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February 22, 2024

Brian J. Feldman, Chair
Education, Energy & the Environment Committee
2 West
Miller Senate Office Building
Annapolis, Maryland 21401

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Re: SB 738 – Freedom to Read Act
Testimony of the Pacific Justice Institute

Dear Chair Feldman and Members of the Committee:

The Pacific Justice Institute (PJI) is a national non-profit law firm focused on the defense of religious freedoms, parental rights and other civil liberties. I work as PJI's Maryland attorney. We are writing to express our **opposition** to the proposed new law entitled "Freedom to Read Act."

In considering the purpose and potential impact of this legislation, it is important to keep in mind that "[n]o single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process. [Our courts have] . . . observed that local control over the educational process affords citizens an opportunity to participate in decision-making, permits the structuring of school programs to fit local needs, and encourages 'experimentation, innovation, and a healthy competition for educational excellence.'" *Milliken v. Bradley*, 418 U.S. 717, 741-42 (1974).

While the State Department of Education and the State Superintendent have general supervisory authority over public elementary and secondary education¹ much of the duty and authority to operate public schools has been delegated to local boards of education. It is clearly stated, in Md. Code Ann., Educ. § 4-101(a), that educational matters affecting counties shall be under the control of a county board of education in each county.²

This highly cherished concept of "local control" in America can be traced to the classical liberal belief in individual autonomy and a healthy fear of government infringement. Local control maintains and stimulates the interests of parents and the community's interests in the children's education. Only local control can provide flexibility in educational programs to meet a particular community's needs. Local control is also necessary for experimentation and innovation.

¹ Md. Code Ann., Educ. § 2-106(2) states that the State Department of Education has authority over the "general care and supervision" of public education." *See also* Md. Code Ann., Educ. § 2-205(g)(2). ("Through the State Superintendent, the State Board shall exercise general control and supervision over the public schools and educational interests of this State.")

² County boards of education referred to herein also include the Board of Education of Baltimore City.

This Bill significantly and substantially removes local control from Maryland Boards of Education (“BOEs”).

As the Bill’s “Purpose Statement” explicitly acknowledges, this legislation would require local BOEs to incorporate State standards for libraries; make funding from the State contingent on adoption of a written policy consistent with State standards for libraries; and require the State Librarian to authorize the State Comptroller to withhold funding from libraries who do not adhere to these State standards.

State standards for libraries is defined as “the philosophy for the operation of a library” that aligns with requirements such as prohibiting a library from excluding material from its catalogue because of “the origin, background, or views of a person who created the material”; and restricting a library from “prohibit[ing], or remov[ing] material from its catalogue because of partisan or doctrinal disapproval.” County Boards rather than State Librarians are better equipped to identify the unique needs of their local communities; yet this legislation requires that County Boards adhere to the philosophical preferences of the State even if adherence is contrary to the local needs and wishes of the communities they serve.

Equally concerning, and with good reason, are Sections 23-205(G)(1) and (2) which tie adoption of and compliance with State philosophical standards to the receipt of State funding of library programs. These sections mandate that the State Librarian authorize the State Comptroller to withhold State funds from libraries that do not adopt a written policy that is consistent with the State standard for libraries.

It is undisputed that educators are entitled to exert control over library materials to ensure that readers are not exposed to material that may be inappropriate for their level of maturity. These decisions are permissible as they are reasonably related to legitimate pedagogical concerns. *Hazelwood v. Kuhlmeier*, 484, U.S. 260 (1988). This Bill takes control and discretion away from local BOEs and requires that they adopt policies that may run counter to the interests of their community or else risk losing funding.

Deciding what library materials will be available to children should be decided within the parameters of the law as it is written. Equally important, it should be left to the local BOE, with parents and community members having input. Local BOEs and school administrators should be held accountable when the materials they choose are inappropriate or not sufficiently diverse and they should not be stripped of their right to implement community-aligned policies when appropriate.

This Bill indefensibly removes this responsibility from local control and places it within the control of the State. The mandates presented in the Bill would prevent parents and local school board members who may disagree with the materials in the public school library from participating in the educational process.

When the State government overreaches and becomes heavily involved in educational decisions, the community loses all its influence, and parental interest in education decreases.

Each BOE must take seriously its responsibility to ensure that all diverse viewpoints are expressed in its library’s materials. Equally important is that all views on how

and at what age some topics are presented should be included in the decision-making. This Bill seeks to restrict and eliminate this right to the detriment of our democracy and public school system.

We ask that you issue an unfavorable report to this bill. Thank you for your attention to this matter.

Sincerely,

/s/ Lorna M. Henry

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