

NO. 23-50224

**In The United States Court Of Appeals
For The Fifth Circuit**

LEILA GREEN LITTLE; JEANNE PURYEAR; KATHY KENNEDY; REBECCA JONES;
RICHARD DAY; CYNTHIA WARING; DIANE MOSTER,

Plaintiffs-Appellees,

v.

LLANO COUNTY; RON CUNNINGHAM, IN HIS OFFICIAL CAPACITY AS LLANO COUNTY JUDGE; JERRY DON MOSS, IN HIS OFFICIAL CAPACITY AS LLANO COUNTY COMMISSIONER; PETER JONES, IN HIS OFFICIAL CAPACITY AS LLANO COUNTY COMMISSIONER; MIKE SANDOVAL, IN HIS OFFICIAL CAPACITY AS LLANO COUNTY COMMISSIONER; LINDA RASCHKE, IN HER OFFICIAL CAPACITY AS LLANO COUNTY COMMISSIONER; AMBER MILUM, IN HER OFFICIAL CAPACITY AS LLANO COUNTY LIBRARY SYSTEM DIRECTOR; BONNIE WALLACE, IN HER OFFICIAL CAPACITY AS LLANO COUNTY LIBRARY BOARD MEMBER; ROCHELLE WELLS, IN HER OFFICIAL CAPACITY AS LLANO COUNTY LIBRARY BOARD MEMBER; RHODA SCHNEIDER, IN HER OFFICIAL CAPACITY AS LLANO COUNTY LIBRARY BOARD MEMBER; GAY BASKIN, IN HER OFFICIAL CAPACITY AS LLANO COUNTY LIBRARY BOARD MEMBER,

Defendants-Appellants.

On Appeal from the United States District Court for the Western District of Texas,
Case No. 1:22-cv-424-RP

BRIEF OF *AMICI CURIAE* THE ASSOCIATION OF AMERICAN PUBLISHERS, INC., CANDLEWICK PRESS, INC., HACHETTE BOOK GROUP, INC., HARPERCOLLINS PUBLISHERS LLC, MACMILLAN PUBLISHING GROUP, LLC, PENGUIN RANDOM HOUSE LLC, SCHOLASTIC INC., AND SIMON & SCHUSTER, INC.

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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Undersigned counsel further certifies, pursuant to Federal Rule of Appellate

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Amici's Unopposed Motion for Leave to File Brief of Amici Curiae is being filed in conjunction with this brief.¹

/s/ Marc A. Fuller

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Counsel for Amici

¹ Pursuant to Fed. R. App. P. 29(a)(4), Amici certify that counsel for Amici authored this brief in whole; that no counsel for a party authored this brief in any respect; and that no person or entity, other than amici and their counsel, contributed monetarily to this brief's preparation or submission.

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STATEMENT OF INTEREST

This brief is filed on behalf of The Association of American Publishers, Inc., Candlewick Press, Inc., Hachette Book Group, HarperCollins Publishers LLC, Macmillan Publishing Group, LLC, Penguin Random House LLC, Scholastic Inc., and Simon & Schuster, Inc. Amici are the national trade association for the United States publishing industry, which represents the leading book, journal, and education publishers in the country, the five largest trade book publishers, the world's largest publisher and distributor of children's books, and a leading independent publisher. Amici include the publishers of most of the banned books in this case ("Banned Books").²

Publishers cannot fulfill their mission of connecting authors' books with readers if the only speech allowed is that which aligns with the views of government authorities. In a democracy, the government can contest ideas, but it cannot ban them. State censorship—no matter the political cause behind it—quells free thinking.

Llano County's removal of books from the shelves of public libraries, which is motivated by government officials' disagreement with the views expressed in the

² Book "bans" are commonly understood to include any action in which access to a book is "restricted or diminished for either limited or indefinite periods of time." *Book Bans*, PEN AMERICA (last visited May 30, 2023), <https://pen.org/book-bans-frequently-asked-questions/>.

books, violates the First Amendment. Amici have a shared interest in seeing the district court's injunction affirmed by this Court.

INTRODUCTION

Officials in Llano County removed 17 books from the shelves of public libraries because the books addressed disfavored subjects. For nearly half a century, courts have recognized that such bans are unconstitutional. It does not matter whether the ban serves progressive or conservative causes. The First Amendment is neither “woke” nor “anti-woke.” It protects the right of all Americans to access literary works across the political, ideological, and experiential spectrum, without government violation.

Llano County's assertion that its removal of the 17 books is not a “ban” is unconvincing. These books are not the type of works that would be “weeded” through standard library collection-management methods. They are not old reference texts being replaced by new editions, nor are they riddled with factual inaccuracies, nor obscene. The Banned Books include a classic of children's literature, some of the most lauded nonfiction works of the past decade, and award-winning fiction and graphic novels. Llano County is not the first to target these books. Despite their many awards and honors, the Banned Books are among the most commonly challenged books in the country.

Book bans are not unique to our historical moment. In decades past, the works of authors like Harper Lee, J.D. Salinger, and Kurt Vonnegut populated lists of the most frequently banned books. Time and again, courts have applied heightened scrutiny to such bans, ordering the return of the challenged books to library shelves. With the benefit of history, those court decisions have been validated, and concerns over “dangerous” books have been exposed as unfounded. It is the censorship, not the idea, that poses the existential threat to our democracy.

These courts have relied primarily on one of the pillars of modern First Amendment jurisprudence: that truth is best determined through competition in the marketplace of ideas. The government undermines that marketplace when it removes views and voices from it. But the harm of Llano County’s removal of the Banned Books is not limited to its distortion of the marketplace of ideas. The targeted works, which include memoirs, coming-of-age stories, and other highly personal accounts of lived experience from varied perspectives, also help members of the community to understand themselves. A public library is a sanctuary for this individual self-exploration. Because the First Amendment cannot tolerate the County’s censorship, this Court should affirm the district court’s preliminary injunction order and ensure the continued availability of the Banned Books.

ARGUMENT

I. The Banned Books Include Some of the Most Honored and Important Recent Works of Nonfiction and Fiction.

The County argues that the decision to remove the Banned Books from public library shelves was not based on any disagreement with the views expressed in them, claiming that the County was merely keeping its collection up to date through standard “weeding” processes. Appellants’ Br. at 1–3, 30–38. Plaintiffs contend—and the district court found—that the County’s proffered justifications are pretext. Appellees’ Br. at 4–12, 24–29, 32–34; ROA.3509–10, 3518, 3524–29. In evaluating these competing accounts, this Court should consider the Banned Books themselves, as well as their many honors and awards. Doing so leaves no room for any serious claim that the Banned Books were targeted for any reason other than the views and themes expressed in them.

The Banned Books are not superseded editions of treatises or reference books. The County did not “weed[] the seventh edition of Hart & Wechsler to make room on its shelves for the eighth edition[.]” Appellants’ Br. at 30. The Banned Books are not “Outdated and obsolete,” of a “Trivial subject matter” or a “Mediocre writing style.” *Id.* at 31 (citing recognized standards for library “weeding” decisions). They are not absent from “standard lists” and do not fit into the category of “Self-published or small press materials that are not circulating[.]” *Id.* (same). Nor is there

any claim by the County that the removals were based on “Inaccurate or false information” in the Books. *Id.* And, as Plaintiffs note, the evidence does not support the County’s assertions that any removals were the result of filing mistakes, “old and worn” covers, or the uniform removal of books that had not been checked out. Appellees’ Br. at 10–11.

Rather, the County’s removals targeted some of the most celebrated and consequential works of recent years, as well as popular and classic children’s books:

Caste: The Origins of Our Discontents
by Isabel Wilkerson

Named to the National Book Awards’ Longlist in 2020—the same year it was featured in the Texas Book Festival—*Caste* argues that America has been shaped by a hidden caste system, telling the stories of Martin Luther King, Jr., baseball’s Satchel Paige, a single father and his young son, the author herself, and many others.³ *Time* named it the No. 1 Nonfiction Book of the Year.⁴ Upon its publication, a *New York Times* reviewer gushed: “It’s an extraordinary document, one that strikes

³ *The Origins of Our Discontents: Isabel Wilkerson in Conversation with Saeed Jones*, TEXAS BOOK FESTIVAL (last visited June 1, 2023), <https://www.texasbookfestival.org/events/the-origins-of-our-discontents-isabel-wilkerson-in-conversation-with-saeed-jones/>; *Caste: The Origins of Our Discontents*, NATIONAL BOOK FOUNDATION (last visited May 30, 2023), <https://www.nationalbook.org/books/caste-the-origins-of-our-discontents/>.

⁴ Andrew R. Chow, Lucy Feldman, Annabel Gutterman, & Lucas Wittmann, *The 10 Best Nonfiction Books of 2020*, TIME (Nov. 21, 2020), <https://time.com/5913865/best-nonfiction-books-2020/>.

me as an instant American classic and almost certainly the keynote nonfiction book of the American century thus far. It made the back of my neck prickle from its first pages, and that feeling never went away.”⁵ Oprah Winfrey chose it as her Summer 2020 pick for Oprah’s Book Club and proclaimed it “the most essential ... the most necessary-for-all-humanity book that I have chosen.”⁶ Its author, Isabel Wilkerson, is the first African-American winner of the Pulitzer Prize in journalism and is also the winner of the National Humanities Medal and the Stephen Ambrose Oral History Prize.⁷ Her debut work, *The Warmth of Other Suns*, won the National Book Critics Circle Award for Nonfiction and was named to *Time*’s Ten Best Nonfiction Books of the Decade and the *New York Times*’s list of the Best Nonfiction of All Time.⁸ *Caste* is published by amicus Penguin Random House.

⁵ Dwight Garner, *Isabel Wilkerson’s ‘Caste’ Is an ‘Instant American Classic’ About Our Abiding Sin*, THE NEW YORK TIMES (July 31, 2020), <https://www.nytimes.com/2020/07/31/books/review-caste-isabel-wilkerson-origins-of-our-discontents.html>.

⁶ *Oprah says she cried when she called author of “Caste,” her latest book club pick: ‘All of humanity needs this book’*, CBS (Aug. 4, 2020), <https://www.cbsnews.com/news/oprah-winfrey-caste-book-club-pick-isabel-wilkerson/>.

⁷ *From the bestselling author of The Warmth of Other Suns: Caste the Origins of Our Discontents*, ISABEL WILKERSON (last visited May 30, 2023), <https://www.isabelwilkerson.com/>.

⁸ *Id.*

***They Called Themselves the K.K.K.:
The Birth of an American Terrorist Group
by Susan Campbell Bartoletti***

Written by a winner of the Newbery Honor and the Washington Post/Children’s Book Guild Nonfiction Award, *They Called Themselves the K.K.K.* is a thorough examination of the Ku Klux Klan, its origins, and its growth in the United States. The book—which was a finalist for the American Library Association’s Excellence in Nonfiction for Young Adults award in 2011—“makes extensive use of congressional testimony, interviews, journals, diaries and slave narratives[.]”⁹ *Kirkus* praised the book as “[a]n exemplar of history writing and a must for libraries and classrooms.”¹⁰ *They Called Themselves the K.K.K.* is published by amicus HarperCollins.

***Spinning
by Tillie Walden***

Spinning is a coming-of-age memoir. The winner of the 2018 Eisner Award for Best Reality-Based Work,¹¹ the graphic novel follows Walden’s childhood experiences as a competitive figure skater and her growth as a teenager in New

⁹ *They Called Themselves the K.K.K.: The Birth of an American Terrorist Group*, KIRKUS (last visited May 28, 2023), <https://www.kirkusreviews.com/book-reviews/susan-campbell-bartoletti/they-called-themselves-the-kkk/>.

¹⁰ *Id.*

¹¹ *2010-Present*, COMIC-CON (last visited May 28, 2023), <https://www.comic-con.org/awards/eisner-award-recipients-2010-present>.

Jersey and Texas, including her experience “coming out.” Wayne Brenner, a book reviewer for *The Austin Chronicle*, described the book as “a thoughtful, bittersweet evocation of the turbulence of puberty and adolescence, of first love, of eventual disillusionment with a thing to which someone has devoted so much of their life ... a powerful work of real-life storytelling[.]”¹² Written by Walden when she was only 21, the book won two coveted comic book Ignatz Awards—one for Outstanding Artist and one for Promising New Talent—and earned Walden two appearances at the Texas Book Festival.¹³ *Spinning* is published by amicus Macmillan.

Being Jazz: My Life as a (Transgender) Teen
by Jazz Jennings

Being Jazz is a memoir written by Jazz Jennings, a transgender teen who rose to prominence after being interviewed by Barbara Walters in 2007 when she was six years old.¹⁴ In 2014, Jennings was named one of “The 25 Most Influential Teens” of the year by *Time*.¹⁵ The book chronicles Jazz’s personal experiences growing up as a trans teenager in the 2000s and 2010s, including her experiences with bullying and

¹² Wayne Alan Brenner, *Review: Spinning*, THE AUSTIN CHRONICLE (Nov. 3, 2017), <https://www.austinchronicle.com/daily/arts/2017-11-03/review-spinning/>.

¹³ *Id.*

¹⁴ Caroline Framke, *How Jazz Jennings Changed the World for Trans Youth Simply by Being Herself*, VARIETY (last visited May 28, 2023), <https://variety.com/2021/tv/features/jazz-jennings-i-am-jazz-trans-legislation-1234985248/>; *Being Jazz: My Life as a (Transgender) Teen*, GOODREADS (last visited May 28, 2023), <https://www.goodreads.com/en/book/show/28698224>.

¹⁵ The 25 Most Influential Teens of 2014, TIME (Oct. 13, 2014), <https://time.com/3486048/most-influential-teens-2014/>.

discrimination. It was included on the Rainbow Project Book List, a list of recommended books dealing with LGBTQ issues for children.¹⁶ *Being Jazz* is published by amicus Penguin Random House.

Gabi, a Girl in Pieces
by Isabel Quintero

An “authentic and honest” coming-of-age story of a young Mexican girl, *Gabi, A Girl in Pieces* covers real-life topics of body image, broken homes, drug use, sexuality, childhood dreams, and community values.¹⁷ *Kirkus* wrote that author Isabel Quintero “excels at presenting a life that is simultaneously messy and hopeful.”¹⁸ Published in 2014, the book was a finalist and winner of multiple awards: the William C. Morris YA Debut Award, School Library Journal’s Best Books of the Year, and the American Library Association Amelia Bloomer Project.¹⁹

¹⁶ *Rainbow Project Book List*, AMERICAN LIBRARY ASSOCIATION (last visited May 28, 2023), https://www.ala.org/awardsgrants/awards/35/all_years.

¹⁷ *Gabi, A Girl in Pieces*, KIRKUS (last visited May 28, 2023), <https://www.kirkusreviews.com/book-reviews/isabel-quintero/gabi-girl-in-pieces/>.

¹⁸ *Id.*

¹⁹ *Gabi, A Girl in Pieces*, LEE & LOW BOOKS (last visited May 28, 2023), <https://www.leeandlow.com/books/gabi-a-girl-in-pieces>.

Freakboy
by Kristin Elizabeth Clark

Freakboy is a coming-of-age story told from three distinct perspectives, all from different points on the gender identity spectrum.²⁰ Published in 2013, the book won, or was a finalist for, numerous awards, including:

- Best Children’s Books of the Year, 2014 Sports
- *Booklist* Book Review Stars, 2013
- *Booklist* Top 10 First Novels for Youth, 2014 First Novels
- *Kirkus* Book Review Stars, 2013
- Rainbow List, 2014 Teen Fiction
- YALSA Best Fiction for Young Adults, 2014 Fiction
- YALSA Top Ten Best Books for Young Adults, 2014 Best Fiction for Young Adults²¹

Kirkus deemed *Freakboy* a “gutsy . . . must-buy.”²² *Freakboy* is published by amicus Macmillan.

²⁰ *Freakboy*, UNIVERSITY OF CENTRAL FLORIDA (last visited May 28, 2023), <https://stars.library.ucf.edu/diversefamilies/119/>.

²¹ *Id.*

²² *Freakboy*, KIRKUS (last visited May 28, 2023), <https://www.kirkusreviews.com/book-reviews/kristin-elizabeth-clark/freakboy/>.

Shine
by Lauren Myracle

The winner of the 2012 Amelia Elizabeth Walden Award—an annual award for a young adult book that exemplifies literary excellence, widespread appeal to teens, and a positive approach to life—*Shine* is a mystery novel that follows a teen girl investigating the violent beating of her openly gay friend in a small town.²³ The book also tackles issues of poverty, drug use, and sexual assault.²⁴ Called “raw, realistic and compelling,” this Young Adult Library Services Association 2012 Readers’ Choice List book masterfully mixes mystery and coming-of-age tales.²⁵

It’s Perfectly Normal:
Changing Bodies, Growing Up, Sex and Sexual Health
by Robie Harris

It’s Perfectly Normal was first published in 1994 and has since sold over a million copies.²⁶ Designed “to teach children 10 and older about sexual health,

²³ *The Walden Award*, ASSEMBLY ON LITERATURE FOR ADOLESCENTS OF NCTE (last visited May 28, 2023), <https://alan-ya.org/awards/walden-award/>; Mary Quattlebaum, *Book review: ‘Shine’ by Lauren Myracle*, THE WASHINGTON POST (last visited May 28, 2023), https://www.washingtonpost.com/entertainment/books/book-review-shine-by-lauren-myracle/2011/05/20/AGWwJkFH_story.html.

²⁴ Abigail Pesta, *Lauren Myracle On Why Her Books Top List That America Wants Banned*, DAILY BEAST (Sept. 28, 2018), <https://www.thedailybeast.com/lauren-myracle-on-why-her-books-top-list-that-america-wants-banned>.

²⁵ *Shine*, KIRKUS (last visited May 28, 2023), <https://www.kirkusreviews.com/book-reviews/lauren-myracle/shine-myracle/>; *2012 Readers’ Choice List*, YALSA (last visited May 28, 2023), <https://www.ala.org/yalsa/readers-choice/2012>.

²⁶ Rebeca Hersher, *It May Be ‘Perfectly Normal’, But It’s Also Frequently Banned*, NPR (Sept. 21, 2014 5:00 PM), <https://www.npr.org/2014/09/21/350366435/it-may-be-perfectly-normal-but-its-also-frequently-banned>.

emotional health and relationships,” it provides factual information that is regularly updated.²⁷ The author consults “experts like pediatricians, biologists and even lawyers to fact-check each edition” to make sure all of the information contained in it is accurate.²⁸ In more recent editions, the book addresses internet safety.²⁹ *It’s Perfectly Normal* won the Boston Globe-Horn Book Honor Book Award and has been featured in a variety of “honors” lists, including the American Library Association’s Notable Children’s Book List, Horn Book’s Fanfare Book List, and the *New York Times* Book Review’s annual list of 100 Notable Books.³⁰ *It’s Perfectly Normal* is published by amicus Candlewick Press.

Under the Moon: A Catwoman Tale
by Lauren Myracle

Written by *New York Times* bestselling author Lauren Myracle, *Under the Moon* tells the tale of 15-year-old Selina, who will grow up to be Catwoman, after she is forced to abandon her home.³¹ The book grapples with issues like self-harm,

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *It’s Perfectly Normal*, PENGUIN RANDOM HOUSE (last visited May 28, 2023), <https://www.penguinrandomhouse.com/books/76024/its-perfectly-normal-by-robie-h-harris-illustrated-by-michael-emberley/>.

³¹ *Under the Moon: A Catwoman Tale*, DC (last visited May 28, 2023), <https://www.dc.com/graphic-novels/under-the-moon-a-catwoman-tale>.

suicide, animal abuse, and domestic violence.³² The graphic novel, published in 2019, was praised by *ComicBookWire* for its ability “to capture real issues ... [I]t is emotional and endearing in a great way.”³³ *School Library Journal* concurred: “This look at Catwoman’s backstory is dense with plot, emotion, and action. A sensitive origin story of a beloved antihero.”³⁴

In the Night Kitchen
by Maurice Sendak

A classic children’s picture book first published in 1970, *In the Night Kitchen* follows a young boy as he explores and floats through a dreamworld. Sendak—who also authored and illustrated *Where the Wild Things Are*—creates a “celebration of the primal, sensory world of childhood and an affirmation of its imaginative potency.”³⁵ The book won a Caldecott Honor, which is awarded annually by the

³² Jenna Busch, *Lauren Myracle On Her Selina Kyle Reimagining In Under The Moon: A Catwoman Tale*, SYFY (Apr. 24, 2019, 11:16 AM ET), <https://www.syfy.com/syfy-wire/lauren-myracle-on-her-selina-kyle-reimagining-in-under-the-moon-a-catwoman-tale>.

³³ *Review: Under the Moon - A Catwoman Tale*, COMICBOOKWIRE (Nov. 3, 2021), <https://www.comicbookwire.com/review-under-the-moon-a-catwoman-tale/>.

³⁴ *Under the Moon: A Catwoman Tale*, PENGUIN RANDOM HOUSE (last visited June 1, 2023), <https://www.penguinrandomhouse.com/books/600453/under-the-moon-a-catwoman-tale-by-lauren-myracle/>

³⁵ *In the Knight Kitchen*, BOOKSHOP (last visited May 28, 2023), <https://bookshop.org/p/books/in-the-night-kitchen-maurice-sendak/286853>.

Association for Library Service to Children to the most distinguished picture book for children.³⁶ *In the Night Kitchen* is published by amicus HarperCollins.

***My Butt is So Noisy!, I Broke My Butt!, and I Need a New Butt!*
by Dawn McMillan**

Three best-selling rhyming picture books, the “*Butt*” series follows a boy with an uncooperative backside.³⁷ The books follow his “hilarious adventures caused by the hooting and tooting, humming and strumming, and clicking and ticking of a bothersome backside.”³⁸ These books are valuable for their ability to spark an interest in reading, even among the most disinclined young readers, which will carry over into more mature subjects as the kids get older.³⁹

***Larry the Farting Leprechaun, Gary the Goose and His Gas on the Loose,
Freddie the Farting Snowman, and Harvey the Heart Has Too Many Farts*
by Jane Bexley**

Another collection of silly children’s picture books, the “*Fart*” collection was described by Goodreads as “appropriate for ALL AGES who don’t mind silly toot

³⁶ *Caldecott Winners and Honor Books*, MADISON PUBLIC LIBRARY (last visited May 28, 2023), <https://www.madisonpubliclibrary.org/reading-and-viewing/book-lists/kids/caldecott-winners-and-honor-books>; see also *Randolph Caldecott Medal*, ASSOCIATION FOR LIBRARY SERVICE TO CHILDREN (last visited May 28, 2023), <https://www.ala.org/alsc/awardsgrants/bookmedia/caldecott>.

³⁷ *I Need a New Butt!, I Broke My Butt!, My Butt Is So Noisy! : 3 Hilarious Stories in One Noisy Book (Hardcover)*, WALMART (last visited May 28, 2023), <https://www.walmart.com/ip/I-Need-a-New-Butt-I-Broke-My-Butt-My-Butt-Is-So-Noisy-3-Hilarious-Stories-in-One-Noisy-Book-Hardcover-9780486848631/480409601>.

³⁸ *Id.*

³⁹ See *Want to Teach Your Kids to Love Reading? Buy Them Books About Poop, Farts, and Butts?* (May 31, 2023), <https://www.mentalfloss.com/posts/poop-books-good-for-kids>.

humor (that is not overly gross).”⁴⁰ All four books were published in 2020 or 2021.⁴¹ Like the “*Butt*” series, these books are valuable for their ability to spark an interest in reading, even among the most disinclined young readers, which will carry over into more mature subjects as the kids get older.⁴²

Clearly, the Banned Books are not the type of works that are so outdated, trivial, mediocre, inaccurate, or replete with falsehoods that they would be subject to “weeding,” had standard “weeding” processes occurred (they did not). To the contrary, their honors, critical reception, and popularity reinforce the district court’s finding that the books were removed from the shelves for ideological reasons, which violates the First Amendment (as further discussed below in Sections II and III).

II. Llano County’s Removal of the Banned Books Is Part of a Recent Trend and Long History of Unconstitutional Book Bans.

The actions taken by Llano County are not unprecedented. Government restriction of access to books is a tale as old as time. Over the course of history, repressive regimes have frequently relied on book bans to quell dissent and prevent their citizens from accessing “dangerous” ideas. During World War II, the Nazis

⁴⁰ *Freddie The Farting Snowman: A Funny Read Aloud Picture Book For Kids And Adults About Snowmen Farts and Toots*, GOODREADS (last visited May 28, 2023), <https://www.goodreads.com/book/show/55947570-freddie-the-farting-snowman>.

⁴¹ *Id.*; see also *Jane Bexley Books in Order (5 Book Series)*, MOST RECOMMENDED BOOKS (last visited May 28, 2023), <https://www.mostrecommendedbooks.com/series/jane-bexley-books-in-order>.

⁴² See *supra* Note 37.

destroyed or banned thousands of books, including works by Albert Einstein, Ernest Hemingway, and Upton Sinclair, in an effort to silence dissenters and political opponents.⁴³ In East Germany, the communist government suppressed various comic books due to the main characters being perceived as “anti-red rebel[s].”⁴⁴ The practice continues today. In the People’s Republic of China, the banning of books has recently reached levels not seen since the days of the Cultural Revolution, as works perceived to have a pro-democracy message are deemed “deviant.”⁴⁵

The United States has had its own moments of book-banning fervor. During the Civil War, the Confederacy banned Harriet Beecher Stowe’s *Uncle Tom’s Cabin*.⁴⁶ In 1885, a public library in Concord, Massachusetts banned the *Adventures of Huckleberry Finn*.⁴⁷ The library deemed the book “suited to the slums.”⁴⁸ By 1907, other public libraries followed, insisting that the protagonist was a poor role model for impressionable youth.⁴⁹ During the Great Depression, many local

⁴³ See *Bannings and Burnings in History*, Freedom to Read (May 25, 2023), <https://www.freedomtoread.ca/resources/bannings-and-burnings-in-history/>.

⁴⁴ *Id.*

⁴⁵ Huizhong Wu, *In echo of Mao era, China’s schools in book-cleansing drive*, REUTERS (July 9, 2020, 7:04 AM), <https://www.reuters.com/article/us-china-books-insight/in-echo-of-mao-era-chinas-schools-in-book-cleansing-drive-idUSKBN24A1R5>.

⁴⁶ *Id.*

⁴⁷ *Bannings and Burnings in History*, *supra* note 43.

⁴⁸ *Id.*

⁴⁹ *Id.*

municipalities tried to ban popular books, such as John Steinbeck’s *The Grapes of Wrath*, in fear of ideas they considered too dangerous for the public.⁵⁰ James Joyce’s *Ulysses* was banned by U.S. customs officials in the 1930s for its alleged “impure and lustful thoughts,” but the ban was vacated by a federal court.⁵¹ Other works now considered canonical have been—and continue to be—common targets of challenges and censors. *To Kill a Mockingbird* was listed as the seventh most challenged book as recently as 2020, with *Of Mice and Men* following closely in eighth place.⁵² *The Adventures of Huckleberry Finn* was thirty-third on the list of the most challenged books from 2010-2019.⁵³ Even the Bible has been challenged, based on parents’ complaints about “pornographic” content.⁵⁴

⁵⁰ Livia Gershon, *Banning The Grapes of Wrath in 1939 California*, JSTOR DAILY (Mar. 27, 2022),

<https://daily.jstor.org/banning-the-grapes-of-wrath-in-1939-california/#:~:text=The%20Kern%20County%2C%20CA%20Board,from%20their%20libraries%20and%20schools.&text=In%20April%20of%201939%2C%20John%20Steinbeck%20published%20The%20Grapes%20of%20Wrath.>

⁵¹ *Court Lifts Ban on ‘Ulysses’ Here*, THE NEW YORK TIMES (Dec. 7, 1933), <https://archive.nytimes.com/www.nytimes.com/books/00/01/09/specials/joyce-court.html>.

⁵² *Banned and Challenged Books*, ALA OFFICE FOR INTELLECTUAL FREEDOM (last visited May 31, 2023), <https://www.ala.org/advocacy/bbooks/frequentlychallengedbooks/top10/archive>.

⁵³ *Id.*

⁵⁴ Eesha Pendharkar, *Why the Bible is Getting Pulled Off School Bookshelves*, EDUCATION WEEK (Dec. 15, 2022), <https://www.edweek.org/teaching-learning/why-the-bible-is-getting-pulled-off-school-bookshelves/2022/12>; Brooke Kato, *Utah parent wants Bible removed from schools: ‘It’s pornographic’*, NEW YORK POST (Mar. 23, 2023), <https://nypost.com/2023/03/23/utah-parent-wants-bible-removed-from-schools-its-pornographic/>.

Book bans are not the exclusive domain of any particular political party or cultural movement. As Dean Rodney Smolla has observed, “[w]e are all prone to the natural human instinct to censor—to pronounce speech that is upsetting, disquieting, and offensive as taboo.” Rodney A. Smolla, *Freedom of Speech for Libraries and Librarians*, 85 LAW LIBR. J. 71, 72 (1993). In Llano County, books were removed from the public library system because they addressed subjects disfavored by officials; elsewhere, classics such as *To Kill a Mockingbird*, *Of Mice and Men*, and *The Adventures of Huckleberry Finn* have been challenged or removed in various school districts due to concerns over offensive language and outdated racial perspectives.⁵⁵

The Constitution does not care about the political affiliation of the book-banners or the causes that motivate their censorship. When faced with the removal of books from library shelves, courts have consistently applied heightened scrutiny to bans motivated by government disapproval of the views and themes in the books. In hindsight, these decisions have been validated: books that once seemed dangerous and destabilizing to the prevailing political, moral, or cultural consensus are now considered part of the canon and celebrated.

⁵⁵ *Banned/Challenged Books of 2021-2022–Title List*, MARSHALL LIBRARIES (May 12, 2023), <https://www.marshall.edu/library/bannedbooks/bannedbooks-2022/title/>.

Nearly 45 years ago, members of a New York school board obtained a list of “inappropriate” books from a conservative political organization. *Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853, 856 (1982) (plurality opinion). The list included *Slaughterhouse-Five* by Kurt Vonnegut and *Best Short Stories of Negro Writers*, edited by Langston Hughes. *Id.* at n.3. The Board swiftly removed the books from the school library shelves, stating that they were “anti-American, anti-Christian, anti-Sem[i]tic, and just plain filthy.” *Id.* at 857 (quoting *Pico v. Board of Ed., Island Trees Union Free School Dist. No. 26*, 474 F.Supp 387, 390 (E.D.N.Y. 1979)). A group of students sued, claiming that the removal of the books violated their First Amendment rights. The Supreme Court agreed, with the plurality opinion holding that “the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge” accessible in the library based on disagreement with the ideas at issue. *Id.* at 866 (citation omitted).

In 1995, this Court applied *Pico* in a case concerning the restriction, and later removal, of *Voodoo & Hoodoo*, a book about the development of African tribal religion, from a school library. *Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184, 188–89 (5th Cir. 1995). The mother of a middle-school student had complained “that the Book heightened children’s infatuation with the supernatural and incited students to try the explicit ‘spells,’ which she believed to be potentially dangerous.” *Id.* at

186. Although this Court remanded for further consideration of the evidence of the school board’s motivations, it cautioned that removing books from library circulation could constitute an “unconstitutional attempt to ‘strangle the free mind at its source.’” *Id.* at 190 (citation and quotations omitted).

Five years later, the Northern District of Texas considered the City of Wichita Falls’ relocation of *Heather Has Two Mommies* and *Daddy’s Roommate* from the children’s section to the adult section of the public library. *Sund v. City of Wichita Falls*, 121 F. Supp. 2d 530, 531–32 (N.D. Tex. 2000). Both books addressed the subject of children who have gay parents. *Id.* at 532–33. Supporters of the ban “objected vehemently to the perceived ‘homosexual message’” of the books. *Id.* at 533. The court noted that “[t]he principles set forth in *Pico*—a school library case—have even greater force when applied to public libraries.” *Id.* at 548, 554. The court ordered the books returned to the children’s section, explaining that the City’s actions had “unconstitutionally burden[ed] the First Amendment rights of” library-goers even though it did not completely remove the books. *Id.* at 551.

The correctness of *Pico*, *Campbell*, and *Sund* is even clearer in hindsight. As these decisions recognize, the real danger lies not in the books they involved, but in the infringement of First Amendment rights, including the rights of library patrons to read these books and decide for themselves the merits of their views and themes.

III. The County’s Removal of these Authors’ Voices from the Public Library Infringes the Individual Liberty of Intellectual Self-Exploration Protected by the First Amendment.

As these cases demonstrate, the district court’s order fits well within established precedent holding that book bans motivated by viewpoint discrimination are unconstitutional. In an attempt to evade this precedent, and relying on *Chiras v. Miller*, 432 F.3d 606 (5th Cir. 2005), the County has tried to analogize this case to a school board’s choices about which texts to purchase for use in its schools. Appellants’ Br. at 26–28. The County also argues (in recognition that this case is *not* about the selection of educational texts) that a public librarian is engaged in government speech when managing the library’s collection. *Id.* at 29–30. Finally, the County argues that the First Amendment’s prohibition on viewpoint discrimination applies only if the Court concludes that public libraries are public fora.⁵⁶ *Id.* at 29–30. None of these arguments adequately captures the First

⁵⁶ As the district court noted, courts have held that public libraries are limited public fora. ROA. 3519, 3525 (citing *Sund*, 12 F. Supp. 2d at 548 (“The Wichita Falls Public Library, like all other public libraries, is a limited public forum for purposes of First Amendment analysis.”); *see also Doe v. City of Albuquerque*, 667 F.3d 1111, 1128 (10th Cir. 2012) (“reaffirm[ing]” that libraries are “a type of designated public forum”); *Neinast v. Bd. of Trustees of Columbus Metro. Libr.*, 346 F.3d 585, 591 (6th Cir. 2003) (“For the purposes of First Amendment analysis, the Library is a limited public forum.”); *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242, 1259 (3d Cir. 1992) (“[T]he Library constitutes a limited public forum, a type of designated public fora.”). Here, the Court need not determine whether the public library is a limited public forum for all purposes, but only that the same First Amendment prohibition on viewpoint discrimination that applies to limited public fora also applies to government decisions to remove or restrict books from public libraries.

Amendment values at stake when the government acts to remove books from the library's existing collection as a result of the government's disapproval of the ideas in them.

In *Chiras*, the Court explained that a school district's selection of instructional materials is an act of government speech. 432 F.3d at 614–15. When the government speaks, its objective is not to “encourage a ‘diversity of views’” or to ensure reader access to intellectual diversity. *Id.* at 615 (quoting *Rosenberger v. Rectors & Visitors of the Univ. of Va.*, 515 U.S. 819, 834 (1995)). Rather, it is “to promote the state’s chosen message.” *Id.*; *Rust v. Sullivan*, 500 U.S. 173, 194 (1991) (“When Congress established a National Endowment for Democracy to encourage other countries to adopt democratic principles, ... it was not constitutionally required to fund a program to encourage competing lines of political philosophy such as communism and fascism.”). When speaking as educator, the government enjoys broad discretion, and “[c]entral among these discretionary powers is the authority to establish public school curricula which accomplishes the states’ educational objectives.” *Chiras*, 432 F.3d at 611 (citing *Pico*, 457 U.S. at 864; *Ambach v. Norwick*, 441 U.S. 68, 76–77 (1979)).

But the government's maintenance of a public library's book collection is a fundamentally different endeavor. It does not involve the government's role as speaker or educator. In *Pico*, even while disagreeing with parts of Justice Brennan's

analysis of the First Amendment’s application to *school* libraries, Justice Rehnquist had no trouble acknowledging that, like university libraries, *public* libraries are “designed for freewheeling inquiry[.]” 457 U.S. at 914–15 (Rehnquist, J., dissenting). In short, public libraries embody the marketplace of ideas.

It is a hallmark of modern First Amendment jurisprudence that, in the marketplace of ideas, voices of dissent and criticism are essential to a deliberative process that arrives at truth. *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) (“[T]he best test of truth is the power of the thought to get itself accepted in the competition of the market[.]”). Unfettered public debate is, in turn, essential to effective self-government. *Citizens United v. Federal Election Com’n*, 558 U.S. 310, 339 (2010) (“The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.”); 9 WRITINGS OF JAMES MADISON 103 (G. Hunt ed. 1910) (“A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both ... And a people who mean to be their own Governors, must arm themselves with the power which knowledge give.”). Courts have been justifiably hostile to government attempts to regulate the marketplace of ideas or to tip the scales in favor of some messages by restricting access to others. *Citizens United*, 558 U.S. at 340

(recognizing that “the First Amendment stands against attempts to disfavor certain subjects or viewpoints.”).

But the First Amendment is not solely concerned with an unfettered marketplace of ideas and its role in effective democratic self-governance. The First Amendment also protects the liberty of individuals to govern themselves according to norms and beliefs that might be different than those ultimately embraced by the body politic. *See* Martin H. Redish, *The Value of Free Speech*, 130 U. PA. L. REV. 591, 593 (1982) (arguing “that the constitutional guarantee of free speech ultimately serves only one true value ... ‘individual self-realization’”). As John Stuart Mill recognized, the individual must be free to explore whether the majoritarian consensus is “properly applicable to his own circumstances and character.” John Stuart Mill, *On Liberty and Other Essays*, at 65 (John Gray ed. 1991); *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (the “right to receive information and ideas, regardless of their social worth ... is fundamental to our free society”) (citation omitted). In *NetChoice, L.L.C. v. Paxton*, this Court discussed at length the related right to express one’s own conscience, which was core to the original understanding of the First Amendment. 49 F.4th 439, 453–54 (5th Cir. 2022), *petition for cert. docketed*, No. 22-555 (U.S. Dec. 19, 2022) (citing Jud Campbell, *Natural Rights and the First Amendment*, 127 YALE L.J. 246, 280–87 (2017)). This liberty of conscience

is “not defined by or limited to concerns about preserving republican government,” but extends to understanding one’s self. *See* Campbell, at 263 n.58.

Public libraries are havens for this self-exploration, self-actualization, and the development of the beliefs that define one’s own conscience. Libraries have the capacity “to expose individuals to a ‘variety of situations’ far richer than they are likely to encounter in their day-to-day lives.” Marc Jonathan Blitz, *Constitutional Safeguards for Silent Experiments in Living: Libraries, the Right to Read, and A First Amendment Theory for an Unaccompanied Right to Receive Information*, 74 UMKC L. REV. 799, 829 (2006). And they do so in an environment that is free of peer pressures and stigma that accompany public discourse and social settings. *Id.* at 881–82. Within the quiet confines of the library, an individual can engage in a “self-directed exploration[,]” sampling ideas and exposing themselves to a wide array of lived experiences. *Id.* at 861; *see also Pico*, 457 U.S. at 869 (noting the “regime of voluntary inquiry that ... holds sway” in a library).

The County’s actions infringe this individual liberty of self-exploration. It cannot be ignored that the majority of the Banned Books are coming-of-age stories, memoirs, and other personal accounts of individual experience and self-discovery. Most are told from outsider perspectives, in voices not commonly heard. Literature has the power to bring communities together by expanding consciousness, empathy, and compassion. Books provide opportunities to encounter and consider new ideas

and fresh perspectives. For library patrons who feel like outsiders or underdogs in one way or another, a book can provide a much-needed breath of fresh air, a dose of validation, and solace in the knowledge that they are not alone.

By removing the Banned Books from circulation, the County limits the range of ideas accessible to the community, enforcing an orthodoxy of perspective and experience. This violates the individual liberty of self-exploration embodied in the First Amendment, which is nurtured by the wealth of knowledge and viewpoints available at public libraries.

CONCLUSION

For these reasons, Amici respectfully urge this Court to affirm the order of the district court.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the typeface and volume limits of Fed. R. App. P. 32(a) and Local Rule 32.1.

1. This brief contains 5,654 words, excluding the sections exempted by Fed. R. App. P. 32(f) and Local Rule 32.2, which is less than fifty percent of that allotted for the Appellant's brief pursuant to Fed. R. App. P. 29.
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/s/ Marc A. Fuller

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of June, 2023, a copy of the foregoing has been served upon counsel for all parties to this proceeding as identified below through the Court’s electronic filing system as follows:

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