

RESOLUTION TO STRIKE THE OBSCENITY EXEMPTION

WHEREAS, the Supreme Court of the United States has determined that the First Amendment of the United States Constitution does not protect materials which are obscene, defined as

1. Materials which taken as a whole, appeal to prurient interests according to contemporary community standards;
2. Materials that, according to contemporary community standards as viewed by the average person, depict or describe sexual conduct in a patently offensive way; and
3. Materials that a reasonable person finds that, taken as a whole, lack serious literary, artistic, political, or scientific value;

WHEREAS, Texas has furthered its compelling state interest in protecting the health, safety and welfare of minors by enacting Penal Code Section 43.24 which prohibits the dissemination of materials deemed harmful to minors, defined as “material whose dominant theme taken as a whole:

- (A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;
- (B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
- (C) is utterly without redeeming social value for minors”;

WHEREAS, Penal Code Section 43.24 includes in subsection (c) an exemption for the “sale, distribution, or display of harmful material to minors” for “scientific, educational, governmental, or other similar justification”;

WHEREAS, Section 43.24(c), added to the Texas Penal Code in 1973, is based on Section 251.4(3) of the 1962 Model Penal Code which provided that “It is an affirmative defense to prosecution under this Section that dissemination was restricted to: (a) institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material”;

WHEREAS, the Model Penal Code upon which Texas Penal Code Section 43.24(c) is based is in turn based upon research by Dr. Alfred Kinsey, (see Model Penal Code Tentative Draft No. 6, Commentary, p. 5 (1957)), which was based upon studies that included the serial sexual abuse of children (*see, Alfred Kinsey, Wardell Pomeroy, et. al., SEXUAL BEHAVIOR IN THE HUMAN MALE (1948), pp. 176-80*);

And WHEREAS, Penal Code Section 43.24(c) has enabled materials otherwise prohibited from distribution as “harmful to minors” to be distributed to minors in schools and libraries through “sex education,” “health educations,” “Bullying Prevention,” and in general reading assignments, thereby circumventing the legislature’s intention in prohibiting the distribution of such materials to children;

BE IT RESOLVED, THEREFORE, that the GOP Platform should be amended as follows: “Sex Education - We respect parental authority regarding sex education. We support the teaching of biology of reproduction and abstinence until marriage. **We support striking the obscenity exemption in the Texas Penal Code that allows harmful material to minors in schools.** We should prohibit entities and their affiliates that contradict our beliefs from conducting sex education and/or teacher training in public schools.”

Be it further resolved that a copy of this resolution be sent to the _____ Senatorial/County Convention Resolutions Committee from Precinct # _____ of the _____ County _____ Party, with the recommendation that it be passed and sent to the State Convention Platform Committee of the _____ Party of Texas.