

# **Legal Update Texas Libraries**

**City of Corpus Christi Legal Department**

December 3, 2024

# Leila Green Little, et al. v. Llano County

## Procedural Case History

- *Little v. Llano County*, 1:22-CV-424-RP (Western Dist. Tex. March 30, 2023)
- Appealed to U.S. Court of Appeals 5<sup>th</sup> Circuit – Panel Opinion in this case dated June 6, 2024, is VACATED (*Little v. Llano County*, 103 F.4<sup>th</sup> 1140 (5<sup>th</sup> Cir. 2024))
- 5<sup>th</sup> Circuit Court of Appeals will rehear this case En Banc. (Pending Appeal)
- Oral Arguments were heard on Sept. 24, 2024

## **March 30, 2023, Little v. Llano County District Court Case Case Background**

- Community group members deemed certain children’s books “inappropriate” and demanded their removal from Llano Public Library. The members contacted the Commissioner’s Court and the Library Director to instruct removal of books from the shelves. A number of books were removed by the Library Director in response, and in the months that followed, more books disappeared following similar demands.
- The existing library board was dissolved, and the community group members advocating book removals were named to a new “Library Advisory Board” that halted acquisitions, barred library staff from attending Board meetings, and closed the library temporarily for 3 days to remove books from the shelves the new members deemed “inappropriate.”

## March 30, 2023, Little v. Llano County District Court Case

### Federal Western District Court Ruling (Austin Division)

- The federal district court found that the plaintiffs’ “First Amendment right to access to information in libraries” had been violated because the defendants “removed the books at issue to prevent access to viewpoints and content to which they objected.”
- While the First Amendment may most famously shield freedom of speech, it also protects “the right to receive information and ideas.”
- The key inquiry in a book removal case is whether the government’s substantial motivation was to deny library users access to ideas. As the Fifth Circuit held in *Campbell*, removal decisions are subject to the First Amendment are evaluated based on whether the government’s substantial motivation in arriving at the removal decision was discriminatory. *See Campbell*, 64 F.3d at 190.
- Removals must be narrowly tailored to serve a compelling state interest. (“**Compelling** state interest” means that you are very narrowly interpreting the reason for removal.)

## ***Little v. Llano County District Court Order (Currently Effective)***

1. Defendants shall return all print books that were removed because of their viewpoint or content to the Llano County Libraries.
2. Immediately after returning the books to the Libraries as ordered in (1) above, Defendants shall update all Llano County Library Service's catalogs to reflect that these books are available for checkout.
3. Defendants are enjoined from removing any books from the Llano County Library Service's catalog for any reason during the pendency of this action.

## ***Little v. Llano County* 5<sup>th</sup> Circuit Court of Appeals Case Opinion**

- Librarians may consider books' contents in making curation decisions. Their discretion, however, must be balanced against patrons' First Amendment rights. One of these rights is "the right to receive information and ideas." This right is violated when an official who removes a book is "substantially motivated" by the desire to deny "access to ideas with which they disagree."
- Government actors may **not** remove books from a public library with the intent to deprive patrons of access to **ideas (words)** with which they disagree.

## 5<sup>th</sup> Circuit Court Ruled Books Back on Shelves: Shelves:

- *Caste: The Origins of Our Discontent* by Isabel Wilkerson
- *Called Themselves the K.K.K: The Birth of an American Terrorist Group* by Susan C Bartoletti
- *Spinning* by Tillie Walden
- *Being Jazz: My Life as a (Transgender) Teen* By Jazz Jennings
- *Shine* by Lauren Myracle
- *Under the Moon: A Catwoman Tale* by Lauren Myracle
- *Gabi, a Girl in Pieces* by Isabel Quintero
- *Freakboy* by Kristin Elizabeth Clark

## 5<sup>th</sup> Circuit Court Ruled These Books Off

- *In the Night Kitchen* by Maurice Sendak (pics or illustrations)
- *It's Perfectly Normal: Changing Bodies, Growing Sex and Sexual Health* by Robie Harris (pics or illustrations)
- *My Butt is So Noisy!, I Broke My Butt!, and I Need a New Butt!* by Dawn McMillan
- *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

## Books that were relocated to the adult section (court permitted relocation):

- (1) *All out: the no-longer-secret stories of queer teens throughout the ages* by Sandra Mitchell;
- (2) *Beyond Magenta: transgender teen speaks out*, by Susan Kuklin;
- (3) *Some assembly required: the not-so secret life of a transgender teen*, by Arin Andrews;
- (4) *How to be an antiracist*, by Ibram X. Kendi; and
- (5) *Separate is never equal* by Duncan Tonatiuh.