretation of HB 1557. (Photo courtesy of Phelan M. Ebenhack via AP)

that their identity is transgressive can harbor feelings of shame and self-loathing. A supportive educational environment is essential to helping such students through what can be added challenges for adolescents who identify as LGBTQ+. Forcing schools to police students' identities and report back to parents, especially when doing so against educators' best judgment or the explicit request of students, puts teachers in an untenable position and jeopardizes important bonds of trust that ideally exist between educators and students.

# The number of anti-LGBTQ+ provisions introduced per year

as a percentage of all educational intimidation bills introduced that year



Data from PEN America Index of Educational Intimidation Bills, January 1, 2021-August 17, 2023



This alarming state of affairs is compounded by how common these provisions are among educational intimidation bills. Proposals to monitor students' expression of gender and sexuality have become part of a concerted national campaign. An early version of Arizona's HB 2161, for example, would have obliged schools to inform parents about their child's "purported gender identity or requested transition, where the child's purported gender identity is incongruous with his or her biological sex"; Mississippi's unsuccessful

SB 2679 and SB 2820 also contained this provision. And under Arizona's unsuccessful HB 2011 and Texas's unsuccessful SB 393, schools would have required permission from parents before letting a student join a group or club "involving sexuality, gender, or gender identity"—a requirement that does not exist for any other types of school club membership. Virginia HB 2432, passed by the state house of delegates before dying in the senate, would require schools to notify parents if a child expresses "gender incongruence" to a school employee, including requesting "social affirmation" of gender, and would require parental consent for any plan by the school to refer to the child by a gender that differs from their sex assigned at birth. Texas's SB 393, introduced in January 2023, would require schools to alert parents immediately if they have any reason to suspect that "the student's perception of [their] biological sex . . . is inconsistent with the student's biological sex as determined by the student's sex organs, chromosomes, and endogenous hormone profile. There is little suggestion of how educators are to assess a student's own perception of themselves.

Some bills also limit how students can be identified: many bills, like Louisiana's HB 466, would require parental consent prior to any change in a student's name or pronoun, effectively requiring schools to out students. HB 466, which is identical to dozens of other bills of this type, has been vetoed by Governor John Bel Edwards, who had previously said, "Members of the trans community are much more likely than other young people to have suicidal ideation or attempts or to actually be successful. These kinds of bills do not tend to help with that." 124 In his veto letter, he repeatedly called the bill "cruel" and said it amounted to a "legislative blessing for sanctioned bullying of LGBTQ+ students in schools under the guise of religious freedom." A similar bill—along with a bill barring teachers from using any pronoun for a student that differs from their documented biological sex—was vetoed by Arizona governor Katie Hobbs. 126

These student monitoring provisions are just one form of anti-LGBTQ+ provisions that have become popular in 2023. In fact, of all educational intimidation bills introduced this year, 45 percent include some kind of anti-LGBTQ+ provision, including both "forced outing" provisions and those that chill classroom discussion of LGBTQ+ topics. Prior to 2023, only 18 percent of intimidation bills included such provisions. This increase is also represented in new laws: seven have passed in 2023, in addition to one executive order, compared to four laws and one policy in the previous two years combined.

<sup>120</sup> Arizona HB 2161, legiscan.com/AZ/text/HB2161/id/2470501/Arizona-2022-HB2161-Introduced.html; Mississippi SB 2679, legiscan.com/MS/text/SB2679/id/2482281/Mississippi-2022-SB2679-Introduced.html; Mississippi SB 2820, legiscan.com/MS/text/SB2820/id/2655957/Mississippi-2023-SB2820-Introduced.html

<sup>121</sup> Arizona HB 2011, legiscan.com/AZ/text/HB2011/2022

<sup>122</sup> Virginia HB 2432, legiscan.com/VA/text/HB2432/id/2681162

<sup>123</sup> Texas SB 393, legiscan.com/TX/text/SB393/id/2638282

<sup>124</sup> Piper Hutchinson, "Louisiana Governor to Veto Bills Targeting LGBTQ+ Youth," Louisiana Illuminator, June 8, 2023, lailluminator.com/2023/06/08/louisiana-governor-to-veto-bills-targeting-lgbtq-youth/

<sup>125</sup> John Bel Edwards, "RE: Veto of House Bill 466 of the 2023 Regular Season," State of Louisiana, July 29, 2023, gov.louisiana.gov/assets/2023Vetoes/HB466.

<sup>126</sup> John Tanet, "Gov. Hobbs Vetoes Arizona Bill Looking to Mandate Pronouns Assigned at Birth for Children," 12 News, May 22, 2023, www.12news.com/article/news/politics/hobbs-promises-to-veto-every-anti-trans-bill-aimed-at-youth/75-56e7a448-707e-402c-a726-2f6161063778

<sup>127</sup> Jonathan Friedman, Jeffrey Sachs, Jeremy C. Young, and Samantha LaFrance, "Educational Censorship Continues: The 2023 Legislative Sessions So Far," *PEN Americα*, February 16, 2023, pen.org/educational-censorship-continues-in-2023/

The effect of such provisions will be to silence students' gender expression in school and thus their free expression. As PEN America wrote in 2015:

The heart of free expression is self-expression. This includes the right of individuals to inhabit and represent their own authentic identity, and to share their experiences with others. The right to make free, open choices about how to live and how to identify oneself publicly is central to individuals' ability to advocate for their own rights and take part in political and social debates that affect them. . . . Laws that ban the expression of one's own identity, or support for others who do so, stifle democratic debate and the free exchange of information and opinions. 128

In this way, anti-LGBTQ+ provisions directly threaten every student's free expression at school and erode the trust that is necessary for a classroom to function. Regardless of whether they identify as LGBTQ+, students may now feel forced to self-censor their speech, dress, club participation, library activity, and anything else that might signal possible deviation from gender norms, lest a teacher be forced to report them to their parents. These laws are also coming alongside reports of student theatrical productions being halted for LGBTQ+ content. This includes not only plays with gay characters but also plays like Newsies, where teachers are newly concerned with how parents will react to girls dressed up as newsboys for the play.<sup>129</sup>

For students who face an abusive or unsafe home environment, anti-LGBTQ+ provisions are about not just restrictions on self-expression and opportunities for learning but the risk of active endangerment. Dr. Sarah Wilson of the Duke University School of Medicine, when testifying against North Carolina's SB 49, a newly enacted law which will force teachers to out students they suspect of being LGBTQ+, said it this way: "My professional opinion as a licensed clinical psychologist is that this bill will make our children less safe." Such students might be forced to view self-censorship as a matter of survival.

A 2021 letter organized by the Human Rights Campaign and signed by 20 medical and educational organizations, including the American Academy of Pediatrics, underscored the dangers posed by anti-LGBTQ+ policies in school: "We have found that less than a quarter of transgender and gender-expansive youth can definitely be themselves at school and only sixteen percent of transgender and gender-expansive youth feel safe at school. Every child deserves equal access to education, academic success, and a future in which they are empowered to fulfill their true potential, and these laws contravene that fundamental principle, which has long guided our nation's education policy." <sup>131</sup>

<sup>128</sup> Katy Glenn Bass and Joey Lee, "Silenced Voices, Threatened Lives: The Impact of Nigeria's Anti-LGBTI Law on Freedom of Expression," PEN America, June 29, 2015, pen.org/wp-content/uploads/2022/08/Silenced-Voices-Threatened-Lives.pdf

<sup>129</sup> Michael Paulson, "It's Getting Hard to Stage a School Play without Political Drama," New York Times, July 5, 2023, www.nytimes.com/2023/07/04/theater/school-plays-politics.html

<sup>130</sup> Hannah Schoenbaum, "Experts Warn NC Bill Could Harm LGBTQ Youth Mental Health," AP News, February 2, 2023, apnews.com/article/sex-education-north-carolina-health-schools-cdebec08a9a508ca5ca1218d367841a9

<sup>131</sup> Wyatt Ronan, "Major Health, Education, and Child Welfare Organizations Oppose Anti-LGBTQ State-Based Legislation," Human Rights Campaign, March 5, 2021, www.hrc.org/press-releases/major-health-education-and-child-welfare-organizations-oppose-anti-lgbtq-state-based-legislation

Lawmakers have introduced and passed educational intimidation bills with anti-LGBTQ+ or student monitoring provisions at increasing rates since 2021, but some legislators and governors across the aisle have apparently recognized the threat they pose: over 130 such bills have died or been vetoed across the country since 2021. Nonetheless, failed legislation may reappear in future sessions, or similar provisions may be adopted at the district level, and 14 bills containing these provisions have already become law.

It is understandable that parents want to keep track of their children's wellbeing and be aware of significant developments affecting them. But, for teenagers in particular, youth is a time when students are forming their own identities and seeking out independence, as well as gleaning the information and knowledge they need to further pursue their education and careers. To force schools into the position of policing children's gender identity can interfere with schools' educational focus and ability to provide a source of adult support to children in need.

# The Impact of HB 1557 on Florida Students and Teachers

In Florida, the foreseen effect of these bills has become a harrowing reality for teachers and students. One major legislative plank for Governor DeSantis's "war on woke" has been Florida's HB 1557, the Parental Rights in Education Act, colloquially described as the "Don't Say Gay" act, which DeSantis signed into law in March 2022. 132

The bill includes the following requirement:

In accordance with the rights of parents . . . [a school district must] adopt procedures for notifying a student's parent if there is a change in the student's services or monitoring related to the student's mental, emotional, or physical health or well-being and the school's ability to provide a safe and supportive learning environment for the student. The procedures must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage a student to discuss issues relating to his or her well-being with his or her parent or to facilitate discussion of the issue with the parent. 133

Since HB 1557's passage in March 2022, its impact on Florida's schools has been dramatic and far reaching. In Pasco County, school superintendent Kurt Browning ordered staff to remove from school grounds all "Safe Space" stickers that designate areas of campus as LGBTQ+ friendly—but not because of any objection to the idea of safe spaces. Rather, "a student's presence in a designated 'safe space," Browning reasoned, "could trigger a duty for Pasco County Schools staff to notify a parent of a potential change in their child's well-being." Given the difficulty of interpreting a student's presence in a designated "safe space," he continued, "our district will discontinue the utilization of such limited spaces to avoid misinterpretation and a potential violation of the law." 134

<sup>132</sup> Paul Blumenthal, "Ron DeSantis Wants to Take His 'War on Woke' National. There's One Big Problem: The Constitution," HuffPost, May 27, 2023, www. huffpost.com/entry/ron-desantis-anti-woke-laws-courts\_n\_647104d6e4b045ce2482f76c

<sup>133</sup> Florida HB 1557, legiscan.com/FL/text/H1557/id/2541706

<sup>134</sup> Jeffrey S. Solochek, "Pasco Schools Ban 'Safe Space' Stickers That Show Support for LGBTQ Students," *Tampa Bay Times*, September 1, 2022, www. tampabay.com/news/education/2022/09/01/pasco-schools-ban-safe-space-stickers-that-show-support-for-lgbtq-students/

In other words, the knowledge or even suspicion that a student might identify as LGBTQ+ imposes on Florida teachers a legal obligation to notify parents. It could affect all students, whether or not they identify as LGBTQ+, depending on a teacher's perception of a student's appearance, clothing, relationships, or interests, or whether they happen to enter a room with a Safe Space sticker. While the law includes a carve-out for school districts to withhold such information from a parent if "a reasonably prudent person would believe that disclosure would result in abuse, abandonment, or neglect," this standard immediately fails in any situation where a teacher, believing that such parental notification could put the child at risk, is unable to convince a supervisor that the risk is real—or if a teacher is simply unaware of a student's troubled family context.



Students in Miami Beach, Florida protest the state's anti-LGBTQ educational legislation in 2022. (Pedro Portal/Miami Herald via AP)

This might seem like an alarmist interpretation of HB 1557, but Florida's government has in fact insisted that the above interpretation of HB 1557 is accurate. In November 2022, the Florida State Board of Education sent a letter to the Duval County School District warning that the district was out of compliance with the new "student well-being" provision. The reason? Duval was not requiring school staff to report to a parent their child's sexual orientation or gender identity. According to the state, teachers in Florida are obligated to notify parents if they believe a student identifies as LGBTQ+. Letters regarding district policies related

to gender identity or other topics were also sent to nine other school districts, prompting Leon County's superintendent to worry that "the Florida Department of Education is trying to force us to out students who are not ready to come out." <sup>136</sup>

Thanks to HB 1557, being a gay or transgender student in parts of Florida today means running the very real risk of being outed to one's parents in a manner and time frame not of one's choosing.<sup>137</sup> It means that any accommodation a student requests in light of their LGBTQ+ identification, such as a pronoun or name that corresponds to their gender identity, will have to be run by their parents first. This same requirement would stand even in cases where a student is in imminent physical danger; for example, if a student is being bullied for being gay and asks their teacher for help, they would not be able to do so without obligating the teacher to alert the student's parents. The law also threatens the free expression of all students, not only those who identify as LGBTQ+, because it does not define the level of androgyny at which a student should be reported, forcing teachers into the position of playing gender police for all students.

<sup>135</sup> Jacob Oliva to Dr. Diana Greene, Florida Department of Education, November 18, 2022, www.fldoe.org/core/fileparse.php/20554/urlt/1-5.pdf

<sup>136 &</sup>quot;Meeting Agenda," Florida Department of Education, December 14, 2022, fldoe.org/policy/state-board-of-edu/meetings/2022/2022-12-14/; Ana Goñi-Lessan, "Florida DOE May 'Force Us to Out' Students to Parents, Leon County Superintendent Says," *Tallahassee Democrat*, December 12, 2022, www.tallahassee.com/story/news/2022/12/12/leon-school-districts-lgbtq-guide-under-scrutiny-by-florida-doe/69715548007/

<sup>137</sup> Florida HB 1557, legiscan.com/FL/bill/H1557/2022

The effects of HB 1557 on LGBTQ+ students in Florida are already being felt. Students have reported "fleeing" the state of Florida in response to anti-trans policies (at school and beyond).<sup>138</sup> Others have described how the school environment has changed for them since the passage of these laws, and some have described it as "traumatizing."<sup>139</sup> The bill "sends a damaging message to impressionable young people at a critical time in their development," noted American Psychological Association president Frank C. Worrell, because it suggests "that identifying as LGBTQ+ is inherently wrong, stigmatizing and marginalizing children who may realize their difference at a young age."<sup>140</sup> Upon hearing that the bill would become law, a Florida teacher recalled that LGBTQ+ students at her school were distraught over "the idea that something like this could pass and students like them would not be able to have a safe space that they could express themselves, because they couldn't do that at home." "I think it will affect the kids feeling that it means something is wrong with them," the teacher predicted.<sup>141</sup>

Bills with disclosure language similar to Florida's have exploded in popularity this legislative session: 66 percent of all such "forced outing" bills have been filed in 2023. Copycat bills are already being passed in other states, including Alabama, Indiana, and Idaho, and at the local level in districts across the country. In New Jersey, Governor Phil Murphy's administration has sued three districts for their policies of forced disclosure. "Outing' these students against their will," the administration argued in its lawsuit, "poses serious mental health risks; threatens physical harm to students, including risking increased suicides; decreases the likelihood students will seek support; and shirks the District's obligation to create a safe and supportive learning environment for all." In Poses serious of the post of the p

Onerous gender-related reporting requirements also single out a specific type of expressive speech for special monitoring and reporting. Such reporting is a duty that is not required of teachers for any other kind of student expression: for example, teachers are not required to report to parents that a child has elected not to say the Pledge of Allegiance; eschews wearing their family's preferred religious symbols at school; or has adopted any other markers of identity, such as a form of dress or tattoo.

Deputizing teachers to monitor and report on students' expression is not the only way that bills like HB 1557 would impose a censorious climate. To avoid running afoul of such bills, school districts "are likely to discourage teaching on LGBTQ+ issues and will also discourage teachers from discussing personal issues with

<sup>138</sup> Stephanie Colombini, "As Conservative States Target Trans Rights, a Florida Teen Flees for a Better Life," NPR, May 11, 2023, www.npr.org/sections/health-shots/2023/05/11/1172589936/as-conservative-states-target-trans-rights-a-florida-teen-flees-for-a-better-lif

<sup>139</sup> William Brangham and Dorothy Hastings, "Critics Say New School Policies in Florida Ostracize LGBTQ Students," PBS NewsHour, September 20, 2022, www.pbs.org/newshour/show/critics-say-new-school-policies-in-florida-ostracize-lgbtq-students

<sup>140</sup> Frank C. Worrell, "APA President Condemns Florida's 'Don't Say Gay' Bill," American Psychological Association, March 9, 2022, www.apa.org/news/press/releases/2022/03/florida-dont-say-gay

<sup>141</sup> Quoted in Ariel Gilreath, "In the Wake of 'Don't Say Gay,' LGBTQ Students Won't Be Silenced," Hechinger Report, June 13, 2022, hechingerreport.org/in-the-wake-of-dont-say-gay-lgbtq-students-wont-be-silenced/

<sup>142</sup> Indiana HB 1608, legiscan.com/IN/text/HB1608/id/2790220; Alabama SB 184, legiscan.com/AL/bill/SB184/2022; Idaho H 163, legiscan.com/ID/text/H0163/id/2706638

<sup>143</sup> Matt Friedman, "New Jersey Sues Three School Districts over Transgender Notification Policy," POLITICO, June 6, 2023, www.politico.com/news/2023/06/22/murphy-new-jersey-school-districts-transgender-policy-00103127

students (not just LGBTQ+ issues, but all sorts of health-related issues)," said the National Coalition Against Censorship in a statement.<sup>144</sup>

By forcing teachers to anticipate and interpret vague and wide-ranging restrictions on what can legally be taught in the classroom, other anti-LGBTQ+ provisions create an environment of second-guessing and self-censorship. Oklahoma's failed SB 937 states that schools cannot "create or enforce" any policy that "promotes non-secular self-asserted sex-based identity narratives or sexual orientation orthodoxy," and requires parents to opt students into instruction on those topics. The stakes of misinterpreting the instruction restrictions are high: any taxpayer in the state—even one with no ties to a school—would be eligible to sue the school in civil court if they suspect violations of the proposed law.

Anti-LGBTQ+ educational intimidation bills do not merely seek to restrict what students read or see. They target something perhaps even more fundamental: the basic rights of students and teachers to self-expression and the promise of the classroom as a site of free and open dialogue and exploration. They rob teachers and students up to 18 years of age of agency, create bureaucratic hurdles to curriculum development, and incentivize teachers and students to minimize—rather than celebrate—risk-taking and intellectual inquiry in the classroom, eroding the freedom to learn for all.

#### DISEMPOWERING PARENTS

Supporters of educational intimidation bills have been persistent in portraying them as an effort to empower parents. "Parent empowerment is critical for the future of Texas," argued Texas governor Greg Abbott in a June 2023 speech, a representative example of the genre. "During the regular session," Abbott continued, "we passed bills to strengthen parental rights and stop woke agendas in the classroom . . . I look forward to signing bills to empower parents." 146

But this portrayal is misleading—though the narrative pairing of parental empowerment with the obstruction of "woke agendas" is instructive. In point of fact, educational intimidation provisions commonly have the effect of empowering a vocal and politically organized *minority* of parents while simultaneously disempowering everyone else.

According to one national survey, 77 percent of parents say that the emphasis their local schools place on slavery and racism is either about right or too low. Another survey finds that while 48 percent of the public feels parents should have a great deal of influence over their children's education, an equal percentage

<sup>144 &</sup>quot;NCAC Statement on Florida's Education Legislation," National Coalition Against Censorship, April 12, 2022, ncac.org/news/florida-censorship-education-laws 145 Oklahoma SB 937, legiscan.com/OK/text/SB937/id/2651535

<sup>146</sup> Ash Jurberg, "Gov. Abbott Declares War on the 'Woke Agenda,' Pledges to Protect Education System," NewsBreak, June 12, 2023, original.newsbreak. com/@ash-jurberg-560946/3055627456835-gov-abbott-declares-war-on-the-woke-agenda-pledges-to-protect-education-system

<sup>147 &</sup>quot;Results from the 2022 Education Next Survey," Education Next, www.educationnext.org/2022-ednext-poll-interactive/

say the same about teachers.<sup>148</sup> These surveys help illustrate a powerful point: this recent crop of bills that champion "parental rights" actually undermine many parents' wishes in public schools.

Research from UCLA School of Law suggests that over half of LGBTQ+ families with children in the Florida school system have considered leaving the state because of the antagonistic environment created by HB 1557— Florida's "Don't Say Gay" bill, which restricts classroom speech and education around gender identity—and other anti-LGBTQ+ legislation. Some Black parents in Florida and Texas have withdrawn their children from public school altogether, citing their states' hostility toward teaching Black history.

The dozens of bills that seek to pave the way for book banning—including the 68 bills with "harmful to minors" provisions—should also be understood as undermining, rather than empowering, most parents in their involvement in their children's education. In their practical effect, these provisions empower a single parent, or a small emboldened group, to restrict book access for the children of an entire district or even the state at large. This has been the case all over Florida, with these lone book challengers frequently citing laws passed by Governor DeSantis in favor of "parental rights" as granting them the right to demand book removals that impact everyone.<sup>151</sup>

Even bills that ostensibly empower parents to exercise more granular control over only their own children's education—like bills with à la carte provisions—will often do more to disempower most parents than to empower them. Currently, only four states—Indiana, Mississippi, Nevada, and Utah—require schools to use an opt-in system for sex education. Schools in these states do not share their internal data, but records collected by the Nevada ACLU found that in Las Vegas's Clark County School District, the fifth-largest school district in the country, roughly 91 percent of students were given permission by their parents to participate in sex education. The parents of only 1 percent explicitly refused. Parents of the remaining 8 percent of students failed to submit any form whatsoever, most likely because they forgot to do so or never received notice from the school. By default, their children—about 3,500 students in total—were denied any sex education as a result. Under the law, far more youth seem to have been unintentionally denied sex education than those whose parents actually chose to opt out.

Some provisions in educational intimidation bills would empower educators to overrule a parent's wishes, but only on conservative ideological grounds. Consider North Dakota's SB 2231, which passed the legislature but

<sup>148</sup> Morgan Polikoff, Daniel Silver, Amie Rapaport, Anna Saavedra, and Marshall Garland, "A House Divided? What Americans Really Think about Controversial Topics in Schools," University of Southern California, October 2022, www.ednc.org/wp-content/uploads/2022/10/House\_Divided.pdf

<sup>149</sup> Florida HB 1557, legiscan.com/FL/text/H1557/id/2541706

<sup>150</sup> Cheyanne Mumphrey, "Black Parents Seek Schools Affirming Their History amid Bans," WLRN 91.3 FM, April 26, 2023, www.wlrn.org/education/2023-04-26/black-parents-seek-schools-affirming-their-history-amid-bans; Abbie Goldberg, "Impact of HB 1557 (Florida's Don't Say Gay Bill) on LGBTQ+ Parents in Florida," Williams Institute, UCLA School of Law, January 2023, williamsinstitute.law.ucla.edu/publications/impact-dont-say-gay-parents/; Char Adams, "Black Families Are Changing the Educational Landscape through Communal Home-Schooling," February 8, 2023, www.nbcnews.com/news/nbcblk/black-families-are-challenging-educations-status-quo-home-schooling-rcna69027

<sup>151</sup> Jonathan Friedman and Stephana Ferrell, "Now, It Only Takes One Person to Deny Florida Students Hundreds of Books at a Time," *Miami Herald,* February 15, 2023, www.miamiherald.com/opinion/op-ed/article272479541.html

<sup>152 &</sup>quot;Opt-In vs. Opt-Out in Sex Education," ACLU of Nevada, accessed June 14, 2023, www.leg.state.nv.us/App/NELIS/REL/79th2017/ExhibitDocument/OpenExhibitDocument?exhibitId=35494&fileDownloadName=Opt-in%20vs.%20Opt-out.pdf

was vetoed by the governor. The bill would have required parental consent before school employees were allowed to use pronouns for a student that did not align with the student's biological sex—and even if parents gave such consent, school employees would have been able to ignore the parents and child's decision if using a student's preferred pronouns made staff personally uncomfortable. The converse, however, was not true: a teacher who wanted to use a student's preferred pronouns would have been barred from overruling a parent's decision that they not do so. North Dakota's Republican governor Doug Burgum rightly objected to this bill, stating in a veto message that "the teaching profession is challenging enough without the heavy hand of state government forcing teachers to take on the role of pronoun police." 154

# CONCLUSION: EDUCATIONAL INTIMIDATION IN PRACTICE

As this report demonstrates, Christopher Rufo's January 2022 exhortation that lawmakers should embrace "curriculum transparency" and "empower[ing] parents" in order to constrain the discussion of specific ideas in schools has clearly been taken to heart. Sometimes, lawmakers have admitted as much: the Kansas lawmaker who described his bill as "a slick little way" to prevent certain ideas from being taught in public schools, or the Tennessee lawmaker who affirmed his desire to burn school library books containing certain viewpoints. But in most situations, lawmakers have hewed closely to their preferred narrative: that this onslaught of bills is not about shoving out of public view those ideas and identities that make them uncomfortable but instead about "parental rights" and "transparency."

Those lawmakers are wrong. Educational intimidation bills ignore the rights of many, if not most, parents and are in fact quite damaging to the freedom to read and learn in America's public education system—and in states where these bills have become law, that chilling effect is on full display.

Students have been the most immediate victims of educational intimidation laws and policies. Students in affected states and districts are now less likely to encounter a diverse range of lessons and library books—or, in some cases, any books at all. <sup>156</sup> As more educational intimidation bills become law, students can expect to find fewer lessons in the classroom or books in the library that deal with "controversial" topics—fewer, that is, that reflect the complex realities of the society in which students live.

<sup>153</sup> North Dakota SB 2231, legiscan.com/ND/bill/SB2231/2023

<sup>154</sup> Jeremy Turley, "Senate Bill 2231 Veto Message," Scribd, accessed June 14, 2023, www.scribd.com/document/634899278/Senate-Bill-2231-Veto-Message#
155 Christopher F. Rufo, "The Strategy Here Is to Use a Non-threatening, Liberal Value—'Transparency'—to Force Ideological Actors to Undergo Public Scrutiny,"
Twitter, January 7, 2022, web.archive.org/web/20220107230551/twitter.com/realchrisrufo/status/1479515716822781952

<sup>156</sup> Marilyn Parker and Joe McLean, "Parents React to Empty Classroom, Library Shelves as DCPS Continues Book Review," News4Jax, January 27, 2023, www. news4jax.com/news/local/2023/01/27/parents-react-to-empty-classroom-library-shelves-as-dcps-continues-book-review/

While proponents of these bills undoubtedly cheer their censorious effects, the result of these measures has been—and will continue to be—a narrowing of the range of ideas and viewpoints accessible in schools and a narrowing of the openness necessary for teachers and librarians to effectively do their jobs. Without the ability to engage with multiple points of view or to learn how to critically analyze information, the educational experience of all students will suffer.

In certain states, some of the most extreme and misguided provisions of these bills have been rejected by legislators and governors. The rightful recognition by some conservatives of the pernicious, corrosive character of these measures points to an appreciation for the proper role of schools, the respect deserved by educators, and the importance of safeguarding the freedom to teach and learn. The arguments used to defeat these bills—including that they compound the already challenging work of educators, deny students' rights, can override the will of a majority of parents, put youth at risk, and distract from the proper purpose of schools—are powerful ones that warrant further amplification and recognition.

For educators, the success of educational intimidation bills and policies, as well as the ascendancy of the movement that champions them, has transformed schools into more combative and stressful places to work. The administrative burdens of inspection provisions weigh heavily on many teachers, adding many hours of work for those who are already stretched to the breaking point. "This entire process will take so much time," reported Jacksonville, Florida, school librarian Keri Clark. "It just seems like they're trying to catch us making a mistake." 157

Undoubtedly, where educational institutions become a battleground in the culture wars, teachers' jobs become harder, and students' learning suffers—the fruits of educational intimidation at work.

These educational intimidation bills also achieve the opposite of what many promise: in the name of empowering parents at the community level, the bills more often provide the mechanism for imposing the preferences of a minority of parents on the rest of a community. So long as the state lawmakers championing these bills continue to cater to the biases of their most extreme constituents, those constituents will be the ones calling the shots—such as in a Wisconsin case where an activist parent essentially walked a lawmaker through how to initiate a book-banning process.<sup>158</sup>

Taken as a whole, the ultimate impact of most educational intimidation bills is official censorship, self-censorship, the chilling of student expression, and the diminution of most parents' ability to influence what their children learn at school. We should recognize these bills for what they are: a censorious power grab by an extreme and unrepresentative minority that undermines parents, children, teachers, and the democratic foundation of the American system of public education as a whole.

<sup>157</sup> Richard Hall, "A Librarian's Frontline View of Florida's 'Vetting' Process for School Books, and the Titles Being Banned," *Independent*, February 13, 2023, www. independent.co.uk/news/world/americas/keri-clark-florida-school-books-b2280117.html

<sup>158</sup> Isiah Holmes, "The Wisconsin GOP's Search for 'Inappropriate' Books in School Districts," Wisconsin Examiner, May 31, 2022, wisconsinexaminer. com/2022/05/31/the-wisconsin-gops-search-for-inappropriate-books-in-school-districts/

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