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Written Testimony - Opponent
House Bill 2662
House Committee on K-12 Education Budget
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Chairwoman Williams, members of the committee, thank you for the opportunity to testify in opposition to House Bill 2662.

Kansas NEA opposes HB 2662. The bill is problematic for many reasons, but this testimony is focused on the legal problems and unintended consequences of this proposed legislation.

Increased Litigation

If made law, this bill may subject Kansas public schools, and therefore Kansas taxpayers, to the expense of increased litigation and complaints. Rather than focusing on the education of Kansas students and assuring that our children are actually learning and mastering material, schools will instead be focused on avoiding complaints and litigation and complying with the many administrative burdens of this bill.

Some may view this bill as a political tool. But make no mistake, this bill is not limited to one party or one set of beliefs. Rather, it creates a multitude of problems that our public schools will have to spend taxpayer money to solve.

How will districts handle claims that parental rights have been violated by districts or by teachers? How often will they defend against their portal not getting updated soon enough, or with enough detail? How much time and money is too much, when parents already have existing avenues to obtain the same information?

Conflict with Existing Law

The bill may also conflict with existing law. For example, the bill provides the right to respect all written and electronic records of a parent's child. This appears contrary to Federal law. The Family Educational Rights and Privacy Act provision that says a child, *not* the parent, has the right to view records upon age 18 and requires school districts obtain consent of the 18-year-old child before allowing parents or any other party to view those records. *See* 20 USC 1234g(d) (discussing the rights of 18-year-old students).

Chilling Effect

The bill would also create a chilling effect in Kansas schools that harms Kansas students, and ultimately, Kansas economies.

Section 4 of the bill removes the affirmative defense to prosecution for the crime of promotion to minors of material harmful to minors. The existing law, with the existing affirmative defense, is well-reasoned and important to how schools function. The removal of the affirmative defense is not only unnecessary, but harmful. It upsets the existing balance.

Elected school board officials monitor conduct and are subject to being voted out of office if they do not reflect the values of the community they represent (much like yourselves). This structure provides incentive for school boards to adopt curriculum and materials acceptable to the community. School board members lose their seats, and teachers and administrators lose their jobs and possibly their licenses, if they promote obscenity in schools. This, rather than the threat of criminal prosecution, keeps curriculum in check.

Why have an affirmative defense to prosecution? Because by subjecting schools to the threat of criminal prosecution for every parent complaint, a chilling effect would occur. School districts may opt out of any potentially controversial topics to avoid even the threat of criminal charges, regardless of whether they would be successful in defeating the charge.

Furthermore, the bill requires any potentially controversial book to be recommended for parental review. Rather than comply with the onerous burden of reviewing every book, magazine, and Weekly Reader, districts may simply choose to opt out. They may stop purchasing new materials and or may seek to remove any controversial book or any current events periodicals. In today's political climate, that could cover just about everything. The chilling effect would be disastrous for Kansas education.

The competition for high wage jobs is fierce. Failing to provide Kansas students with a quality education due to concern of litigious parents is a waste of taxpayer money. Kansas' own economy will suffer two-fold from the changes this bill will cause in public education: first, from the increased cost of public education, and second, when the changes to public education would make it difficult to attract or retain employers and employees in Kansas.

Summary

The bill is wrought with uncertainties and unintended consequences, all of which serves only to increase costs to taxpayer and deter schools from their constitutional duty of educating Kansas students.

What will we do when schools are so bogged down with the unnecessary burden of creating and maintaining these curriculum portals? What will we do when our schools are devoid of any material that sparks critical thinking, creativity, scientific reasoning, or debate? What will we do when teachers can only teach part-time because the rest of their contractual time is filled with the unnecessary burden of creating curriculum portals for every child, regardless of whether parental requests were made for that information? What will libraries look like, without books on history, culture, literature, art, or periodicals? How many lawsuits will we see based on violations of parent rights? How many discrimination lawsuits will districts face? Will we end up seeing parents suing the state for its failure to fulfill constitutional obligations to adequately educate our children? Will the state be required to pour additional funds for additional staff and resources into education to fund the requirements of this bill? What will Kansas communities look like when our labor force leaves for states that allow teachers to truly *teach* their children?

For these reasons, and many others, Kansas NEA opposes this bill.

A Final Note, Regarding Due Process

This bill does do one thing, though, that Kansas NEA appreciates. It highlights the need for statutory due process. The bill prohibits teachers from being nonrenewed for refusing to teach contrary to their beliefs. Kansas used to have statutory due process for public school teachers to protect them against the political forces that exist in school boards and from the political beliefs of parents who elect those officials. So, I do applaud the bill for the acknowledgment that due process for teachers is both necessary and important for Kansas education and should once again be included in Kansas law.