

Case No. 25-1105

In the United States Court of Appeals
for the Tenth Circuit

Elizabeth School District,
Defendant-Appellant,

v.

**Kristen Crookshanks, as parent and next of friend of a minor on
behalf of C.C.; Mindy Smith, as parent and next friend of a mi-
nor on behalf of E.S.; NAACP–Colorado–Montana–Wyoming
State Area Conferences; and The Authors Guild,**
Plaintiffs-Appellees.

On Appeal from the United States District Court
for the District of Colorado
Case No. 1:24-cv-03512-CNS-STV
The Honorable Charlotte N. Sweeney

**Appellant's Renewed Emergency Motion
for Administrative Stay and Stay Pending Appeal**

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Defendant Elizabeth School District (the District) renews its motion to stay the district court’s order granting a preliminary injunction (Add. 637 (cited, Order)), and further proceedings in the district court, pending appeal. The District also asks for an emergency administrative stay before **Saturday, April 5, 2025 at 5 p.m.**—when the district court compelled compliance—while the panel decides this motion.¹

* * *

I froze as he pushed inside. There it is. Oh, God. There it goes. It went, all right, with an audible tear. Pain mushroomed into agony and all I could do was go stiff.

Crank, Ellen Hopkins

Confused at his tears, and at the sticky stuff icing her hands, still Kaeleigh pleaded, “Don’t cry, Daddy. What’s the matter? Didn’t I love you good enough?”

Identical, Ellen Hopkins

Removing himself from her was so painful to him he cut it short and snatched his genitals out of the dry harbor of her vagina.

The Bluest Eye, Toni Morrison

After engaging the community, parents, the superintendent, and the chief academic officer, the District’s elected School Board voted to remove from its school libraries 18 book titles—less than 0.05% of the District’s total collection—with vulgar and age-inappropriate material like

¹ Plaintiffs oppose the relief requested in this motion.

that quoted above.² If parents disagree, they may access the material for their children through other sources (public libraries, Amazon, adult bookstores), and those students remain free to bring any of the 18 titles to school for their personal use. The Board’s decision to remove the titles was unanimous and enjoys broad support.

Without a hearing, and over the District’s government-speech rights, the district court granted “extraordinary relief” under a misguided constitutional standard from a 1982 plurality decision. The court ordered the District to *purchase* and *reshelve* the 18 at-issue titles, including those quoted above, forcing the District to spend resources to buy titles contrary to the stated policy preferences of the elected school board.

The district court also wrongly assumed a supervisory position over the Board’s future book-removal decisions. The district court’s order will require the court to parse the District’s motivation behind every book-weeding decision for the rest of this litigation.

The district court did this by applying a legal standard never endorsed by this Circuit. This matters because under the correct legal

² Despite the overt vulgarity of the content at issue, the district court never acknowledged it. To comprehend the extreme nature, the District asks the panel to review the School Board’s findings at pages 753 to 764 of the addendum. One of the rejected books at issue features a (fictional) district judge who molests his young daughter by coercing her into masturbating him while his other daughter listens feet away. (*Id.* at 754–56.) This horrific and graphic account is written in verse, making it more accessible for young readers.

standard the School Board easily has the discretion to remove this problematic content. Even under the district court’s chosen standard though, the Board’s discretion is (rightfully) broad. Plaintiffs must show the removal (1) was narrowly partisan or political; (2) the partisan-or-political motive was the “decisive factor” in the removal; and, through the decision, (3) the Board sought to prescribe what shall be orthodox. Without hearing evidence, the district court assigned unconstitutional motive to the Board. The court also ignored sworn declarations from each Board member stating why they voted the way they did. The court dismissed these statements—again without allowing the Board members to testify—relying instead on a handful of out-of-context emails between a few Board members discussing *two* of the 18 titles.

In denying the District’s motion for stay, the district court compounded its error by concluding the District waived its ability to challenge the injunction as being “mandatory,” and the District was untimely in telling the court it discarded the books (before the litigation was filed). Neither point holds. Respectfully, the legal effect of the injunction and whether the District had the at-issue books is only relevant to *the District’s* irreparable harm, which is ripe precisely (and only) in the context of a motion for a stay pending appeal. Worse, the district court credited Plaintiffs’ law firm’s post-injunction attempt to donate the books to mitigate the obvious irreparable harm, while accusing the District of

“improper” attempts to supplement the record when it documented its own response to the donation. All of this—again—without a hearing.

Considering the extraordinary relief ordered by the district court, the important legal issues in this case, and the disputed standard, the District asks the Court to stay both the district court’s preliminary injunction and the district court proceedings during this appeal. Appellate courts often stay district court proceedings on the merits when a clarification of the law from a preliminary injunction would change the merits analysis. The competing harms strongly favor a stay since the harm to Plaintiffs is nonexistent: they have had access to the titles in their libraries since January 2025, and will retain access throughout this case.

STATEMENT OF JURISDICTION

Plaintiffs alleged claims under the First Amendment; the district court has jurisdiction under 28 U.S.C. § 1331. This Court has jurisdiction over this appeal of a preliminary injunction under 28 U.S.C. § 1292(a)(1).

BACKGROUND

I. Elizabeth School District and Its Elected School Board

The small town of Elizabeth, Colorado, is southeast of Denver. The town’s school district educates 2,600 students in two elementary schools, one middle school, and one high school. Each school has a library. As with all instructional materials and curricula, the District’s five-member School Board is responsible for the library collections. (Add. 223–25 (1/27/25 Snowberger Decl.), ¶¶ 5–9); *id.* at 254–55 (Olsen Decl.), ¶¶ 6–7.)

II. Recent Library Improvement Efforts

In 2023, the School Board learned of a disconnect between its curricular goals and the District’s 50,000-book library collection. (*Id.* at 225–27 (1/27/25 Snowberger Decl.), ¶¶ 10–11, 26.) Board member Mike Calahan reported that his then-11-year-old daughter (in sixth grade) checked out a book from the middle school that was recommended by the publisher for “age 14+” and that contained profanity and explicit sexual content. (*Id.* at 226, ¶ 11; *id.* at 310–11 (Calahan Decl.), ¶¶ 7–8.)

The Board tasked a subcommittee, the Curriculum Review Committee (the Curriculum Committee), with reviewing the District’s library collection and proposing a policy to guide its review of potentially controversial content and to address student access to the same. (*Id.* at 255 (Olsen Decl.), ¶ 8.) The Curriculum Committee—comprised of parents, teachers, administrators, and community members—developed and recommended “Library Protocols” that provide guidelines for evaluating library materials based on age-level. (*Id.* at 255–56, ¶¶ 8–9; *id.* at 341–44 (Library Protocols).) The Curriculum Committee used the guidelines to identify 19 titles that it recommended for temporary suspension because of highly sensitive content. (*Id.* at 345 (Suspended List).)

III. The School Board’s Vote to Remove 18 Titles

At its August 12, 2024, meeting, the School Board voted 4–0 to approve the Curriculum Committee’s proposed Library Protocols and temporarily suspend the 19 titles on the Suspended List. (*Id.* at 256–57

(Olsen Decl.), ¶ 10; *id.* at 355 (8/12/24 Meeting Minutes).) The District then invited the community to review and provide feedback on 18 of those titles.³ (*Id.* at 228–29 (1/27/25 Snowberger Decl.), ¶¶ 15–16.) In addition to community review, the Board heard public comment on the 18 titles and read aloud excerpts from five. (*Id.* at 257–58 (Olsen Decl.), ¶ 11.)

On September 9, 2024, the Board voted to permanently remove each of the 18 titles. (*Id.* at 363 (9/9/24 Meeting Minutes); *id.* at 499 (8/16/24 Superintendent Letter (listing titles for review)); *id.* at 345 (Suspended List (identifying library location)).) Most depicted graphic violence, graphic sexual content, and extreme drug and alcohol use, or otherwise contained age-inappropriate content. (*Id.* at 230–33 (1/27/25 Snowberger Decl.), ¶¶ 18–20; *id.* at 258–59, 266–67 (Olsen Decl.), ¶¶ 12, 28–30; *id.* at 278, 286–89 (Powell Decl.), ¶¶ 12, 31–37; *id.* at 297, 303–05 (Waller Decl.), ¶¶ 9, 23–26; *id.* at 313, 319–21 (Calahan Decl.), ¶¶ 10, 24–26.) All lacked educational value or a connection to the District’s curriculum. Weeks after the Board’s vote, the superintendent disposed of the District’s copies of the removed books.⁴ (*Id.* at 701 (3/21/25 Snowberger

³ One title on the Suspended List (*Speak*) was not available for community review because it had been checked out and never returned. (*Id.* at 499 (8/16/24 Superintendent Letter).)

⁴ In January 2025, a donor donated copies of the at-issue titles under the condition that the donated books (1) be made available only to the two Student-Plaintiffs and to any student in the District who is either a member of Plaintiff NAACP or who has a parent or guardian who is a member of Plaintiff NAACP, and (2) are not placed on the District’s library shelves. (*Id.* at 701–02 (3/21/25 Snowberger Decl.), ¶ 11.) The

Decl.), ¶¶ 5–7.) Students are free to bring the removed titles to school for personal use, to discuss them with other students, and to share them outside of school. (*Id.* at 239–40 (1/27/25 Snowberger Decl.), ¶ 37.)

IV. Plaintiffs’ Lawsuit and the District Court’s Preliminary Injunction

Months after the Board’s removal decision, and without advance notice to the District, Plaintiffs filed suit. The NAACP, The Authors Guild, and two students (a highschooler and preschooler) sued, alleging the removal violated the First Amendment and the Colorado Constitution. (*See id.* at 1.) The next day Plaintiffs moved for a preliminary injunction ordering the at-issue titles be returned to the shelves. (*See id.* at 49.) Plaintiffs attached out-of-context exhibits purporting to demonstrate the School Board’s “motives.” (*See id.* at 121–84.)

The District opposed and responded with sworn declarations from each Board member explaining his or her removal vote, a motion to exclude Plaintiffs’ inadmissible evidence, and a request for a hearing to preliminarily resolve the factual disputes underlying the preliminary-injunction motion. (*See id.* at 185, 570.) The parties filed a joint request for a status conference to schedule the evidentiary hearing and discuss the scope of the hearing. (*Id.* at 633.)

District placed the donated books in the libraries from which they had been removed and they will remain there during this case. (*Id.* at 702, ¶ 12.)

On March 19, 2025, the district court granted a broad preliminary injunction—without a hearing. (Order 1.) The court relied on Plaintiffs’ contested evidence to hold that Plaintiffs were likely to succeed on the merits, including showing unconstitutional motive. The court gave the Board six days to “return” every book it had removed “to their respective libraries.” (*Id.* at 45.) The court also broadly prohibited the Board from removing books in the future for reasons the court found problematic.

The District appealed and, on March 21, 2025, moved for an administrative stay and stay pending appeal. (Add. 682.) Because the district court had not ruled, on March 24, the District moved for emergency relief with this Court. The next day, March 25, the district court stayed its Order pending resolution of the District’s motion for stay, and this Court denied the District’s request for emergency relief without prejudice.

Recognizing the mandatory nature of the preliminary injunction, on March 25, Plaintiffs’ law firm attempted to donate copies of the at-issue titles to the District by delivering 21 books to the District’s counsel. (*Id.* at 731 (Dec Decl.), ¶¶ 6–8.) The School Board promptly noticed and held a special public meeting to consider the donation consistent with state law and District policy. (*Id.* at 744 (3/30/25 Snowberger Decl.), ¶¶ 5–7.) The Board voted to reject all but one title, explaining in writing the reasons for its decisions. (*Id.* at 746 (3/28/2025 Special Meeting Findings).) The Board rejected the donated titles because, in addition to not advancing the District’s curricular or educational goals, the titles are not

age-appropriate for the students served by the libraries from which the books were to be placed and most of them contained graphic and harmful content: explicit descriptions of sexual activity, including scenes of rape and incest; suicidal ideations; detailed descriptions of the abuse of hard drugs and themes of an expressly adult nature. (*Id.* at 753–66.)

Just before 1:00 p.m. today, Thursday, April 3, the district court denied the District’s motion and ordered it to “return” the removed books to library shelves by 5:00 p.m. on Saturday, April 5. (*Id.* at 768.).

LEGAL STANDARD

In considering a stay request, the Court balances four factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009).

ARGUMENT

I. The District is Likely to Succeed on Appeal

A. The district court resolved contested facts with inadmissible evidence without an evidentiary hearing

“[M]ost courts hold that when the written evidence reveals a factual dispute, an evidentiary hearing must be provided[.]” Wright & Miller, *Federal Practice & Procedure*, § 2949 Procedure on Application for Preliminary Injunction (3d ed.). The complaint and preliminary-injunction

motion advance a fact-bound legal theory. To prevail on their motion for a preliminary injunction, Plaintiffs had to show that the five-member School Board exercised its discretion—as a body—in a “narrowly partisan or political manner” such that its motivation was to impose partisan or political orthodoxy. (*See* Add. 64–65 (citing *Bd. of Educ. v. Pico*, 457 U.S. 853, (1982)).) This is a fact-driven standard, and the district court acknowledged motive is in dispute. (Order 12.)

All four voting members of the School Board submitted declarations opposing Plaintiffs’ motion and disputing they were, individually or collectively, motivated by partisan or political motive. (Add. 258–69 (Olsen Decl.), ¶¶ 21–31, 33–34; *id.* at 278–290 (Powell Decl.), ¶¶ 12–38; *id.* at 297–306 (Waller Decl.), ¶¶ 9–27; *id.* at 313–321 (Calahan Decl.), ¶¶ 20–27; *see also* at 329–37 (Booth Decl.), ¶¶ 9–26.) Each declarant stated in detail the reasons for their removal vote, which were informed by a variety of factors, including the problematic nature of the titles’ content. (*See, e.g., id.* at 266–68 (Olsen Decl.), ¶¶ 27–31.)

Nonetheless, without a hearing, the district court determined the “decisive factor” in the Board’s removal was “blatantly unconstitutional” based on statements from three Board members (one of whom did not vote) in five out-of-context emails.⁵ (Order 25–28.) In so doing, the court assumed any reference to “conservative values” doubled as an admission

⁵ Only two of the emails mention the 18 at-issue titles, and even then, the discussion addressed just two titles. (*See id.* at 144–46, 174.)

of partisan motive over declarations to the contrary. (Order 29–30, 33.) In truth, to espouse “conservative values” in America ordinarily means belief in moral order, and an attendant distaste for obscenity, vulgarity, or impropriety in keeping with a classical Western sense of these terms. That is not partisan. Similarly, it means that one appreciates the imperfectability of human nature and, as a result, values innocence—particularly in matters of sexuality and the use of mind-altering substances—in children. Ignoring this possibility, the Court’s Order proclaimed it unconstitutional for the District to act on such values.

At the very least, the court should have heard testimony from the Board members, weighed the evidence, and made credibility determinations before reaching a conclusion about the Board’s motives. It is prejudicial to make a fact-based determination about the Board’s motive without a hearing, while refusing the District’s competing evidence because it was prepared in its defense.

B. The District’s removal of books is government speech

“A government entity has the right to ‘speak for itself.’” *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 467 (2009) (quoting *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229 (2000)). Just as a person has a right to speak or not speak as they see fit, a government entity can choose what to say. And, just like a person, “[w]hen government speaks, it is not barred by the Free Speech Clause from determining the content of what it says.” *Walker v. Tex. Div., Sons of*

Confederate Veterans, Inc., 576 U.S. 200, 207 (2015). Therefore, if the District’s curation of its library constitutes government speech, the Plaintiffs cannot prevail on their book-removal claims.

The Supreme Court has held that “[a]n entity exercis[ing] editorial discretion in the selection and presentation of content is engage[d] in speech activity.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 731 (2024) (quotations omitted). This is true even when the content involved is the speech of another party: “Deciding on the third-party speech that will be included in or excluded from a compilation—and then organizing and presenting the included items—is expressive activity of its own. And that activity results in a distinctive expressive product.” *Id.*

The District’s editorial practices with respect to its library are expressive in the same way as social media or newspaper editorial practices. This is not because inclusion of books in a library conveys an express endorsement or sponsorship; a social media company does not explicitly endorse the content it puts in a user’s feed. It is because deciding what books to include in or exclude from the District’s library collection “is expressive activity of [the District’s] own.” *See id.*

C. Even if government speech does not apply, the District prevails under *Hazelwood*

Apart from government speech, the District’s removal was a constitutional restriction of speech that might reasonably be perceived to bear the District’s imprimatur. *Hazelwood School District v. Kuhlmeier*, 484

U.S. 260 (1988), sets the standard for restrictions of speech within “activities that might reasonably be perceived to bear the imprimatur of the school” and that “involve pedagogical concerns.” *Fleming v. Jefferson Cnty. Sch. Dist. R-1*, 298 F.3d 918, 924 (10th Cir. 2002). A school may restrict speech under *Hazelwood* so long as the restrictions are “reasonably related to legitimate pedagogical concerns.” *Pompeo v. Bd. of Regents of the Univ. of N.M.*, 852 F.3d 973, 982 (10th Cir. 2017). The universe of “legitimate pedagogical concerns” is large, including “the academic ... discipline, courtesy, and respect for authority.” *Fleming*, 298 F.3d at 925.

This Court has previously applied *Hazelwood* to a collection of third-party expression hosted by a school—like in a school library. In *Fleming*, the Court held that *Hazelwood* applied to works of art hung in a school that were painted by third parties who were not students and, in some cases, had no relationship to the school. *See* 298 F.3d at 921.

The restrictions imposed by the District served a legitimate pedagogical interest and were constitutional under *Hazelwood*. The District acted to avoid exposing students to what it considered to be inappropriate or objectionable content, which is one of the “legitimate pedagogical concerns” identified in *Hazelwood* itself. Indeed, one of the conceptual foundations of *Hazelwood* was the Supreme Court’s conclusion that schools needed control over school-sponsored speech to ensure students “are not exposed to material that may be inappropriate for their level of maturity.” *Hazelwood*, 484 U.S. at 271.

D. Plaintiffs have no cause of action under the Colorado Constitution

Article II, Section 10 of Colorado’s Constitution does not contain an express right of action and there is no state statute creating one. *See Vanderhurst v. Colo. Mountain Coll. Dist.*, 16 F. Supp. 2d 1297, 1304 (D. Colo. 1998); Colo. Const. Art. II, Section 10. Plaintiffs are therefore asking this Court to recognize an implied cause of action.

In *Board of County Commissioners v. Sundheim*, the Colorado Supreme Court held that courts may imply such a cause of action only where there is “no other adequate remedy.” 926 P.2d 545, 553 (Colo. 1996). *Sundheim* further held that a §1983 action under the federal constitution is an “adequate remedy” sufficient to foreclose the need for an implied cause of action. *See id.* This holding forecloses the Plaintiffs’ state constitutional claims, and this Court has applied *Sundheim* to dismiss state law claims in precisely the situation presented by this case. *Arndt v. Koby*, 309 F.3d 1247, 1255 (10th Cir. 2002).

The district court rejected this argument by citing two supposedly contrary cases. (Add. 775–766 (Order Denying Stay).) In one of those cases, *Bock v. Westminster Mall Co.*, 819 P.2d 55 (Colo. 1991), the Plaintiff brought no federal claims. The second case, *Brammer-Hoelter v. Twin Peaks Charter Acad.*, 81 F. Supp. 2d 1090 (D. Colo. 2000), directly contradicts the district court’s holding. The *Brammer-Hoelter* court dismissed claims for declaratory and injunction relief under the Colorado

Constitution because the plaintiff also brought claims under §1983. *Brammer-Hoelter*, 81 F. Supp. 2d at 1098.

E. Authors have no First Amendment right to have their books in school libraries

The author Plaintiffs have no right to have their books in school libraries. Initially, the authors' claim is properly analyzed under the government-speech doctrine. Authors have no right to have the government purchase and stock their books, which would amount to a right to government sponsorship of the authors' speech. Taking the authors' forum argument to its logical conclusion demonstrates the necessity of following either *Hazelwood* or the government-speech doctrine. If a school library is a public forum, the District is not permitted to exclude books for the views they espouse. *See Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 682 (1998). Books of every stripe must be allowed in the library, no matter if they are unscientific, racist, sexist, or otherwise objectionable. This is not the way of libraries, particularly school libraries.

II. The District will suffer irreparable harm without a stay

The District will suffer irreparable harm without a stay. The “irreparable harm requirement is met if a [party] demonstrates a significant risk that he or she will experience harm that cannot be compensated after the fact by monetary damages.” *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1258 (10th Cir. 2003) (quotation omitted). Irreparable harm can include “increased costs of compliance” and “necessary alterations in

operating procedures.” *Career Colls. & Sch. of Tex. v. U.S. Dep’t of Educ.*, 98 F.4th 220, 235 (5th Cir. 2024), *cert. granted in part*, No. 24-413 (U.S.). If this injunction goes into effect, the District will suffer irreparable harm in at least three ways. *First*, during this litigation, its elected school board will be subject to the second-guessing of the district court over any book-weeding decision. *Second*, the District will be forced to take two actions against the stated policy preferences of its elected board. *Third*, purchasing and reshelving the books alter the relevant legal analysis under *Pico*.

A. Intrusion into future Board decisions regarding library collection

Under the Order, the District is unable to curate its own library collection. Given the district court’s findings that sworn declarations of District officials are “pretext” covering for an unconstitutional decision based on political or religious bigotry, this injunction is breathtakingly broad. Any decision to weed a book for a facially valid reason could be subject to second-guessing by the court. Indeed, the court appears to acknowledge the authority it is assuming when it refuses to approve the removal of books promoting holocaust denial. (Order 35 n.11.) The court is now the District’s de-facto library czar.

B. Mandatory actions required of the District

The district court’s preliminary injunction requires the District do two things: (1) purchase and shelve copies of the at-issue titles, and (2) adopt interim library policies. Injunctions requiring a party to take such

affirmative actions before a trial on the merits are disfavored. *See Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258–59 (10th Cir. 2005).

It is undisputed that the District discarded its copies of the titles after the School Board’s September 9, 2024 removal decision. (Add. 701 (3/21/25 Snowberger Decl.), ¶¶ 5–7.) Plaintiffs never asked for the books’ preservation pending litigation. (*Id.* at 701, ¶¶ 8–9.) The first communication the District received about this lawsuit was the complaint filed three months after the removal decision. (*Id.* at 701, ¶ 10.) Though a private donor arranged for Plaintiffs to have access to copies of the 18 titles during this lawsuit, the District is unable to place these copies on the library shelves because the donation was conditioned on the titles being provided only to Plaintiffs. (*Id.* at 701–02, ¶¶ 11–12.) Further, consistent with its Library Protocols, the School Board rejected all but one of the at-issue titles that Plaintiffs’ law firm proposed to donate because they lacked educational value, were not age appropriate, and for most, contained outright harmful content. (*Id.* at 753–66 (3/28/25 Special Meeting Minutes).) Thus, if this Court does not stay the injunction, the District will be forced to *purchase* and *shelve* a new set of books that its elected Board has *twice* determined are inappropriate for students in the district. (*Id.* at 702 (3/21/25 Snowberger Decl.), ¶ 13.)

If this Court does not stay the order, the District will also be forced to develop new library policies. Most of the titles contain content that is unquestionably inappropriate for children. (*See generally id.* at 386

(BookLooks.org ratings.) The District will have to find a way to accommodate reasonable parental concerns about student access to such material. And it will have to do so while navigating a preliminary injunction. These “necessary alterations in operating procedures” constitute irreparable harm sufficient to justify a stay. *Career Colls.*, 98 F.4th at 235.⁶

C. The injunction may alter the District’s status under the *Pico* plurality standard

The mandate to purchase and re-shelve the books may also prejudice the District by changing the applicable First Amendment analysis. In the Order, the district court cited and applied the three-justice plurality from *Pico*. Critically, the *Pico* plurality emphatically drew a line between decisions to *remove* books from the library and compelling schools to *purchase* books for their libraries. *See Pico* 457 U.S. at 862, 871; *see also id.* at 892 n.8 (Burger, C.J., dissenting). If the District complies with the preliminary injunction below, it risks changing the legal analysis under *Pico*. For *Pico*-analysis purposes, complying with the injunction

⁶ In its most recent order, the district court suggested the District waived any argument the injunction is mandatory. (Add. 778–79 (Order Denying Stay).) Mandatory injunctions are subject to a more exacting review, *see Schrier*, 427 F.3d at 1259–61, and it’s the court “prerogative to decide the applicable law when considering a motion, and therefore the parties have no power to waive a standard of review.” *United States v. Warren*, 22 F.4th 917, 927 (10th Cir. 2022). Nor do waiver principles change the legal effect of the injunction here. Further, the District in fact argued that “the District would be forced to purchase, catalog, and re-shelve the removed titles” if the court granted Plaintiffs’ requested injunction. (Add. 219 (Def.’s Resp. in Opp’n).)

would require the District to purchase the at-issue titles—against its elected School Board’s direction—thereby irreparably harming its legal rights.

III. Plaintiffs will not be substantially injured by a stay

Recognizing the serious harms above, the balance of equities tips decidedly in the District’s favor. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). In contrast to the irreparable harm faced by the District, Plaintiffs will suffer no harm from a stay. Plaintiffs have full and free access to the at-issue books, both in the District’s libraries and through their lawyers. They have no claim to substantial injury when they already have access to the information they seek. *See C.K.-W. by & through T.K. v. Wentzville R-IV Sch. Dist.*, 619 F. Supp. 3d 906, 919 (E.D. Mo. 2022) (“The removal of the books at issue from the District’s schools does not stop any student from reading or discussing the book. ...”).

Plaintiffs’ significant delay in seeking preliminary relief also weighs in the District’s favor. *See GTE Corp. v. Williams*, 731 F.2d 676, 678 (10th Cir. 1984). “Courts in both this jurisdiction and others have uniformly determined that a movant’s delay in seeking injunctive relief warranted the relief’s denial.” *Colo. Motor Carriers Ass’n v. Town of Vail*, No. 123CV02752-CNS-STV, 2023 WL 8702074, at *12 (D. Colo. Dec. 15, 2023), *appeal pending*, No. 24-1024 (10th Cir.).

IV. The public interest favors a stay

The public interest inquiry “primarily addresses impact on non-parties rather than parties.” *Bernhardt v. L.A. Cty.*, 339 F.3d 920, 931–32 (9th Cir. 2003). Here, the public interest favors granting a stay. Thousands of students and their parents rely on the District to responsibly curate its library collection. The Court should preserve the status quo until it has had an opportunity to consider briefing and weigh the significant unresolved legal issues presented by the district court’s Order.

V. The Court should stay further proceedings in the district court until the legal standard is decided

The Court should stay proceedings in the district court pending appeal. At present, there is no controlling decision from the U.S. Supreme Court or this Circuit squarely addressing book removals. This appeal thus presents multiple novel issues that will define the scope of the case before the district court. The legal standard governing Plaintiffs’ claims is chief among them. For instance, if the Court decides that the District’s library-curation decisions are government speech, Plaintiffs have no First Amendment claim. Likewise, if the Court adopts the objective standard from *Hazelwood*, litigation (and burdensome discovery) over the School Board’s subjective motives may be avoided. Avoiding unnecessary cost and expanded proceedings under what turns out to be an improper legal standard is material to a small school district, especially considering the threat of attorneys’ fees under §1983. (*See Add. 47.*)

Further, because the District is likely to succeed in this appeal, it makes little sense for the proceedings below to continue, especially considering the irreparable harm at stake. A stay would also serve the public interest. The matters at issue in this litigation are of great importance and having simultaneous proceedings in this Court and the district court would only confuse the issues and waste limited resources.

The Court could also order expedited briefing and argument to minimize the confusion and harm from parallel proceedings. The District proposes the following briefing schedule:

- Opening Brief: **Friday, April 11, 2025**
- Answer Brief: **Friday, May 2, 2025**
- Reply Brief: **Friday, May 9, 2025**

CONCLUSION

The District respectfully requests that the Court issue an administrative stay to allow full consideration of this motion. The District also requests a stay pending appeal to avoid irreparable harm to the District if it has to comply with the district court's preliminary injunction. Separately, the District requests that the Court stay the proceedings in the district court to allow the Court to decide the novel issues presented in this appeal before the parties are forced to expend significant resources litigating an uncertain standard.

Dated: April 3, 2025

Respectfully submitted,

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CERTIFICATE OF EMERGENCY STATUS

This motion was not filed earlier because the District first sought relief, on March 21, 2025, from the district court in compliance with Federal Rule of Appellate Procedure 8(a)(1)(A). The district court denied the District's motion at 12:57 p.m. on April 3, 2025, and ordered that its preliminary injunction go into effect Saturday, April 5, 2025, at 5 p.m.

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Dated: April 3, 2025

s/ Julian R. Ellis, Jr.

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**CERTIFICATE OF COMPLIANCE
WITH RULES 27 AND 32(a)**

1. This motion complies with the type-volume limitation set forth in Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains **5,177** words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5)(A) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using 14-point font.

Dated: April 3, 2025

s/ Julian R. Ellis, Jr.

Julian R. Ellis, Jr.

CERTIFICATE OF SERVICE

I certify that on April 3, 2025, I electronically filed the Renewed Emergency Motion for Stay Pending Appeal with the Clerk of the Court for the U.S. Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Dated: April 3, 2025

s/ Laura J. Ellis

Laura J. Ellis

Case No. 25-1105

In the United States Court of Appeals
for the Tenth Circuit

Elizabeth School District,
Defendant-Appellant,

v.

**Kristen Crookshanks, as parent and next of friend of a minor on
behalf of C.C.; Mindy Smith, as parent and next friend of a
minor on behalf of E.S.; NAACP–Colorado–Montana–Wyoming
State Area Conferences; and The Authors Guild,**
Plaintiffs-Appellees.

On Appeal from the United States District Court
for the District of Colorado
Case No. 1:24-cv-03512-CNS-STV
The Honorable Charlotte N. Sweeney

**Addendum to Appellant's Renewed Emergency Motion for
Administrative Stay and Stay Pending Appeal**

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 1:24-cv-03512

C.C., a minor, by and through her parent and next friend
KRISTEN CROOKSHANKS,

E.S., a minor, by and through his parent and next
friend MINDY SMITH,

NAACP – COLORADO – MONTANA –
WYOMING STATE AREA CONFERENCE (“NAACP”),

THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

COMPLAINT

Elizabeth High School student C.C., by and through her parent KRISTEN CROOKSHANKS, E.S., a minor student by and through her parent MINDY SMITH, The National Association for the Advancement of Colored People - Colorado – Montana – Wyoming State Conference (“NAACP”) on behalf of its members, and The Authors Guild on behalf of its members, allege as follows:

INTRODUCTION

1. In Summer of 2024, the Elizabeth School District (“ESD” or the “District”), by and through its Board of Education (“the Board”), began a quest to limit students’ access to any books that contravene the Board members’ partisan, political values.

2. The Board appointed a committee to review all of the books in ESD libraries and create a list of books containing “sensitive topics,” such as “racism/discrimination,” “religious viewpoints,” “sexual content,” “profanity/obscenity,” “graphic violence,” and “ideations of self-harm or mental illness.” Per Board policy, a book’s inclusion on this “Sensitive List” means that, any time a student checks it out, their parents receive an email that their child checked out the book. Parents can also choose to prohibit their children from checking out all books on the Sensitive List.

3. Of the dozens of books on the Sensitive List, the committee identified 19¹ books that they believed were more sensitive than the rest. These books were primarily by or about people of color and/or LGBTQ+ people. They include *The Hate U Give* by Angie Thomas; *Beloved* by Toni Morrison; *The Bluest Eye* by Toni Morrison; *The Kite Runner* by Khaled Hosseini; *You Should See Me in a Crown* by Leah Johnson; *#Pride: Championing LGBTQ Rights* by Rebecca Felix; *Melissa/George* by Alex Gino;² *It’s Your World—If You Don’t Like It, Change It* by Mikki Halpin; *The Perks of Being a Wallflower* by Stephen Chbosky; *Thirteen*

¹ According to the Board, one of the books, *Speak* by Laurie Anderson, had been checked out but never returned to the Elizabeth High School library.

² Alex Gino’s book was initially published as *George* but is now published as *Melissa*. References to *Melissa/George* in this Complaint should be construed as references to any copy of the book—whether published as *George* or *Melissa*.

Reasons Why by Jay Asher; *Looking for Alaska* by John Green, *Nineteen Minutes* by Jodi Picoult; and *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke*, all by Ellen Hopkins.

4. Defendant District, through its Board, decided that all of those books should be “temporarily suspended” from ESD libraries and put on display at the Board’s office so that parents could review passages in the books flagged as objectionable and weigh in on whether the books should be returned to ESD libraries.

5. On September 9, 2024, the Board announced its decision to permanently banish all “temporarily suspended” books from ESD libraries instead of returning them.

6. The Board decided not to return the books to ESD libraries because the books contained same-sex relationships, included LGBTQ+ characters, discussed racism, involved police violence, or otherwise struck Board members as “disgusting.”

7. The Board has also quietly removed at least one other book from ESD libraries in response to a parent’s complaint. The Board removed K.A. Holt’s *Redwood and Ponytail* from Running Creek Elementary’s library because it is about two girls who develop feelings for each other.

8. The Board’s removal of these books from ESD libraries is only one component of its broader effort to prescribe its own political orthodoxy in ESD schools. But it is an effort that runs afoul of the federal and state constitutions. It denies students access to books in their school libraries because of the ideas contained in those books and denies authors the right to share their books with ESD students free from viewpoint-based censorship.

9. While the District has discretion over certain curricular matters, the District cannot block students’ access to information in their school libraries based on the Board’s

political preferences, nor can it remove authors' books from school libraries because of viewpoints the authors express.

JURISDICTION AND VENUE

10. This Court has jurisdiction over Plaintiffs' federal claims pursuant to 28 U.S.C. §§ 1331 and 1343, because they arise under the First Amendment to the United States Constitution and 42 U.S.C. § 1983. This Court has supplemental jurisdiction over Plaintiff's pendent claims under the Colorado Constitution pursuant to 28 U.S.C. § 1367.

11. This Court has jurisdiction to grant declaratory relief under 28 U.S.C. § 2201, 28 U.S.C. § 2202, and C.R.S. § 13-51-101.

12. Venue is proper under 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the District of Colorado, and all of the parties reside or conduct business within the District of Colorado.

PARTIES

13. Plaintiff C.C. is a junior at Elizabeth High School. She is an avid reader and enjoys learning about different perspectives by reading books by diverse authors about diverse characters.

14. Plaintiff C.C.'s mother wants her daughter to have access to a diverse array of books in the school library so that C.C. can learn about a diverse array of topics and viewpoints.

15. Plaintiff E.C. is in preschool at Running Creek Elementary in the Elizabeth School District. He will continue his education at Running Creek Elementary through fifth grade and then attend Elizabeth Middle School and then Elizabeth High School. E.C. uses the school library and will continue to use it as he gets older.

16. Plaintiff E.C.’s mother wants her son to have access to a diverse array of reading materials so that they grow up to understand the value in many different ideas and viewpoints.

17. Plaintiff National Association for the Advancement of Colored People – Colorado – Montana – Wyoming State Conference (“NAACP”) seeks to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination. NAACP seeks to protect students’ right to access inclusive storytelling and viewpoints so that they can develop a deeper understanding of the inequities that exist in society and be exposed to marginalized voices. The interests NAACP seeks to protect through this lawsuit are germane to its purpose.

18. The majority of NAACP’s members identify as Black or African American, but NAACP also has members of other races. NAACP has members of all different gender identities and sexualities, including LGBTQ+ people.

19. Members of the NAACP include students who attend ESD schools who would have standing to sue in their own right and parents of those students.

20. Members of the NAACP also include students who were attending ESD schools, but who left ESD schools in whole or in part because of the Board’s restrictions on students’ access to books. For example:

- a. Member 1 has a Black fifth grader who was enrolled in Running Creek Elementary until November 8. The fifth grader is an avid reader who enjoys exploring different perspectives and cultures through books. As one of very few Black students in her class, it is important to her that she and her peers have access to stories by Black authors about Black characters.

- b. Member 2 has a biracial preschooler who was enrolled in Running Creek Elementary until the end of August 2024. Member 2 pulled the preschooler out of ESD schools because she did not want her child to be subject to the Board’s partisan whims. She wants her child to have access to a wide variety of books, and she does not want her child to think there is anything wrong with reading about LGBTQ+ people or people of color.

21. Neither the claims asserted nor the relief requested require the participation of individual NAACP members in this lawsuit, because individual proof is not required to demonstrate that the District violated—and continues to violate—the constitutional rights of NAACP members, or to obtain the requested relief.

22. Plaintiff The Authors Guild (the “Guild”) is a national nonprofit association of more than 14,000 professional, published writers of all genres. The Guild works to promote the rights and professional interests of its member authors. Many Guild members earn their livelihoods through their writing. Their ability to write on topics of their choosing and to explore viewpoints that some readers may disagree with is vital to their ability to make a living in their chosen profession. Members of the Guild who would have standing to sue in their own right include:

- a. Angie Thomas. Angie Thomas is a Black American author who wrote *The Hate U Give*, which the District removed from Elizabeth High School and Elizabeth Middle School. *The Hate U Give* was the number one *New York Times* bestseller the week it was released in 2017. Ms. Thomas is also the author of another young adult novel, *On the Come Up*.

- b. Alex Gino. Alex Gino is the author of several books that foster understanding and acceptance of LGBTQ+ identities especially for young readers. They are the author of *Melissa/George*, which the District removed from Running Creek Elementary. They have won several awards for their work, including the American Library Association's Stonewall Book Award for exceptional LGBTQIAP+ children's literature and a Lambda Literary Award.
 - c. John Green. John Green has authored seven *New York Times* bestsellers, including *Looking for Alaska*, which the District removed from Elizabeth High School. Mr. Green's other novels include *The Fault in Our Stars*; *An Abundance of Katherines*; *Paper Towns*; *Will Grayson, Will Grayson*; *Turtles All the Way Down*; and *The Anthropocene Reviewed*.
 - d. Jodi Picoult. Jodi Picoult has written 28 novels, including *Nineteen Minutes*, which the District removed from Elizabeth High School. Ms. Picoult's other novels include *My Sister's Keeper*, *The Pact*, *Plain Truth*, and *The Storyteller*. Her novels have been translated into 34 languages in 35 countries.
 - e. Ellen Hopkins. Ellen Hopkins has written several *New York Times* bestselling novels. The District removed six books that she authored from ESD libraries: *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke*.
23. The Guild seeks by this suit to protect its members' right to share their books and viewpoints without undue government censorship, and to promote the circulation of its members' books. Protecting these interests is germane to the Guild's purpose.

24. Neither the claims asserted nor the relief requested require the participation of individual Guild members in this lawsuit, because individual proof is not required to demonstrate that the Board violated—and continues to violate—the constitutional rights of Guild members or to obtain the requested relief.

25. Defendant Elizabeth School District is responsible for public education in Elizabeth.

FACTUAL BACKGROUND

26. Elizabeth is a small but growing town in Elbert County, Colorado, located to the east of Colorado Springs. The majority of Elbert County’s residents are politically conservative.

27. Elizabeth School District serves roughly 2,600 students and is governed by a five-member Board of Education (“the Board”). Board members include President Rhonda Olsen, Vice President Heather Booth, Secretary Mary Powell, Treasurer Mike Calahan, and Assistant Secretary/Treasurer Jonathan Waller.

28. Elizabeth School District contains two elementary/preschools, Running Creek Elementary and Singing Hills Elementary, both of which serve students in preschool through fifth grade. The District contains one middle school, Elizabeth Middle School, which serves students in grades six through eight. The District contains one high school, Elizabeth High School, which serves students in grades nine through twelve. The District contains one charter school, Legacy Academy, which serves students in kindergarten through eighth grade. The Board recently approved another charter school.

Politicization of Elizabeth School District's Board of Education

29. Until the 2021 Board election, the Board's meetings were relatively calm and cordial. But the dynamics changed when two new Board members—Heather Booth and Rhonda Olsen—were elected on a mission to keep politically liberal ideologies out of Elizabeth schools. Tensions mounted over the next two years.

30. Board meetings became increasingly contentious as baseless accusations about the teaching of “Critical Race Theory” and “LGBTQ agendas” in Elizabeth schools were bandied about.

31. “Critical Race Theory” or “CRT” is a body of scholarship most commonly used in law schools and graduate schools that involves: (1) the pursuit of understanding how racial subordination originated and has been maintained in the United States, especially in relation to the legal system; and (2) a desire to change the legal system so that it no longer supports racial subordination. It is seldom taught in elementary or secondary education, and was not taught in Elizabeth schools.

32. “LGBTQ+” refers to Lesbian, Gay, Bi, Transgender, or Queer or Questioning people or community.

33. At a February 13, 2023 Board Meeting, the principal of Elizabeth High School implored Board members Booth and Olsen to “stop chasing ghosts,” because false claims about “CRT” and “LGBTQ agendas” were hampering the school's work. The principal pled for help from the Board instead of “political grandstanding.” President Olsen responded by saying that her concerns have not been about what's actually going on in schools, but on “keeping what is on the outside out of our schools.”

34. In March of 2023, more than half of the Board resigned, citing other Board members' personal agendas and disregard for Board policy and ethics. The only two members who remained on the Board were Ms. Booth and Ms. Olsen.

35. Mary Powell was appointed to the Board to ensure there was a quorum to conduct district business. She was then elected, along with Mike Calahan and Jonathan Waller, to join the Board. Ms. Olsen was also reelected in the 2023 election, and Ms. Booth remained on the Board.

36. In campaigning for the 2023 school board election, candidates Olsen, Powell, Calahan, and Waller made their political agenda clear. They pitched themselves as "conservatives for Elizabeth School Board."



[Description: Campaign sign listing Mike Calahan, Rhonda Olsen, Mary Powell, and Jonathan Waller with the caption "conservatives for Elizabeth School Board"]

The Board Aims to Impose a Partisan, Political Orthodoxy in ESD Schools

37. Board members have been open about their commitment to their political values—which they describe as conservative—and expressed pride in the purportedly conservative stands they have taken as Board members.

38. Board Members were very vocal about “getting a superintendent and legal representation with conservative values.” They succeeded with Attorney Brad Miller and Superintendent Dan Snowberger.

39. Superintendent Snowberger recognizes that Elizabeth is “a very conservative community” and believes the “board’s charge is to respond to the community that elected them and holds them accountable.”

40. The Board has directed Superintendent Snowberger not to talk about keeping politics out of schools, because, as Vice President Booth put it, “conservative values are exactly what we are and plan to continue to bring into the district.” President Olsen added that it would be “confusing” to say the Board aims to keep politics out of schools given the Board’s prior communications and decisions.

41. In Spring of 2024, the Board changed book fair providers. While the Board had historically relied on Scholastic, they put out a Request for Proposal to find a book fair partner that would ensure book fairs were devoid of any controversial materials that were contrary to the values of Elizabeth families. The Board ultimately switched from Scholastic to SkyTree Books, which promised a book fair without any LGBTQ+ content, Critical Race Theory, foul language, explicit content, and dark magic.

42. The Board seeks to impose a political orthodoxy in ESD schools and ensure that content—including reading material—that is available to children in Elizabeth schools aligns with Board members’ personal political preferences, which they describe as conservative.

43. The Board seeks to prohibit students from accessing information—including reading material—that contravenes its Board members’ partisan, political values in Elizabeth schools.

44. The Board has sought to limit ESD students’ exposure to LGBTQ+ identities and same-sex relationships.

45. Absent action from this Court, the Board will continue to restrict and remove access to information about LGBTQ+ identities and same-sex relationships in Elizabeth schools.

46. The Board has sought to limit ESD students’ exposure to viewpoints on race and racism that contradict Board members’ own views on the topic.

47. Absent action from this Court, the Board will continue to restrict and remove access to information about race and racism in Elizabeth schools.

48. Those who disagree with the Board’s partisan, political agenda or question the Board’s actions have been subject to public humiliation and retaliation. For example, parents who have submitted public records requests to the District or sued the District have been accused by the Board of “bullying” or “stealing from” the District and wasting the District’s time and resources. Board members sometimes call such parents out by name at public meetings or in communications with other parents.

49. Many parents who have children in ESD schools are afraid to publicly express views that do not align with the Board’s, because they fear being publicly shamed by Board

members, being accused of bullying or harassing the District, or exposing their children to retaliation.

50. Superintendent Snowberger has confirmed that parents who are perceived as attacking the Board are shut down because it is exhausting to deal with them.

Implementation of Sensitivity Protocol

51. In 2024, the Board was determined to cleanse ESD of books that contravene its partisan, political values.

52. The Board directed a committee of parents, teachers, administrators, and community members (the “Board Curriculum Review Committee” or “BCRC”) to create a list of books containing “sensitive” topics in ESD libraries.

53. “Sensitive” topics, according to the Board and the BCRC, include “racism/discrimination,” “drug or excessive alcohol use,” “religious viewpoints,” “ideations of self-harm or mental illness,” “profanity/obscenity,” “graphic violence,” and “sexual content.”

54. To identify “sensitive” books, the BCRC began by looking at online lists of books that had been banned or challenged elsewhere. The BCRC then looked to see if those banned or challenged books were in ESD libraries.

55. In determining whether to add a book to ESD’s Sensitive List, each member of the BCRC had a different level of discernment. Books deemed “sensitive” by one member may not have been deemed “sensitive” by another member.

56. Those reviewing the books often did not read the entire book, but instead read short segments that Internet sources had labeled controversial. Books were often added to the

Sensitive List solely because a member of the BCRC took issue with an isolated passage in the book.

57. Parents can prohibit their children from checking out any books on the Sensitive List by notifying the District. Even if a parent allows their child to check out books on the Sensitive List, however, they will still receive a notification any time their child does so. The notification tells the parent which “sensitive” book their child checked out.

58. There is no way for a parent to opt out of receiving notifications about their children checking out sensitive books. Some parents feel burdened by these types of notifications, as they indicate that the Board believes parents should restrict their children’s access to those books.

59. Many parents have noticed that the books on the Sensitive List disproportionately target authors and characters of color and/or LGBTQ+ authors and characters. They do not want to receive notifications about their children checking out these books because it indicates that there is something wrong or questionable about those books.

60. Many parents would prefer not to receive an email simply because Board members believe the book their child picked is “sensitive.”

61. Some of the books on the Sensitive List—for example, books about the Holocaust—have been used by Elizabeth teachers as part of their courses.

62. The Board has the final say as to which books are on the Sensitive List.

63. Books have been added to and taken off of the Sensitive List based on the whims of Board members. For example, *Anne Frank: Diary of a Young Girl, 1984*, and *Brave New World* were all initially on the Sensitive List. But the Board decided to take those books off the

Sensitive List because they are “classics.” Additionally, a picture book series about a Siamese cat who thinks he is a chihuahua, *Skippyjon Jones*, was initially included on the Sensitive List, but it was removed after Elizabeth’s Chief Academic Officer told Secretary Powell that the series is one of her grandchildren’s favorites, and Secretary Powell said at a Board meeting that it’s a “very cute little story and there’s nothing wrong with that.”

64. Books that remain on the Sensitive List include *The Color Purple*, *I Know Why the Caged Bird Sings*, *To Kill a Mockingbird*, *Kaffir Boy*, *Muslim Festivals Throughout the Year*, *Catcher in the Rye*, *Slaughterhouse Five*, *The Hunger Games*, *Gay Power! The Stonewall Riots and the Gay Rights Movement 1969*, *Beyond Magenta – Transgender Teens Speak Out*, *Being Transgender in America*, and *Growing up LGBTQ*. Dozens of other books remain on the Sensitive List.

65. Superintendent Snowberger clarified in an August 19 email that books on the Sensitive List “could also be removed based on further discussion between members of the community and the Board of Education.”

Initial Removal of Books from Library

66. While most “sensitive” books were added to the Sensitive List but left in ESD libraries, there were some books that some reviewers believed were *too* sensitive or controversial to be kept in ESD libraries at all. The Board decided to remove these books from ESD libraries while they determined what to do about them.

67. On July 25, the Board Clerk informed the Elizabeth High School librarian that she had removed 14 books from the Elizabeth High School Library for further review. By August 9, three books had also been removed from the Elizabeth Middle School library, and one book was

removed from the Running Creek Elementary library. In total, eighteen books (the “Removed Books”) were taken out of ESD libraries.

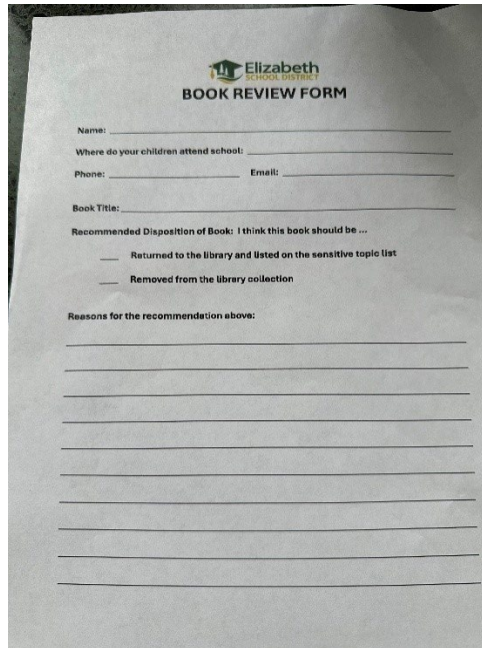
68. The Removed Books were not taken out of ESD libraries because they contain factual inaccuracies or are pervasively vulgar. They were taken out of ESD libraries because Board members sought to prescribe a partisan, political orthodoxy in ESD and disagreed with the ideas in the Removed Books.

69. The Board announced that the Removed Books would be “temporarily suspended” from ESD libraries and displayed in the Board’s office for public review. Isolated passages were marked in many of the Removed Books so that parents could quickly turn to the parts of the books that the Board members found offensive. Based on the community’s feedback on the Removed Books, the Board would decide the “final disposition” of the Removed Books.

70. Board members did not read each book in full before deciding to remove them from ESD libraries.

71. The Board announced that, based on public feedback, the eighteen Removed Books would either be returned to the libraries and added to the Sensitive List, or they would be kept out of the ESD’s collections altogether.

72. For roughly 25 days, parents could review the books and fill out the form below indicating whether each book should be permanently kept out of ESD libraries, or returned to the library but included in the Sensitive List—meaning parents would automatically be notified if their child checked the book out. The form provided no option for returning the books to the library and allowing children to check them out without automatic parental notifications.



The image shows a "Book Review Form" from the Elizabeth School District. The form is titled "Elizabeth SCHOOL DISTRICT BOOK REVIEW FORM". It contains several fields for information: "Name:", "Where do your children attend school:", "Phone:", "Email:", and "Book Title:". Below these fields, there is a section for "Recommended Disposition of Book: I think this book should be ..." with two radio button options: "Returned to the library and listed on the sensitive topic list" and "Removed from the library collection". At the bottom, there is a section for "Reasons for the recommendation above:" followed by several horizontal lines for writing.

[Description: Book Review Form allowing parents to indicate that a book should be “Returned to the library and listed on the sensitive topic list” or “Removed from the library collection”]

73. Some parents who opposed the Board’s decision to remove books from ESD libraries wrote in a third option on the form: return the books to the library without including them on the Sensitive List.

74. Student Plaintiffs were unable to check out any of the eighteen Removed Books from the school library while they were made available in the Board’s office.

75. The eighteen Removed Books were *The Hate U Give* by Angie Thomas; *Beloved* by Toni Morrison; *The Bluest Eye* by Toni Morrison; *The Kite Runner* by Khaled Hosseini; *You Should See Me in a Crown* by Leah Johnson; *#Pride: Championing LGBTQ Rights* by Rebecca Felix; *George/Melissa* by Alex Gino; *It’s Your World—If You Don’t Like It, Change It* by Mikki Halpin; *The Perks of Being a Wallflower* by Stephen Chbosky; *Thirteen Reasons Why* by Jay

Asher; *Looking for Alaska* by John Green; *Nineteen Minutes* by Jodi Picoult; and *Crank, Glass, Fallout, Identical, Burned*, and *Smoke*, all by Ellen Hopkins.

76. *Speak* by Laurie Anderson was initially on the list of books to be “temporarily suspended” from Elizabeth High School’s library, but the Board stated it had been checked out the previous school year and never returned. *Speak* is about a freshman in high school who calls the police because she is raped at an end-of-summer party. She is then ostracized by her peers who don’t know why she called 9-1-1. By the end of the novel, she finds her voice and becomes a hero. On information and belief, if *Speak* were returned, the Board would remove it.

77. Many of the Removed Books have been in school libraries in ESD—and across the country—for years. They are educationally valuable and nondisruptive.

78. Plaintiff C.C. intended to browse and/or check out *The Hate U Give*, *Beloved*, *The Bluest Eye*, *The Kite Runner*, *The Perks of Being a Wallflower*, *Thirteen Reasons Why*, *Looking for Alaska*, *Nineteen Minutes*, *Crank, Glass, Fallout, Identical, Burned*, and *Smoke* from the Elizabeth High School library. But she has not been able to access the books there since the District removed them.

79. Plaintiff NAACP has members in Elizabeth Middle School and Running Creek Elementary intended to be able to browse and/or check out *The Hate U Give*, *Thirteen Reasons Why*, *#Pride: Championing LGBTQ Rights*, *You Should See Me in a Crown*, *It’s Your World—If You Don’t Like It*, *Change It*, and *Melissa/George* in their school libraries but have not been able to access the books there since the District removed them.

80. Plaintiff NAACP has members who are parents of ESD students and intended for their children to be able to browse and/or check out *The Hate U Give*, *Thirteen Reasons Why*,

#Pride: Championing LGBTQ Rights, You Should See Me in a Crown, It's Your World—If You Don't Like It, Change It, and *Melissa/George* in their school libraries.

81. *The Hate U Give* by Guild member Angie Thomas is about a Black sixteen-year-old girl who lives in a poor neighborhood and attends a suburban prep school. She witnesses her best friend get shot by police and at first declines to speak publicly about it, but over the course of the novel, she decides to speak out and honor his memory. Before *The Hate U Give* was “temporarily suspended,” it was available for students to peruse or check out in the Elizabeth Middle School library and the Elizabeth High School library.

82. *The Hate U Give* expresses Angie Thomas’s views on racism, police misconduct, and the value of teenagers using their voices to advocate for people and causes they care about. Ms. Thomas intends to share those views with teenagers who might feel alone or hesitant to speak up about their values and experiences. When *The Hate U Give* is removed from school libraries, Angie Thomas is unable to reach her target audience—teenagers who may be processing trauma, confronting racism, or feeling split between two worlds.

83. Parents who filled out the Board’s forms about *The Hate U Give* disagreed as to whether it should be permanently banned or returned to ESD libraries. Multiple parents filled out forms advocating against returning *The Hate U Give* to ESD libraries because of “anti-police” viewpoints expressed in it. Parent forms indicated the book is “[b]iased towards police—name calling them Pigs,” contains “[h]ate for cops,” includes “police viewed in a bad light,” or “pushes the wrong and dangerous narrative of racist cops killing young Black men.” On the other hand, some parents believed the book should be returned to the library because “[w]hether we like it or not kids are going to be exposed to situations represented in this book.”

84. *Beloved* is a novel by Toni Morrison, a critically acclaimed Black American author. The story takes place after the Civil War and was inspired by the life of Margaret Garner, who escaped slavery in Kentucky and fled to Ohio in 1856. The novel won the Pulitzer Prize for Fiction in 1988. Before *Beloved* was “temporarily suspended,” it was available for students to peruse or check out in the Elizabeth High School library.

85. Parents who filled out the Board’s forms about *Beloved* disagreed as to whether it should be permanently banned or returned to ESD libraries. One form characterized the novel as “sexual deviancy porn” that should not be in ESD libraries. Another indicates that “Toni Morrison is an internationally acclaimed and beloved chronicler of African American history. Nasty things happened. Suppressing an idea does not get rid of it and people who want to explore this should be free to do so.”

86. *The Bluest Eye* is Toni Morrison’s first novel. *The Bluest Eye* is about Pecola Breedlove, a young Black girl who wishes she had lighter features—in particular, blue eyes. Many Advanced Placement courses across the country teach *The Bluest Eye*. Before *The Bluest Eye* was “temporarily suspended,” it was available for students to peruse or check out in the Elizabeth High School library.

87. Parents who filled out the Board’s forms about *The Bluest Eye* disagreed as to whether it should be permanently banned or returned to ESD libraries. While some Elizabeth parents advocated for the book to be banned from school libraries because of its discussion of incest, rape, and abuse, others believed the book should be returned to the library because it does not contain information they are concerned about their children accessing in an educational institution.

88. *The Kite Runner* by Khaled Hosseini is a historical fiction novel about friendship between a wealthy boy and his father's servant's son in Kabul. The main character flees from Afghanistan to the United States after the 1979 Soviet invasion, and later travels back to Afghanistan when it is under Taliban rule. *The Kite Runner* has been the #1 New York Times bestselling novel. The Princeton Review recommends *The Kite Runner* for students preparing for Advanced Placement exams. Khaled Hosseini himself receives mail from high school readers of the *Kite Runner* who say that the book has called them to "stand up to bullies," "defy intolerance," and "muster the courage to do the right and just thing, no matter how difficult." For many, *The Kite Runner* is "their first window into Afghan culture," and the book helps them "gain a more nuanced and compassionate perspective on the country and its people." Before *The Kite Runner* was "temporarily suspended," it was available for students to peruse or check out in the Elizabeth High School library.

89. Parents who filled out the Board's forms about *The Kite Runner* disagreed as to whether it should be permanently banned or returned to ESD libraries. One Elizabeth parent of a high school student wrote that she "do[es] not want [her] teens reading a book that criticizes Christianity," though it is unclear which part of *The Kite Runner* could plausibly be interpreted as a criticism of Christianity. Another form indicates that "violence + depravity of Islam is on display in this book. Even adults shouldn't read it." On the other hand, one ESD parent wrote that "*Kite Runner* changed my views. Reading that book made me a reader." Another wrote that topics like suicide and sexual assault "have merit in an educational institution because our children will be confronted with these topics – hopefully not due to personal experience, but through our shared human experience."

90. *You Should See Me in a Crown* by Leah Johnson is about a Black, queer teenager who runs for prom queen in order to get a college scholarship. She also develops feelings for another prom queen contender and learns that honesty is necessary to make a relationship work. Before *You Should See Me in a Crown* was “temporarily suspended,” it was available for students to peruse or check out in the Elizabeth Middle School library.

91. Parents who filled out the Board’s forms about *You Should See Me in a Crown* disagreed as to whether it should be permanently banned or returned to ESD libraries. While some in the community believed the book should be removed for its alleged “CRT undertones and homosexual storyline,” “queer factor,” or “same sex dating mentioned,” others advocated for it to be returned to the library, noting that Goodreads referred to it as “a self-love anthem for queer black girls everywhere.”

92. *#Pride: Championing LGBTQ Rights* by Rebecca Felix is a history of the Pride movement from the Stonewall riots to the modern LGBTQ rights movement. Before *#Pride: Championing LGBTQ Rights* was “temporarily suspended,” it was available for students to peruse or check out in the Elizabeth Middle School library.

93. Parents who filled out the Board’s forms about *#Pride: Championing LGBTQ Rights* disagreed as to whether it should be permanently banned or returned to ESD libraries. Some parents wrote on their forms that “LGBTQ themes do not belong in our public schools,” and the book should be removed “because of its support of the Pride movement and villainization of Christians on Pg 6.” Meanwhile, other parents believed the book could give LGBTQ+ kids “a way to realize they aren’t alone + its ok to ‘be different than the norm’ (straight or identifying as the gender you’re born with).”

94. *Melissa/George* by Guild member Alex Gino is about a fourth grader who most people think is a boy, but she knows she is a girl. The main character was given the name George at birth, but the character does not want to use that name for herself—she uses Melissa. In 2022, Alex Gino republished the book with the name *Melissa* and encouraged people to print out a new cover for copies of the books that were published as *George* or use sharpies to correct the name on the book itself. Board members have primarily referred to the book as *George*. The novel has won the Lambda Literary Award, the Stonewall Award, among others. Before the book was “temporarily suspended,” it was available for students to peruse or check out in the Running Creek Elementary library. *Melissa/George* was also previously available in the Singing Hills Elementary library, but it is no longer available there.

95. *Melissa/George* expresses Alex Gino’s viewpoint that LGBTQ+ people should be accepted and allowed to fully be themselves. The book also expresses the author’s viewpoints on courage, self-discovery, and friendship. *Melissa/George* is a vital resource for students who seek to better understand gender diversity, and transgender students who seek books with relatable characters. When *Melissa/George* is removed from school libraries, the author is unable to reach their target audience and those who need access to the book the most.

96. Parents who filled out the Board’s forms about *Melissa/George*, disagreed as to whether it should be permanently banned or returned to ESD libraries. One parent of a high school student wrote that the book should be removed because it “is evil trans ideology.” A couple with children at Running Creek Elementary wrote that “there are only TWO genders and they are not interchangeable.” They voted to remove the novel because the “subject matter” has “no place in school.” One Running Creek Elementary parent, however, wrote that LGBTQ+

topics do have merit in an educational setting because “these are important social issues my children will need to understand.”

97. *It’s Your World—If You Don’t Like It, Change It* by Mikki Halpin discusses how to act on a person’s beliefs and make a difference. Before *It’s Your World—If You Don’t Like It, Change It* was “temporarily suspended,” it was available for students to peruse or check out in the Elizabeth Middle School library.

98. Parents who filled out the Board’s forms about *It’s Your World—If You Don’t Like It, Change It* disagreed as to whether it should be permanently banned or returned to ESD libraries. One parent wrote that the book should be kept out of ESD libraries because it allegedly “supports abortion,” “talks heavily of sex education,” and “encourages the reader to oppose parental notification laws which is exactly what our ESD board is trying to put in place.” Others voted to remove the book because they believed that it is a “very biased, leftist book,” or is “overly political with an outright Marxist slant” and is “offensive morally to Christians, muslims and orthodox jews.” Meanwhile, one parent voted to return the book to the library because she saw no problem “with the topic of standing up for what you believe in + trying to change things.”

99. *The Perks of Being a Wallflower* is a semi-autobiographical young-adult novel by Stephen Chbosky about a freshman in high school. It addresses common teen struggles, such as drugs, sexuality, and mental illness, and chronicles the characters’ personal growth. The book has been on the *New York Times* Bestseller list, and it was adapted into a PG-13 film starring Emma Watson in 2012. Before *The Perks of Being a Wallflower* was “temporarily suspended,” it was available for students to peruse or check out in the Elizabeth High School library.

100. Parents who filled out the Board’s forms about *The Perks of Being a Wallflower* disagreed as to whether it should be permanently banned or returned to ESD libraries. Some Elizabeth parents objected to the book’s inclusion in the high school library, saying it contains abuse, drugs, abortion, and gay sexual relationships. Others asserted that the book contains no information of concern in the context of an educational institution, and, as with the rest of the Removed Books, that it “ha[s] meaningful messages to be considered beyond a few pages.”

101. *Thirteen Reasons Why* by Jay Asher follows a high school student, Clay Jensen, whose classmate, Hannah Baker, died by suicide. Throughout the novel, Clay learns more about Hannah and himself as he listens to tapes Hannah left explaining why she took her own life. At an August 26 Board meeting, President Olsen explained that the reason *Thirteen Reasons Why* was “temporarily suspended” is that “it’s putting ideas into kids’ heads.” Before *Thirteen Reasons Why* was “temporarily suspended,” it was available for students to peruse or check out in the Elizabeth Middle School library and the Elizabeth High School library.

102. Parents who filled out the Board’s forms about *Thirteen Reasons Why* disagreed as to whether it should be permanently banned or returned to ESD libraries. One high school parent wrote that *13 Reasons Why* is “just porn” that “[e]ven adults shouldn’t read.” He indicated that reading the book “would be soul murder to a child.” Another parent wrote that the book has “morally offensive content for most religious people.” Another wrote “Childhood is hard enough, shouldn’t give kids ideas surrounding suicide.” On the other hand, some parents wished to return it to the library because it “is a prime example of a book that could be a conversation starter + open lines of communication between parents + their children.”

103. *Looking for Alaska* is Guild member John Green’s first novel. It is a fictionalized account of the author’s time at boarding school. The book is about Miles Halter, a teenage boy who goes to boarding school in his junior year and whose first love dies. The book explores how Miles and his friends process their grief during high school. *Looking for Alaska* was awarded the American Library Association’s Michael L. Printz award and was the *Los Angeles Times* Book Prize finalist. It has also been selected for lists including NPR’s “Top Ten Best-Ever Teen Novels” and *TIME* magazine’s “100 Best Young Adult Novels of All Time.” Before *Looking for Alaska* was “temporarily suspended,” it was available for students to peruse or check out in the Elizabeth High School library.

104. *Looking for Alaska* expresses Mr. Green’s viewpoints on loss, grief, and intimacy. When *Looking for Alaska* is removed from school libraries, Mr. Green is unable to reach his target audience—adolescents who may be experiencing death and grief for the first time and need easy access to books like *Looking for Alaska* to help them process their feelings.

105. Parents who filled out the Board’s forms about *Looking for Alaska* disagreed as to whether it should be permanently banned or returned to ESD libraries. One parent of an elementary and high school student wrote that the book should be removed from school libraries because it is “Talking about school pranks gone wrong resulting in death” and discusses “teen drugs, alcohol, sex, etc.” Another form says “People (teens) in pain can read this story and find a place for themselves, because of the unhappy ending they will maybe find a way to reach out for help.”

106. *Nineteen Minutes* by Guild member Jodi Picoult was a 2007 bestseller about a school shooting. One of the characters is bullied with words like “homo” and “fag,” leading him

to question his sexual orientation. The author has heard from hundreds of teenagers who say *Nineteen Minutes* made them realize that not intervening to stop bullying can be as bad as bullying itself. She has even heard from teenagers who say that *Nineteen Minutes* is what motivated them to stay alive, because it made them realize they were not alone. Before *Nineteen Minutes* was “temporarily suspended,” it was available for students to peruse or check out in the Elizabeth High School library.

107. *Nineteen Minutes* reflects Jodi Picoult’s viewpoint on bullying, marginalization, and the drastic consequences of children feeling “othered” by their school community. Ms. Picoult writes in order to make young adults feel seen. School libraries are critical to her ability to share her work with the teenagers she writes for. When *Nineteen Minutes* is removed from school libraries, Ms. Picoult is unable to reach her target audience—teenagers whose friends or family may have lived through school shootings, and who can make their schools safer by standing up to bullies.

108. Parents who filled out the Board’s forms about *Nineteen Minutes* disagreed as to whether it should be permanently banned or returned to ESD libraries. One form on *Nineteen Minutes* indicates that “[e]very bad suggestion is in this book – LGBTQ, killing, bestiality, etc.” Other forms indicated no concern with students’ access to the book.

109. *Crank, Glass, Fallout, Identical, Burned, and Smoke* by Guild member Ellen Hopkins are young-adult novels written in verse. They address teenage struggles including the perils of addiction, sexual desires, and abuse and express the author’s viewpoints on these topics. Before these books were “temporarily suspended,” they were available for students to peruse or check out in the Elizabeth High School library.

110. When Ellen Hopkins' books are removed from school libraries, she is unable to reach her target audience—teenagers who are on the brink of making dangerous choices and need an easy-to-read cautionary tale.

111. Parents who filled out the Board's forms about Ellen Hopkins' books disagreed as to whether they should be permanently banned or returned to ESD libraries. One parent wrote Ellen Hopkins' books should be banned because "This author loves sex + drugs." Another wrote that "Ellen Hopkins is disgusting" and called her a pervert. But another parent wrote, referencing *Crank*, that "[b]ecause this book is written in free verse it is a great pick for reluctant readers," and the book can serve as a "cautionary tale." Ellen Hopkins herself continuously receives communications about how her books have helped teenagers navigate difficult situations and avoid going down dangerous paths.

112. Authors who are members of Plaintiff Guild fear that other districts will copy ESD and remove their books from their school library shelves because of their disagreement with the ideas they contain.

113. The Board has stigmatized each of the Removed Books, the ideas contained therein, and their authors.

114. Plaintiff E.S.'s parent does not want her son to be deprived of access to books just because the school board disagrees with the ideas in the books. By banning these books, the District is sending the message that it is not okay to learn about LGBTQ+ identities and same-sex relationships or race and racism. This creates an unwelcome and unsafe environment in Plaintiff E.S.'s school.

115. Some parents noticed that the list of Removed Books appears targeted at books involving LGBTQ+ and/or Black characters and authors. One form notes, “This book list . . . is not welcoming to anyone who is not white, straight and politically conservative.” Another notes that banning *You Should See Me in a Crown*, *It’s Your World—If You Don’t Like It, Change It*, *#Pride: Championing LGBTQ Rights*, Toni Morrison’s *Beloved* and *The Bluest Eye*, and *Melissa/George* “is a clear and transparent assertion that people of color, women and homosexuals are less welcome in our public school and this is unacceptable.” Many parents who reviewed the Removed Books recognized that it does a disservice to children to deny them access to books in the school library that could broaden their perspective and help them develop empathy.

116. When a parent criticized the Board for removing books from school libraries, Vice President Booth responded, “[a]s an elected official committed to conservative values for our children, I feel a strong obligation to honor the promises made during my campaign.” Other Board members have similarly expressed that the books must be removed from school libraries because they believe their constituents would not like the ideas in the books.

117. Indeed, many Elizabeth parents believe that removing books from school libraries is a good way to prevent perceived liberal ideology from seeping into Elizabeth schools. Some of these parents have spoken out at public meetings, saying that people are “criminals” for letting kids read certain books.

118. Many parents who opposed the Board’s removal of books from their children’s school libraries did not fill out forms for the Board because they believed the Board would

ignore any feedback with which they disagreed and/or feared retaliation for expressing disagreement with the Board's disdain for the Removed Books.

119. None of the removed books were required reading for any student in the District. Students and parents can opt out of reading any of the books available in ESD libraries.

Permanent Removal of Books from Library

120. In deciding whether to permanently ban or return the Removed Books to ESD libraries, Board members considered community members' reaction to the Removed Books, as well as the books' inclusion of same-sex relationships, discussion of LGBTQ+ identities, attitudes towards racism, and views on issues like racism, police violence, and parents' rights.

121. Board members did not read each book in full before deciding whether or not to return it to ESD libraries.

122. Board members waffled on their decisions about whether some of the books should be returned to the libraries or kept out permanently. For example, Secretary Powell initially advocated to return *#Pride - Championing LGBTQ Rights* to the library "because this book is largely a history of LGBTQ, and doesn't totally try to indoctrinate." She explained to the other Board members that she "also thought it would be a good thing to show some openness to other viewpoints, as long as it isn't indoctrinating." But Vice President Booth responded that "LGBTQ is only regarding sexual preference which doesn't belong in any school," and "[o]ur constituents will not be happy about us returning any of these books." Secretary Powell was also convinced by President Olsen's point that the book has "gender identity ideology in [it], and do we really want that out there at all?" In order to banish discussion of LGBTQ+ identities from

Elizabeth school libraries, all Board members ultimately decided that *#Pride - Championing LGBTQ Rights* should be permanently removed from ESD libraries.

123. Secretary Powell also initially voted to return *You Should See Me in a Crown* to the library because, “while it has some racist overtones, they are just the main character handling them.” Powell stated that, while “halfway through you find out she is a lesbian[,] . . . there isn’t anything graphic other than discussing a kiss that I saw, and it is not the central theme of the book at all.” Board members Waller and Calahan initially agreed with Powell. But again, after Vice President Booth expressed her view that LGBTQ+ content should not be available to any student in school, all Board members decided that they should permanently remove *You Should See Me in a Crown* from ESD libraries.

124. Board members have also referred to multiple Removed Books as “disgusting.” President Olsen expressed that she “wouldn’t care” if reading *The Bluest Eye* made children better readers, because it was a disgusting book.

125. Secretary Powell stated that students “don’t need to see an ugly story just for the sake of being an ugly story.”

126. Ultimately, all Board members voted to permanently banish all Removed Books from ESD libraries because of the ideas they contain.

127. The Board announced its decision to permanently ban all Removed Books from ESD libraries at the September 9 Board meeting.

128. The Board’s decision to prohibit students from accessing any of the Removed Books in ESD libraries prevented Plaintiff C.C., E.S, and NAACP members’ children from

exploring and learning about topics and ideas that they otherwise would have—all because Board members disagree with those ideas.

129. The Board’s decision to prohibit students from accessing any of the Removed Books in ESD libraries prevented members of the Guild from sharing their viewpoints with ESD students because the Board disagreed with them.

130. Plaintiffs believe it is important to have books available in school libraries that reflect a diversity of views and experiences so that all students can find books in the library that they relate to, and they can learn about different perspectives.

131. The Board’s decision to prohibit students from accessing any of the Removed Books in ESD libraries created a stigma around each of the Removed Books and the ideas in them.

132. NAACP members’ children and C.C. know that if they discuss any of the Removed Books or the ideas in them, they will be perceived as amoral and as outsiders in Elizabeth.

133. The Board’s decision to prohibit students from accessing any of the Removed Books in ESD libraries signaled to C.C., E.S., and NAACP members’ children that certain identities—particularly LGBTQ+ identities and racial minorities—are not welcome in Elizabeth.

134. NAACP members’ children are harmed by the stigma that the Board has placed on books by Black authors about Black characters.

135. By removing two books by Toni Morrison—one of the most famous and celebrated Black authors—and other books centering Black perspectives and experiences from

the Elizabeth High School library, the Board indicated to Black students and other minority students that their own perspectives and experiences might be shameful or devalued.

136. Students, including children of NAACP members, who want to gain empathy and understanding of others' experiences and perspectives are harmed by the Board's removal of books from their school libraries, because they are limited to reading materials that promote the Board's preferred views.

137. Students, including children of NAACP members, who read as a means of understanding themselves and their identities, are harmed by the Board's removal of books from their school libraries, because they are inhibited from reading about experiences or identities that the Board deems objectionable.

138. As a sixteen-year-old girl navigating adolescence and preparing to leave Elizabeth for college, Plaintiff C.C. is harmed by the Board's enforcement of an orthodoxy that banishes books about LGBTQ+ history and identity.

139. Plaintiff C.C. participates in a school-sponsored book club that meets in the school library. When Plaintiff C.C. is waiting for the book club to start, she browses through the Elizabeth High School library collection. Plaintiff C.C.'s ability to discover different views and diverse authors while she is browsing is inhibited by the Board's removal of viewpoints and authors that they dislike.

140. Plaintiff C.C.'s mother wants C.C. to be able to read the Removed Books without incurring the stigma that the Board has placed on the books.

141. Plaintiff C.C.'s mother believes it is important for C.C. to be exposed to a wide variety of perspectives and viewpoints in her school library so that she will be prepared to participate in modern society.

142. Because of the Board's decisions, Plaintiff C.C.'s mother fears being publicly shamed or accused of bad parenting if she allows C.C. to read the Removed Books.

143. Plaintiff E.S. uses the Running Creek Elementary school library, and he will continue to use the Running Creek Elementary school library as he gets older.

144. It is important to E.S. and his family that the children have access to a diverse array of reading materials so that they grow up to understand the value in many different ideas and viewpoints. E.S.'s mother does not want E.S. to be deprived of access to books just because his school board—or other parents in our district—disagree with the ideas in those books.

145. E.S.'s mother does not want E.S. to be educated in an environment where LGBTQ+ people and people of color are stigmatized. She wants him to learn about all different identities, experiences, and lifestyles and to feel free to discuss differing viewpoints and explore challenging ideas.

146. Parent members of the NAACP want their children to be able to read the Removed Books without incurring the stigma that the Board has placed on the books.

147. Parent members of NAACP believe it is important for their children to be exposed to a wide variety of perspectives and viewpoints in their school libraries so that they will be prepared to participate in modern society.

148. Because of the Board's decisions, parent members of the NAACP fear being publicly shamed or accused of bad parenting if they allow their children to read the Removed Books.

149. The Board's process of reviewing and removing books is ongoing.

150. In addition to the removal of books as described above, on at least one occasion, the Board removed a library book upon receiving a parent complaint.

151. On September 5, 2024, President Olsen received an email complaining about a book from the library at Running Creek Elementary, *Redwood and Ponytail* by K.A. Holt. The email included the following excerpt from the inside cover: "K.A. Holt delivers an emotional wallop in this novel in verse about two girls discovering their feelings for each other...Sometimes you know who you're meant to be *with* before you know who you're meant to *be*." The email also included the following excerpts from the end of the book:

Hours go by. We talk about moms, and Jill, and Levi.
About plans and lack thereof and impulse control. We talk
about holding hands and what that means and maybe it
means nothing or maybe it means everything. We talk
about that forbidden word, the tiny word, that fills both our
heads, and how we'll figure out our words one day all on
our own. We need our own word, you know? A phrase just
for us. Because you're not my best friend, or my best girl,
or my girlfriend, or my whole world, you're something
even bigger, Kate. Bigger than just one word."

"She's my winning point. She's my summer day. She's my
sneaky wink. She's my light. She's my heart. She's my
Kate. I'm her Tam. Together we're everything."

"She's my cheering crowd. She's my laugh out loud. She's
my secret smile. She's my light. She's my heart. She's my
Tam. I'm her Kate. Together we're everything."

152. The email complaining about *Redwood and Ponytail* also included an excerpt from a review site, KirkusReviews.com:

Tam is a volleyball player sometimes mistaken for a boy. Kate is a popular cheerleader. When they notice each other at seventh grade registration, Tam sees a walking cliché with a perfect ponytail, while Kate sees a girl as “tall as a palm tree.” When they meet face to face, they strike an immediate rapport. Soon the two are having lunch together every day and linking pinkies in the halls. As they grow closer, each finds herself questioning who she thought she was. Tam doesn’t know how she fits into Kate’s seemingly perfect world. Kate, who has spent her life trying to live up to her shallow, perfectionist mother’s expectations, wants to go her own way, a process that includes deciding whether or not to admit her feelings for Tam. Tam and Kate share the first-person narration, which keenly conveys each girl’s joys and inner turmoil. The dual narratives play off of each other, sometimes in a call-and-response manner that clearly communicates the shyness, awkwardness, and confusion of first love. A trio of unseen watchers, identified as Alex, Alyx, and Alexx, collectively represent the observant school-hallway bystanders, providing commentary and speculation in the manner of a Greek chorus. Their verses can be read vertically or horizontally, resulting in multiple meanings. Characters are racially ambiguous. A glowing, heartfelt addition to the middle-grade LGBTQ genre. (Fiction. 8-14)

153. Less than an hour after receiving the email complaining about *Redwood and Ponytail*, President Olsen responded to the parent saying she would have the book removed.

154. The Board thereafter removed *Redwood and Ponytail* from the Running Creek Elementary library.

155. NAACP members’ children are harmed by the removal of *Redwood and Ponytail* from the Running Creek Elementary library, because they can no longer access the ideas explored in the book.

156. Parent members of the NAACP want their students to be able to access *Redwood and Ponytail* from their school library.

157. The Board has directed ESD librarians not to order any new books for school libraries.

158. The Board's decision to remove books from ESD libraries caused some Elizabeth families to send their kids to schools outside of ESD.

Restrictions on Classroom Libraries

159. The Board's purge of books by and about people of color and LGBTQ+ people is not limited to school libraries.

160. On August 12, 2024, the Board voted to adopt Policy 9.9, which directs that "no classroom libraries of books are maintain[ed] within the Elizabeth School District."

161. Classroom libraries are collections of books in individual classrooms that students access during free time or designated reading times. For example, a student who finishes a test early is often allowed to choose a book from the classroom library to read while the other students finish their tests.

162. Most classroom libraries are created by teachers themselves. Many teachers spend their own money to buy books for their classrooms or get donations from other teachers.

163. The Directive to remove classroom libraries was intended to cover only books that are not used in classroom instruction.

164. Per the Board's direction to remove classroom libraries, some ESD teachers covered their classroom libraries with brown paper; others brought their classroom library books home.

165. Shortly after voting to ban classroom libraries, after much community criticism, the Board admitted their decision was made too quickly and paused the ban.

166. While the classroom library ban was paused, Superintendent Snowberger and the Board asked ESD staff for feedback on how to ensure classroom libraries did not contain “sensitive” books. After receiving staff feedback, Superintendent Snowberger chastised some staff members for providing “harsh feedback to the Board on their decision.” Some of the feedback resulted in disciplinary action.

167. On August 20, Superintendent Snowberger informed Elizabeth staff that they could open their classroom libraries back up while the Board deliberated on how to proceed. By that point, many teachers had already taken all of their books home in response to the ban.

168. On August 26, the Board determined that teachers should create inventories of all the books in their classroom libraries so that the BCRC could review them and the District could determine which ones were in keeping with the Board’s partisan, political preferences, and which one needed to be removed.

169. Superintendent Snowberger assured parents that classroom libraries would be purged of any books containing racism/discrimination, drug or alcohol use, graphic violence, sexual content, ideations of self harm, or religious content.”

170. In the process of reviewing their classroom libraries, teachers were expected to remove questionable books. Some teachers removed books out of fear or anticipation that the Board would direct their removal.

171. The Board also directed teachers not to purchase any more books for their classroom libraries.

172. Teachers' inventory lists were passed on to principals, who passed them on to the Board for review. The Board then directed principals to ensure that certain books were removed from classroom libraries.

173. The Board directed that several books be removed from classroom libraries. One Running Creek teacher was initially told he was required to remove *The Slave Dancer* by Paula Fox; *To Be a Slave* by Julius Lester; *The Cay* by Theodore Taylor; *The Giver* by Lois Lowry; and *Lawn Boy* by Gary Paulson from his classroom library.

174. *The Slave Dancer* by Paula Fox is about a teenager who is thrown aboard a slave ship and witnesses how enslaved people were being treated. Its removal is further evidence of the District's intent to restrict access to information and ideas with which it disagrees.

175. *To Be a Slave* by Julius Lester is a nonfiction children's book that includes personal accounts of former slaves. It has won several awards, including the John Newbery Medal and School Library Journal's Best Book of the Year. Its removal is further evidence of the District's intent to restrict access to information and ideas with which it disagrees.

176. *The Cay* by Theodore Taylor is about a young white boy, Phillip, and his new companion, Timothy, a Black man who rescues Phillip from the ocean. Phillip initially views Timothy as inferior, but over the course of the story, they develop a friendship. Its removal is further evidence of the District's intent to restrict access to information and ideas with which it disagrees.

177. *The Giver* by Lois Lowry is a young adult novel about an eleven-year-old boy who lives in a society where everyone is equal, but there is no individualism, emotion, or color. *The Giver* has won the Newbery Medal and the William Allen White Children's Book Award,

among several others. Its removal is further evidence of the District's intent to restrict access to information and ideas with which it disagrees.

178. *Lawn Boy* by Gary Paulson is about a boy who mows lawns after his grandmother gives him a lawnmower for his birthday. It includes chapters like "The Growth of Capitalism," "Dramatic Economic Expansion: Its Causes and Effects," and "Conflict Resolution and Its Effects on Economic Policy." It shares its name with *Lawn Boy* by Jonathan Evison, a different book that has been frequently challenged and banned across the country. The teacher was ultimately allowed to keep this book in his classroom library, but not the others.

179. The Running Creek teacher refused to remove any books from his classroom library, because he believed they were educationally valuable for his students. He was threatened with dismissal on insubordination grounds and quit his job because he was not willing to remove the books.

Ban on Sharing Books

180. Policy 9.9, which the Board adopted on August 12, provides: "Books will not be shared between students."

181. Current policy in the District dictates that students are not permitted to share books with each other.

182. Superintendent Snowberger informed parents that the ban on sharing books in the classroom was enacted "to respect parental rights in ensuring that they control what literature students have access to."

183. NAACP members' children commonly share books with other students. They recommend and provide books to other students as a way of expressing their interest in particular

books or topics. Students can then share the experience of reading the book and discussing it together.

184. NAACP members' children receive books from other students as a means of accessing information and ideas that their friends or classmates suggest to them.

185. Plaintiff C.C. commonly shares books with other students. As an avid reader, she has opinions on many different authors and stories, and she enjoys being able to discuss them with her classmates. Plaintiff C.C. learns more about her classmates and herself when they share books with each other and discuss what stood out to them, which parts they liked, etc.

186. As the Board makes fewer and fewer books available in school libraries, Plaintiff C.C. and NAACP members' children perceive a heightened need to share books with each other.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

42 U.S.C. § 1983 – First Amendment

Right to Receive Information

Plaintiffs NAACP, C.C. by and through Kristen Crookshanks, and E.S. by and through Mindy Smith Against Defendant

187. The allegations of the foregoing paragraphs are incorporated by reference as though fully set forth herein.

188. The First Amendment binds the State of Colorado pursuant to the incorporation doctrine of the Fourteenth Amendment. In all of the following paragraphs, references to the First Amendment include the First Amendment as applied to the states through the Fourteenth Amendment.

189. The First Amendment protects the right to access information and ideas. School boards are not permitted to remove books from school libraries in a narrowly partisan or political manner, or because of board members' disagreement with the ideas contained in the books.

190. The Elizabeth School District, acting through its Board, removed at least nineteen books from ESD libraries in a narrowly partisan or political manner because the Board disagrees with the ideas or views contained in those books.

191. The Board continues to determine whether additional books should be removed from ESD libraries in order to deny students access to ideas that Board members dislike.

192. The Board's decision to remove books from ESD libraries was—and continues to be—motivated by their desire to suppress ideas that were not in keeping with Defendant's political values and ideas, and to prescribe their partisan, political orthodoxy in Elizabeth schools.

193. The Board has no substantial or legitimate interest in banning the Removed Books from ESD libraries.

194. None of the Removed Books are obscene.

195. The Removed Books were not interfering with order and discipline in ESD schools.

196. The Removed Books contain educational value and are educationally suitable for students in ESD schools.

197. Defendants' removal of books from ESD libraries interferes with the ability of Plaintiffs C.C., E.S., and NAACP members' children's ability to learn about a diversity of information and viewpoints.

198. Plaintiffs are entitled to monetary, declaratory, and injunctive relief for the Board's violation of their First Amendment rights.

SECOND CLAIM FOR RELIEF

Colo. Const. Art. II, Section 10

Freedom of Speech

Plaintiffs NAACP, C.C. by and through Kristen Crookshanks, and E.S. by and through Mindy Smith Against Defendant

199. The allegations of the foregoing paragraphs are incorporated by reference as though fully set forth here

200. The Free Speech Clause of the Colorado Constitution protects the right to access information and ideas.

201. The free speech rights protected by Colo. Const. Art. II, Section 10 are more expansive than those protected by the First Amendment to the United States Constitution.

202. By removing books from ESD libraries because of disagreement with the ideas contained in those books, the Board violated—and will continue to violate—the Colorado Constitution.

203. Plaintiffs are entitled to monetary, declaratory, and injunctive relief for the Board's violation of their rights under Article II, section 10 of the Colorado Constitution.

THIRD CLAIM FOR RELIEF

42 U.S.C. § 1983 – First Amendment

Freedom of Expression

Plaintiff Authors Guild Against Defendant

204. The allegations of the foregoing paragraphs are incorporated by reference as though fully set forth herein.

205. The First Amendment protects authors' ability to communicate their ideas to students without undue government interference.

206. The Board removed Guild members' books because of its distaste for the viewpoints and topics expressed therein.

207. The Board's removal of Guild members' books from ESD libraries violates the First Amendment because it interferes with members' ability to share their constitutionally protected books free from viewpoint-based discrimination.

FOURTH CLAIM FOR RELIEF
Colo. Const. Art. II, Section 10
Freedom of Expression
Plaintiff Authors Guild Against Defendant

208. The allegations of the foregoing paragraphs are incorporated by reference as though fully set forth herein.

209. Article II, section 10 of the Colorado Constitution protects authors' ability to communicate their ideas to students without undue government interference.

210. The Board removed Guild members' books because of its distaste for the viewpoints and topics expressed therein.

211. The Board's removal of Guild members' books from ESD libraries violates Article II, section 10 because it interferes with members' ability to share their constitutionally protected books free from viewpoint-based discrimination.

FIFTH CLAIM FOR RELIEF
42 U.S.C. § 1983 – First Amendment
Freedom Of Expression
Plaintiffs NAACP, C.C. by and through Kristen Crookshanks, and E.S. by and through Mindy Smith Against Defendant

212. The allegations of the foregoing paragraphs are incorporated by reference as though fully set forth herein.

213. Students have a First Amendment-protected interest in sharing books with each other.

214. Sharing books is a non-disruptive form of expression.

215. The Board has no interest that justifies a blanket prohibition on sharing books with each other in school.

SIXTH CLAIM FOR RELIEF

Colo. Const. Art. II, Section 10

Freedom of Expression

Plaintiffs NAACP, C.C. by and through Kristen Crookshanks, and E.S. by and through Mindy Smith Against Defendant

216. The allegations of the foregoing paragraphs are incorporated by reference as though fully set forth herein.

217. Article II, Section 10 of the Colorado Constitution protects students' interest in sharing books with each other.

218. Sharing books is a non-disruptive form of expression.

219. The Board has no interest that justifies a blanket prohibition on sharing books with each other in school.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing facts, Plaintiffs respectfully request the following relief against Defendant:

- a. A preliminary and permanent injunction requiring the Board and its agents, attorneys, servants, employees, and other representatives in office to restore to ESD libraries *The Hate U Give* by Angie Thomas; *Beloved* by Toni Morrison; *The Bluest Eye* by Toni Morrison; *The Kite Runner* by Khaled Hosseini; *You Should See Me in a Crown* by Leah Johnson; *#Pride: Championing LGBTQ Rights* by Rebecca Felix; *Melissa/George* by Alex Gino; *It's Your World—If You Don't Like It, Change It* by Mikki Halpin; *The Perks of Being a Wallflower* by

Stephen Chbosky; *Thirteen Reasons Why* by Jay Asher; *Looking for Alaska* by John Green, *Nineteen Minutes* by Jodi Picoult; *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke*, by Ellen Hopkins; and *Redwood and Ponytail* by K.A. Holt;

- b. A preliminary and permanent injunction enjoining the Board and its agents, attorneys, servants, employees, and other representatives from removing books from ESD libraries because of the ideas contained in the books;
- c. A permanent injunction enjoining the Board and its agents, attorneys, servants, employees, and other representatives from preventing students from sharing books;
- d. A declaratory judgment that Defendant's removal of *The Hate U Give* by Angie Thomas; *Beloved* by Toni Morrison; *The Bluest Eye* by Toni Morrison; *The Kite Runner* by Khaled Hosseini; *You Should See Me in a Crown* by Leah Johnson; *#Pride: Championing LGBTQ Rights* by Rebecca Felix; *Melissa/George* by Alex Gino; *It's Your World—If You Don't Like It, Change It* by Mikki Halpin; *The Perks of Being a Wallflower* by Stephen Chbosky; *Thirteen Reasons Why* by Jay Asher; *Looking for Alaska* by John Green, *Nineteen Minutes* by Jodi Picoult; *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke*, by Ellen Hopkins; and *Redwood and Ponytail* by K.A. Holt from ESD libraries violated the First Amendment and Article II, section 10 of the Colorado Constitution;
- e. A declaratory judgment that the Board's prohibition on students sharing books with each other violates the First Amendment and Article II, section 10 of the Colorado Constitution;

- f. Reasonable attorney's fees and costs;
- g. Damages including but not limited to those for past and future pecuniary and non-pecuniary losses, pain, humiliation, fear, anxiety, loss of enjoyment of life, loss of liberty, privacy, and sense of security and individual dignity, and other non-pecuniary losses;
- h. Such further relief as justice requires.

REQUEST FOR TRIAL BY JURY

Plaintiffs demand a jury trial on all issues so triable.

Dated: December 19, 2024.

Respectfully submitted,

s/ Thomas C. Dec

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:24-cv-03512-STV

C.C., a minor, by and through her parent and next
friend KRISTEN CROOKSHANKS,

E.S., a minor, by and through his parent and next
friend MINDY SMITH,

NAACP – COLORADO – MONTANA –
WYOMING STATE AREA CONFERENCE (“NAACP”),

THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs C.C. by and through her parent and next friend KRISTEN CROOKSHANKS, E.S. by and through his parent and next friend MINDY SMITH, NAACP – COLORADO – MONTANA – WYOMING STATE AREA CONFERENCE (“NAACP”), and THE AUTHORS GUILD hereby move for a preliminary injunction as set forth below:

Defendant Elizabeth School District (“the District”), by and through its Board of Education (“the Board”), has removed at least nineteen books from school libraries in the District because of the Board’s disagreement with the ideas contained in the books. The District

is poised to continue removing books from school libraries based on narrowly partisan and political motives. Plaintiffs seek a preliminary injunction to protect students’ right to receive information and ideas, as well as authors’ right to share their books free from undue viewpoint-based discrimination, as guaranteed under the First Amendment of the U.S. Constitution and Article II, section 10 of the Colorado Constitution. The District removed these books in order to prevent students in Elizabeth from accessing information and ideas about racism, discrimination, and LGBTQ+ people, and to ban views that fall outside of the political orthodoxy that the Board seeks to impose in the District. Without a preliminary injunction requiring that the removed books be returned to ESD libraries, students will be unable to access books in their school libraries that question or challenge the Board’s partisan, political ideals, and authors’ speech will be censored in ESD because of the views they express.

Plaintiffs therefore respectfully ask this Court to issue a preliminary injunction requiring that the removed books be returned to Elizabeth School District (“ESD”) libraries and enjoining the Board from continuing to remove books from ESD libraries because of their disagreement with the ideas contained in the books. As explained below, a preliminary injunction is warranted because (1) Plaintiffs are likely to succeed on the merits of their claims, (2) Plaintiffs will suffer irreparable injury absent an injunction, (3) Plaintiffs’ injury is great, and preliminary relief will not harm Defendants, and (4) an injunction would serve the public interest.

STATEMENT OF FACTS

I. Elizabeth School District

The Town of Elizabeth, located to the east of Colorado Springs in Elbert County, is a small, majority-conservative, majority-white community with two elementary and preschools,

one middle school, one high school, and a charter school. The Elizabeth School District is governed by a five-member Board.¹ The Board has made no secret of its intent to imbue ESD schools with their own brand of political conservatism. Recently, the Board has become increasingly militant about banishing viewpoints that fail to conform with the partisan, political orthodoxy that they seek to impose in ESD. One of the Board’s most recent efforts in service of this mission was to identify books they believe to be “sensitive” in ESD libraries and remove supposed “highly sensitive” books from the libraries altogether.

II. Identifying and Removing “Sensitive” Books

On August 12, 2024, the Board voted to adopt Policy 9.7, which directs the Board Curriculum Review Committee (“BCRC”) to develop a list of books in ESD libraries that contain so-called “sensitive” topics (the “Sensitive List”). Ex. 7, Policy 9.7 at 3-4. According to Policy 9.7, “special attention” should be given to books that contain “racism/discrimination,” “religious viewpoints,” “sexual content,” “graphic violence,” “profanity/obscenity,” “drug or excessive alcohol use,” or “ideations of self-harm or mental illness.” Ex. 7, Policy 9.7 at 4. In order to develop the Sensitive List, the BCRC began by looking at online lists of books that had been banned or challenged elsewhere to see if those books were in ESD libraries.²

¹ The Board members are Rhonda Olsen (President), Heather Booth (Vice President), Mary Powell (Secretary), Mike Calahan (Treasurer) and Jonathan Waller (Assistant Secretary/Treasurer).

² August 12 Board meeting at 48:16 (<https://www.youtube.com/live/MC9iw6vtX3o>).

A book's inclusion on the Sensitive List means that, if a child tries to check it out, their parent(s) will automatically be notified. Parents can also prohibit their children from checking out all books on the Sensitive List.

The Board determined that some of the "sensitive" books that the BCRC identified were *so sensitive* that they should not be in ESD libraries at all. The Board decided to remove these books (the "Removed Books") from ESD libraries and display them in the Board's office so that community members could weigh in on whether they thought the books should be returned to ESD libraries and added to the Sensitive List or permanently removed from ESD libraries' collections. The Removed Books are:

- *The Hate U Give* by Angie Thomas;
- *Beloved* by Toni Morrison;
- *The Bluest Eye* by Toni Morrison;
- *The Kite Runner* by Khaled Hosseini;
- *You Should See Me in a Crown* by Leah Johnson;
- *#Pride: Championing LGBTQ Rights* by Rebecca Felix;
- *George* (now published and referred to as *Melissa*) by Alex Gino;
- *It's Your World—If You Don't Like It, Change It* by Mikki Halpin;
- *The Perks of Being a Wallflower* by Stephen Chbosky;
- *Thirteen Reasons Why* by Jay Asher;
- *Looking for Alaska* by John Green;
- *Nineteen Minutes* by Jodi Picoult;
- *Crank* by Ellen Hopkins;
- *Glass* by Ellen Hopkins;
- *Fallout* by Ellen Hopkins;
- *Identical* by Ellen Hopkins;
- *Burned* by Ellen Hopkins; and
- *Smoke* by Ellen Hopkins.

For roughly 25 days, the Removed Books were displayed in the Board's office, with passages that the Board found troubling marked so that parents could easily turn to the portions of the books that the Board disagreed with. The Board provided forms that parents could fill out

to indicate whether they thought each of the eighteen books should be “[r]eturned to the library and listed on the sensitive topic list” or “[r]emoved from the library collection.” Ex. 8, Book Review Form. There was no option on the form to return the books to school libraries and leave them off the Sensitive List such that students could check them out like any other book in the library.

III. Permanent Removal Decision

The Board believes its mandate is to imbue its own brand of conservative politics in ESD schools. Ex. 9, Booth email (Aug. 4) at 2 (“conservative values are exactly what we are and plan to continue to bring into the district”); Ex. 10, Booth email (Aug. 19) (“As an elected official committed to conservative values for our children, I feel a strong obligation to honor the promises made during my campaign. Many parents in our community are concerned about the content of books available in schools and libraries. It is our responsibility to respect [parents’] concerns and uphold our campaign commitments to the majority.”); Ex. 11, Booth email (Aug. 19) (same). Removing books that discuss LGBTQ+ and race-related topics—and that other conservative districts have banned—is one step in fulfilling that mandate.

In deciding whether to return any of the “temporarily suspended” books to ESD libraries, the Board made clear it would consider the community’s feedback on the books. In discussing whether to return some of the Removed Books to ESD libraries, Vice President Booth said the Board’s “constituents will not be happy about us returning any of these books,” and “[t]hat is who we are beholden to.” Ex. 12, Booth email (Sept. 7) at 1.

Indeed, many parents filled out forms indicating they wanted the books to be removed because the books did not align with their partisan, political viewpoints. For example, one parent

of a high school student wrote that *#Pride: Championing LGBTQ Rights* should be removed because “LGBTQ themes do not belong in our public schools,” Ex. 13, Book Review Forms, p. 1 (Laura), and a middle school parent wrote that “Middle school students are too young to be exposed to the pride movement, same sex marriage, stonewall riots and pride parades,” Ex. 13, Book Review Forms, p. 2 (Ken). A high school parent opined that Ellen Hopkins, whose books address topics from teen sexuality to drugs, is “disgusting,” and recommended that all of her books be removed. Ex. 13, Book Review Forms, p. 3 (Lyra). Some parents wrote that *Melissa/George* should be removed because, according to them, it “is evil trans-ideology” that “has no place in any school,” Ex. 13, Book Review Forms, p. 4 (David), or is “morally offensive,” Ex. 13, Book Review Forms, p. 5 (Matt). One parent wrote that *It’s Your World—If You Don’t Like It, Change It* should be removed because the “Women’s Rights chapter supports abortion and equates it with healthcare when it is the murder of a human life,” and the book contains an example letter that “encourages the reader to oppose parental notification laws which is exactly what our ESD board is trying to put in place.” Ex. 13, Book Review Forms, p. 6 (Maryrose).

One high school parent said of Toni Morrison’s *The Bluest Eye* that it should be removed because “no one should read this,” and noted it contains rape, incest, and sex. Ex. 13 Book Review Forms, p. 7 (David). One parent advocated for the removal of “The Hate U Give,” writing that it has “themes of anti-police, anti-white, pro BLM/riots and gang activity,” Ex. 13, Book Review Forms, p. 8 (Maryrose), and another wrote that the book should be removed because it allegedly contains “police viewed in a bad light,” Ex. 13, Book Review Forms, p. 9 (Ken). A middle school parent wrote that *You Should See Me in a Crown* should be removed

“because of it’s [sic] CRT undertones and homosexual storyline.” Ex. 13, Book Review Forms, p. 10 (Maryrose). Other parents voted for its removal because of a “DEI Pride flag” and the “Lesbian romance mentioned,” Ex. 13, Book Review Forms, p. 11 (Shelly), or the “queer factor” and the fact that “the unrealistic aspects of this book give young people ideas that are unlikely at best,” Ex. 13, Book Review Forms, p. 12 (Tracy). One parent claimed that *The Kite Runner* is “very racially divisive” and has “LGBTQ themes that do not belong in school.” Ex. 13, Book Review Forms, p. 13 (Laura). She also wrote that she does “not want [her] teens reading a book that criticizes Christianity.” *Id.*³

Board members echoed many of these same sentiments in their discussions of the Removed Books. For example, when Secretary Powell suggested that *#Pride: Championing LGBTQ Rights* and *You Should See Me in a Crown* be returned to ESD libraries, Vice President Booth vehemently disagreed, saying “LGBTQ is only regarding sexual preference which doesn’t belong in any school.” Ex. 12, Booth email (Sept. 7) at 1. President Olsen made the point to Secretary Powell that, if a book has “gender identity ideology” then the Board should not put it “out there at all.” Ex. 14, Powell email (Sept. 8). Secretary Powell was convinced by their points and ultimately voted—along with all of her fellow Board members—to permanently banish both books from ESD libraries. Ex. 12, Booth email (Sept. 7) at 1.

Additionally, Vice President Booth, after reading aloud isolated passages from *Melissa/George* about the main character’s discomfort with her body and ideas about boys

³ The parent identified no portion of *The Kite Runner* that criticizes Christianity, and counsel for Plaintiffs, upon reading the book, also identified none.

becoming girls remarked, “this is disgusting.”⁴ Similarly, Assistant Secretary/Treasurer Waller, after reading two out-of-context passages from *The Bluest Eye* that discuss sexual pleasure, stated “I find this absolutely disgusting for kids to be reading in school.”⁵ President Olsen agreed “it’s disgusting,” and added that she doesn’t know if any kid would read better after engaging with Toni Morrison’s novel, but even if they did, she “wouldn’t care.”⁶

Unlike the Board members, many parents who filled out the Board’s forms advocating for books to be returned to school libraries focused on the educational value of the Removed Books and a desire for students to be exposed to a broad range of ideas and viewpoints. For example, one parent wrote “Books are a gift – they help us understand, process, confront, empathize; they let us ‘walk a mile’ in others’ shoes; they validate our feelings and help us feel not so alone; they give us tools and the names for problems and emotions,” and “[b]anning these books because the subjects are difficult or the content graphic is short-sighted and misguided.” Ex. 13, Book Review Forms, p. 14 (Mindy). Another form expressed that “[w]e do our children a dis-service if we sugar-coat and cherry-pick literary material that could broaden their minds to others’ experiences, leading to a more compassionate state of being,” Ex. 13, Book Review Forms , p. 15 (Wendy).

Some forms noted the educational value of individual authors or books, explaining, for example, that “Toni Morrison is an internationally acclaimed and beloved chronicler of African

⁴ Aug. 26 Board meeting at 1:19:42 (<https://www.youtube.com/watch?v=lALFn6EY9-8>).

⁵ *Id.* at 1:26:25.

⁶ *Id.* at 1:26:37.

American history,” and suppressing ideas does not get rid of atrocities that happened, Ex.13, Book Review Forms, p. 17 (Kathy) or that “John Green is celebrated for his portrayals of modern teen life” and *Looking for Alaska* can help teens “find a place for themselves,” Ex. 13, Book Review Forms, p. 18 (Kathy). One form notes that *Crank* should not be returned to the Elizabeth High School library because it is “a great pick for reluctant readers” because it is written in verse and can serve as a cautionary tale. Ex. 13, Book Review Forms, p. 19 (Kathy). Another notes that *The Hate U Give* is a “sympathetic portrayal of a girl and her family dealing with fear and horror resulting from a violent encounter she never expected.” Ex. 13 Book Review Forms, p. 20 (Kathy). And another notes that *You Should See Me in a Crown* is, according to 2020 Goodreads, “a self-love anthem for queer black girls everywhere.” Ex. 13 Book Review Forms, p. 21 (Mindy).

Some parents also opposed the Board’s decision to remove books from school libraries because of the stigmatizing messages the Board was sending, noting, for instance, that the list of removed books “is not welcoming to anyone who is not white, straight and politically conservative,” Ex. 13 Book Review Forms, p. 22 (Kathy).

Some parents even modified the options provided by the Board on the form and indicated that they wanted the books returned to the library and did *not* want to be notified when their children checked out the books, because “Book Banning is unconstitutional,” Ex. 13, Book Review Forms, p. 23 (Christine), because high school students “will encounter all the ideas/verbiage/violence at some time,” Ex. 13, Book Review Forms, p. 24 (Janet), or because some parents “much prefer [their] child can explore these subjects in an educational institution

then [sic] from hearsay, whispers, gossip and their fellow peers without the hope of open discussion and psychological safety,” Ex. 13 Book Review Forms, p. 25 (Mindy).

But because Board members found the eighteen “temporarily suspended” books “disgusting,” and out of line with the so-called “conservative values” they intended to promote in ESD, they determined that all eighteen books would be permanently banished from school libraries. The District has also made clear that they may continue to remove books from ESD libraries based on the ideas they contain. Ex. 15, Snowberger email (Aug. 19).

IV. Additional Ad Hoc Book Removal

The District has also removed at least one other book from ESD libraries. On September 5, 2024, a parent emailed President Olsen complaining about a book from the library at Running Creek Elementary, *Redwood and Ponytail* by K.A. Holt. Ex. 16, Olsen email (Sept. 5). The parent complained about the book because it includes two girls who develop strong feelings for each other. Less than an hour after receiving the complaint, President Olsen responded to the parent saying she would have the book removed. *Id.* Because the Board sought to remove any books that acknowledge LGBTQ+ identities, it removed *Redwood and Ponytail* from the Running Creek elementary library.

V. Plaintiffs Harmed by Removal of School Library Books

Plaintiffs in this case include ESD students who intended to browse and/or check out the Removed Books from their school libraries but have not been able to do so since the Board removed them. Plaintiff C.C. is an eleventh-grade student at Elizabeth High School who spends much of her free time reading. Ex. 1, C.C. Decl. at ¶¶ 2–3. She regularly spends time in her school library and enjoys browsing the library shelves to discover interesting books to read. Ex.

1, C.C. Decl. at ¶¶ 13–14. She is interested in browsing and/or checking out the Removed Books from her school library, but now, when C.C. browses her school library, she is “only . . . able to find books that fit the school board members’ worldview.” Ex. 1, C.C. Decl. at ¶¶ 10-12, 15. She experiences the Board’s removal of books from her school library as an impediment to her ability to “access[] information about a wide variety of topics and views.” Ex. 1, C.C. Decl. at ¶ 16. C.C. was brought to tears by the District’s decision to remove books from her school library, both because she could no longer browse or check out the Removed Books, and because “it was so clear that they were targeting LGBTQ people” like her. Ex. 1, C.C. Decl. at ¶¶ 7–8; Ex. 2, Crookshanks Decl. at ¶ 9; *see also* Ex. 1, C.C. Decl. at ¶ 8 (“When a book like *#Pride: Championing LGBTQ Rights* is selected to be banned from school libraries, it tells me that the people responsible for my education don’t want us to be gay, and they don’t want us to learn about LGBTQ history or LGBTQ people.”).

Plaintiff E.S. is in preschool at Running Creek Elementary and uses the school’s library to choose books. Ex. 3, Smith Decl. at ¶¶ 2-5. His parents intend for E.S. and his younger sister to attend elementary, middle school and high school in the Elizabeth School District. *Id.* It is important to E.S.’s parents that throughout E.S.’s education he has access to a diverse array of books where he can learn about difficult subjects and different viewpoints. Ex. 3, Smith Decl. at ¶¶ 6-8. They are also concerned that the District’s actions are sending a message that it is not okay to learn about race and racism in America and that stigmatizes LGBTQ+ identities. Ex. 3, Smith Decl. at ¶¶ 10-15.

Plaintiff NAACP has members who are parents of students in the Elizabeth School District who use their school library to discover new information and explore a wide array of

ideas and viewpoints. Ex. 4, Prescott Decl. at ¶ 8; Like C.C., they intended to use their school library to access information about race, racism, LGBTQ history and identity, and other topics that are important to them. Ex. 4, Prescott Decl. at ¶ 8. Now, they are prevented or chilled from reading the Removed Books and discussing any ideas that fall outside the Board’s partisan, political orthodoxy. Ex. 4, Prescott Decl. at ¶ 7. Plaintiff NAACP also has members who are parents of students in ESD who want their children to have access to all of the books that have been removed from their school libraries. Ex. 2, Crookshanks Decl. at ¶ 10; Ex. 3, Smith Decl. at ¶¶ 18-20.

Plaintiff the Authors Guild (“Guild”) includes authors whose books were removed from ESD libraries because of the viewpoints expressed therein. Guild member Ellen Hopkins wrote *Crank, Glass, Fallout, Identical, Burned, and Smoke* to help teenagers navigate difficult situations and express her views on the perils and realities of addiction, abuse, and promiscuity. Ex. 5, Hopkins Decl. at ¶¶ 1, 7-13. Guild member Angie Thomas wrote *The Hate U Give* to express her views on racism, police misconduct, and the value of teenagers using their voices to advocate for people and causes they care about. Guild member Alex Gino wrote *George* (now published and referred to as *Melissa*) which offers an authentic portrayal of a child navigating gender identity while addressing themes of courage, self-discovery, acceptance, and friendship. Ex. 6, Gino Decl. at ¶¶ 4. Guild member John Green wrote *Looking for Alaska* to express his views on loss, grief, and intimacy, and to share his views with teenagers who may be experiencing death and grief for the first time. Guild member Jodi Picoult wrote *Nineteen Minutes* to help young adults feel seen and express her views on the consequences of teasing and failing to stand up against bullying. Because the Board disagrees with these authors’ viewpoints

and worldviews, the authors can no longer share them with ESD students. Ex. 5, Hopkins Decl. at ¶ 19; Ex. 6, Gino Decl. at ¶ 7.

Unless this Court grants injunctive relief, students will continue to be denied access to information and ideas in a narrowly partisan and political manner, and authors will continue to be censored in a viewpoint-discriminatory manner.

LEGAL STANDARD

“District courts have discretion over whether to grant preliminary injunctions.” *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 796 (10th Cir.2019). To obtain a preliminary injunction, Plaintiffs must show “(1) a substantial likelihood of prevailing on the merits; (2) irreparable harm unless the injunction is issued; (3) [that] the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party; and (4) [that] the injunction, if issued, will not adversely affect the public interest.” *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1255 (10th Cir.2003) (quoting *Fed. Lands Legal Consortium ex rel. Robart Estate v. United States*, 195 F.3d 1190, 1194 (10th Cir.1999)). All factors are satisfied here.

Plaintiffs seek a preliminary injunction in order to preserve the status quo—when all of the Removed Books were available in ESD libraries. Because this Motion merely seeks to return those books to ESD libraries, “the preliminary injunction in this case does not require defendant[] to do something that they were not doing during the last uncontested period.” *Evans v. Fogarty*, 44 Fed.Appx. at 928 (10th Cir. 2002).

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits of Their Claims.

Plaintiffs are likely to succeed on the merits of their claims asserting violations of the First Amendment of the United States Constitution and Article II, section 10 of the Colorado Constitution. To demonstrate a likelihood of success on the merits, Plaintiffs must “present ‘a prima facie case showing a reasonable probability that [they] will ultimately be entitled to the relief sought.’” *Salt Lake Tribune Pub. Co., LLC v. AT & T Corp.*, 320 F.3d 1081, 1100 (10th Cir.2003) (quoting *Autoskill v. Nat’l Educ. Support Sys.*, 994 F.2d 1476, 1487 (10th Cir.1993)). This burden is lower than showing an “overwhelming” likelihood of success, or “positively” establishing a right to relief on the merits. *Atchison, Topeka and Santa Fe Ry. Co. v. Lennen*, 640 F.2d 255, 261 (10th Cir.1981). And where, as here, the three “harm” factors tip “decidedly” in the moving party’s favor, the “probability of success requirement” is relaxed further; the moving party “need only show questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation.” *Heidemann v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir.2003) (internal quotation marks omitted). Plaintiffs more than satisfy this burden.

A. The District Violated Students’ Constitutional Right to Access Information and Ideas in School Libraries.

1. Students’ Interest in Accessing Books in Their School Libraries Is Constitutionally Protected.

The First Amendment of the U.S. Constitution and Article II, section 10 of the Colorado Constitution protect the right to receive information and ideas. *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1051 (Colo. 2002). And

“[t]he vigilant protection of constitutional rights is ‘nowhere more vital’ than in our schools and universities.” *Tinker*, 393 U.S. at 512 (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)). “In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate.” *Id.* at 511.

This is particularly true in the school library, which is the “principal locus” of students’ freedom “to inquire, to study and to evaluate, [and] to gain new maturity and understanding.” *Pico*, 457 U.S. at 869 (Opinion of Brennan, Marshall, and Stevens) (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967)). The school library is meant to serve as “a mirror of the human race, a repository of the works of scientists, leaders, and philosophers.” *Roberts v. Madigan*, 702 F. Supp. 1505, 1512–13 (D. Colo. 1989), *aff’d*, 921 F.2d 1047 (10th Cir.1990); *see also Right To Read Def. Comm. of Chelsea v. Sch. Comm. of City of Chelsea*, 454 F. Supp. 703, 715 (D. Mass. 1978) (“The student who discovers the magic of the library is on the way to a life-long experience of self-education and enrichment. That student learns that a library is a place to test or expand upon ideas presented to him, in or out of the classroom.”).

To be sure, school districts have broad discretion over certain *curricular* matters. But school library books are not part of the mandatory curriculum; no student is required to read every book in the library. Instead, school libraries are “valuable adjunct[s] to classroom discussion.” *Minarcini v. Strongsville City Sch. Dist.*, 541 F.2d 577, 582 (6th Cir.1976). Students’ “selection of books from these libraries is entirely a matter of free choice; the libraries afford them an opportunity at self-education and individual enrichment that is wholly optional.” *Pico*, 457 U.S. at 869. In this noncurricular space, students’ First Amendment and Article II, section 10 rights are at their pinnacle. *See id.* at 868 (“[T]he special characteristics of the

school *library* make that environment especially appropriate for the recognition of the First Amendment rights of students.”).

2. The District’s Removal of Books From ESD Libraries Violated Students’ Constitutional Right to Receive Information and Ideas.

While the District “possess[es] legitimate power to protect children from harm, . . . that does not include a free-floating power to restrict the ideas to which children may be exposed.” *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786, 794 (2011) (internal citations omitted). The Supreme Court considered the constitutionality of a school district’s removal of books from school libraries in *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982). The facts of *Pico* are remarkably similar to the facts here. In *Pico*, parents in a New York school district obtained a list of “objectionable” books at a conservative conference about education legislation. *Id.* at 856. Some of the listed books were in the school district’s libraries, so the school board directed that the books be removed from school library shelves and delivered to the board members for them to read. *Id.* at 857. The Board ultimately determined that all but one of the books should be banned from school libraries.

A plurality of the U.S. Supreme Court held that “local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to ‘prescribe what shall be orthodox in politic, nationalism, religion, or other matters of opinion.’” *Pico*, 457 U.S. at 872 (Opinion of Brennan, Marshall, Stevens, and Blackmun)) (quoting *Barnette*, 319 U.S. at 642). In explaining its decision, the plurality provided two examples of acts that would undoubtedly violate the First Amendment. First, “[i]f a Democratic school board, motivated by party affiliation, ordered the removal of all books written

by or in favor of Republicans, few would doubt that the order violated the constitutional rights of the students denied access to those books.” *Id.* at 870–71. Second, “[t]he same conclusion would surely apply if an all-white school board, motivated by racial animus, decided to remove all books authored by blacks or advocating racial equality and integration.” *Id.* at 871. From past precedent, the plurality gleaned the rule that school boards cannot constitutionally exercise their discretion to determine the content of school libraries “in a narrowly partisan or political manner.” *Id.* at 870.

Indeed, the notion that “[o]ur Constitution does not permit the official suppression of ideas,” *id.* at 871, was well established before *Pico* and continues to be after. *See, e.g., Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”); *West Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

Courts across the country have followed these principles in holding the removal of controversial books from school libraries unconstitutional. *See, e.g., Case v. Unified School Dist. No. 233*, 908 F.Supp. 864 (D. Kan. 1995) (granting injunction to restore to school library a book about a romantic relationship between teenage girls); *Sheck v. Baileyville Sch. Comm.*, 530 F. Supp. 679, 693 (D. Me. 1982) (students and parents were entitled to preliminary injunction restoring *365 Days* to high school library after it was removed for having objectionable language); *Right To Read Def. Comm. of Chelsea v. Sch. Comm. of City of Chelsea*, 454 F. Supp. 703, 715 (D. Mass. 1978) (enjoining removal of anthology from high school library where school committee found its theme and language offensive); *Salvail v. Nashua Bd. of Ed.*, 469 F.

Supp. 1269, 1272, 1275 (D.N.H. 1979) (enjoining removal of magazine from high school library where it contained advertisements for vibrators, contraceptives, “gay material,” and a “pro-communist newspaper” but also had “obvious research value”); *Minarcini v. Strongsville City School District*, 541 F.2d 577, 582 (6th Cir.1976) (Board’s removal of books from school library, in absence of any neutral explanation, violated First Amendment); *see also Parnell v. Sch. Bd. of Lake Cnty., Fla.*, No. 4:23-CV-414-AW-MAF, 2024 WL 2703762, at *26 (N.D. Fla. Apr. 25, 2024) (Plaintiffs stated plausible claim that removing a book about two male penguins raising a baby penguin violated First Amendment); *PEN American Center, Inc. v. Escambia County School Board*, No. 3:23-CV-10385-TKW-ZCB, 2024 WL 133213, at *2 (N.D. Fla. Jan. 12, 2024) (Plaintiffs stated plausible claim that Board’s removal of books from high school library violated First Amendment); *Counts v. Cedarville Sch. Dist.*, 295 F. Supp. 2d 996, 1005 (W.D. Ark. 2003) (District violated First Amendment when it moved Harry Potter books from school library’s normal shelves to special area for students who have signed permission statement from parent); *Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184, 189 (5th Cir.1995) (remanding for further development of the record but also observing that “in light of the special role of the school library as a place where students may freely and voluntarily explore diverse topics, the School Board’s non-curricular decision to remove a book well after it had been placed in the public school libraries evokes the question whether that action might not be an unconstitutional attempt to ‘strangle the free mind at its source.’” (quoting *Barnette*, 319 U.S. at 637)).

Here, the Board did—and continues to—remove books because of the ideas they contain. Policy 9.7 itself singles out the particular ideas that the Board takes issue with:

“racism/discrimination,” “religious viewpoints,” “sexual content,” “graphic violence,” “profanity/obscenity,” “drug or excessive alcohol use,” and “ideations of self-harm or mental illness.” Ex. 7, Policy 9.7 at 4. And in discussing the books to be removed, the Board members made clear their disdain for the ideas contained therein. Vice President Booth stated that books about LGBTQ people should not be returned to school libraries because “LGBTQ is only regarding sexual preference which doesn’t belong in any school.” Ex. 12, Booth email (Sept. 7) at 1. President Olsen suggested that if a book has “gender identity ideology” then it should not be “out there at all.” Ex. 14, Powell email (Sept. 8).

Secretary Powell also stated that students “don’t need to see an ugly story just for the sake of being an ugly story.”⁷ The Board publicly expressed its disdain for the Removed Books, referring to books like *The Bluest Eye* and *Melissa/George* as “disgusting.”⁸ Secretary/Treasurer Waller, after reading two out-of-context passages from *The Bluest Eye* that discuss sexual pleasure and stating that he finds the book “absolutely disgusting for kids to be reading in school,”⁹ President Olsen agreed “it’s disgusting,” and added that she doesn’t know if any kid would read better after engaging with Toni Morrison’s novel, but even if they did, she “wouldn’t care.”¹⁰

⁷ Aug. 12 Board meeting at 1:01:01 (<https://www.youtube.com/live/MC9iw6vtX3o>).

⁸ Aug. 26 Board meeting at 1:19:42 (<https://www.youtube.com/watch?v=lALFn6EY9-8>).

⁹ *Id.* at 1:26:25.

¹⁰ *Id.* at 1:26:37.

These comments make clear not only that the Board’s removal of books is unconstitutional under *Pico*, but also that the Board’s actions would fail any lesser standard of scrutiny as well. Under *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), “[s]chools may restrict student speech only if it ‘would substantially interfere with the work of the school or impinge upon the rights of other students’” or if the school “reasonably forecasts such disruption.” *Cl.G on behalf of C.G. v. Siegfried*, 38 F.4th 1270, 1276 (10th Cir.2022) (quoting *Tinker*, 393 U.S. at 509). “Officials may not restrict speech based on ‘undifferentiated fear or apprehension of disturbance’ or a ‘mere desire to avoid the discomfort and unpleasantness that always accompany [an] unpopular viewpoint.’” *Taylor v. Roswell Indep. Sch. Dist.*, 713 F.3d 25, 37 (10th Cir.2013) (quoting *Tinker*, 393 U.S. at 508–09).

Here, there was no “concrete threat” that the Removed Books would cause “substantial disruption.” *Id.* (quoting *Sypniewski v. Warren Hills Regional Bd. of Educ.*, 307 F.3d 243, 262 (3rd Cir.2002)). Indeed, Vice President Booth stated publicly, while discussing the Board’s decisions with respect to its new library protocols, that “[w]e don’t always put things in place . . . because it’s happening right now in our schools right now. We put things in place so as new people come in, as new things happen, we have up guardrails to protect our students.”¹¹ The vague notion that books containing ideas with which Board members disagree might at some point make “new things happen” in Elizabeth schools does not justify removing them. *See Counts v. Cedarville Sch. Dist.*, 295 F. Supp. 2d 996, 1004 (W.D. Ark. 2003) (“speculative

¹¹ Aug. 26 Board meeting at 1:46:36 (<https://www.youtube.com/watch?v=lALFn6EY9-8>).

apprehensions of possible disturbance are not sufficient to justify the extreme sanction of restricting the free exercise of First Amendment rights in a public school library”). While such books might engender discussion or spirited debate by those who read them, “*Tinker* rejected the idea that a ‘silent, passive’ expression that merely provokes discussion in the hallway constitutes such a threat, particularly if that expression is political.” *Taylor v. Roswell Indep. Sch. Dist.*, 713 F.3d 25, 37 (10th Cir.2013) (quoting *Tinker*, 393 U.S. at 514).

All Board members ultimately voted not to return any of the Removed Books to ESD libraries because each book contained LGBTQ characters, expressed views on race that the Board members disagree with, or otherwise failed to align with the Board’s brand of “conservative values.” Ex. 9, Booth email string (Aug. 4). Under any standard, by depriving students of access to books that fail to conform with the Board’s partisan, political orthodoxy, the District violated students’ right to receive information under the First Amendment and Article II, section 10.

B. The District Violated Authors’ Constitutional Right to Share Their Books Free From Undue Viewpoint-based Censorship.

Books are authors’ tools to share their own viewpoints and ideas with their intended audiences. Ex. 5 Hopkins Decl. at ¶¶ 8-9, 13-14, 19; Ex. 6, Gino Decl. at ¶¶ 6, 8. Authors’ right to share their books is protected under the First Amendment. *See Martin v. City of Struthers, Ohio*, 319 U.S. 141, 143 (1943) (The First Amendment “embraces the right to distribute literature.”); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 64 (1963) (The First Amendment “embraces the circulation of books”).

The First Amendment’s “bedrock principle” is that the “government may not prohibit the expression of an idea simply because society finds [the] idea itself offensive or disagreeable.”

Texas v. Johnson, 491 U.S. 397, 414 (1989). Thus, in most contexts, viewpoint-based discrimination is “presumed to be unconstitutional.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828-29 (1995). But even if a lesser standard were to apply in the context of permitting authors’ expression to remain in school libraries, the District could not satisfy it. For example, even if the Court treated ESD libraries as nonpublic fora, the Board could not constitutionally restrict access to books unless their restrictions were “reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.” *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985) (quoting *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 46 (1983)). Here, the Board’s removal of books from ESD libraries was not “reasonable in light of the purpose of the property,” *Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 682 (1998), because school libraries are designed to “mirror . . . the human race” and offer students “a range of knowledge,” *Roberts v. Madigan*, 702 F. Supp. 1505, 1512–13 (D. Colo. 1989), *aff'd*, 921 F.2d 1047 (10th Cir.1990) —not to mirror the Board’s preferred viewpoints and circumscribe the available knowledge to that which fits into the Board’s prescribed political orthodoxy. Even if the authors’ views are “unpopular or out of the mainstream,” and even if there is “political pressure” to remove books and ideas that community members dislike, the Board must still act with viewpoint neutrality. *Forbes*, 523 U.S. at 683.

Moreover, as discussed above, because the District’s removal decisions were based on no more than a “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint,” the District could not satisfy the standard under *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969). And because the District’s removal decisions

were not motivated by a legitimate pedagogical purpose, the District could not satisfy the standard for restrictions on curricular speech, *see Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 273 (1988); *see also Axson-Flynn v. Johnson*, 356 F.3d 1277, 1292–93 (10th Cir.2004) (“we would be abdicating our judicial duty if we failed to investigate whether the educational goal or pedagogical concern was *pretextual*”).

The Board’s attempt to absolve itself of responsibility for its viewpoint-based censorship by soliciting community input on whether the books should be permanently banished from ESD libraries must fail. Vice President Booth stated that the Board was instituting its new book protocols because the current Board members were elected “on these values to keep your (the majority) values in mind of this community, and that is what we are going to do.”¹² To be sure, some Elizabeth parents expressed their agreement with the Board that the Removed Books are “disgusting” because they acknowledge LGBTQ identities or offer minority perspectives.

But the Board cannot put the majority’s desires above the Constitution’s guarantees. Indeed, “the framers enshrined the right to free speech into the Constitution because they ‘recogniz[ed] the occasional tyrannies of governing majorities.’” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (quoting *Whitney v. California*, 274 U.S. 357, 375—376 (1927) (Brandeis, J., concurring)). “[T]he fact that an idea may be embraced and advocated by increasing numbers of people is all the more reason to protect the First Amendment rights of those who wish to voice a different view.” *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 660 (2000). And the First Amendment prohibits the government from enacting a “heckler’s veto,” censoring

¹² Aug. 26 Board meeting at 1:49:00 (<https://www.youtube.com/watch?v=lALFn6EY9-8>).

speech “simply because it might offend a hostile mob.” *Forsyth Cty., Ga. v. Nationalist Movement*, 505 U.S. 123, 135, 140 (1992); *Flanagan v. Munger*, 890 F.2d 1557, 1566 (10th Cir.1989) (“The Supreme Court has squarely rejected what it refers to as the ‘heckler's veto’ as a justification for curtailing ‘offensive’ speech in order to prevent public disorder.”); *see also Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 549 (N.D. Tex. 2000) (holding unconstitutional a resolution that allowed library card holders to petition to remove books from the children’s area to the adult’s area of the library, in part because it permitted complaining patrons “to veto lawful, fully-protected expression simply because of their adverse reaction to it”).

While a parent might believe that certain library books are disgusting or should not be read by children, if an author’s “message does not fall into one of the recognized categories of unprotected speech, the message does not lose its protection under the First Amendment due to the lawless reaction of those who hear it.” *Bible Believers v. Wayne Cty., Mich.*, 805 F.3d 228, 252 (6th Cir.2015). “Any other rule would effectively empower a majority to silence dissidents simply as a matter of personal predilections and the government might be inclined to regulate offensive speech as a convenient guise for banning the expression of unpopular views.” *Id.* at 243 (quotations and citations omitted).

Thus, even if the Board correctly divined that the majority of ESD parents vehemently support police decisions to use force and disagree with any notion that anti-Black racism persists in modern society, they could not constitutionally remove *The Hate U Give* and other books addressing racism from ESD libraries simply because they express such views. Even if most ESD parents sincerely believed that teenagers should never question their sexuality or develop

romantic feelings for people of the same gender, the Board could not constitutionally remove all ESD students' access to *#Pride: Championing LGBTQ Rights* and other books that discuss the issue simply because the books express the viewpoint that LGBTQ identities are real and/or are not shameful.

Thus, under any standard, the Board's removal of books from ESD libraries because of its disagreement with the viewpoints expressed therein violates Guild member authors' First Amendment rights. Such viewpoint-based censorship likewise violates Article II, section 10 of the Colorado Constitution, which "provides greater protection of free speech than does the First Amendment." *Lewis v. Colorado Rockies Baseball Club, Ltd.*, 941 P.2d 266, 271 (Colo. 1997).

II. Plaintiffs Will Suffer Irreparable Harm Absent Injunctive Relief.

Where, as here, Plaintiffs' First Amendment rights are implicated, there is a presumption of sufficient irreparable injury to warrant preliminary injunctive relief. *Cnty. Commc'ns Co., Inc. v. City of Boulder*, 660 F.2d 1370, 1376 (10th Cir.1981). "[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Verlo v. Martinez*, 820 F.3d 1113, 1127 (10th Cir.2016) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Indeed, "[w]hen an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir.2012) (quoting *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir.2001)).

No amount of monetary relief could fully compensate students for their inability to access books presenting controversial topics and viewpoints in the school library from August 2024 to present. *See Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 269 F.3d 1149, 1156 (10th Cir.2001) ("A plaintiff suffers irreparable injury when the court would be unable to grant

an effective monetary remedy after a full trial because such damages would be inadequate or difficult to ascertain.”). Even if some students are able to find the removed books in other locations, the restriction on their right to access them in the school library—based on the Board’s disagreement with the ideas they contain—still constitutes irreparable injury. *See Schneider v. State of New Jersey, Town of Irvington*, 308 U.S. 147, 163 (1939) (“[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place”); *Minarcini*, 541 F.2d at 582 (“Restraint on expression may not generally be justified by the fact that there may be other times, places, or circumstances available for such expression.”); *Case*, 908 F. Supp. at 876 (“The availability of *Annie on My Mind* from other sources does not cure defendants’ improper motivation for removing the book.”).

Student C.C. and NAACP members’ children are injured both by the loss of access to the Removed Books in the school library, and by the stigma that Defendants’ actions have placed on the Removed Books and the ideas they contain. *See Counts v. Cedarville School District*, 295 F. Supp. 2d 996, 1002 (W.D. Ark. 2003) (holding that requiring parental permission to check out Harry Potter books violated students’ First Amendment rights in part because “the stigmatizing effect of having to have parental permission to check out a book constitutes a restriction on access”); *Pratt v. Indep. Sch. Dist. No. 831, Forest Lake, Minn.*, 670 F.2d 771, 779 (8th Cir.1982) (“The symbolic effect of removing [material from schools] is more significant than the resulting limitation of access to the story.”). C.C. experiences Elizabeth as an “openly homophobic place,” and as a queer teenager, it is important for her to have easy access to books about LGBTQ people who are accepted and proud. Ex. 1, C.C. Decl. ¶ 9; Ex. 2, Crookshanks Decl. ¶¶ 10–13. And unless and until the Removed Books are restored to ESD libraries, C.C. and

the children of NAACP’s members will be restricted from reading books that interest them and that have educational value for them. Ex. 1, C.C. Decl. ¶¶ 10–12.

Guild member authors are similarly suffering irreparable injury absent an injunction barring the District from removing their books from school libraries because of the viewpoints they express. Ex. 5, Hopkins Decl. at ¶¶ 17-19; Ex. 6, Gino Decl. at ¶¶ 9-10. And ESD librarians have already been directed not to order any more library books so as to avoid including any objectionable viewpoints in ESD libraries. *See* Ex. 17, Moore email (Sept. 6); Ex. 18, Moore email (Sept. 10).

Moreover, the Board has made clear that the process of reviewing and removing books is ongoing. Without an injunction ordering Defendants to cease removing books from the school library based on their disagreement with the topics and views expressed in those books, the District will continue to deprive students of access to an unknown number of books and ideas and to deprive authors of the ability to share their views with those students. The removal of books from ESD libraries has already caused Plaintiffs irreparable injury and will continue to do so if not enjoined.¹³ *See, e.g.*, Ex. 15, Snowberger email (Aug. 19) (“Books on [the evolving Sensitive List] could also be removed based on further discussion between members of the community and the Board of Education”); Ex. 1, C.C. Decl. ¶ 19 (“I worry that the District will continue to remove books from my school library if they find out the books acknowledge LGBTQ identities or discuss topics like racism”).

¹³ Aug. 26 Board meeting at 1:30:00 (<https://www.youtube.com/watch?v=lALFn6EY9-8>).

III. The Harm to Plaintiffs Outweighs Any Harm to Defendants.

“[W]hen [a] plaintiff is claiming the loss of a constitutional right, courts commonly rule that even a temporary loss outweighs any harm to defendant and that a preliminary injunction should issue.” 11A Charles Alan Wright et al., *Federal Practice and Procedure* § 2948.2. Here, the District’s removal of books from ESD libraries heavily burdens Plaintiffs’ First Amendment rights—a burden that constitutes irreparable injury as a matter of law.

On the other side of the balance, restoring books to school library shelves will cause no injury to the District. If Board members prefer not to read the Removed Books, and if some of their constituents prefer not to read the Removed Books, they can simply choose not read the Removed Books. Allowing *others* to read those books causes them no harm. *See Sheck v. Baileyville Sch. Committee*, 530 F.Supp. 679, 684 (D. Me. 1982) (Defendants failed to show that restoring *365 Days* to the school library pending decision on merits of Plaintiffs’ First Amendment claims would cause them comparable injury to Plaintiffs); *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 551 (N.D. Tex. 2000) (“Where First Amendment rights are concerned, those seeking to restrict access to information should be forced to take affirmative steps to shield themselves from unwanted materials; the onus should not be on the general public to overcome barriers to their access to fully-protected information.”).

IV. Injunctive relief serves the public interest

“[A]s far as the public interest is concerned, it is axiomatic that the preservation of First Amendment rights serves everyone’s best interest.” *Local Org. Comm., Denver Chapter, Million Man March v. Cook*, 922 F. Supp. 1494, 1501 (D. Colo. 1996). Indeed, “[i]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Awad v. Ziriach*, 670

F.3d 1111, 1132 (10th Cir.2012).

Moreover, allowing Elizabeth students to read freely and expose themselves to new ideas benefits everyone. Whether or not students agree with various authors' viewpoints, identify with various types of characters, or even read the removed books at all, the availability of controversial ideas is critical to ensuring that school libraries remain the "mighty resource in the free marketplace of ideas" that they have always been. *Minarcini v. Strongsville City School Dist.*, 541 F.2d 577, 582 (6th Cir.1976).

PLAINTIFFS SHOULD NOT BE REQUIRED TO POST SECURITY

Federal Rule of Civil Procedure 65(c) references "security in an amount that the [C]ourt considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." The Court may, in exercise of discretion, determine a bond is unnecessary to secure an injunction "if there is an absence of proof showing a likelihood of harm." *Coquina Oil Corp. v. Transwestern Pipeline Co.*, 825 F.2d 1461, 1462 (10th Cir.1987).

Here, for the reasons discussed, the District will not suffer any undue harm if the requested relief is granted. Instead, injunctive relief will preserve the status quo by restoring the parties to the "last peaceable position" existing between them before the dispute developed. *Dry Cleaning To-Your-Door, Inc. v. Waltham Ltd. Liab. Co.*, No. 07-CV-01483-WDM-MJW, 2007 WL 4557832, at *2 (D. Colo. Dec. 20, 2007). The last peaceable position was when the District had not yet begun unlawfully removing books from ESD libraries because they failed to conform with the Districts partisan, political orthodoxy. An injunction restoring the removed books and barring the District from continuing to remove library books with which they disagree will not affect the District's future interests. Accordingly, no bond should be required.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask this Court to grant a preliminary injunction prohibiting the Board and its agents, attorneys, servants, employees, and other representatives from removing books from ESD libraries because of the ideas contained in the books and requiring that they restore to ESD libraries *The Hate U Give* by Angie Thomas; *Beloved* by Toni Morrison; *The Bluest Eye* by Toni Morrison; *The Kite Runner* by Khaled Hosseini; *You Should See Me in a Crown* by Leah Johnson; *#Pride: Championing LGBTQ Rights* by Rebecca Felix; *Melissa/George* by Alex Gino; *It's Your World—If You Don't Like It, Change It* by Mikki Halpin; *The Perks of Being a Wallflower* by Stephen Chbosky; *Thirteen Reasons Why* by Jay Asher; *Looking for Alaska* by John Green, *Nineteen Minutes* by Jodi Picoult; *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke*, by Ellen Hopkins; and *Redwood and Ponytail* by K.A. Holt.

Dated: December 20, 2024.

Respectfully submitted,

s/ Craig R. May

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Attorneys for Plaintiffs

CERTIFICATE OF CONFERRAL

On December 19, 2024, shortly after the Complaint was filed, counsel for Plaintiffs, Craig May, sent an email to Brad Miller of Miller Farmer Carlson Law, the attorney who has represented ESD in recent CORA requests related to the book ban, to confer on this motion. The email provided Mr. Miller with a copy of the filed Complaint and advised that Plaintiffs would soon be moving for a preliminary injunction – based on the same reasoning set out in the Complaint – to enjoin the existing book ban and any future book bans based on the District’s disagreement with the ideas in a book. Mr. May asked that the District respond with its position and also asked Mr. Miller to notify him immediately if Mr. Miller was not representing the school in this matter.

On December 20, 2024, Bryce Carlson, Mr. Miller’s law partner, emailed Mr. May a response. He indicated the district had just gone on holiday break and requested the motion not be filed until after the break to provide his firm with more of an opportunity to review the complaint with the District.

District Superintendent Dan Snowberger has made public statements about the lawsuit and has been quoted as saying that the District “intends to vigorously defend itself” in the lawsuit.

<https://www.cpr.org/2024/12/19/aclu-sues-elizabeth-school-district-over-book-ban/>.

Additionally, in an email to all families in ESD sent today, Mr. Snowberger informed families about the lawsuit, and wrote:

Yesterday, in cooperation with two parents in our community, the American Civil Liberty Union (ACLU) filed a legal claim against the district seeking to force Elizabeth School District to place these materials back into our school libraries. It is sad that some want to force their political agenda on the district and cause parents to worry about what their children might check out from school.

...Know that we will vigorously defend our actions that protect students. For parents who wish to have their children access such materials, our public library is always available and such books can be purchased through other resources...

Our board and I continue to stand behind your rights as parents to make important decisions about your children and will continue to use a common sense approach in selecting materials that are available in our schools. No one should have the right to take that away from you because their values may differ from yours.

Based on ESD's public statements, Plaintiffs are filing the above motion. Plaintiffs are amenable to agreeing to a reasonable extension of time should the District's counsel need it, in light of the upcoming holidays.

CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on December 20, 2024, I electronically filed the foregoing **PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

- **Thomas C. Dec**
dec@wtotrial.com, christman@wtotrial.com
- **Celyn D. Whitt**
whitt@wtotrial.com, behunin@wtotrial.com
- **Timothy R. Macdonald**
tmacdonald@aclu-co.org, mbailey@aclu-co.org, sneel@aclu-co.org

s/ Craig R. May

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:24-cv-

C.C. a minor, by and through her parent and next
friend KRISTEN CROOKSHANKS,

E.S., a minor, by and through his parent and next
friend MINDY SMITH,

NAACP – COLORADO – MONTANA –
WYOMING STATE AREA CONFERENCE (“NAACP”),

THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**DECLARATION OF C.C. IN SUPPORT OF PLAINTIFFS’ MOTION FOR A
PRELIMINARY INJUNCTION**

I, C.C., hereby declare and state as follows:

1. I am a resident of Elizabeth, Colorado. I have personal knowledge of the following facts and if called to testify could and would competently do so.

2. I am 16 years old, and I am in eleventh grade at Elizabeth High School in the Elizabeth School District. I will graduate from Elizabeth High School in 2026.

3. I’ve enjoyed reading since a very young age. I read regularly, especially on weekends and school breaks. Besides being a fun hobby, reading helps me learn about lots of

different topics and ideas, and it helps me process my emotions. I think my reading has also helped me maintain good grades and stay interested and engaged in my classes. I have a 4.0 GPA, and I'm really involved in school activities.

4. Reading gives me perspective. Sometimes when I read about characters going through something really horrible, it makes me realize that whatever I've been worrying about or experiencing isn't that bad, and I know I can get through it. Reading also makes me realize that I'm not alone when I have strong emotions about something or when I have thoughts that I haven't heard other people talk about. Books help me understand that other people have gone through whatever I'm going through, and knowing that helps with my mental health and anxiety.

5. I enjoy reading books in a lot of different genres about all different topics, but I especially enjoy reading books with LGBTQ characters, because I can relate to them.

6. It is important to me to have access to books about topics like LGBTQ history, racism, and mental illness in my school library so that I can learn about a variety of subjects, views, and experiences.

7. I found out that the Elizabeth School District had decided to remove books from our school libraries while I was at school. When I looked at the list of books that were being removed, I was very upset, because it includes books I have read and loved and books I've been wanting to read. I was so upset about the District's decision that I cried about it when I came home from school that day.

8. I was so devastated by the book removals both because it would prevent me and my classmates from browsing or checking out those books in our school library, and because it was so clear that they were targeting LGBTQ people. When a book like *#Pride: Championing*

LGBTQ Rights is selected to be banned from school libraries, it tells me that the people responsible for my education don't want us to be gay, and they don't want us to learn about LGBTQ history or LGBTQ people. I loved *You Should See Me in a Crown* when I read it in middle school, and now Elizabeth Middle School students can't check it out of their library, probably because the main character is queer and/or Black.

9. I experience Elizabeth as a very conservative and openly homophobic place. As a queer teenager here, I think it's really important to have access to books about LGBTQ people who are accepted and proud of who they are. Instead, the District is restricting access to those books and stigmatizing them.

10. I've been wanting to read many of the books that were removed from my school library for a long time. I once read the inside cover of *The Hate U Give*, and it covers a lot of topics and themes that I want to be more educated on. I would check out the book if it were still in our school library, but I can't, because the District removed it.

11. I've also been wanting to read and then watch *The Perks of Being a Wallflower* and *Thirteen Reasons Why*, because I'm interested in psychology and the stories sound interesting from that perspective. But now I can't check those books out of my school library, because the District removed them.

12. I am interested in browsing and/or checking out *Beloved*, *The Bluest Eye*, *The Kite Runner*, *Looking for Alaska*, *Nineteen Minutes*, *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke* in my school library. But now I can't, because the District removed them.

13. I regularly use my school library and its resources. Last year, a book club formed at Elizabeth High School, and I joined it because I love reading and wanted to be exposed to different books. The book club meets in the Elizabeth High School library.

14. Before the book club starts, I often browse the bookshelves in the library. I sometimes notice books I've never heard of that I want to read.

15. Now that the District is removing books that the school board doesn't like from my school library, browsing the shelves is different. I feel like I'm only allowed to look at books that have been pre-approved by people with their own political agenda. Now, when I browse, I'll only be able to find books that fit the school board members' worldview, and based on the books they've removed and labeled as "sensitive," I don't think people like me fit into their worldview.

16. The District's removal of books from my school library prevents me from accessing information about a wide variety of topics and views there.

17. When I saw books like *The Hate U Give*, *Beloved*, and *The Bluest Eye* on the list of removed books, it looked to me like the District was trying to silence the voices of minorities.

18. I don't understand why the District is removing books about things people are actively experiencing. I get that some parents don't want their kids to read about difficult topics like racism, violence, drugs, or sex. But some kids are dealing with those things in their own lives, and in my experience, it has been helpful to read stories I can relate to.

19. I worry that the District will continue to remove books from my school library if they find out the books acknowledge LGBTQ identities or discuss topics like racism.

20. I also worry that I and others who discuss or learn about the ideas in the removed books will be stigmatized because the District has made clear that there is something wrong with those ideas and viewpoints.

21. I don't think books should be banned from school libraries based on a few people's opinions about them. In my English class, we got to choose a topic to write an essay on, and I chose book bans because I feel like they are very harmful to students. Books are one of the main ways students like me can learn about the world, and by removing books from school libraries, the District is preventing students from becoming as knowledgeable and well-rounded as we could be.

22. I remember when my older sister was a senior at Elizabeth High School, and she had a class assignment to read a book that has been routinely banned and write about it. She chose *Nineteen Minutes*, which has now been removed from our school library. I would learn a lot from that kind of project because it challenges students to explore controversial topics, but I don't know how we could possibly have an assignment like that now if the books are being removed from our own school library.

23. Besides removing certain books from our libraries, it is my understanding that the District has decided to prohibit students from sharing books with each other.

24. I commonly share books with my classmates and friends. Now that sharing books is apparently against the rules, it is harder to learn from each other and talk about books we enjoyed together. I also worry that I could get in trouble if I try to share books with my friends at school or if they try to share books with me.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 18, 2024.

CC

C.C.

Exhibit 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:24-cv-

C.C. a minor, by and through her parent and next
friend KRISTEN CROOKSHANKS,

E.S., a minor, by and through his parent and next
friend MINDY SMITH,

NAACP – COLORADO – MONTANA –
WYOMING STATE AREA CONFERENCE (“NAACP”),

THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**DECLARATION OF KRISTEN CROOKSHANKS IN SUPPORT OF PLAINTIFFS’
MOTION FOR A PRELIMINARY INJUNCTION**

I, Kristen Crookshanks, hereby declare and state as follows:

1. I am over 18 years of age and a resident of Elizabeth, Colorado. I have personal knowledge of the following facts and if called to testify could and would competently do so.
2. I am currently the parent of a 16-year-old student, C.C., who attends Elizabeth High School. I intend for C.C. to continue to attend Elizabeth High School through high school graduation.
3. I also have a 19-year-old daughter who graduated from Elizabeth High School.

4. My daughter C.C. has always been a voracious reader. I encourage her reading habits because she is developing critical thinking skills, and I want her to be able to learn about a wide variety of topics both related and unrelated to what she is learning in class. If I tell C.C. what to think or prevent her from learning about certain topics or views, that will inhibit her personal growth.

5. I want C.C. to learn that there are lots of people in the world who don't look, live, or love like she does. Reading helps her understand that.

6. When my daughter is able to access a diverse array of books that are interesting to her, it makes her more excited to read and to discuss what she's reading with me. We are able to engage in spirited dinner-table discussions about values, academics, and politics when C.C. has access to interesting information.

7. I became concerned about censorship in Elizabeth School District when the school board cancelled the Scholastic book fair because of the content in Scholastic's books. I learned that the District had changed its book fair vendor from Scholastic to SkyTree Books, which promised a book fair without any LGBTQ content, critical race theory, foul language, explicit content, or dark magic. I started watching the school board more closely because I was concerned about my daughter losing access to books that she would enjoy and learn from.

8. When I learned that the Elizabeth School District was removing books from my child's school library, I was angry and disheartened. I believe all children in Elizabeth should have access to all of the books that the District removed. I don't want C.C. or her classmates to be deprived of access to books simply because her school board doesn't like them.

9. C.C. uses her school library and its resources, and she was devastated when she learned that the District was removing books from school libraries.

10. I want C.C. to have access to all of the following books, which were previously available in her school library: *The Hate U Give*, *Beloved*, *The Bluest Eye*, *The Kite Runner*, *The Perks of Being a Wallflower*, *Thirteen Reasons Why*, *Looking for Alaska*, *Nineteen Minutes*, *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke*.

11. When I read the list of books that the District removed from school libraries, it was clear to me that the District was targeting books about LGBTQ people and people of color.

12. By removing books like *#Pride: Championing LGBTQ Rights*, *The Perks of Being a Wallflower*, *You Should See Me in a Crown*, *It's Your World—If You Don't Like It Change It*, and *Melissa/George*, the District has stigmatized LGBTQ identities and book about those identities, which is particularly harmful to my family, because my daughter identifies as queer.

13. I want my daughter to see and read books about LGBTQ people in her school library and have access to books with characters she can relate to. I never want her to feel ashamed or alone because of her sexual orientation.

14. I am a member of the National Association of the Advancement of Colored People, and I believe in equal rights for people of all races. I believe reading books by authors of color about characters of color is crucial to developing empathy and understanding in our multicultural world.

15. C.C. is white, as are most of her classmates. I think it is important that C.C. have access to books about people of color to help her understand other people's experiences and to prepare her to participate in a diverse society. In particular, C.C. should be able to access books

by Toni Morrison, Angie Thomas, and Khaled Hosseini in her school library. By removing their books, the District has stigmatized them and their ideas.

16. The stigma is compounded by the books that the District has placed on the Sensitive Topic Book List, many of which also contain characters of color and/or LGBTQ characters. I don't want to receive a notification every time C.C. checks out a book that her school board believes is sensitive. I have different views on what is sensitive than the board does, and I don't want my child to think that there is anything wrong with reading books like *The Hunger Games* or *Anne Frank: Diary of a Young Girl*.

17. I value the diversity that exists in our community, and I want my daughter to have access to a diversity of books so that she can learn about other people's experiences and develop empathy and compassion for them.

18. I want my child to have access to all books that she wants to read, even if I or other parents disagree with the ideas or views in those books.

19. Sometimes C.C. does read books that I dislike or don't agree with. We learn more about each other and the topic of the book by talking about our disagreements and sharing our perspectives.

20. I understand that some of the books were removed because of sexual content that made school board members uncomfortable. C.C. is a mature 16-year-old who will soon apply to college. I don't want her to be denied access to books in her school library simply because they discuss sex. I would rather C.C. learn about these facets of human life from books than from the Internet or TV shows.

21. I have read several of the books that were removed from the Elizabeth High School library, including *Beloved*, *Looking for Alaska*, and *Nineteen Minutes*. These books address difficult topics, but they also teach valuable lessons and have expanded my horizons. I want C.C. to be able to learn those lessons and be exposed to ideas that challenge her and help her grow. As she navigates adolescence and young adulthood, I want her to be informed about difficult issues like racism, discrimination, alcohol, drugs, sex, war, mental illness, and religion. I don't want C.C. to be afraid to learn about or discuss these topics because the District has stigmatized them.

22. Because the District has stigmatized certain books and ideas, I fear I will be labeled as an irresponsible or inadequate parent for allowing C.C. to read books that school board members don't like. I was hesitant to sue my child's school district, but her access to diverse reading material—and other Elizabeth students' access to diverse reading material—is so important that I knew I needed to take action.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 18, 2024.



Kristen Crookshanks

Exhibit 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:24-cv-

C.C. a minor, by and through her parent and next
friend KRISTEN CROOKSHANKS,

E.S., a minor, by and through his parent and next
friend MINDY SMITH,

NAACP – COLORADO – MONTANA –
WYOMING STATE AREA CONFERENCE (“NAACP”),

THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**DECLARATION OF MINDY SMITH IN SUPPORT OF PLAINTIFFS’ MOTION FOR A
PRELIMINARY INJUNCTION**

I, Mindy Smith, hereby declare and state as follows:

1. I am over 18 years of age and a resident of Elizabeth, Colorado. I have personal knowledge of the following facts and if called to testify could and would competently do so.
2. My son, E.S., is in preschool at Running Creek Elementary in the Elizabeth School District.
3. I intend for E.S. to continue to attend Running Creek Elementary through fifth grade. I intend for him to attend Elizabeth Middle School and then Elizabeth High School through graduation.

4. E.S. uses the Running Creek Elementary school library, and he will continue to use the Running Creek Elementary school library as he gets older.

5. I have a younger daughter who is not yet in preschool. I intend for her to attend Running Creek Elementary when she is old enough for preschool, and then Elizabeth Middle School, and then Elizabeth High School.

6. It is important to our family that our children have access to a diverse array of reading materials so that they grow up to understand the value in many different ideas and viewpoints.

7. When I heard that the school board had “temporarily suspended” books from our District’s school libraries, I was angry and upset. When the school board solicited feedback on whether to return the books or not, I filled out their forms and expressed my view that each of the removed books should be returned to school libraries. I have read several of the books that were removed. None of them contain any information that I’m concerned about E.S. having access to in the school library.

8. My husband, who was equally as upset about the removal of books from our child’s school library as I was, also filled out the school board’s feedback forms. He wrote that he would prefer that our child explore difficult subjects in an educational institution than learn about them from hearsay, whispers, gossip, and their peers, without the hope of open discussion and psychological safety.

9. I do not want E.S. to be deprived of access to books just because his school board—or other parents in our district—disagree with the ideas in those books.

10. By banning books like *Melissa* (formerly published as *George*) from my son’s school library, the District is sending the message that it is not okay to be transgender—or even to

learn about transgender people and experiences. That creates an unwelcoming and unsafe environment in my son's school.

11. When I look at the other books that the District has removed from our public school libraries, it is clear that the District is trying to prohibit students from learning about LGBTQ+ identities and critically acclaimed literature by and about people of color. In removing these books from our District's school libraries, the school board has stigmatized LGBTQ+ identity and discussions about race and racism.

12. The school board has made the stigma even worse with its Sensitive Topic Book List. I understand that the purpose of that list is to notify parents when their children check out books on the list. But I don't want to receive those notifications *just for books that the school board dislikes*. I disagree with the school board about which topics are "sensitive" and which are not. My child should have unrestricted access to all of the books that were in his school library before the school board started removing the books they didn't like. I don't want him to think that some books or ideas are bad or wrong just because his school board disagrees with them.

13. I don't want E.S. to be educated in an environment where LGBTQ+ people and people of color are stigmatized. I want him to learn about all different identities, experiences, and lifestyles. I want him to feel free to discuss differing viewpoints and explore challenging ideas.

14. I am a member of the National Association of the Advancement of Colored People, and I believe that people of all races should be treated with respect and dignity.

15. I want my son to learn about race and racism in America. One way to do that is to be exposed to books by and about people of color. I don't want the first lesson my son learns about Toni Morrison to be that her books were removed from school libraries by his school board.

16. I want E.S. to have access to books about all kinds of people so that he can develop empathy and learn to understand other people's experiences.

17. Having access to all kinds of interesting ideas and information is helpful in encouraging E.S. to develop his reading skills. I want him to realize that, the more he reads, the more he will be exposed to interesting ideas and viewpoints that might be different from his own. If the available reading materials are restricted to those that his school board agrees with, then E.S. will only be able to learn about a narrow selection of ideas. In other words, he will be less motivated to read if he can only read books his school board likes.

18. I want E.S. to have the opportunity to browse *Melissa/George* in his school library. He should be able to check out the book if he finds it interesting or informative, or if he wants to bring it home so that we can read it together.

19. I want E.S. to have the opportunity to browse *Redwood and Ponytail* in his school library. He should be able to check out the book if he finds it interesting or informative, or if he wants to bring it home so that we can read it together.

20. I want E.S. to have the opportunity to browse books with all different viewpoints in his school library. I want him to be able to check out any book that he finds interesting or informative, even if it contains viewpoints that the school board dislikes.

21. E.S. usually isn't interested in books that are above his reading level. However, when he sees a cover he likes or hears about a book that sounds interesting to him, I want him to be able to check out the book so that I can read it to him or with him, and we can discuss it together.

22. E.S. often looks at books with other students in his class. Sharing books is important both to his education and his socialization. I want him to remain free to share and discuss books with others.

23. I understand that the school board members, and some parents in our community, will disagree with my decision to allow E.S. to read certain books—they might even view me as an irresponsible parent for declining to censor my child's reading material. But I am raising E.S. to be kind, respectful, and considerate to all people in our diverse society. Just as I don't want him to learn to judge people based on a single attribute about them, I don't want him to learn to judge books based on a single page or theme they contain. I believe that growing up with books that express a diversity of views, ideas, and opinions is crucial to developing critical thinking skills, understanding our complex world, and challenging injustice where we see it.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 17, 2024.



Mindy Smith

Exhibit 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:24-cv-

C.C. a minor, by and through her parent and next
friend KRISTEN CROOKSHANKS,

E.S., a minor, by and through his parent and next
friend MINDY SMITH,

NAACP – COLORADO – MONTANA –
WYOMING STATE AREA CONFERENCE (“NAACP”),

THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**DECLARATION OF PORTIA PRESCOTT IN SUPPORT OF PLAINTIFFS’ MOTION
FOR A PRELIMINARY INJUNCTION**

I, Portia Prescott, hereby declare and state as follows:

1. I am over 18 years of age. I have personal knowledge of the following facts and if called to testify could and would competently do so.

2. I am the President of the NAACP – Colorado – Montana – Wyoming State Area Conference. I am authorized to provide this declaration on behalf of this state conference.

3. The National Association for the Advancement of Colored People (NAACP) was founded in 1909 with the mission of ensuring political and educational equality for all people and

combatting racial discrimination. The organization works to promote policies and practices that expand human and civil rights, eliminate discrimination, and accelerate the well-being, education, and economic security of Black people and all people of color. We advocate for equitable education policies to ensure that Black students and their peers have access to culturally relevant resources.

4. The NAACP Colorado – Montana – Wyoming State Area Conference assists in the implementation of the mission of the NAACP in these three states. When school districts in Colorado take actions that will hinder the education of Black students and their peers, our mission and our members are harmed.

5. The NAACP Colorado – Montana – Wyoming State Area Conference includes more than 2,000 members who reside in Colorado. While most of our members identify as Black or African American, we also have members who identify as white, Native American, of mixed descent, or other races.

6. The NAACP aims to support all Black people and members of minority communities, regardless of membership in NAACP. We are a resource for members and nonmembers across the mountain west who encounter racial discrimination and other attempts to interfere with the education, safety, and well-being of Black people and other marginalized people.

7. Our members include parents whose children attend Elizabeth public schools. They have shared that the Elizabeth School District's removal of books from school libraries has interfered with their children's ability to access books by and about people of color. They have also shared that, by removing Toni Morrison's *The Bluest Eye* and *Beloved*, Angie Thomas's *The Hate U Give*, Khaled Hosseini's *The Kite Runner*, and Leah Johnson's *You Should See Me in a*

Crown from school libraries, the District has cast a stigma over celebrated authors of color and their stories. Our members have also shared that many of the books that the District removed from school libraries were about LGBTQ rights or LGBTQ characters. By removing those books, the District is sending the message that there is something wrong with LGBTQ people—including students in Elizabeth schools.

8. One NAACP member who has a child at Running Creek Elementary shared her belief that the District's removal of these books from school libraries stigmatizes the ideas they contain, and that this stigma interferes with her child's ability to learn and grow. Another member who has a child at Elizabeth High School shared that her daughter was devastated when the District removed books from her school library because she read the list of removed books to mean that gay students are not welcome in Elizabeth schools. Her daughter wants to check out the books that were removed from her school library, but now she cannot, because of the school board's political agenda.

9. Some NAACP members removed their children from Elizabeth schools because of the District's decision to remove books from their school libraries. For example, one member who had a Fifth Grader enrolled in Running Creek Elementary saw the removal of books as yet another manifestation of racism in the District. She unenrolled her child in Elizabeth public schools because she wanted her daughter to be educated in a school that values her and doesn't deprive her of access to books about Black people she can relate to. Another member who had a preschooler enrolled in Running Creek Elementary unenrolled her child because she did not want her daughter subject to the Board's partisan whims. She wants her child to have access a wide variety of books,

and she does not want her child to think there is anything wrong with reading about LGBTQ+ people or people of color.

10. Elizabeth's removal of books from Elizabeth's school libraries harms many of our members because it signals that there is something wrong with books that discuss racism, discrimination, and LGBTQ+ people. I was appalled to hear Elizabeth School Board members publicly refer to *Beloved* as "disgusting," as were many NAACP members. As the District continues to deprive students access to books that they personally find "disgusting" and to determine which other books are so "disgusting" that students should not be able to access them, our members and our members' children will continue to suffer the consequences. Students in Elizabeth public schools can no longer go to their school library to explore Toni Morrison's or Angie Thomas's perspectives on Black experiences in this country. They can no longer educate themselves about LGBTQ+ rights or history in their school libraries using books by Leah Johnson, Rebecca Felix, Alex Gino, or Mikki Halpin. This impacts their education, their personal development, and their well-being.

11. Elizabeth School District's removal of books from school libraries runs directly counter to the NAACP's mission and our state conference's goals. While we advocate to educate children about racism and discrimination, the District has targeted these topics for removal from school libraries. While we advocate to make schools more equitable and welcoming to people of all races, genders, and sexualities, the District has indicated that stories by and about people of color and LGBTQ people are disgusting and deserve to be removed. While we fight to empower young students to explore challenging ideas and develop their critical thinking skills, the District

is excising materials that could help them do just that from their school libraries. The harms that the District is inflicting on our members and our organization simply cannot be overstated.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 18, 2024.

/s/ Portia Prescott

Portia Prescott, President of the NAACP – Colorado –
Montana – Wyoming State Area Conference

Exhibit 5

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLORADO

Civil Action No: 1:24-cv-

C.C., a minor, by and through her parent and next friend
KRISTEN CROOKSHANKS,

E.S., a minor, by and through his parent and next friend
MINDY SMITH,

NAACP – COLORADO – MONTANA – WYOMING
STATE AREA CONFERENCE (“NAACP”),

THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

DECLARATION OF ELLEN HOPKINS

I, Ellen Hopkins, declare that the following facts are true and correct to the best of my
knowledge and belief:

1. I am over the age of 18 years. I have personal knowledge of the facts stated
below. If I were called to testify, I could and would competently do so under oath.
2. I am an award-winning author of fourteen *New York Times* Bestselling novels-
in-verse. My fifteenth young adult novel, *SYNC*, was published on August 27, 2024.
3. As a former freelance journalist, I have published hundreds of articles on various
topics. I am also a regular speaker at schools, book festivals, and writers’ conferences
worldwide.

4. I am a member of The Authors Guild.

5. I have received many awards over my extensive career. In 2001, I received the Society of Children's Book Writers Charlotte's Web Award for outstanding contributions to children's literature by a new author. In 2013, I received the Joan F. Kaywell Award, which is given to an author who best represents an adolescent's overcoming of situations not in their own making—in such a way that provides significant hope to a reader. In 2015, I was inducted into the Nevada Writers Hall of Fame, where my name hangs beneath Mark Twain's.

6. I've also received many awards for several of the books that the Elizabeth School District removed from their high school library. With over 1.5 million copies sold, the *Crank* trilogy (*Crank*, 2004; *Glass*, 2008; *Fallout*, 2010) has received twenty-nine awards, including a Quills Award; the Book Sense Top 10; New York Public Library Recommended for Teens; three American Library Association/Young Adult Library Services Association Top Ten for Teens; an International Literacy Association Teens' Choice; an Abe Award; Soaring Eagle Award; and Green Mountain Book Award. The *Burned* duology (*Burned*, 2006; *Smoke*, 2013) has received multiple awards including a nomination for the National Book Award in 2007; two American Library Association Best Books for Young Adults Awards; a Children's Book Council Children's Choice Books Award finalist; an International Literacy Association Young Adults Award; and the Tayshas Reading Award. *Identical* was published in 2010, and received numerous awards, including a Kirkus Best Book for Teens; a New York Public Library Best Books for Teens; an American Library Association Quick Picks for Reluctant Readers; a Young Adult Library Services Association Top Ten Books for Teens; and the Pacific Northwest Young Readers Choice Award.

7. My first novel, *Crank*, is a semi-autobiographical novel in verse that delves into

the harrowing effects of drug use. The book is a fictionalized account of my daughter's teenage years and introduces Kristina Snow, a straight-A honor roll student, who is peer pressured into trying methamphetamines and then struggles with addiction. Its sequel, *Glass*, details her journey as she graduates from street meth to crystal meth, trafficking the drug to support her addiction. She is ultimately arrested and taken to jail. The third book in the trilogy, *Fallout*, moves into the points-of-view of her three oldest children, who have lost their mother to addiction.

8. *Crank* reflects my viewpoint on adolescent drug use, grief, and intimacy. This novel not only shines a light on the destructive nature of addiction but it also explores themes of family dynamics, identity, and resilience. *Crank* has received widespread acclaim for its honesty and lyrical verse, captivating readers while providing a voice for those who are often unheard. *Crank* is a required text in many high school English classes. Teachers have told me that *Crank*, and many of my other books, inspire critical conversations in classrooms.

9. I have heard from thousands of readers who say *Crank* helped them turn away from drugs or offered insight into a loved one's addiction. One reader wrote to me: "I'm honored to get this opportunity to tell you that *Crank* saved my life, opened my eyes to the world I was exposing myself to and rapidly getting drowned in. And then, two years later it did the very same for my little brother who found it in my moving boxes and read it thinking it was a teen book about kids doing drugs. He was doing meth the night he read it, with his at the time girlfriend. They quit the very next day. Thank you Ellen, you've touched our lives forever and I'll always be more thankful than you'll ever know for your books."

10. *Identical* is about twin sisters whose father is abusing one of them. Publisher's Weekly's starred review of the book states: "Brief, gutsy confessions reveal a history of sexual abuse and emotional neglect, and it's not clear that both girls will survive it. Hopkins's verse is

not only lean and sinuous, it also demonstrates a mastery of technique.” Kirkus, an industry-trusted source for book reviews, also gave it a star, which I understand is only awarded to a small percentage of the thousands of books reviewed each year. Kirkus wrote “Hopkins’s gift with free verse reaches new heights in this portrait of splintered identical twins . . . Kaeleigh and Raeanne maintain distinct voices throughout as they wrestle with psychic damage and an astonishing, devastating realization. Sharp and stunning, with a brilliant final page.”

11. With *Identical*, childhood sexual abuse is a pervasive problem. Unfortunately, the perpetrator is sometimes a parent, and in those cases the victims are often unaware that it is wrong. And for those who do, many are afraid no one will believe them if they ask for help. A reader once wrote to thank me for “not closing the door. Because when you do, people don’t believe something’s happening behind it.” I want readers to understand that yes, it is wrong and yes, someone will believe them. That there is help, and to encourage them to ask for it sooner rather than later. And for readers not experiencing it, to develop understanding of the issue, and empathy for victims. Maybe even to offer help.

12. *Burned* and its sequel, *Smoke*, tell the story of Pattyn von Stratten, the oldest of seven sisters raised in a religious but abusive home. Pattyn has questions about God and her place in the world, but when she experiences the first stirrings of love and her father finds her in a compromising situation, things spiral out of control. Founded in 1978, Voice of Youth Advocates, or (VOYA), magazine is the leading library journal dedicated to the needs of young adult librarians, the advocacy of young adults, and the promotion of young adult literature and reading. *Voya*’s starred review had this to say: “The book is rife with real issues and demanding attention, leaving the reader to realize that when the smoke clears, redemption is always possible

. . . the character’s decisions transcend the page and leave much to be discussed and contemplated among readers.”

13. Similarly, with *Burned* and *Smoke*, express my viewpoints on family problems, alcoholism, and physical abuse. I want readers to know there is help if you know where to go or who to ask, or how to recognize solutions to the problem. My goal is to shine a light on the problem, and show a way out. All of my books, including these, offer resources in the back matter for people experiencing the issues I’m writing about. The journeys might be fictional, but satisfying endings can be very real.

14. My novels address teenage struggles, including the perils of addiction, sexual desire, mental health, and abuse, and express my viewpoints on these topics. My goal is to connect through words with young adults on the brink of making dangerous choices and bring perspective through cautionary tales.

15. Many of my books have provided young adults with the resources they need to navigate the challenges of their teen years. I have heard from thousands of teens over the years who have said that my books helped them navigate difficult situations and avoid going down dangerous paths. My books have resonated with countless readers, offering a mirror for their struggles and a roadmap to understanding the complexities of young adulthood.

16. Because my books are written in verse, they contain fewer words than most novels, but just as much substance. I use poetry to express complex ideas in an accessible way. I have heard from many teenagers who didn’t think of themselves as ‘readers’ or struggled to finish entire novels until they discovered my books in verse. My books help them develop their reading skills and foster an appreciation for language and literature.

17. School libraries are important to my work and livelihood. Many of my readers

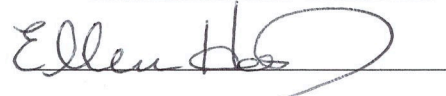
first find my books there, and schools have hired me to come and speak with students about my books, including those removed from Elizabeth School District libraries.

18. Elizabeth School District's book ban silences important dialogues by preventing students from encountering my books in the first instance. Labeling my books as "sensitive" or inappropriate for students—let alone removing them from school libraries—stigmatizes me, the ideas and viewpoints contained in my work, and the students who read my books.

19. Elizabeth's removal of my books from their high school library limits my ability to reach my intended audience and diminishes the opportunities for open dialogue about difficult subjects. Such censorship denies readers—especially young people—the chance to immerse themselves in stories that validate their experiences, broaden their perspectives, and foster empathy. I fear that other school districts will copy Elizabeth School District and similarly remove my books from their school library shelves because they disagree with the ideas and viewpoints I express in those books.

20. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 18 day of December 2024, in Cape Girardeau, Missouri

A handwritten signature in dark ink, appearing to read "Ellen Hopkins", written over a horizontal line.

Ellen Hopkins

Exhibit 6

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLORADO

Civil Action No: 1:24-cv-

C.C., a minor, by and through her parent and next
friend KRISTEN CROOKSHANKS,

E.S., a minor, by and through his parent and next
friend MINDY SMITH,

NAACP – COLORADO – MONTANA –
WYOMING STATE AREA CONFERENCE (“NAACP”),

THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

DECLARATION OF ALEX GINO

I, Alex Gino, declare that the following facts are true and correct to the best of my
knowledge and belief:

1. I am an author whose work has been instrumental in fostering understanding and
acceptance of LGBTQIAP+ (Lesbian, Gay, Bisexual, Transgender, Queer or Questioning,
Intersex, Asexual or Aromatic Pansexual and + to include any other not listed identity under the
umbrella of sexualities and genders or lack thereof.) identities, particularly among young readers.
I’ve written five middle-grade books: *Green*, *Alice Austen Lived Here*, *Rick*, *You Don’t Know
Everything*, *Jilly P!*, and *Melissa* (sometimes referred to as *George*, including by Elizabeth
County School District (“ESD”), however, the proper title is *Melissa*).

2. I am currently a member of The Authors Guild.

3. I believe LGBTQIAP+ people deserve the same rights, respect, and resources as all other people.

4. My debut novel, *Melissa* (originally published as *George* in 2015), tells the story of Melissa, a transgender girl who struggles to be seen and accepted for who she truly is. The main character was given the name George at birth, but the character does not want to use that name for herself—she uses Melissa. When people look at George, they think they see a boy. But she knows she is not a boy. George thinks she will have to keep this a secret forever. *Melissa* offers an authentic portrayal of a child navigating gender identity while addressing themes of courage, self-discovery, acceptance, and friendship.

5. *Melissa* has received numerous accolades including the American Library Association’s prestigious Stonewall Book Award for exceptional LGBTQIAP+ children’s literature and a Lambda Literary Award. It has also won the Children’s Choice Book Awards for Debut Author and the Juvenile California Book Award, and it has been named to several “best of” lists, including Audiofile’s *Top 100 Kids Books of All Time*. *Melissa* has been published in fourteen languages to reach young readers throughout the world. Through my novel, I share my viewpoints and creative expression.

6. I did not see any positive depictions of LGBTQIAP+ people in media growing up. The first time I found the word *genderqueer*, it was written in a book. I was 19 and I finally felt real. I had language to describe who I was and knowledge that there were other people like me as a genderqueer (or nonbinary) person. In *Melissa*, I wrote the sort of book I wish I had read growing up, so that young transgender people today might not be as alone as I was. *Melissa* expresses my viewpoint on gender identity.

7. Despite its accolades and impact, my novel has been removed from ESD's libraries. Removing books like mine from school libraries silences vital narratives and reinforces stigmas and misunderstandings about the LGBTQIA+ community. By removing *Melissa* from its bookshelves, ESD denies young readers the opportunity to see themselves reflected in the literature and sends the message that there is something bad or wrong with stories about people like them. Removing *Melissa* from school libraries denies students access to a story that fosters empathy and inclusivity.

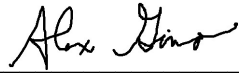
8. *Melissa* is a vital resource for children, educators, and parents seeking to better understand gender diversity. I have received hundreds of emails and other correspondence from readers who have been impacted positively by *Melissa*. Young transgender people have felt seen and young cisgender people have expanded their empathy for their transgender friends and family. Adults tell me about how *Melissa* has helped the children in their lives—as well as themselves—learn and grow. Many adult LGBTQIAP+ people tell me that my story helps to heal deep, old emotional wounds, and that they wish they had had access to a book like *Melissa* when they were Melissa's age (fourth grade). I have spoken with adults who have been guided towards compassion for their children and grandchildren through Melissa's story, and children who have been bolstered by *Melissa* to tell people who they are. I have spoken at over a hundred public libraries and schools, from elementary through university levels, sharing the importance of being ourselves and seeing each other for who we are. I regularly hear that thoughtful conversations about empathy and kindness extend into the weeks after my visit. Stories like *Melissa* help LGBTQIAP+ youth by providing connection and fostering empathy in those who might otherwise cause them physical and/or emotional harm.

9. Many of my readers are children. Many lack the resources or ability to access my

books outside of the school library. Removing my books from school libraries makes it functionally impossible to reach my audience. By removing my book from its libraries, ESD is preventing me from communicating my viewpoint with young Americans who attend schools in ESD. I fear that other school districts will see how ESD is treating *Melissa* and the viewpoint I express through that book and also remove my books from their library shelves.

10. In the past two years, my writing income has dropped drastically. This drop reflects the harmful impact of book bans across the country. Royalties fluctuate, but in 2021-23, I earned an average of \$15,245 every six months. My latest bi-annual royalty check totaled only \$5,752, and the check before that was for \$8,168. Further, I am receiving a fraction of the speaker invites I did a few years ago – at schools, libraries, and professional conferences. In 2022, I received \$37,003 in honoraria from 24 groups. In 2023, I earned \$18,565 from sixteen groups. This year, I have received \$12,250 for appearances from only six groups. I have appearances scheduled with one group (Lambda Literary Writers in Schools) for \$700 in 2025. These are tangible outcomes caused by the recent surge in book bans, including the ban in place in ESD. The surge in book bans has created a chilling effect, leading schools and school districts to omit my books from their collections due to perceived controversy over the viewpoints and ideas expressed in them. Additionally, due to the decline in royalty and speaker-related income, I have had to take on part-time work as a Personal Care Assistant, which leaves me less time to work on future books, limiting my future income and ability to continue to share my ideas and viewpoints with readers. My writing time and state of mind are also negatively impacted by media and individuals reaching out to me to respond to book bans like the one in place in ESD.

11. I declare under penalty of perjury that the foregoing is true and correct.
Executed on this __18th__ day of _December_ 2024 in __Shutesbury__, Massachusetts.

A handwritten signature in black ink, appearing to read "Alex Gino", is positioned above a horizontal line.

Alex Gino

Exhibit 7



REQUEST FOR BOARD ACTION

To: ESD Board of Education
From: ESD Chief Academic Officer, Kim Moore
Date: August 5, 2024
Business Date: August 12, 2024
Subject: 9.7 Library Sensitive Topic Protocol and Book Lists

Recommendation

Approve protocol and book lists as presented.

Background and Findings:

During the 2023-24 school year, the Board Curriculum Review Committee (BCRC), worked to develop a protocol regarding handling books that may contain sensitive topics. The BCRC drafted a protocol that would provide guidelines for identifying books and creating a sensitive topic book catalog that would be available to parents. The protocol also provides an option for parents to opt their children out from being able to check out identified books. It also provides guidance that parents will receive an email if their child does check a book that is identified as being in the sensitive topic list.

The BCRC also worked during the spring to identify books that should be flagged in Destiny that contain sensitive topics. The list should be reviewed and approved by the BOE before books are flagged in Destiny.

Members of the BCRC also identified books that were considered to contain highly sensitive topics and suggested these be further scrutinized by public review and determined if they should remain in the library collection. These books are suggested to be offered for public review and then a determination made by the board as to whether they should be weeded from the library collection. The list of identified books is attached along with a suggested public input form that will accompany the public display in the district office.



Elizabeth School District Library Services Guiding Protocols

The Elizabeth School District's mission is to provide students with excellent learning opportunities that inspire a passion for learning, develop individual potential, and prepare them for a successful future. This requires access to resources facilitating such passion and interest. Additionally, Elizabeth School District believes that parental involvement and community collaboration are equally necessary to ensure students' most effective educational services pursuant to the District's educational philosophies and goals. To that end, the Board Curriculum Review Committee, and pursuant to District policy, has developed the following guiding protocols to ensure a consistent, transparent, and balanced approach to library services.

Purpose of Library Services

Library services in the Elizabeth School District aim to ensure students have access to age-appropriate materials necessary to facilitate the district's mission of providing students with excellent learning opportunities that inspire a passion for learning.

System of Transparency

The system of transparency within the Elizabeth School District library system is anchored in three primary protocols: a well-defined and consistent process for the ongoing analysis of resources and obtaining future materials, parental access to their student's circulation history and the library registry, and a notification system to inform parents and guardians of materials their students is attempting to access which have been flagged for sensitive content.

Library materials include any print or nonprint materials that are available to students for general use through the District schools' libraries and classrooms, including books, e-books, material available in a digital library database, streaming videos, sound recordings, periodicals, newspapers, applications and subscription content in any form, along with any films or videos in any format.

Protocol 1 - Analysis and Selection Process

This protocol, in conjunction with related District policies, is established to ensure the review of library materials in the District is conducted in a manner that promotes the educational needs and values of the community and considers age-appropriateness. It seeks to ensure transparency in the management of library materials in the District and aims to promote openness and accountability in providing access to educational resources for students and the school community.

- Library and/or district staff as well as members of the BCRC will evaluate existing library materials for potential age-level sensitive content using the following

resources: Goodreads, Trigger Warning Database, Book Trigger Warnings, booklooks.org, and/or Junior Library Guild. Staff will also evaluate any parent/guardian identified books of concern which are brought to the BCRC or district administration for review. Although any flag for sensitive content will be considered for age-level appropriateness, special attention will be given to: graphic violence, sexual content, profanity/obscenity, ideations of self-harm or mental illness, religious viewpoints, drug or excessive alcohol use, racism/discrimination. Materials reviewed and flagged may be purchased if the school principal confirms that such library materials will contribute to the attainment of course objectives directly related to Board-adopted academic standards. However, these materials will be considered for labeling as sensitive content and reported to the BCRC in the annual library services summary, or as otherwise required.

- All materials maintained and purchased by schools are to facilitate the district's mission of providing students with excellent learning opportunities that inspire a passion for learning, developing individual potential, and preparing them for a successful future.
- Library and/or district staff as well as members of the BCRC will analyze the school library resources on an ongoing basis to determine the needs and appropriateness of library materials reporting at least annually to the Chief Academic Officer, the BCRC, and BOE. At a minimum, this includes:
 - Conducting an analysis of the catalog of all materials within the library catalog to determine which of them may require further consideration;
 - Comparing the catalog against an appropriate book list as recommended by the Board Curriculum Review Committee. Any materials identified as potentially concerning will be shared with the Chief Academic Officer who will share with the Board Curriculum Review Committee (BCRC) annually in a library services summary before December 1st of each school year, and as otherwise required when specific library materials are brought up as a concern by a parent/guardian.
 - Purchases may be made from any vendor unless specifically excluded by School Board direction. All suggested material purchases will be approved by the Chief Academic Officer prior to purchase.
 - In the event that materials are provided directly to the school from library services (such as bulk shipments), and not deliberately chosen by the school's library staff, staff will review each item for educational and grade-level appropriateness, and will evaluate the material using the previously referenced resources for flags of sensitive content.
- In the event any materials are determined to be inappropriate based on age level, flags, or lacking educational merit, these materials will be brought to the principal of the school for further consideration. The principal will bring the materials to the Chief Academic Officer who will present the information to the

BCRC which will make a recommendation to the Chief Academic Officer and the Elizabeth School Board of Education. Examples include adding or deleting titles on the sensitive content catalog.

Protocol 2 - Sensitive Content Catalogs

Elizabeth School District will develop and maintain ***sensitive content catalogs according to these protocols and applicable District policy***. This catalog will be created through the review of current materials and review of materials prior to purchase using the BCRC recommended book review sites. The books identified as containing age level sensitive content, will be flagged within Destiny as containing sensitive topics and placed on the Sensitive Topic Catalog list which will be updated throughout the year.

All parents/guardians will be automatically set up to have control over their student's access to materials listed in the sensitive content catalog by the following criteria:

- All parents will automatically receive an email from Destiny when their student checks out a book from the Sensitive Topic Catalog.
- If parents/guardians choose, they may OPT OUT their student from being able to check out any book in the Sensitive Topic Catalog.
- If parents/guardians OPT OUT their student from the Sensitive Topic Catalog, the student will be told by the librarian, "According to your parents, you are not allowed to check out this book."
- The student will be advised that if they want to check out the book, they will need to talk with their parents and have their parents/guardians contact the librarian directly.

Protocol 3 - Parental Access to Library Catalog and Student History

Elizabeth School District recognizes parent/guardian rights and responsibilities as they pertain to the educational system for their students. This requires transparency not only in the process but also in access. Therefore, Elizabeth School District shall maintain open access for parents and guardians to their student's library account through a parental portal as well as full access to the entire school library catalog. This permits parents/guardians to review, at their discretion and convenience, any materials their student is checking out through the school library.

The following protocols outline the process and guidelines for sensitive topic catalogs:

- All materials will be evaluated first with regard to educational merit and attainment of course objectives as they relate to Board-adopted academic standards and as to whether they contain Sensitive Topics as described: graphic violence, sexual content, profanity/obscenity, ideations of self-harm or mental illness, religious viewpoints, drug or excessive alcohol use, racism/discrimination.
- Sensitive Topic Catalogs will exist, and be available upon request.
- Items will be added to the sensitive topic catalog at the school and/or district's discretion based on flags as outlined in Protocol 1.
- Titles not in the sensitive content catalog may be referred to the school or district by parents for consideration and will be evaluated as outlined in Protocol 1.

- District will ensure the Destiny Catalog system issues a pop-up warning when a student attempts to check the material out on a sensitive topic catalog.

Temporarily Suspended Books		
Title	Author	Location
The Hate U Give	Angie Thomas	EMS & EHS
Thirteen Reasons Why	Jay Asher	EMS & EHS
#Pride: Championing LGBTQ Rights	Rebecca Felix	EMS
You Should See Me in a Crown	Leah Johnson	EMS
It's Your World---If You Don't Like It, Change It	Mikki Halpin	EMS
The Kite Runner	Khaled Hosseini	EHS
Beloved	Toni Morrison	EHS
The Bluest Ey	Toni Morrison	EHS
The Perks of Being a Wallflower	Stephen Chbosky	EHS
Looking for Alaska	John Green	EHS
Nineteen Minutes	Jodi Picoult	EHS
Speak	Laurie Anderson	EHS
Identical	Ellen Hopkins	EHS
Fallout	Ellen Hopkins	EHS
Glass	Ellen Hopkins	EHS
Burned	Ellen Hopkins	EHS
Crank	Ellen Hopkins	EHS
Smoke	Ellen Hopkins	EHS
George	Alex Gino	RCE

ESD Sensitive Topic Draft Book List			
Title	Author	School Catalog	Flagged for:
1984 George Orwell	George Orwell	EHS	Graphic Violence
A Clockwork Orange	Anthony Burgess	EHS	Graphic Violence
Anne Frank: Diary of a Young Girl	Anne Frank	EHS	Sexual Content
Ashes to Ashes	Jenny Han and Siobhan Vivian	EHS	Graphic Violence
Assassins	Tim LaHaye and Jerry B. Jenkins	EHS	Religious Viewpoints
Athletic Shorts	Chris Crutcher	EHS	Sexual Content
Beloved	Toni Morrison	EHS	Sexual Content
Beyond Magenta - Transgender teens speak out	Susan Kuklin	EHS	Sexual Content
Bhagavad Gita Annotated and Explained	Shri Purohit Swami	EHS	Religious Viewpoints
Bhagavad Gita for modern times - secrets to attaining inner peace & harmony	Call # 294.5 BHA	EHS	Religious Viewpoints
Bless Me Ultima	Rudolfo Anaya	EHS	Profanity/Obscenity
Bless Me, Ultima	Rudolfo Anaya	EHS	Profanity/Obscenity
Brave New World	Aldous Huxley	EHS	Sexual Content
Brigham Young pioneer prophet	John G. Turner	EHS	Religious Viewpoints
Buddhism	Winston King	EHS	Religious Viewpoints
Buddhism	Patricia D. Netzley	EHS	Religious Viewpoints
Buddhists, Hindus and Sikhs in America	Gurinder Singh Mann	EHS	Religious Viewpoints
Burn for Burn	Jenny Han and Siobhan Vivian	EHS	Graphic Violence
Burned	Ellen Hopkins	EHS	Drug or excessive ...
Catcher in the Rye	JD Salinger	EHS	Profanity/Obscenity
Critical Perspectives on Islam and the Western World	JONathan Johansen	EHS	Religious Viewpoints
Decoding the past secrets of the Koran	DVD - Hlstory Channel	EHS	Religious Viewpoints
Desecration	Tim LaHaye and Jerry B. Jenkins	EHS	Religious Viewpoints
Drinking and driving kills	Danielle Dardashti	EHS	Drug or excessive ...
Early Islam	Stewart Desmond	EHS	Religious Viewpoints
Eleanor & Park	Rainbow Rowell	EHS	Sexual Content
Empire of the Islamic World	Robin S. Doak	EHS	Religious Viewpoints
Ender's Game	Orson Scott Card	EHS	Graphic Violence
Fallen Angels	Walter Dean Myers	EHS	Graphic Violence
Fallen Angels	Walter Dean Meyers	EHS	Profanity/Obscenity
Fire with Fire	Jenny Han and Siobhan Vivian	EHS	Graphic Violence
Gay Power! the Stonewall Riots and the gay rights movement 1969	Betsy Kuhn	EHS	Sexual Content
Glass	Ellen Hopkins	EHS	Drug or excessive ...
Go Ask Alice	Anonymous	EHS	Sexual Content
Hinduism	Gregory Kozlowski	EHS	Religious Viewpoints
Hinduism	Madhu Bazaz Wangu	EHS	Religious Viewpoints
Hinduism	Thomas Streissguth	EHS	Religious Viewpoints
House of Night (series)	P.C. Cast	EHS	Sexual Content
I know Why the Caged Bird Sings	Maya Angelou	EHS	Sexual Content
I Know Why the Caged Bird Sings	Maya Angelou	EHS	Sexual Content
Inside Mecca	DVD	EHS	Religious Viewpoints
Into the Bright Open - A Secret Garden Remix	Cherie Dimaline	EHS	Sexual Content
Islam	Charles Adams	EHS	Religious Viewpoints
Islam	Lauri S. Friedman	EHS	Religious Viewpoints
Islam empire of faith	Jonathan Grupper	EHS	Religious Viewpoints
Islam World Religions	Matthew S. Gordon	EHS	Religious Viewpoints
Islamophobia	Dedria Bryfonski	EHS	Religious Viewpoints
Joseph Smith	Robert Vincent Remini	EHS	Religious Viewpoints
Kaffir Boy	Mark Mathabane	EHS	Sexual Content
Leah on the Offbeat	Becky Albertalli	EHS	Sexual Content
Monster	Walter Dean Meyers	EHS	Graphic Violence
More Than a Carpenter	Josh McDowell	EHS	Religious Viewpoints
Mormons in America	Claudia Lauper Bushman	EHS	Religious Viewpoints
Night	Elie Wiesel	EHS	Graphic Violence
One Flew Over the Cukoo"s Nest	Ken Kesey	EHS	Sexual Content
Slaughterhouse Five	Kurt Vonnegut	EHS	Graphic Violence
The Remnant	Tim LaHaye and Jerry B. Jenkins	EHS	Religious Viewpoints
The Absolutely True Diary of a Part-Time Indian	Sherman Alexie	EHS	Sexual Content

The Bluest Eye	Toni Morrison	EHS	Graphic Violence
The book of Mormon - an account written by the hand of Mormon upon plates taken from...	Joseph Smith	EHS	Religious Viewpoints
The Chocolate War	Robert Cormier	EHS	Profanity/Obscenity
The Color Purple	Alice Walker	EHS	Racism/discrimination
The Color Purple	Alice Walker	EHS	Graphic Violence
The Essence of Buddhism - how to bring spiritual meaning into every day	Carole M. Cusak	EHS	Religious Viewpoints
The Giver	Lois Lowry	EHS	Ideations of Self-H...
The Handmaid's Tale	Margaret Atwood	EHS	Sexual Content
The Holy Bible	Holy Spirit	EHS	Religious Viewpoints
The Hunger Games	Suzanne Collins	EHS	Graphic Violence
The Indwelling	Tim LaHaye and Jerry B. Jenkins	EHS	Religious Viewpoints
The Kite Runner	Khaled Hosseini	EHS	Sexual Content
The Koran	Series - Bantam Classic	EHS	Religious Viewpoints
The Koran - a very short introduction	Michael Cook	EHS	Religious Viewpoints
The Mark	Tim LaHaye and Jerry B. Jenkins	EHS	Religious Viewpoints
The night trilogy - NIGHT, DAWN, DAY	Elie Wiesel	EHS	Graphic Violence
The Perks of Being a Wallflower	Stephen Chbosky	EHS	Sexual Content
The Spread of Islam	John Dunn	EHS	Religious Viewpoints
To Kill a Mockingbird	Harper Lee	EHS	Racism/discrimination
Tokyo Ghoul 7 (NOTE there is an entire series, apparently up to 10)	Sui Ishida	EHS	Graphic Violence
Twilight	Elie Wiesel	EHS	Graphic Violence
Understanding Islam	Beverly A. James	EHS	Religious Viewpoints
Women in Islam	Margaret Speaker Yuan	EHS	Religious Viewpoints
BHA	Jan Thompson	EMS	Religious Viewpoints
Anne Frank: Diary of a Young Girl	Anne Frank	EMS	Sexual Content
Averroes (Ibn Rushd): Scholar of Classical and Islamic Philosophy	Bridget Lim	EMS	Religious Viewpoints
Being Transgender in America (Part of above series)	Duchess Harris, JD, PhD	EMS	Sexual Content
Buddhism	Anita Ganeri	EMS	Religious Viewpoints
Buddhism	Mel Thompson	EMS	Religious Viewpoints
Buddhist Festivals Throughout the Year	Anita Ganeri	EMS	Religious Viewpoints
Eleanor & Park	Rainbow Rowell	EMS	Sexual Content
Ender's Game	Orson Scott Card	EMS	Graphic Violence
Growing up LGBTQ (PART OF A SERIES: Being LGBTQ in America)	Duchess Harris, JD, PhD	EMS	Sexual Content
Hindu Festivals Throughout the Year	Anita Ganeri	EMS	Religious Viewpoints
Hinduism	Das Rasamandala	EMS	Religious Viewpoints
Hinduism	Ranchor Prime	EMS	Religious Viewpoints
His Dark Materials Series Bk 1 The Golden Compass	Phillip Pullman	EMS	Religious Viewpoints
House of Night (series)	P.C. Cast	EMS	Sexual Content
Islam	David Self	EMS	Religious Viewpoints
Muslim Festivals Throughout the Year	Anita Ganeri	EMS	Religious Viewpoints
My Brother Sam is dead	James Lincoln Collier	EMS	Profanity/Obscenity
Nasreen's Secret School	Jeanette Winter	EMS	Religious Viewpoints
Speak Up!	Rebecca Burgess	EMS	Sexual Content
The Giver	Lois Lowry	EMS	Ideations of Self-H...
The Hunger Games	Suzanne Collins	EMS	Graphic Violence
The Kids Book of World Religions	Jennifer Glossop	EMS	Religious Viewpoints
The King James Bible: Christianity's Definitive Text	Phyllis Corzine	EMS	Religious Viewpoints
To Kill a Mockingbird	Harper Lee	EMS	Racism/discrimination
Zenobia July	Lisa Bunker	EMS	Sexual Content
Bridge to Terabithia	Katherine Patterson	Running Creek	Religious Viewpoints
Ender's Game	Orson Scott Card	Running Creek	Graphic Violence
House of Night (series)	P.C. Cast	Running Creek	Sexual Content
Noah's Ark	Jerry Pinkney	Running Creek	Religious Viewpoints
Skippyjon Jones (series)	Judith Schachner	Running Creek	Racism/discrimination
The Camel in the Sun	Griffin Ondaatje	Running Creek	Religious Viewpoints
The Creation	Stephen Mitchell	Running Creek	Religious Viewpoints
The Giver	Lois Lowry	Running Creek	Ideations of Self-H...
The proudest blue: a story of hijab and family	Ibitha Muhammad	Running Creek	Religious Viewpoints
Two by Two	Barbara Reid	Running Creek	Religious Viewpoints
Daughters of Eve - Strong Women of the Bible	Lillian Hammer Ross	Singing Hills	Religious Viewpoints

Dinner in the Lions' Den	Bob Hartman	Singing Hills	Religious Viewpoints
Illustrated dictionary of religions: rituals, beliefs and practices from around the world	Philip Wilkinson	Singing Hills	Religious Viewpoints
Noah	Patricia Lee Gauch	Singing Hills	Religious Viewpoints
Noah's Ark	CALL# E SPI	Singing Hills	Religious Viewpoints
Noah's Ark	Jerry Pinkney	Singing Hills	Religious Viewpoints
Ramadan	Kieran Walsh	Singing Hills	Religious Viewpoints
Ramadan	Molly Aloian	Singing Hills	Religious Viewpoints
Scary Stories to tell in the Dark	Alvin Schwartz	Singing Hills	Graphic Violence
Skippyjon Jones (series)	Judith Schachner	Singing Hills	Racism/discrimination
The Bible Story (Individual listings for Volumes 1 - 10)	Arthur Maxwell	Singing Hills	Religious Viewpoints
The Children's Illustrated Bible	Selina Hastings	Singing Hills	Religious Viewpoints
The Christmas Star	Marcus Pfister	Singing Hills	Religious Viewpoints
The Giver	Lois Lowry	Singing Hills	Ideations of Self-H...
The Librarian of Basra	Jeanette Winter	Singing Hills	Graphic Violence
The Little Lama of Tibet	Lois Raimondo	Singing Hills	Religious Viewpoints
The mysterious visitor - Stories of the Prophet Elijah	Nina Jaffe	Singing Hills	Religious Viewpoints
The Stable Where Jesus was Born	Rhonda Gowler Greene	Singing Hills	Religious Viewpoints
The Ten Commandments	Patricia Daniels	Singing Hills	Religious Viewpoints
What I believe	Alan Brown	Singing Hills	Religious Viewpoints

Exhibit 8



BOOK REVIEW FORM

Name: _____

Where do your children attend school: _____

Phone: _____ Email: _____

Book Title: _____

Recommended Disposition of Book: I think this book should be ...

☐ Returned to the library and listed on the sensitive topic list

☐ Removed from the library collection

Reasons for the recommendation above:

Exhibit 9

From: [Dan Snowberger](#) on behalf of [Dan Snowberger <dsnowberger@esdk12.org>](#)
To: [Mary Powell](#)
Cc: [Rhonda Olsen](#); [Heather Booth](#); [Brad Miller](#); [Jaimee Glazebrook](#)
Bcc: [ESD Board Members](#)
Subject: Re: Board Update - Week of July 29
Date: Monday, August 5, 2024 8:16:50 AM
Attachments: [Screenshot 2024-08-04 at 2.08.20 PM.png](#)

I am very comfortable with substituting "out of classrooms" in my language. I'll consider that to be the direction since I've heard from three of you unless directed otherwise. Thanks for the feedback. Just want to make sure I'm taking your lead as a board. I think this is very much understandable by our staff and will be appreciated by all staff.

Dan

On Mon, Aug 5, 2024 at 8:13 AM Mary Powell <mpowell@esdk12.org> wrote:
out of classrooms is probably best wording.

On Mon, Aug 5, 2024, 7:58 AM Rhonda Olsen <rolsen@esdk12.org> wrote:
These are all great points. Dan, thank you for taking much needed steps toward accountability and unifying around our vision for the district. I agree with Heather and understand her concerns regarding the verbiage. Our vision for the district could be considered by some to be conservative based. We were very vocal about getting a superintendent and legal representation with conservative values so technically, to say keep it out of our schools would be confusing. I may have said that in error in the past as well. We don't have to bang drums (we already have). We will just move forward saying out of classrooms. We all know where we stand, keep the politics out of the classroom and the focus on academics and not ideologies.

Thanks

Rhonda

On Sun, Aug 4, 2024 at 6:15 PM Heather Booth <hbooth@esdk12.org> wrote:
I'll let everyone weigh in on it. I really just think it's the wording for me but I'm open to what everyone else says too.

Heather

On Sun, Aug 4, 2024 at 5:54 PM Dan Snowberger <dsnowberger@esdk12.org> wrote:
I'm not opposed to the change, Heather. This has been what we've spoken about since I've been hired so it's just important that I know how the board wants to frame this. I certainly will take the boards direction.

Dan Snowberger
Superintendent
Elizabeth School District

Sent from my iPhone

On Aug 4, 2024, at 3:32 PM, Heather Booth <hbooth@esdk12.org> wrote:

Hi Dan,

I wanted to follow up on your email. First of all, I want to say that it addressed many important points. However, there's something I should have mentioned earlier, and I apologize for not bringing it up sooner.

We need to be cautious about the way we frame our stance on politics in our schools. While I completely agree that we must keep politics out of the classroom and shield our students from partisan influences, it's equally important to remember that our commitment to conservative values was a key aspect of our campaign. We all ran on a platform that promised to uphold these values in our district, reflecting the majority sentiment of our community.

It's crucial that as we navigate these discussions, we remain mindful of the promises we made and the values we pledged to support. By doing so, we can maintain our integrity and ensure that our actions align with the expectations of those who elected us. As I like to say "we need to keep politics out of the classroom and away from the kids". However conservative values are exactly what we are and plan to continue to bring into the district.

Thanks for considering this perspective.

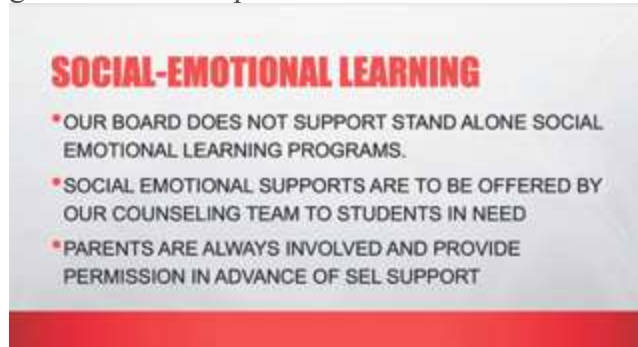
On Sun, Aug 4, 2024 at 2:47 PM Dan Snowberger <dsnowberger@esdk12.org> wrote:

Superintendent:

Retreat: Our retreat this year was an amazing one held last Tuesday at Cielo in Castle Pines. Our administrative team truly felt ready to take on the challenges this year and also seemed uniquely unified behind our common mission and vision this year. They also called for more opportunity for team focus and alignment that was accomplished on Tuesday, I regret the board couldn't be a part of it but do feel especially proud of where we are as a leadership team starting this school year.



SEL Learning: At the end of our leadership retreat, I did take advantage of reiterating some expectations. I did want to share a slide I provided on SEL to make sure you know I reminded of our SEL guidelines and expectations.



Classified Evaluation System Handbook: We have put into place a new Classified/ProTech Evaluation System for the new school year. Included in this handbook is a discipline system that will be used for all employee groups. I shared this with Mike and Heather when I met with them on Wednesday on another topic but wanted to make sure the board had a copy as well. This discipline system provides principals with tools to capture concerns with employees of all groups and document them so that we won't continue to have situations go by where employees have poor behavior but no documentation in their files. The system includes counseling notes, letters of concern, and letters of reprimand. These would all precede a termination process. While they were originally called a "progressive discipline" process, we removed the work progressive as depending on the seriousness of the violation, we may skip a step and go right to a letter of concern or reprimand. If you have questions, don't hesitate to reach out to me. LINK: [Evaluation Handbook](#)

Charter Meeting: On Wednesday, I met with Candy Putch who asked to stop by. She notified me of an upcoming meeting they are having next Saturday, August 10 at Pine Valley Church to talk about their proposed charter school. We also discussed possible facility options including the possibility of locating modulars on the Singing Hills campus and sharing space should they decide to open in 2025. We did have a good conversation overall.

Classroom Libraries: As you saw by Kim's email, in a meeting with Mike and Heather, it was relayed to us that the board had conversation about eliminating classroom libraries and asking students to simply bring a book from home or check one out from the library to keep in their desk should free time exist. I agreed with this idea and we are executing this plan. We will be bringing a resolution forward at the board meeting on the 12th for formal action along with our Library protocol. We are framing this from the standpoint of taking the responsibility off of teachers and principals for providing access to students to books that may be considered offensive to parents and simply allowing that to be part of the library process the CRC

committee has already spent considerable amount of time on.

Board Agenda Setting: As you saw, Brad pointed out many pitfalls to having all board members attend agenda setting. Most notably, that would constitute a meeting meaning roll call would need to happen, minutes would need to occur, and the formality of it would add a lot of additional work to the process. Jaimee has sent out a doodle poll for one board member to once again sign up for the agenda setting dates to join Rhonda at these meetings. Please know that you can always send Jaimee or Rhonda any item you want on the agenda no later than Wednesday prior to a board meeting. Agenda setting will almost always take place on Wednesday afternoon sometime around 3-5 pm.

Jaimee out Thursday & Friday: Jaimee will be taking Lincoln to college at the end of this week. If you need anything after Wednesday, please don't hesitate to contact me. We hope to have the majority of the board meeting items up for your review. She will make any minor changes while away,

Complaint from Colorado Department of Labor & Employment: This week we received a complaint from the Colorado Department of Labor and Employment regarding the process in which we hired Kimberly Runyan as principal at Elizabeth Middle School. It references an "Equal Pay Transparency Act." We are working with Brad to respond. We have until August 13 to make a response to the complaint. The complainant is Misty Callahan and is unknown to me.

Convocation: Convocation starts at 8:00am on Monday, August 12 in the cafeteria. We'd like the board to judge our Spirit Stick competition this year. As you recall, the high school students picked the high school last year causing some controversy. I think there is a great opportunity for a message from the board to staff about the desire to unify and keep politics out of our classrooms and schools. I think it is important to remind them that we live in a community where parents expect us to respect their rights as parents. We don't intend to make decisions for parents, but to empower them to make those decisions!

--



Exhibit 10

From: [Heather Booth](#) on behalf of [Heather Booth <hbooth@esdk12.org>](mailto:hbooth@esdk12.org)
To: [REDACTED]
Cc: [ESD Board Members](#)
Subject: Re: Removing of Library Books and Sensitive Topic Book List
Date: Monday, August 19, 2024 8:45:06 PM

Hi Casie,

Thank you for your valuable feedback and suggestions. We appreciate your input as we transition to this new approach. We want to clarify that we are not restricting students' access to books. Rather, we are relocating classroom libraries to the school library, where teachers and students can still check out books for classroom use. This process ensures that all books have undergone a thorough review and approval for educational suitability.

You mentioned the absence of a local bookstore, but you might not be aware that there is a long-established library in Elizabeth. This library provides an excellent resource for parents to take their children and borrow books of their choice.

As an elected official committed to conservative values for our children, I feel a strong obligation to honor the promises made during my campaign. Many parents in our community are concerned about the content of books available in schools and libraries. It is our responsibility to respect these concerns and uphold our campaign commitments to the majority. We believe in empowering parents to make informed decisions about their children's access to reading materials.

Best regards,

Heather Booth

On Fri, Aug 16, 2024 at 1:53 PM Casie [REDACTED] <[REDACTED]> wrote:

Dear Members of the Elizabeth School Board,

As a graduate of Elizabeth High School and student of the Elizabeth School District since the third grade I was absolutely appalled to hear that 13 books were being removed from the shelves of the school libraries and an additional 130 are to be marked as "sensitive topics" to which access can be restricted. I am generally proud of where I came from and the education I received, but knowing that the school board is removing the autonomy of students and their right to access information and knowledge angers and saddens me. I do not yet have children, but if I did I would not send them to Elizabeth schools in light of this decision.

After graduating from EHS, I went on to earn a BA in English Literature from the University of Denver and an MA in Publishing from University College London. I worked in book publishing for a decade and am still involved in the publishing and book community. I firmly believe that a book itself is not dangerous. Lacking the ability to use critical thinking is.

As a young person, the library was a haven for me - a place where I could explore the world and other ideas from a safe place and decide, *for myself*, my thoughts, feelings, and beliefs. Making sense of the world around you is the purpose of childhood and youth and should be encouraged and supported by the adults in a child's life. Research shows that reading develops empathy in children and adults alike; a value that should be raised up and not strangled. Empathy is essential to build a strong community and world.

In a rural area without a local bookstore, access to a variety of content through the library is more than important, it is essential. The youth of the community need an opportunity to learn about ideas, systems, and the world outside their immediate vicinity. At times these ideas may be out of their comfort zone, or that of their parents, but that is why books and a *dialogue around them* is so very important. Without reading I don't know if I ever would have had the life experiences that make me the person that I am today.

I'd like to remind you of the mission statement of the Elizabeth School Board which is "To provide our students with excellent and diverse learning opportunities that inspire passion for learning, develop individual potential and prepare them for a successful future." I encourage the Elizabeth School Board to reexamine their position on removing books from shelves and the implementation of a "sensitive topics" list, an action which is in direct opposition to the mission they were elected to uphold. The move to ban books (let's call it what it is) is not a protection but a removal of freedom. Freedom for an individual to form their own thoughts and make their own decisions. Children too have this right.

Sincerely,

Casie [REDACTED]
Elizabeth High School, Class of 2006

Exhibit 11

From: [Heather Booth](#) on behalf of [Heather Booth <hbooth@esdk12.org>](#)
To: [REDACTED]
Cc: [jwaller@esdk12.org](#); [mcalahan@esdk12.org](#); [mpowell@esdk12.org](#); [rolsen@esdk12.org](#)
Subject: Re: Teacher classroom libraries
Date: Monday, August 19, 2024 8:49:55 PM

Thank you for your valuable feedback and suggestions. We truly appreciate your input as we transition to this new approach. We want to clarify that we are not restricting students' access to books. Rather, we are relocating classroom libraries to the school library, where teachers and students can still check out books for classroom use. This process ensures that all books have undergone a thorough review and approval for educational suitability.

As an elected official committed to conservative values for our children, I feel a strong obligation to honor the promises made during my campaign. Many parents in our community are concerned about the content of books available in schools and libraries. It is our responsibility to respect these concerns and uphold our campaign commitments to the majority. We believe in empowering parents to make informed decisions about their children's access to reading materials.

Thank you,

Heather Booth

On Wed, Aug 14, 2024 at 9:21 AM Gerald [REDACTED] > wrote:

As a grandparent of two children in your school district and a former public school principal, I want to respectfully disagree with the new requirement that requires teachers to remove their personal reading books from the classroom. We should be promoting reading not discouraging it. If you are worried about content, then, develop content guidelines. In the mean time, have the teacher send home a list of the books and give parents the option to request that their child not read a certain book or books. Give credit and honor to your teachers for selecting and BUYING appropriate books

What has happened thus far is anger teachers who spend their own money to provide opportunities for their students to learn. It's a poor step in the wrong direction.

Don't interpret this communication as coming from a liberal wacko. I'm a conservative Christian who just wants the best for his grandchildren

Exhibit 12

From: [Mary Powell](#) on behalf of [Mary Powell <mpowell@esdk12.org>](#)
To: [Heather Booth](#)
Cc: [Jaimee Glazebrook](#); [Dan Snowberger](#); [Kim Moore](#); [Brad Miller](#)
Subject: Re: FINAL CONFIDENTIAL Book Review Tally from Temporarily Suspended List
Date: Sunday, September 8, 2024 4:08:24 PM

Hi Heather. Rhonda and I talked, and I have changed my vote on these two to REMOVE. I talked to both Jon and Mike and they also agree on REMOVE.

Therefore, all board votes for the 18 books are to REMOVE.

Thanks, Mary

On Sat, Sep 7, 2024 at 1:32 PM Heather Booth <hbooth@esdk12.org> wrote:

Hi Mary,

Thank you for your explanation.

I'll let Rhonda weigh in but I've spoken with a lot of people who couldn't make the time to fill out the paperwork (I'm disappointed in that). I haven't met one person for keeping them in our schools.

Personally, LGBTQ is only regarding sexual preference which doesn't belong in any school. That being said if someone wants their children to read these books they can absolutely do that outside of school; as is their right.

Our constituents will not be happy about us returning any of these books. That is who we are beholden to.

Mike and Jon, can you let me know your thoughts?

Thanks,
Heather

On Sat, Sep 7, 2024 at 9:21 PM Mary Powell <mpowell@esdk12.org> wrote:

Hi Heather. The two "move to Sensitive and move to EHS from EMS" suggestions were mine originally - Jon and Mike both agreed with my overall assessments.

That being said, I have kind of waffled on the two I marked this way:

#Pride - Championing LGBTQ Rights and You Should See me in a Crown.

While our board decision is based on considering community feedback, it is overall still Board decision.

The community vote for #Pride was 12 for REMOVE and 7 for Move to Sensitive List. Those 7 didn't mention moving it up to EHS.

The community vote for "Crown" was 11 for REMOVE and 5 for Move to Sensitive List.

Again, those 7 didn't mention moving it up to EHS.

I voted "Move to Sensitive List and move up to EHS" on #Pride because this book is largely a history of LGBTQ, and doesn't totally try to indoctrinate. But, just the overall topic is going to tend to that regardless. I also thought it would be a good thing to show some openness to other viewpoints, as long as it isn't indoctrinating.

I voted same on "Crown" because while it has some racist overtones, they are just the main character handling them. About halfway through you find out she is a lesbian. There Is another prom contestant who is also, and they form a relationship. There isn't anything graphic other than discussing a kiss that I saw, and it is not the central theme of the book at all. I thought the story was overall a good one of empowerment for black students - this is a very successful girl. There is also some good general friend support, etc. in the story.

There are some community comments in line 6 column G re "CROWN, and in line 5 column G re #Pride.

So, that is my reasoning, and Jon and Mike joined me in that vote. HOWEVER, if you and Rhonda strongly feel they should be REMOVED, I will change my vote on these two to REMOVE. The REMOVE for both is supported by the community opinion on these 2 books.

Thanks, Mary

The

On Sat, Sep 7, 2024 at 12:15 PM Heather Booth <hbooth@esdk12.org> wrote:

I'm completely against putting any of the pulled books back on the shelves. We can easily take those books and donate them to the local library and if people want their children to read them, then they can go down and get them from their .

Our school library's should be filled with educational books. I have talked to a lot of people and those who supported us and voted us in office are against putting these books back on the shelves. If anyone is for any of these books going back on the shelves ; please explain to me the educational value in those books.

Sorry for the choppy email it's hard to text just from my phone.

Heather

On Sat, Sep 7, 2024 at 6:00 PM Mary Powell <mpowell@esdk12.org> wrote:

Good morning,

There were 2-3 additional people who came in on Friday, so I have now updated through reviews received as of 9/6, the final review day. Update is attached.

Jon and I talked this morning, and I hope to connect with Mike before Monday as well.

BCC:: Board members

Thanks, Mary Powell

Exhibit 13



Elizabeth
SCHOOL DISTRICT

BOOK REVIEW FORM

Name: Laura [REDACTED]

Where do your children attend school: EHS

Phone: [REDACTED] Email: [REDACTED]

Book Title: # Pride

Recommended Disposition of Book: I think this book should be ...

☐ Returned to the library and listed on the sensitive topic list

☒ Removed from the library collection

Reasons for the recommendation above:

First of all, all Americans have the same rights. What rights do LGBTQ individuals not have? Why would we teach our children ^{that} ~~some~~ need or have different rights? Additionally LGBTQ themes do not belong in our public schools. This is a conversation for parents to have with their children at home.



BOOK REVIEW FORM

Name: Ken [REDACTED]

Where do your children attend school: EMS

Phone: [REDACTED] Email: [REDACTED]

Book Title: #Pride: Championing LGBTQ Rights

Recommended Disposition of Book: I think this book should be ...

☐ Returned to the library and listed on the sensitive topic list

☒ Removed from the library collection

Reasons for the recommendation above:

Middle school students are too young to be
exposed to the pride movement, same sex
marriage, Stonewall riots and pride parades.



BOOK REVIEW FORM

Name: Lyra [REDACTED]

Where do your children attend school: EHS

Phone: [REDACTED] Email: [REDACTED]

Book Title: Burned

Recommended Disposition of Book: I think this book should be ...

☐ Returned to the library and listed on the sensitive topic list

☒ Removed from the library collection

Reasons for the recommendation above:

Ellen Hopkins is disgusting. Sexual encounters,
etc., more of the same from a pervert. Not for
anyone's eyes, really.



Elizabeth
SCHOOL DISTRICT

BOOK REVIEW FORM

Name: David [REDACTED]

Where do your children attend school: EHS

Phone: [REDACTED] Email: [REDACTED]

Book Title: George

Recommended Disposition of Book: I think this book should be ...

☐ Returned to the library and listed on the sensitive topic list

☒ Removed from the library collection

Reasons for the recommendation above:

This is evil trans-ideology. It has
no place in any school - much less
an elementary school.



BOOK REVIEW FORM

Name: MATT [REDACTED]

Where do your children attend school: EMS & EHS

Phone: [REDACTED] Email: [REDACTED]

Book Title: GEORGE

Recommended Disposition of Book: I think this book should be ...

- ☐ Returned to the library and listed on the sensitive topic list
☒ Removed from the library collection

Reasons for the recommendation above:

No redeeming value and the overall gist of the book is forming mental illness and confusion as normal and even heroic. We would never consider putting a book extolling the virtues of being mentally ill in any other way on a school bookshelf. These kinds of books in school libraries are why parents home school. I find the premise of the book damaging and morally offensive. There is no shortage of clearly wholesome and amazing literature out there. I am 52 and have 3 degrees and am an avid reader. I have not even touched all the great works out there. There is zero reason this should be in a school library.



BOOK REVIEW FORM

Name: Maryrose [REDACTED]

Where do your children attend school: SHE/EMS

Phone: [REDACTED] Email: [REDACTED]

Book Title: 'IT'S YOUR WORLD...' , MIKKI HALPIN

Recommended Disposition of Book: I think this book should be ...

☐ Returned to the library and listed on the sensitive topic list

☒ Removed from the library collection

Reasons for the recommendation above:

Women's Rights chapter supports abortion
and equates it with healthcare when it is the
murder of a human life- it also talks
heavily of sex education which isn't an
appropriate topic for EMS aged students.

The ~~exam~~ example letter on p. 217 encourages
the reader to oppose parental notification laws
which is exactly what our ESD board is
trying to put in place.



BOOK REVIEW FORM

Name: David [REDACTED]

Where do your children attend school: EHS

Phone: Same Email: Same

Book Title: The Bluest Eye

Recommended Disposition of Book: I think this book should be ...

☐ Returned to the library and listed on the sensitive topic list

☒ Removed from the library collection

Reasons for the recommendation above:

Rape / Incest / Sex — no one should read
this.



BOOK REVIEW FORM

Name: Mangrove [REDACTED]

Where do your children attend school: SHE/EMS

Phone: [REDACTED] Email: [REDACTED]

Book Title: 'The Hate U Give'

Recommended Disposition of Book: I think this book should be ...

☐ Returned to the library and listed on the sensitive topic list

☒ Removed from the library collection

Reasons for the recommendation above:

I believe this book should be removed from EMS and EMS libraries for it's themes of anti-police, anti-white, pro BLM/riots and gang activity. None of these themes are appropriate to be sold in a way that supports them ~~and~~ with the goal of getting the reader to be incited by them. There is also loads of foul language in this book, if the language is not allowed by students at school why is there a book available that romanticizes its use?



BOOK REVIEW FORM

Name: Ken [REDACTED]

Where do your children attend school: EMS

Phone: [REDACTED] Email: [REDACTED]

Book Title: The Hate U Give

Recommended Disposition of Book: I think this book should be ...

☐ Returned to the library and listed on the sensitive topic list

☒ Removed from the library collection

Reasons for the recommendation above:

Bad language, violence, police shooting, killing
no educational value, police viewed in a bad light



BOOK REVIEW FORM

Name: Maryrose [REDACTED]

Where do your children attend school: SHE/EMS

Phone: [REDACTED] Email: [REDACTED]

Book Title: 'You Should See Me in a Crown', Leah Johnson

Recommended Disposition of Book: I think this book should be ...

☐ Returned to the library and listed on the sensitive topic list

☒ Removed from the library collection

Reasons for the recommendation above:

I believe this book should be removed from the
EMS library because of it's CRT undertones
and homosexual storyline. Our district does not
teach CRT so why would we have a book that
encourages its reader to believe in it. CRT
is a race baiting agenda. I also do not
believe a middle school aged student should
be reading a homosexual storyline.

The very first page even has Seventeen magazine
saying this book is for recent graduates or
college students - NOT 11-14 year olds!



Elizabeth
SCHOOL DISTRICT

BOOK REVIEW FORM

Name: Shelly [REDACTED]

Where do your children attend school: N/A Concerned Citizen

Phone: [REDACTED] Email: [REDACTED]

Book Title: You should See Me in a Crown EWS

Recommended Disposition of Book: I think this book should be ...

☐ Returned to the library and listed on the sensitive topic list

☒ Removed from the library collection

Reasons for the recommendation above:

Racially charged

Trans - Same sex dating mentioned

DEI Pride flag

Language - F word

Lesbian romance mentioned

Not appropriate for Middle School

No educational value



Elizabeth
SCHOOL DISTRICT

BOOK REVIEW FORM

Name: Tracy [REDACTED]

Where do your children attend school: Legacy

Phone: [REDACTED]

Email: [REDACTED]

Book Title: You should see me in a crown

Recommended Disposition of Book: I think this book should be ...

☐ Returned to the library and listed on the sensitive topic list

☒ Removed from the library collection

Reasons for the recommendation above:

First of all, let me say that I have
an issue with the most basic premise. This
girl loses her scholarship and instead of
working to find a job to pay for school
she ~~joins~~ decides to go for prom queen?
How degrading for girls. There are plenty
of other scholarships available for young,
black kids.

Now add in the queer factor, no
thank you. Also, the unrealistic aspects
of this book give young people ideas
that are unlikely at best.



BOOK REVIEW FORM

Name: Laura [REDACTED]

Where do your children attend school: EHS

Phone: [REDACTED] Email: [REDACTED]

Book Title: The Kite Runner

Recommended Disposition of Book: I think this book should be ...

☐ Returned to the library and listed on the sensitive topic list

☒ Removed from the library collection

Reasons for the recommendation above:

Very adult sexual content, not appropriate for teens. Very racially divisive, again not appropriate for teens. LGBTQ themes that do not belong in school. The references to abortion again are not appropriate for teens. Additionally, I do not want my teen reading a book that criticizes Christianity. This book is for adults, not teens and should not be available in a school library.



BOOK REVIEW FORM

Name: Mindy [REDACTED]

Where do your children attend school: RCE

Phone: [REDACTED] Email: [REDACTED]

Book Title: Thirteen Reasons Why, The Kite Runner, Speak,

Recommended Disposition of Book: I think this book should be ...

- ☒ ^{NO} Returned to the library ~~and listed on the sensitive topic list~~
- ☐ Removed from the library collection

Reasons for the recommendation above:

Suicide, sexual assault, school shootings, death. More difficult
and explicit topics unite these books. Unfortunately, I cannot
isolate or protect my children from these sad realities. Books
are a gift - they help us understand, process, confront, empathize;
they let us "walk a mile" in others' shoes; ~~the~~ they validate our
feelings and help us feel not so alone; they give us tools and
the names for problems and emotions. Banning these books because
the subjects are difficult or the content graphic is short-
sighted and misguided. Banning these books doesn't keep these
things from happening. These topics have merit in an educational
institution because our children will be confronted with these
topics - hopefully not due to personal experience, but through
our shared human experience. And I hope, more than anything...



BOOK REVIEW FORM

Name: Wendy [REDACTED]

Where do your children attend school: EMS

Phone: [REDACTED] Email: [REDACTED]

Book Title: All books under consideration

Recommended Disposition of Book: I think this book should be ...

- ☒ Returned to the library and listed on the sensitive topic list
☐ Removed from the library collection

Reasons for the recommendation above:

We live in a diverse world with many different perspectives and painful realities. We do our children a dis-service if we sugar-coat and cherry-pick literary material that could broaden their minds to others' experiences, leading to a more compassionate state of being. Censorship efforts change with time anyone recall bans on classics like To Kill A Mockingbird & The Catcher in the Rye? Returning to the library via sensitive topic list enables balance for parents with differing views on the topics in these books.

Over →

As noted by Laurie Halse Anderson in response to censorship of *Speak*:

"... But censoring books that deal with difficult, adolescent issues ~~does~~ does not protect anybody. Quite the opposite. It leaves kids in the darkness and makes them vulnerable. Censorship is the child of fear and the father of ignorance. Our children cannot afford to have the truth of the world withheld from them."

Thanks for the opportunity to review these books and provide feedback.



BOOK REVIEW FORM

Kathy [REDACTED]
Name: Beloved Toni Morrison
Where do your children attend school: Running Creek, EMS, EHS grad 2018
Phone: [REDACTED] Email: [REDACTED]

Book Title: Beloved

Recommended Disposition of Book: I think this book should be ... leave it on the shelf
☒ ~~Returned to the library and listed on the sensitive topic list~~
☒ ~~Removed from the library collection~~

Reasons for the recommendation above:

Toni Morrison is an internationally acclaimed
and beloved chronicler of African American
history. ~~the~~ Nasty things happened.
Suppressing an idea does not get rid of it
and people who want to explore this should
be free to do so.

Parents who can't educate themselves about
what their child is reading should
review their choices



BOOK REVIEW FORM

Name: Kathy [REDACTED]
Where do your children attend school: Running Creek EMS EHS 2018
Phone: _____ Email: _____

Book Title: Looking for Alaska
Recommended Disposition of Book: I think this book should be ... leave it
☒ ~~Returned to the library and listed on the sensitive topic list~~
☒ ~~Removed from the library collection~~

Reasons for the recommendation above:

John Green is celebrated for his portrayals of modern teen life. Alaska is a wounded girl who's lost her mother and is estranged from her father. She uses drugs and alcohol and acts out from her pain. Without the help she needs, she ultimately dies. People (teens) in pain can read this story and find a place for themselves, because of the unhappy ending they will maybe find a way to reach out for help.



BOOK REVIEW FORM

Name: Kathy [REDACTED]

Where do your children attend school: Running Creek, EMS, EHS

Phone: [REDACTED] Email: [REDACTED]

Book Title: Crank Ellen Hopkins

Recommended Disposition of Book: I think this book should be ... leave it

- ☒ ~~Returned to the library and listed on the sensitive topic list~~
- ☒ ~~Removed from the library collection~~

Reasons for the recommendation above:

Because this book is written in free verse it is a
great pick for reluctant readers. The story it
tells about a girl lost to drug addiction who
does just about everything your parents warned
you about and some they didn't even know.
It's because of this cautionary tale that
the book is important.



BOOK REVIEW FORM

Name: Holly [REDACTED]

Where do your children attend school: Running Creek, Eliz MS, EHS grad 2018

Phone: [REDACTED] Email: [REDACTED]

Book Title: The Hate You Give by Angie Thomas

Recommended Disposition of Book: I think this book should be ... left on the shelf

☒ ~~Returned to the library and listed on the sensitive topic list~~

☒ ~~Removed from the library collection~~

Reasons for the recommendation above:

This book portrays a girl caught in the crossfire of 2 communities after she witnesses a horrifying incident that results in the death of a friend. Students should be allowed to read this book because of its sympathetic portrayal of a girl and her family dealing with fear and horror resulting from a violent encounter she never expected.



BOOK REVIEW FORM

Name: Mindy [REDACTED]

Where do your children attend school: RCE

Phone: _____ Email: _____

Book Title: See below

Recommended Disposition of Book: I think this book should be ...

- ☒ Returned to the library and ^{NO} listed on the sensitive topic list
- ☐ Removed from the library collection

Reasons for the recommendation above:

- 1) You should see me in a crown... " a self-love anthem for queer black girl girls everywhere" 2020 Goodreads
- 2) It's your world... a book about activism and social issues - racism, free speech, gay rights, women's rights, school safety
- 3) # Pride... the history of LGBTQ rights, a 32 page picture book
The Hate U Give... inspired by Black Lives Matter movement
- 4) Toni Morrison... Nobel Prize winning author, themes on black women
- 5) George... LGBT+ content

I believe these topics have merit in an educational setting, these are important social issues my children will need to understand. In my opinion, banning these books is a clear and transparent assertion that people of color, women and homosexuals are less welcome in our public school and this is unacceptable. ^{Add 168}



BOOK REVIEW FORM

Name: Kathy [REDACTED]
Where do your children attend school: Running Creek, EMS, EHS ^{grad} 2018
Phone: [REDACTED] Email: [REDACTED]

Book Title: I am at a loss to see censorship in Elizabeth
Recommended Disposition of Book: I think this book should be ...

- ☐ Returned to the library and listed on the sensitive topic list
☐ Removed from the library collection

Reasons for the recommendation above:

It hurts my heart to see these books highlighted within an inch of their lives. Life feeds on controversy. "Protecting" children, particularly teens who are exploring their world, getting ready to be adults does them and their community an enormous disservice.

This book list reads to me like people spooked by that imaginary course "Critical Race Theory" It is not welcoming to anyone who is not white, straight ~~ap~~ and politically conservative. As our community base expands these actions will be less+less welcome



BOOK REVIEW FORM

Name: Christine [REDACTED]

Where do your children attend school: Pre K

Phone: [REDACTED] Email: [REDACTED]

Book Title: The Hate You Give, Thirteen Reasons Why, I Pride: Championing LGBTQ Rights, You Should See Me in a Crown, It's Your World If you don't like it, change it, The King Runner, Beloved, The Bluest Eye, The Perks of Being a Wallflower, Looking for Alaska, Nineteen minutes, Speak, Identical, Fallout, Glass, Burned,

Recommended Disposition of Book: I think this book should be ... Crank, Smoke, George

☒ **Returned to the library and listed on the sensitive topic list**

☐ **Removed from the library collection**

more it to the high school

Reasons for the recommendation above:

Book Banning is unconstitutional
For public libraries, books are purchased based
on interest, popularity, other circulation numbers,
gaps in collection etc. There is a process
where parents can fill out a form for a book
they find inappropriate and that form goes
to professional librarians and the board
eventually.



Elizabeth
SCHOOL DISTRICT

BOOK REVIEW FORM

Name: Janet [REDACTED]

Where do your children attend school: ETS

Phone: _____ Email: _____

Book Title: All Books in the high school section

Recommended Disposition of Book: I think this book should be ...

☒ Returned to the library and listed on the sensitive topic list

☐ Removed from the library collection

Reasons for the recommendation above:

all fine for high school. Although
there is definitely sensitive subject
matter, they will encounter all the
things on these ideas / verbiage / violence
at some time, doesn't mean they
are so will suddenly become any
of the above things - trust your
kids, have confidence in how you
raise them. Give them some credit,
they can handle it at High School level



BOOK REVIEW FORM

Name: Mindy [REDACTED]

Where do your children attend school: RCE

Phone: _____ Email: _____

Book Title: Identical, Fallout, Glass, Burned, Crank, Smoke Ellen Hopkins

Recommended Disposition of Book: I think this book should be ...

- ☒ Returned to the library ^{NO} ~~and listed on the sensitive topic list~~
- ☐ Removed from the library collection

Reasons for the recommendation above:

The title, author as or subject is irrelerant to why I am opposed to
banning books. I haven't read these, however, it took no time to discover
these are banned due to the difficult subject material contained within
the pages. Difficult subjects our children face. Suicide, addiction,
abuse, sexual identity crises are real - I would much prefer my
child can explore these subjects in an educational institution then
from heresay, whispers, gossip and their fellow peers without the
hope of open discussion and psychological safety. Other parents
may choose to censor their child's reading material, but that
right does not extend to me and my children.

Exhibit 14

From: [Mary Powell](#) on behalf of [Mary Powell <mpowell@esdk12.org>](#)
To: [REDACTED]
Date: Sunday, September 8, 2024 3:38:24 PM

Hi. One more thing on book removal vote.

As we talked about yesterday, there were two that I voted to Move to Sensitive and move to high school.

The LGBTQ book and the

You should see me in a Crown.

I was really back and forth in my mind about removal or moving to sensitive. I have hears from both Rhonda and Heather - Rhonda was a little back and forth too, but she made a really good point - they both have gender identity ideology in them, and do we really want that out there at all?

Of the people who came in to review , these books and write up a form (there were 29 people who came in), the majority favored removal.

SO, I am going to go ahead and change my vote on both of these to REMOVE, which would therefore make ALL 18 of the books be REMOVE.

Are you OK with this change in what we discussed?

Thanks! Mary

Exhibit 15

From: [Dan Snowberger](#) on behalf of [Dan Snowberger <dsnowberger@esdk12.org>](#)
To: [Jeff Maher](#)
Subject: Re: CPR question about book issues
Date: Monday, August 19, 2024 2:19:48 PM

-is the book list of temporarily suspended books - have those been removed from the school libraries? What could change their status? **Those have been removed from their respective libraries at this time and on display outside our boardroom for public feedback. Based upon feedback received from our community during the review period, the board will determine their final disposition which could include returning them to the collection and inclusion on the sensitive topic list, moving them to a different level (i.e., middle to high school), or weeding them from our current collection.**

-is the "sensitive topic" book list subject to change? Are you collecting both staff and parent feedback on this list now?

This list is subject to change as our collection continues to be compared against the book lists discussed in our library protocol. Books may be brought to the attention of the district throughout the year by staff or parents to be reviewed for inclusion in this list. Books on this list could also be removed based on further discussion between members of the community and the Board of Education.

-how did the board leave the question of removing classroom libraries? Will that be revisited at a future meeting? **The board will discuss the classroom library issue on Monday, August 19 at its worksession once it receives additional feedback from staff across the district.**

Exhibit 16

From: [Rhonda Olsen](#) on behalf of [Rhonda Olsen <rolsen@esdk12.org>](#)
To: [REDACTED]
Cc: [Dan Snowberger](#); [Michael Seefried](#)
Subject: Re: RCE Library - Book Review
Date: Thursday, September 5, 2024 9:59:51 PM

Hello Mr. [REDACTED],

Thank you so much for bringing this to our attention. The review of the library books to ensure age appropriate content is a new process for the district and we really appreciate it when parents bring to our attention any items that may have been missed. I will request that the book be removed from the library for further review.

Sincerely,
Rhonda Olsen

On Thu, Sep 5, 2024 at 9:14 PM [REDACTED] Family <[REDACTED]> wrote:
Hello,

My name is [REDACTED] [REDACTED]. I have a [REDACTED], at ESD schools.

[REDACTED] class visited the library at Running Creek Elementary today, where she checked out the book, Redwood and Ponytail, by K.A. Holt. While she was completing her 20 minutes of nightly reading, I peered over her shoulder at the book and became concerned.

The following is an excerpt from the inside of the book jacket: "K.A. Holt delivers an emotional wallop in this novel in verse about two girls discovering their feelings for each other...Sometimes you know who you're meant to be *with* before you know who you're meant to *be*."

The following are excerpts from the end of the book:

"Hours go by. We talk about moms, and Jill, and Levi. About plans and lack thereof and impulse control. We talk about holding hands and what that means and maybe it means nothing or maybe it means everything. We talk about that forbidden word, the tiny word, that fills both our heads, and how we'll figure out our words one day all on our own. We need our own word, you know? A phrase just for us. Because you're not my best friend, or my best girl, or my girlfriend, or my whole world, you're something even bigger, Kate. Bigger than just one word."

"She's my winning point. She's my summer day. She's my sneaky wink. She's my light. She's my heart. She's my Kate. I'm her Tam. Together we're everything."

"She's my cheering crowd. She's my laugh out loud. She's my secret smile. She's my light. She's my heart. She's my Tam. I'm her Kate. Together we're everything."

Tam identified as a nickname for her given name, Tamara.

The following is an excerpt from a review site, KirkusReviews.com:

"Tam is a volleyball player sometimes mistaken for a boy. Kate is a popular cheerleader. When they notice each other at seventh grade registration, Tam sees a walking cliché with a perfect ponytail, while Kate sees a girl as "tall as a palm tree." When they meet face to face, they strike an immediate rapport. Soon the two are having lunch together every day and linking pinkies in the halls. As they grow closer, each finds herself questioning who she thought she was. Tam doesn't know how she fits into Kate's seemingly perfect world. Kate, who has spent her life trying to live up to her shallow, perfectionist mother's expectations, wants to go her own way, a process that includes deciding whether or not to admit her feelings for Tam. Tam and Kate share the first-person narration, which keenly conveys each girl's joys and inner turmoil. The dual narratives play off of each other, sometimes in a call-and-response manner that clearly communicates the shyness, awkwardness, and confusion of first love. A trio of unseen watchers, identified as Alex, Alyx, and Alexx, collectively represent the observant school-hallway bystanders, providing commentary and speculation in the manner of a Greek chorus. Their verses can be read vertically or horizontally, resulting in multiple meanings. Characters are racially ambiguous. A glowing, heartfelt addition to the middle-grade LGBTQ genre. (Fiction. 8-14)"

Based on the content of the book, its subject matter, its target audience of 8-14 year olds and its similar subject matter to George by Alex Gino (also from RCE's library) I believe this book should be added to the Sensitive Topics List and reviewed by the Curriculum Review Committee.

My wife will be substitute teaching at RCE tomorrow, and will be bring the book back to the RCE library herself. RCE can decide what to do with the book at that time.

Thanks,

[REDACTED]

Exhibit 17

From: [Michael Seefried](#) on behalf of [Michael Seefried <mseefried@esdk12.org>](#)
To: [Kim Moore](#)
Subject: Re: UIPs and other items
Date: Wednesday, September 11, 2024 12:13:45 PM

Thanks, working on them!

On Fri, Sep 6, 2024 at 11:42 AM Kim Moore <kmoore@esdk12.org> wrote:
Good Morning,

Thank you so much for the great meeting yesterday. I appreciate your extending grace to me when I had to postpone then be late to my own meeting. I hope the information from John, Rebekah, and Dr. Seefried was helpful. With their time during our meeting, we did not have a lot of time to discuss the items I had on the agenda so I just wanted to touch base with you on those.

Libraries

- Classroom & school libraries - no new books should be purchased for either library
- The BOE is considering purchasing some books from the Great Books list to add to classroom libraries and school libraries.
- Don't allow teachers to send home the Scholastic Book order forms - whether in paper form on the online order link.

Observations/Evaluations

- Randa training should be complete
- Self-assessments and professional goals should be complete by 9/13
- Set up some times for me to join you during walkthroughs so we can observe in classrooms together. This can be done in conjunction with your 1:1 time.
- Work with your staff in identifying their MSL/MLOs - deadline is 9/30/24
- Elementary - collective should be focused on primary literacy
- Every teacher should have one observation documented in Randa before fall break.

UIPs

- Work on your UIP drafts - remember keep them simple - don't overthink
- Set up time to work with me if you need support
- You should have 2-3 priority performance challenges
- Elementary - one should be focused on primary literacy & one on math
- Discuss your draft UIP with your SAC in September
- Final UIPs due to Kim M by Oct. 1
- BOE will review on Oct. 7th.
- UIPs will be submitted to CDE by Oct. 15th.

Let me know how I can support you.

Have a great weekend!

--

Students are at the heart of everything we do!

Kim Moore

Chief Academic Officer



303-646-1839

634 S. Elbert Street, Elizabeth, CO 80107

elizabethschoolsdistrict.org

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--

Michael J. Seefried
Principal



.....
900 S. Elbert St., POB 550
Elizabeth, CO 80107
(303) 646-4620

Question, Comments, or Suggestions? Please use the [RCE Comment Form](#).

Exhibit 18

From: [Kim Moore](#) on behalf of [Kim Moore <kmoore@esdk12.org>](mailto:kmoore@esdk12.org)
To: [Pam Slade](#)
Cc: mseefried@esdk12.org
Subject: library books
Date: Tuesday, September 10, 2024 10:20:59 AM

Hi Pam,

I just got a notification to approve a purchase for library books through Follet for RCE. Please keep in mind that there should be no new purchases for books for the library without my approval.

Thank you.

--

Students are at the heart of everything we do!

Kim Moore
Chief Academic Officer



303-646-1839
634 S. Elbert Street, Elizabeth, CO 80107
elizabethschoolsdistrict.org

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

Defendant's Opposition to the Motion for Preliminary Injunction

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INTRODUCTION

Plaintiffs ask this court to substitute its judgment regarding the appropriate content for the Elizabeth School District’s libraries for that of the district’s elected school board pending the resolution of this litigation on the merits. Because Plaintiffs are not harmed at all—let alone irreparably—by the school board’s decision to remove books from the library shelves that the board has determined are incompatible with the pedagogical objectives of the district, they cannot make a clear showing that they are entitled to the extraordinary remedy of a preliminary injunction.

FACTUAL BACKGROUND

I. The Elizabeth School District (Schools, Leadership, and Educational Mission)

The Town of Elizabeth, Colorado sits approximately 45 miles southeast of Denver. The town’s school district, aptly named the Elizabeth School District (the “District”), educates approximately 2,600 students across four traditional public schools. The District’s elementary schools include Running Creek and Singing Hills—each educating preschool through fifth-grade students (ages 3–10). Elizabeth Middle School serves sixth through eighth grade (ages 10–14), and Elizabeth High School covers grades nine through twelve (ages 14–18). Snowberger Decl., at ¶ 5.

The District is governed by a five-director Board of Education (the “Board”).¹ See C.R.S. § 22-31-105(1)(a). Directors are elected at regular biennial school elections, each for a term of four years. *Id.* A quorum of directors must be present for the Board to conduct

¹ The Board directors at the time the disputed books were suspended and later removed from the district’s libraries were Rhonda Olsen, Olsen Decl., at ¶ 2; Heather Booth, Booth Decl., at ¶ 2; Mary Powell, Powell Decl., at ¶ 2; Mike Calahan, Calahan Decl., at ¶ 2; and Jonathan Waller, Waller Decl., at ¶ 2. Director Booth resigned on January 13, 2025, based on health issues. Booth Decl., at ¶ 3.

business, and the Board implements policy and other decision-making functions through a majority vote of directors present. *See generally* C.R.S. § 22-32-108.

Dan Snowberger is the District's superintendent and was unanimously appointed to the position by the then-Board of Education on March 13, 2023. Snowberger Decl., at ¶ 3. Superintendent Snowberger has a long and successful track record in educational leadership, spanning nearly four decades. *Id.*, at ¶ 4. As superintendent, he serves as the chief executive and operations officer of the District and is responsible for the primary instructional, financial, and operational functions of the District and its personnel. *Id.*, at ¶ 6.

One of the essential functions of Superintendent Snowberger's role is to ensure that the curriculum and materials used in classroom instruction align with the Board's vision and the values of the community. Snowberger Decl., at ¶ 7. To that end, Superintendent Snowberger collaborates extensively with the Board on a variety of initiatives to create a unified curriculum and improve the quality and consistency of the overall educational program. *Id.*

Within the District there has historically been a tremendous variety in what students have been learning in the classroom, and there has been very little integration between District schools and even within individual grade levels. *Id.* Through Superintendent Snowberger's leadership, the District has made it a top priority to provide an integrated approach to its educational program. *Id.* Specifically, the District has worked tirelessly to improve its curriculum and ensure that all students of the same grade level are taught the same core competencies such that those skills build upon themselves and lead to improved educational outcomes. *Id.* The District's efforts in this regard have already led to objective improvements to the quality of education within its four schools. *See e.g., id.* n.3.

II. The District's School Libraries Support and Enhance the District's Educational and Curricular Objectives

Each of the District's four traditional public schools has its own library. Students may not access or check out books except at the library of the school that they attend. Snowberger Decl., at ¶ 25. While the District's libraries may share some similarities with the local public library, the District has long regarded its school libraries as a component of its instructional materials as a whole. See Snowberger Decl., at ¶ 9; Ex. 1 (District Policy IJ). In other words, the purpose of the District's libraries is not to entertain the masses but to provide its students with materials of significant educational weight. See Snowberger Decl., at ¶ 9. Thus, the libraries are an essential part of the District's overall educational program. *Id.*

As with all instructional materials and curriculum used within the District, the Board is legally responsible for the school-library collections, Snowberger Decl., at ¶ 5, containing more than 50,000 titles, Snowberger Decl., at ¶ 26. But until recently the District did not have a uniform approach or policy with respect to purchasing, reviewing, and weeding library resources. See Snowberger Decl., at ¶ 12. Purchases were typically made on an ad hoc basis and often did not meaningfully consider (1) each book's suitability for a school setting, (2) the age-appropriateness of the book, and (3) how the book would support and reinforce the curriculum for the target age and grade level. *Id.* Further, publishers offer discount rates for bulk purchases, and the District additionally receives large book donations from a variety of sources. *Id.* The result has been that many books of questionable or even no educational value have made their way into District libraries. *Id.*

III. The Curriculum Review Committee's Careful Evaluation of the District's Library Collections

In the fall of 2023, the Board became aware of a significant disconnect between its curricular goals and the content of the District's library collection. Snowberger Decl., at

¶ 11. Specifically, Board director Mike Calahan had reported that his then-11-year-old daughter (a sixth-grade student at Elizabeth Middle School) had checked out a book from her school library that was recommended by the publisher for “age 14+” and that contained profanity and explicit sexual content. *Id.* Accordingly, in its process of comprehensively aligning the District’s curriculum and overall instructional materials, the Board became convinced that it was necessary to include the school-library collections in the effort, given the important role that school libraries play in the District’s overall educational program. See Snowberger Decl., at ¶¶ 11–13.

The Board tasked a subcommittee, the Curriculum Review Committee (the “Curriculum Committee”), with reviewing the District’s extensive library collection and proposing a clear policy to both guide that review and address student access to potentially controversial library content.² Snowberger Decl., at ¶ 11. Thus, the Curriculum Committee began the monumental task of both reviewing the significant collection of existing books on the shelves and developing a uniform and thoughtful approach to purchasing additional resources moving forward.³ *Id.* at ¶ 12.

The Curriculum Committee began its work by drafting a set of written protocols (the “Library Protocols”) for how the District should review books in its existing library

² The Curriculum Committee is co-chaired by Kim Moore, the District’s Chief Academic Officer. Moore Decl., at ¶ 5. Ms. Moore has served in this role both as co-chair and Chief Academic Officer since April 2024. *Id.* at 2. Board directors Heather Booth and Mary Powell additionally served on the Curriculum Committee along with other parents, teachers, administrators, and community members. *Id.*; Booth Decl., at ¶ 7; Powell Decl., at ¶ 6.

³ Although the Board expressed a long-term desire to replicate the libraries of schools that have collections limited to classics and soon-to-be-classics (similar to the approach taken by Liberty Common in Fort Collins, led by former State Senator and State Board of Education member Bob Schaffer), that type of large-scale replacement was simply not financially feasible at the time. Rather than shutting down school libraries in the interim, the Board decided to do the hard work of reviewing and weeding its existing collection. Snowberger Decl., at ¶ 11.

collection and how it should handle books that may contain sensitive topics. Snowberger Decl., at ¶ 14; Ex. 2 (Request for Board Action: 9.7 Library Sensitive Topic Protocol and Book Lists). The Library Protocols were designed with two main goals in mind: first, to advance the foundational purpose of the District's library services "to ensure that students have access to age-appropriate materials necessary to facilitate the [D]istrict's mission of providing students with excellent learning opportunities that inspire a passion for learning;" and second, to create a system of transparency in the District's library system by establishing: (i) a well-defined and consistent process for the ongoing evaluation of library resources and the acquisition of future library materials, (ii) parental access to student circulation history and the library registry, and (iii) a notification system to inform parents and guardians of materials their students are attempting to access that have been flagged for sensitive content. Moore Decl., at ¶ 7; Ex. 2, at 2.

To achieve these goals, the Library Protocols provided guidance and specific action steps related to three focus areas: (1) Analysis and Selection Process; (2) Sensitive Content Catalogs; and (3) Parental Access to Library Catalog and Student History (the "Protocols"). Snowberger Decl., at ¶ 14; Ex. 2, at 2–5. While the District and its Board could have easily weeded books with questionable educational value without any fanfare or public input, it was important to the Board that the Library Protocols and review process include complete transparency and feedback from the community. See Snowberger Decl., at ¶ 13. This approach aligned with District Policy KBB related to parental rights. See Ex. 9, (Parents Rights and Responsibilities). Specifically, the District firmly believes that parents have a right "[t]o know what curriculum and instructional materials are being used in their student's school." *Id.*

The Library Protocols also included a recommended list of books containing sensitive topics (the "Sensitive Topics List") as well as a smaller subset of 19 books to be

suspended pending further review by the Board (the “Suspended List”). Ex. 2, at 6–9. These lists were created pursuant to Protocol #1 concerning the analysis and selection process of District library books. *Id.* at 2-3. To develop the Sensitive Topics List and Suspended List, Curriculum Committee members were each assigned titles that had appeared on lists of frequently removed books from public school libraries. Powell Decl., at ¶ 7. Curriculum Counsel members would then cross-check those titles against the District’s library catalog. *Id.* If a title from a list of frequently removed books appeared in one of the District’s school libraries, or if the Curriculum Committee member identified a potentially problematic title through another source, they would then conduct a second-layer review to evaluate the book for specific content and age-appropriateness. *Id.*

The second-layer review included (i) reviewing third-party sources that evaluate books for younger audiences (e.g., BookLooks.org, Goodreads, Trigger Warning Database, Book Trigger Warnings, or the Junior Library Guild), and (ii) determining whether the work contained any of the topics flagged in the Library Protocols (e.g., graphic violence, sexual content, profanity/obscenity, ideations of self-harm or mental illness, religious viewpoints, drug or excessive alcohol use, racism/discrimination). *Id.* If Curriculum Committee members remained concerned about the age-appropriateness of the content after this second-layer review, they would add the title to a spreadsheet and submit it to Chief Academic Officer Kim Moore, who combined them to create a single draft list for the Board to review.⁴ *Id.* at ¶¶ 7–8.

⁴ The same basic process was used for developing both the Sensitive Topic List and Suspended List. If the Curriculum Committee member believed that the content was highly sensitive, it was placed on the Suspended List warranting further scrutiny and review. See Powell Decl., at ¶ 9.

IV. The Board's Approval and Implementation of the Library Protocols

The Library Protocols, including the Sensitive Topic List and Suspended List, were presented to the Board and approved on August 12, 2024, by a 4–0 vote.⁵ Snowberger Decl., at ¶ 14. Upon Board approval, the District began a process to include the community in the review of the Suspended List of 19 titles that included highly sensitive content. See Snowberger Decl., at ¶ 16. Specifically, on August 16, 2024, Superintendent Snowberger sent a letter to the entire community inviting them to review these 19 titles and provide the Board with feedback on whether they were appropriate to remain on District shelves. *Id.*; Ex. 12 (August 16, 2024, Letter Re Parent Opportunity to Review Library Materials). Superintendent Snowberger specified the days and times that the books would be available for review and made clear that the District's priority was to "implement a system where parents are empowered to make important decisions on the content their children will be able to access and be alerted when sensitive content is checked out by their children." *Id.*⁶

After the Board approved the Library Protocols, the District implemented Protocol #2 concerning sensitive-content catalogs. Specifically, the District designed a system where parents automatically receive an email if their child checked out a book on the Sensitive Topics List and further allowed parents to exclude their children altogether from checking out these titles. Moore Decl., at ¶ 11.

⁵ Director Calahan was not present. Calahan Decl., at ¶ 9; Ex. 4, (Aug 12, 2024, School Board Business Session Meeting Minutes), at 1.

⁶ The community review period was open for 25 days, Snowberger Decl., at ¶ 16, during which time the 19 books were temporarily removed from the shelves, *id.* at ¶ 15. Of the 19 titles on the Suspended List, only 18 were made available for the community to review given that one (*Speak*) had been checked out and not returned during the review period. *Id.* at ¶ 16 n.7.

V. The Board's Decision to Permanently Remove the 18 of the Titles on the Suspended List

On August 26, 2024, the Board held a work session where it had a robust and transparent discussion of the books on the Suspended List. See Powell Decl., at ¶ 11; see *also* Snowberger Decl., at ¶ 18; Ex. 7 (Aug 26, 2024, School Board Working Session Meeting Minutes). The Board heard from a variety of stakeholders, including Superintendent Snowberger, Chief Academic Officer Moore, other District staff members, parents, and community members. See Snowberger Decl., at ¶ 18. At this meeting, Board members read aloud excerpts from certain titles on the Suspended List. Snowberger Decl., at ¶ 19. For instance, Director Waller read a passage from *The Bluest Eye* by Toni Morrison:

She might wonder again, for the six hundredth time, what it would be like to have that feeling while her husband's penis is inside her. The closest thing to it was the time she was walking down the street and her napkin slipped free of her sanitary belt. It moved gently between her legs as she walked. Gently, ever so gently. And then a slight and distinctly delicious sensation collected in her crotch. As the delight grew, she had to stop in the street, hold her thighs together to contain it. That must be what it is like, she thinks, but it never happens while he is inside her. When he withdraws, she pulls her nightgown down, slips out of the bed and into the bathroom with relief. ... Or as she sits reading the uplifting thoughts of the Liberty Magazine, the cat will jump into her lap. She will fondle that soft hill of hair and let the warmth of the animal's body seep over and into the deeply private areas of her lap. Sometimes the magazine drops as she opens her legs.

Id. No formal Board action or decision-making occurred at the August 26th work session. See Ex. 7.

The Board's next regular business meeting was scheduled for September 9, 2024. Ex. 5 (Sept 9, 2024, School Board Business Session Meeting Minutes). At that meeting, the Board voted 4-0⁷ to permanently remove the 18 of the 19 titles from the Suspended

⁷ Director Booth was not present and did not vote on the Board's decision to permanently remove the 18 books. Booth Decl., at ¶ 9.

List.⁸ *Id.* Board members considered many factors, including the problematic nature of the content, which included, without limitation, graphic violence, graphic sexual content, extreme drug and alcohol use, and suicidal ideation.⁹ See Snowberger Decl., at ¶ 18; Olsen Decl., at ¶¶ 12, 28; Powell Decl., at ¶¶ 12, 31–37; Calahan Decl., at ¶¶ 10, 24; Waller Decl., at ¶¶ 9, 23. The overwhelming number of community members who reviewed the books on the Suspended List favored permanent removal. Snowberger Decl., at ¶ 18. Further, the books in question had no clear connection to the curriculum and contained little to no educational value or rigor. Snowberger Decl., at ¶ 18.

More importantly, no Board director voted to remove any of the 18 books based on the viewpoint expressed therein. Further, although Board directors considered the fact that community input overwhelmingly favored removal, their decisions were not based upon the individual viewpoints of community members who participated in the review process. Rather, all Board members based their removal decisions on the specific content of each book that they believed to be incompatible with the educational mission of the District. Olsen Decl., at ¶ 14; Powell Decl., at ¶ 14; Calahan Decl., at ¶ 12; Waller Decl., at ¶ 11.

The removal of the 19 titles on the Suspended List did not affect all four school libraries in the same way. Snowberger Decl., at ¶ 27. First, all 19 titles did not appear in every school library. For example, one title was removed from Running Creek Elementary School, five titles were removed from Elizabeth Middle School, and 15 titles were

⁸ The title that was not available for public review was not permanently removed; it remains on the Suspended List. See Snowberger Decl. at ¶ 16 n.7.

⁹ 15 of the 19 at-issue titles were reviewed by BookLooks.org and rated a “3” or “4.” See Ex. 11 (BookLooks Ratings). According to BookLooks, its rating system is designed to assess the appropriateness of a book for a child or young adult based on the content of the book taken as a whole. *Id.* at 1. A “3” rating means “Minor Restricted: Under 18 requires guidance of a parent or guardian.” A “4” rating means “No Minors: Adult content. No child under 18.” *Id.* at 2.

removed from Elizabeth High School. *Id.* Second, titles that appeared in two libraries were not necessarily removed from both. *It's Your World—If You Don't Like It, Change It: Activism for Teenagers*, was in both the middle-school library and the high-school library, but it was only removed from the middle school library due to concerns that the content was not age appropriate for students between the ages of 10 and 14. *Id.* Thus, this particular book is still available at the Elizabeth High School library. *Id.*

The Board's removal decision affected less than 0.05% of the District's catalog, and the libraries still have a diverse collection of books on a range of subjects, Snowberger Decl., at ¶ 26, including those subjects specifically scrutinized by Plaintiffs, *see id.* at ¶ 36. Moreover, many of the same authors continue to have books on District shelves. Snowberger Decl., at ¶ 30. The 19 books that the Board removed are the work of 13 discrete authors. *Id.* Of those 13 authors, eight currently have at least one work included in the District's collection. *Id.* Finally, despite being in the District's collection for years, eight of the 19 titles had never been checked out, and another eight had been checked out five times or fewer, even when considering renewals by the same student. *Id.* at ¶ 28.

As of January 27, 2025, the District decided to place copies of each of the 19 titles that the School Board voted to remove in the library from which they were taken. Snowberger Decl., at ¶ 38. These titles are available only to C.C., E.S., or any student who is either a member of the NAACP — Colorado–Montana–Wyoming State Area Conference ("NAACP"), or who has a parent or guardian who is a member of the NAACP. *Id.* All the current members of the School Board are aware of and have approved the return of the disputed books for the purpose of allowing the plaintiffs in this litigation to browse, read, or check out those books in the school district's libraries. Olsen Decl., at ¶ 38; Powell Decl., at ¶ 42; Waller Decl., at ¶ 31; Calahan Decl., at ¶ 31.

VI. Plaintiffs Sue to Reverse the Board's Removal Decisions and Force the Challenged Books Back on the Shelf.

On December 19, 2024, Plaintiffs filed a Complaint against the District alleging First Amendment violations other related claims under the Colorado Constitution. ECF No. 1 (Pls.' Compl.). Plaintiffs' Motion for Preliminary Injunction followed the next day, ECF No. 9 (Pls.' Mot. for Prelim. Inj.).

LEGAL STANDARD

To obtain a preliminary injunction, the plaintiffs needed to make a "clear showing" of: (1) likely success on the merits; (2) a likelihood that the plaintiffs will suffer irreparable harm absent preliminary relief; (3) that the balance of equities tips in the plaintiffs' favor; and (4) that a preliminary injunction is in the public interest. *See Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008). A preliminary injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 971, 972 (1997) (per curiam).

ARGUMENT

I. None Of The Plaintiffs Have Standing To Challenge The Removals Of *#Pride, Crown, Or It's Your World*

Students in the Elizabeth School District cannot access or check out library books held at other schools within the district. *See* Snowberger Decl. ¶ 25. So while C.C. has alleged Article III standing to sue over the 15 disputed books held at the high-school library, she has no standing to challenge the book removals from the middle-school library or Running Creek Elementary. A student does not suffer "injury in fact" from book removals at a school library that she cannot access. E.S. has likewise alleged standing only to challenge the book removals at the school that she currently attends (Running Creek Elementary). Any injury based on the future possibility that four-year-old E.S. might someday enroll at the Elizabeth School District's middle school and seek to access the disputed

books at the middle school's library is too speculative and unripe to support a justiciable controversy. See *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990) (“[A] threatened injury must be ‘certainly impending’ to constitute injury in fact.”); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014).

None of the other plaintiffs have made a “clear showing” of standing to challenge the removals of *#Pride*, *Crown*, or *It’s Your World* from the middle school. None of these books were written by members of The Authors Guild. See Pls. Br., ECF No. 9, at 12–13. And the NAACP’s declaration fails to identify any NAACP member who attends the middle school or has children who attend. See Prescott Decl., ECF No. 9-4, at ¶ 8 (referring to “[o]ne NAACP member who has a child at Running Creek Elementary”). That some NAACP members may experience feelings of anguish or distress from the removal of these books from the middle-school library does not supply a basis for Article III standing. See *id.* at ¶ 10; *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 485 (1982) (“[T]he psychological consequence presumably produced by observation of conduct with which one disagrees [is] not an injury sufficient to confer standing under Art. III”). And the NAACP members who have “removed their children from Elizabeth schools” have no stake in this controversy because their children no longer attend the district’s schools and cannot access any books in those libraries.

II. None Of The Plaintiffs Have Made a “Clear Showing” Of Likely Success On Their First Amendment Claims

The plaintiffs cannot make a “clear showing” of likely success on the merits of their First Amendment claims because a school library’s curation decisions are government speech immune from First Amendment scrutiny. Even if the district’s curation decisions were not government speech, Plaintiffs cannot show any harm to their purported First Amendment right to access information because the books at issue remain available to

them in the school libraries. Moreover, the standard advocated by Plaintiffs—the three-justice plurality opinion in *Pico*—is nonprecedential and doctrinally stale; to the extent there is a First Amendment inquiry here, it must proceed under the rubric for curricular-related speech bearing the imprimatur of the district established in *Hazelwood*. Finally, even if this Court were to (incorrectly) apply the *Pico* plurality opinion, Defendant easily satisfies that standard because it is not withholding access to the titles at issue for narrowly partisan or political reasons.

A. A School Library’s Curation Decisions Are Government Speech Immune From First Amendment Scrutiny

The plaintiffs’ First Amendment claims cannot get off the ground because a school library’s curation decisions are government speech immune from First Amendment scrutiny. A library’s curating decisions are no less “speech” than a social-media company’s decisions regarding the third-party speech that it chooses to convey on its platforms. See *Moody v. NetChoice, LLC*, 603 U.S. 707, 728 (2024) (“[E]xpressive activity includes presenting a curated compilation of speech originally created by others.”). As the Supreme Court explained in *NetChoice*:

An entity “exercis[ing] editorial discretion in the selection and presentation” of content is “engage[d] in speech activity.” *Arkansas Ed. Television Comm’n v. Forbes*, 523 U.S. 666, 674 (1998). And that is as true when the content comes from third parties as when it does not. (Again, think of a newspaper opinion page or, if you prefer, a parade.) Deciding on the third-party speech that will be included in or excluded from a compilation—and then organizing and presenting the included items—is expressive activity of its own. And that activity results in a distinctive expressive product.

Id. at 731. And “none of that changes just because a compiler includes most items and excludes just a few.” *Id.* at 732; see also *id.* at 738 (“That those platforms happily convey the lion’s share of posts submitted to them makes no significant First Amendment difference.”). Most libraries are willing to carry the vast majority of available books, but that

does not mean that they are no longer engaged in “speech” when they choose to exclude certain materials from their collections. See *United States v. American Library Ass’n Inc.*, 539 U.S. 194, 204 (2003) (Rehnquist, C.J.) (plurality opinion) (“[L]ibraries collect only those materials deemed to have ‘requisite and appropriate quality.’”); *id.* (“‘The librarian’s responsibility . . . is to separate out the gold from the garbage, not to preserve everything’” (quoting W. Katz, *Collection Development: The Selection of Materials for Libraries* 6 (1980))).

And a library’s acquisition and weeding decisions remain its own “speech” even though a library is conveying the speech of others when deciding whether to include materials in its collection. Like a social-media platform, a library is “in the business . . . of combining ‘multifarious voices’ to create a distinctive expressive offering.” *NetChoice*, 603 U.S. at 738. As *NetChoice* explains:

The individual messages may originate with third parties, but the larger offering is the platform’s. It is the product of a wealth of choices about whether—and, if so, how—to convey posts having a certain content or viewpoint. Those choices rest on a set of beliefs about which messages are appropriate and which are not (or which are more appropriate and which less so). And in the aggregate they give the feed a particular expressive quality.

Id. at 738. So too with a library. The “individual messages” originate with the authors, but “the larger offering” is the library’s speech. See *id.* And a library’s acquisition and weeding decisions “rest on a set of beliefs about which [materials] are appropriate” to include in the library’s collection and “which [materials] are not.” *Id.* Finally, the aggregate of the library’s curating decisions gives the collection “a particular expressive quality” unique to that library. A library is “engage[d] in speech activity”¹⁰ when it curates its collection, and

¹⁰. *NetChoice*, 603 U.S. at 731 (quoting *Arkansas Ed. Television Comm’n v. Forbes*, 523 U.S. 666, 674 (1998)).

a public-school library's acquisition and weeding decisions are government speech immune from First Amendment attack.

The plaintiffs do not even discuss the government-speech point or acknowledge the holding of *NetChoice*, and they appear to believe that *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982), not only forecloses the school district's government-speech argument but somehow enshrines a three-justice plurality opinion as the law of the land. See Pl. Mot., ECF No. 9, at 14–21. But the justices in *Pico* failed to produce a rationale that garnered five or more votes, and in these situations the Supreme Court instructs lower courts to follow the opinion of the justice (or justices) who “concurred in the judgments on the narrowest grounds.” *Marks v. United States*, 430 U.S. 188, 193 (1977); see also *id.* (“When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, ‘the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds’” (quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976) (Stewart, Powell, and Stevens, JJ.)). In *Pico*, the controlling opinion under *Marks* belongs to Justice White, who concurred in the judgment and refused to join any portion of Justice Brennan's plurality opinion. See *Pico*, 457 U.S. at 883–84 (White, J., concurring in the judgment); *Campbell v. St. Tammany Parish School Board*, 64 F.3d 184, 189 (5th Cir. 1995) (“Justice White's concurrence in *Pico* represents the narrowest grounds for the result in that case”); *Muir v. Alabama Educational Television Comm'n*, 688 F.2d 1033, 1045 n.30 (5th Cir. 1982) (“[T]he opinion of Justice White [is] the narrowest grounds for the judgment [in *Pico*].”); *C.K.-W. by & through T.K. v. Wentzville R-IV School District*, 619 F. Supp. 3d 906, 913 (E.D. Mo. 2022) (“Justice White's opinion [in *Pico*] therefore controls”); *Walls v. Sanders*, --- F. Supp. 3d ---, No. 4:24-CV-00270-LPR, 2024 WL 5192031, at *7 n.49 (E.D. Ark. Dec. 20, 2024) (“Justice White's decisive concurrence

in the judgment . . . controls under *Marks v. United States*, 430 U.S. 188, 193 (1977)”). Yet Justice White’s opinion refused to weigh in on the constitutional standards for determining whether a library-book removal violates the First Amendment:

The District Court found that the books were removed from the school library because the school board believed them “to be, in essence, vulgar.” 474 F. Supp. 387, 397 (E.D.N.Y. 1979). Both Court of Appeals judges in the majority concluded, however, that there was a material issue of fact that precluded summary judgment sought by petitioners. The unresolved factual issue, as I understand it, is the reason or reasons underlying the school board’s removal of the books. I am not inclined to disagree with the Court of Appeals on such a fact-bound issue and hence concur in the judgment of affirmance. Presumably this will result in a trial and the making of a full record and findings on the critical issues.

The plurality seems compelled to go further and issue a dissertation on the extent to which the First Amendment limits the discretion of the school board to remove books from the school library. I see no necessity for doing so at this point. . . . [I]f there is an appeal, if there is dissatisfaction with the subsequent Court of Appeals’ judgment, and if certiorari is sought and granted, there will be time enough to address the First Amendment issues that may then be presented. . . .

We should not decide constitutional questions until it is necessary to do so, or at least until there is better reason to address them than are evident here. I therefore concur in the judgment of affirmance.

Pico, 457 U.S. at 883–84 (White, J., concurring in the judgment). The controlling opinion in *Pico* remains entirely agnostic on whether the First Amendment imposes *any* constraints on book-removal decisions made by public-school libraries, and it merely concurs in a judgment that affirms a federal court of appeals’ decision vacating a ruling that granted summary judgment for the school district and remanding the case for trial. See *id.* at 856–61 (Brennan, J.) (plurality opinion) (describing the lower-court proceedings). So there is *no* precedent from the Supreme Court that prevents this Court from following *NetChoice* and holding that school-library curating decisions are government speech

immune from First Amendment scrutiny. See *Muir*, 688 F.2d at 1045 n.30 (“*Pico* . . . decided neither the extent nor, indeed, the existence vel non., of First Amendment implications in a school book removal case.”); *Walls*, 2024 WL 5192031, at *7 (“Justice White’s decisive concurrence in the judgment . . . was anodyne enough that nearly nothing of substance was actually done in *Pico*.”).

B. The School District Cannot Be Violating Plaintiffs’ First Amendment “Right To Receive Information” When Each Of The 19 Disputed Books Remains Available For The Plaintiffs’ Children And Members To Read And Check Out Through From The School District’s Libraries

There is an additional reason why the plaintiffs cannot show that the school district is violating their constitutional rights: Each of the 19 disputed books remains available in the school district’s libraries for C.C., E.S., and the members of the NAACP and their children to read, browse, or check out. See Snowberger Decl. at ¶¶ 38–41. The defendants cannot be violating the plaintiffs’ “right to receive information” when each of the plaintiffs retains the same ability to access the 19 disputed books in the school district’s libraries that they had before the books were removed. And the plaintiffs cannot obtain a preliminary injunction by complaining that *other* students can no longer access the 19 disputed books through the school district’s libraries, because the plaintiffs must establish a violation of their own constitutional rights and not someone else’s. See *Archuleta v. McShan*, 897 F.2d 495, 497 (10th Cir. 1990) (“[A] section 1983 claim must be based upon the violation of plaintiff’s personal rights, and not the rights of someone else”); David P. Currie, *Misunderstanding Standing*, 1981 Sup. Ct. Rev. 41, 45.

Library patrons do not suffer violations of their First Amendment “right to receive information” when their desired books remain available to them in a library but are not placed on the library shelves. Many materials in a library’s collection can be obtained only by asking a librarian for assistance, such as books stored in a rare-book room, books that

are difficult to find, or books that are made available only through interlibrary loan. A library cannot be sued under 42 U.S.C. § 1983 whenever it offers materials to library patrons that are not available on the library's shelves, and a library does not violate anyone's First Amendment "right to receive information" by offering books in a manner that requires patrons to seek a librarian's assistance. What's more, Justice Kennedy's and Justice Breyer's concurrences in *United States v. American Library Ass'n Inc.*, 539 U.S. 194 (2003), make clear that "small" or non-significant burdens on a library patron's ability to obtain materials do not violate the First Amendment. See *id.* at 215 (Kennedy, J., concurring in the judgment) (upholding restriction after concluding that the plaintiffs failed to "show that the ability of adult library users to have access to the material is burdened in any significant degree"); *id.* at 220 (Breyer, J., concurring in the judgment) (upholding restriction given the "comparatively small burden that the Act imposes upon the library patron"). Here, the plaintiffs have yet to identify *any* burden that might be imposed on C.C., E.S., or the members of the NAACP or the children of their members, as the school district has spared them the inconvenience of having to search for the disputed books on the library shelves and allows them to obtain their desired book directly from a librarian. And even if the plaintiffs attempted to theorize or concoct a "burden," it would be far less than the burdens imposed by Children's Internet Protection Act, which required adult library patrons to ask a librarian to unblock filtered materials before internet access would be allowed. See *id.* at 199–201.

The members of the Authors Guild also cannot show a violation of their First Amendment rights when their books remain in the school district's libraries and remain available to C.C., E.S., and the members (and children of members) of the NAACP. The plaintiffs failed to produce evidence that any students other than C.C., E.S., or the NAACP's members and their children have any interest in accessing the disputed books

written by members of the Authors Guild, so they cannot show that the school's curation decisions have impeded their right to have these children access their works.

C. The Three-Justice Plurality In *Pico* Is Nonprecedential, Doctrinally Stale, And Factually Infirm

Plaintiffs simply assume that the Court will apply the three-justice plurality opinion in *Board of Education v. Pico*, 457 U.S. 853 (1982), even though this plurality opinion has no status as law. (PI Mot. 16–17.) The Tenth Circuit has never endorsed the *Pico* plurality opinion. Neither should this Court.

A three-justice plurality in *Pico* tried to invent a new First Amendment right for students in schools—a “right to receive” information in their school library, even when that information remains available elsewhere, and even when the school district does nothing to impede a student’s efforts to obtain the desired information from other sources. *Id.* at 866. The plurality attempted to fashion a “constitutional” standard for evaluating challenged book removals: while school boards have broad discretion to run their schools, including discretion to remove books from the school library, “that discretion may not be exercised in a *narrowly partisan or political manner*” such that it’s the “decisive factor” in the board’s decision. *Id.* at 870–71 (emphasis added). The plurality opinion was sharply criticized. “If the school board can set the curriculum, select teachers, and determine initially what books to purchase for the school library, it surely can decide which books to discontinue or remove from the school library so long as it does not also interfere with the right of students to read the material and to discuss it.” *Id.* at 921 (O’Connor, J., dissenting). “[E]lementary and secondary schools are inculcative in nature,” and school libraries “serve as supplements to this inculcative role.” *Id.* at 915 (Rehnquist, J., dissenting). Libraries are “tailored, as the public school curriculum is tailored, to the teaching of basic

skills and ideas” for success in the community; and that is the job of educators, not federal courts. *Id.*

The three-justice *Pico* plurality opinion “is a non-decision so far as precedent is concerned,” *Am. C.L. Union of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1200 (11th Cir. 2009), which is reason enough to disregard it. But there are other reasons why this Court should eschew the analysis of the three-justice *Pico* plurality. *First*, the *Pico* plurality opinion predates the Supreme Court’s government-speech doctrine, which applies to curation of the District’s school libraries (see *infra* subsection I.C). See *Rust v. Sullivan*, 500 U.S. 173, 199–200 (1991). *Second*, the Supreme Court has consistently narrowed student speech rights in secondary schools since *Pico*. It has limited students’ expressive speech rights in schools, emphasizing schools’ unique educational role and the need for operational order and efficiency. See *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 681 (1986). It has limited students’ rights vis-à-vis school-sponsored or curricular speech, recognizing that school boards have maximum discretion over speech the public may perceive as bearing the imprimatur of the school. See *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 270–71 (1988). The clear message since *Pico* is that schools need flexibility to fulfill their educational mission, even when it requires limiting some forms of expression.

Third and finally, the three-justice *Pico* plurality opinion is premised on a false assumption. The plurality assumed that the school library in *Pico* was “the principal locus” of free inquiry. 457 U.S. at 868–69. Perhaps that’s true of the libraries at research universities like the University of Colorado, or potentially even a large public library with broad appeal, but the District’s libraries are not places of unrestrained inquiry or entertainment. See Snowberger Decl. at ¶ 9. They support and enhance the educational and curricular objectives of the District. Federally required firewalls and internet filters limit students’ web

access; similarly, the school library shelves are curated to further a defined educational mission. See Snowberger Decl. at ¶ 18 n.10.

D. The Court Must Defer To The Board’s Removal Decisions Under *Hazelwood* Because They Are Reasonably Related To Legitimate Pedagogical Concerns

While Plaintiffs’ First Amendment claims should start and end with government speech, the Supreme Court’s decision in *Hazelwood* also bars their claims. School boards have maximum deference over curricular and school-sponsored speech. *Hazelwood*, 484 U.S. at 271. The rule of *Hazelwood* applies both to “activities conducted as part of the school curriculum” and to “activities that might reasonably be perceived to bear the imprimatur of the school.” *Fleming v. Jefferson Cnty. Sch. Dist. R-1*, 298 F.3d 918, 924 (10th Cir. 2002). The District’s decisions regarding its libraries fit both categories.

First, the District’s libraries are necessary components of the District’s broader curriculum. The District’s long-standing policy makes this clear: “Instructional materials for school classrooms *and school libraries* shall be selected by the appropriate professional personnel All instructional resources and materials *shall be aligned with the district’s academic standards and support the district’s educational objectives*.” Ex. 1 (emphasis added); see *also* Snowberger Decl. at ¶ 9. The District’s policy is common sense; “[t]he purpose of public school libraries is to advance the school curriculum—that is, to facilitate the pedagogical mission of the school, which may involve some limitation of expression.” *GLBT Youth in Iowa Sch. Task Force v. Reynolds*, 114 F.4th 660, 670 (8th Cir. 2024). And the policy-making body of schools—school boards—have the institutional competence in educational and pedagogical decision-making. They have both the expertise and responsibility to shape curriculum and educational resources based on the community’s needs and educational goals. If the school band, drama club, and choir are constitutional adjuncts of a school’s curriculum, *Board of Education of Westside Community Schools v.*

Mergens By & Through Mergens, 496 U.S. 226, 246 (1990), then surely school libraries are within the curricular activities or resources “that affect learning,” *Fleming*, 298 F.3d at 925.

Second, the District’s libraries bear the imprimatur of the District and its pedagogical concerns. “The imprimatur concept covers speech that is so closely connected to the school that it appears the school is somehow sponsoring the speech.” *Fleming*, 298 F.3d at 925. Unquestionably, book selection and removal decisions by the Board signal its educational priorities and bear directly on the public’s perception of the District’s educational quality and operational order. No one can dispute that, if the District’s libraries included a collection of back-issues of *Playboy*, the community would rightly question the educational priorities of the District. The same could be said if the District housed a collection of books promoting frauds—like Holocaust denial, that life in North Korea compares favorably to life in the United States, or that the Apollo 11 moon landing was faked—or overt racism. *Hazelwood* allows school boards to avoid this. Indeed, “[m]any cases have applied a *Hazelwood* analysis to activities outside the traditional classroom ... to avoid controversy within a school environment.” *Id.* at 926 (collecting cases).

If the first part of *Hazelwood* is satisfied, “the school may impose restrictions ... so long as those restrictions are reasonably related to legitimate pedagogical concerns.” *Id.* at 924. The reasonably-related-to-legitimate-pedagogical-concerns standard is an objective one. “Pedagogical means related to learning,” and the Tenth Circuit “give[s] substantial deference to educators’ stated pedagogical concerns.” *Id.* at 925. The scope of “legitimate pedagogical concerns” is broad and includes discipline, courtesy, and the avoidance of controversy. “[T]he pedagogical concern in *Hazelwood* itself was to avoid the controversial subjects of pregnancy and divorce in a school setting[.]” *Id.* at 926.

Because of the types of educational decisions that “face educators in ‘awakening the child to cultural values’ and promoting conduct consistent with ‘the shared values of a civilized social order,’” the Tenth Circuit has rejected viewpoint neutrality under *Hazelwood*. *Id.* at 928 (cleaned up). For instance, a school must be able to refuse speech that “might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with ‘the shared values of a civilized social order,’ or to associate the school with any position other than neutrality on matters of political controversy.” *Hazelwood*, 484 U.S. at 272 (citation omitted).

The Board’s removal decisions here easily clear the “reasonable relation to a legitimate pedagogical concern” bar. The removal decisions were part of a broad effort to standardize the District’s curriculum to enhance educational value. The District has purchased and adopted a new science curriculum, recognized opportunities to improve student proficiency in reading, and is evaluating a new social-studies curriculum. See Snowberger Decl. at ¶ 8. At the same time, the Board directed the District to reevaluate the books in the District’s school libraries to align them with the District’s curricular and educational goals. See Snowberger Decl. at ¶¶ 7, 13. This meant removing select books with sexually explicit content, including base vulgarity, that were not age appropriate for the respective school library, or that promoted discourse or indoctrination on sensitive and controversial topics best left to parents as the primary educators of their children. See Snowberger Decl. at ¶¶ 13, 20, 43. If a school principal can unilaterally pull an article in the school newspaper on teen pregnancy and the impact of divorce on students, *Hazelwood*, 484 U.S. at 272–73, surely the Board can identify core competencies and educational objectives and direct the District to thoroughly (and transparently) evaluate the books in the school libraries and remove those that are inconsistent with the District’s pedagogical concerns. In the end, “*Hazelwood* entrusts to educators these decisions,”

even if the decision is based on “viewpoint.” *Fleming*, 298 F.3d at 928. Here, the Board’s removal decisions were well within its constitutional discretion under *Hazelwood*.

E. Even If The Court Applies The *Pico* Plurality Standard, Plaintiffs Have Not Proven Unconstitutional Motive

Plaintiffs concede the *Pico* plurality’s standard is limited: “school boards cannot constitutionally exercise their discretion to determine the content of school libraries ‘in a narrowly partisan or political manner’.” (Pl. Mot. 17 (quoting *Pico*, 457 U.S. at 870 (plurality opinion of Brennan, J.)).) Not only must the school board’s motive be “narrowly partisan or political,” but this “unconstitutional” intent must be “the decisive factor in [the board’s] decision.” *Pico*, 457 U.S. at 871. “Decisive factor” means “‘substantial factor’ in the absence of which the opposite decision would have been reached.” *Id.* at 871, n.22. Examples of impermissible motive include: “[i]f a Democratic school board, motivated by party affiliation, ordered the removal of *all* books written by or in favor of Republicans,” *id.* at 870–71 (emphasis added); or, “if an all-white school board, motivated by racial animus, decided to remove *all* books authored by blacks or advocating racial equality and integration,” *id.* at 871 (emphasis added). To the *Pico* plurality, an intent to remove *all* books on one side of a political or partisan debate while leaving others, “would be to encourage” a “sort of officially prescribed orthodoxy.” *Id.*

On the other hand, the *Pico* plurality opined it would be “perfectly permissible” for a school board to remove books based on vulgarity or the “educational suitability” of the book. *Id.* Such removals “would not carry the danger” of prescribing orthodoxy in partisan or political matters by eliminating contrary views. *Id.*

“[T]he burdens at the preliminary injunction stage track the burdens at trial.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006). Here, even if this Court were to plow new ground by adopting the three-justice *Pico* plurality’s

standard, to carry their burden, Plaintiffs must show unconstitutional motive.¹¹ And the relevant motive is the Board's—no one else's.

Plaintiffs don't try to carry this burden. They simply claim that “the Board did—and continues to—remove books because of the ideas they contain.” (Pl. Mot. 18.) That's not the standard. To prove unconstitutional motive, the three-justice *Pico* plurality requires the Board's decision (1) be narrowly partisan or political; (2) the partisan-or-political motive be the “decisive factor” in the removal; and, through the decision, (3) the school board sought “to prescribe what shall be orthodox” in the school. *Pico*, 457 U.S. at 871, 872 (cleaned up). Plaintiffs have not—and cannot—carry their burden of proving unconstitutional motive; their thin, inadmissible, out-of-context evidence certainly does not warrant broad injunctive relief.

The Board's Decision was not partisan or politically motivated. Plaintiffs do not identify the Board's partisan-or-political motives other than vague references to the Board's “conservative values.” Pl. Mot. 21. Plaintiffs' own evidence undermines any after-the-fact claim of rank-partisan motivation. As Plaintiffs acknowledge, the Board's book review tags included “‘racism/discrimination,’ ‘religious viewpoints,’ ‘sexual content,’ ‘graphic violence,’ ‘profanity/obscenity,’ ‘drug or excessive alcohol use,’ and ‘ideations of self-harm or mental illness.’” (Pl. Mot. 19 (quoting Ex. 7).) These aren't partisan or political categories, and Plaintiffs do not claim otherwise. Nor are these categories unique to “conservative values,” whatever Plaintiffs mean by that phrase. These are common-sense identifiers to guide the decision to remove select books with explicit, age-inappropriate, or overly controversial content from the District's libraries. A complete account of the

¹¹ Because a district court's finding of motive under the three-justice *Pico* plurality standard “depends on constitutional facts,” appellate courts review lower courts' findings de novo. See *ACLU of Fla.*, 557 F.3d at 1206; see also *id.* at 1204 (“[U]nder the *Pico* plurality standard we are assuming applies, the Board's motive is the ultimate fact upon which the resolution of the constitutional question depends.”).

Board's process (as opposed to Plaintiffs' litigation narrative) shows the Board followed a principled, thorough, and transparent process to evaluate the educational suitability of the books in the District's libraries. See Snowberger Decl. at ¶¶ 13–21. That process accords with the three-justice *Pico* plurality's direction: "This would be a very different case if the record demonstrated that [the school board] had employed established, regular, and facially unbiased procedures for the review of controversial materials." *Pico*, 457 U.S. at 874.

Politics or Partisan Motivations were not a decisive factor. Plaintiffs do not acknowledge the "decisive factor" requirement, much less carry their burden and prove it. The closest Plaintiffs come is citing two out-of-context emails from *two* of five Board members.¹² See Pl. Mot. 19 (citing Exs. 12 and 14). Again, the Board's actual process, described in the District's supporting declarations, conclusively establishes that the Board's removal decisions were not one-dimensional based on partisan-or-political motive. Rather, the Board's decisions were guided by multiple factors (as Plaintiffs, perhaps inadvertently, concede, see Pl. Mot. 19 (outing various review considerations), which themselves were informed by multiple resources, including online book-review publications and rating systems for primary and secondary schools, and the views of Superintendent Snowberger, parents, teachers, and other community members. See Snowberger Decl. at ¶¶ 13–21. Again, this process is in accord with the *Pico* plurality. See *Pico*, 457 U.S. at 874 (noting the school board "ignored 'the advice of literary experts,' the views of 'librarians and teachers within [the district],' the advice of the Superintendent of Schools, and the guidance of publications that rate books for junior and senior high school students").

¹² One of the two Board members referenced, Heather Booth, no longer serves on the Board and did not vote to permanently remove books from the District's libraries. See Booth Decl. at ¶ 9.

The Board's Decision Was not made to Prescribe Partisan Orthodoxy. Lastly, Plaintiffs' thin claim that the Board is imposing its "partisan, political orthodoxy" on students is against the facts. (See Pl. Mot. 21.) *First*, Plaintiffs cannot seriously contend that removing books with sexually explicit and vulgar content (whether by a straight, lesbian, gay, bisexual, transsexual, or queer character) imposes a political orthodoxy. Opposition to indecency in schools is surely not limited to those espousing "conservative values" (or "liberal" or "moderate" values for that matter). *Second*, the *Pico* plurality's concern with school boards prescribing orthodoxy was with the elimination of one viewpoint to elevate contrary remaining viewpoints. *Pico*, 457 U.S. at 871. Here, Plaintiffs try to frame the Board's removal decisions as the suppression of LGBTQ and racial views with which Board members supposedly disagreed. (Pl. Mot. 21.) Beyond categorically labeling the Board's views as undefined "conservative values," Plaintiffs are silent on the Board's actual views. More simply though, Plaintiffs' narrative isn't doesn't survive contact with reality. Today, a District student interested in LGBTQ history, self-narrative, or authors will find many such books on the library shelves. See Snowberger Decl. ¶ 35. The same can be said about "race." See *id.* at ¶ 36. While it may be convenient for Plaintiffs to claim in unchecked legal filings and promotional materials on social media, Plaintiffs' "political orthodoxy" narrative ignores the Board's deliberative and balanced approach to the removal decisions.

F. Additional Points On The Authors' Viewpoint Discrimination Claim

The guild member authors' viewpoint discrimination claims fail for an additional reason: the Elizabeth School District's libraries are not a public forum for the authors' expression. Rather, because they serve defined communities of students and school employees (as opposed to the general public) the School Board's removal of the 19 titles is garden-variety regulation of access to a non-public forum. Even outside the walls of a

school, the Supreme Court has acknowledged that the otherwise absolute interest of adult speakers to reach an unlimited audience must give way in the context of minors where the adult's speech is sexually explicit. See *Ginsberg v. New York*, 390 U.S. 629, 639–40 (1968) (affirming the constitutionality of a state law banning the sale of non-obscene sexually oriented material to minors); *FCC v. Pacifica Foundation*, 438 U.S. 726, 732 (1978) (affirming FCC's power to regulate speech that is indecent, obscene or profane and noting offending broadcast was made during an hour when "children were undoubtedly in the audience"). If public forums can be curbed to protect minors from inappropriate speech, of course the non-public forum of a school library may be made unavailable to the same.

III. The Plaintiffs Have Not Made A "Clear Showing" Of Irreparable Harm

The plaintiffs cannot identify *any* harm (let alone an "irreparable" harm) that could befall C.C., E.S., or the NAACP members (or the children of NAACP members) who are students in the Elizabeth School District, as each of the previously removed books is now available for them to read, browse, or check out in the library from which it was taken. See Snowberger Decl. at ¶¶ 38–41; see also *CK-W by and through TK v. Wentzville R-IV School District*, 619 F. Supp. 3d 906, 919 (E.D. Mo. 2022) (removal of books from school library did not inflict irreparable harm because it "does not stop any student from reading or discussing the book"). The plaintiffs do not deny that it is easier for them to obtain a book by asking for it at the reference desk rather than by searching a catalog, traipsing among the shelves, and pawing through the books.

The plaintiffs would prefer that the books be returned to the library shelves so that *other* students can check them out, but that does not inflict irreparable harm *on the plaintiffs*. See *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008) ("A plaintiff seeking a preliminary injunction must establish . . . that *he is* likely to suffer irreparable harm in the absence of preliminary relief." (emphasis added)); *Jones v. District of*

Columbia, 177 F. Supp. 3d 542, 546 n.3 (D.D.C. 2016) (“[T]he irreparable harm prong . . . only concerns harm suffered by the party or parties seeking injunctive relief [A]ny alleged harm to third parties is properly addressed under the public interest prong”). And the distress that the plaintiffs may experience over the plight of other library patrons is not an Article III injury, let alone “irreparable harm.” See *Valley Forge Christian Coll. v. Americans United for Separation of Church and State*, 454 U.S. 464, 485–86 (1982).

Plaintiffs argue, formulaically, that there is a presumption of irreparable injury where First Amendment rights are implicated. Pl. Mot. at 25. But even if such a presumption were warranted—and it is not given the weakness of Plaintiffs’ claims on the merits—it would be rebutted here by the simple fact that Plaintiffs cannot show irreparable harm to their First Amendment rights to access and receive information when each of the 19 disputed books remain available for the plaintiffs.

Finally, Plaintiffs’ delay in seeking a preliminary injunction implies a lack of irreparable harm and in and of itself warrants denial of preliminary relief. “Courts in both this jurisdiction and others have uniformly determined that a movant’s delay in seeking injunctive relief warranted the relief’s denial.” *Colo. Motor Carriers Ass’n v. Town of Vail*, 2023 WL 8702074 at *12 (D. Colo.) (collecting cases holding that three months or more delay in seeking a preliminary injunction implies that the harm complained of is not serious enough to warrant the extraordinary remedy of a preliminary injunction). Here, Defendants determined to permanently remove the titles on September 9, three and a half months before Plaintiffs’ December motion for preliminary injunction. Compl. ¶ 127. This is a tell that Plaintiffs—whatever the merits of their claims—do not believe their harm is irreparable. 11A Fed. Prac. & Proc. Civ. § 2948.1 (3d ed.) (“[L]ong delay by plaintiff after learning of the threatened harm also may be taken as an indication that the harm would not be serious enough to justify a preliminary injunction.”) (citations omitted).

IV. The Balance Of The Hardships Favors The District

While Plaintiffs' claim of irreparable harm is weak, the harm to the District that would be occasioned by Plaintiffs' requested preliminary injunction is considerable. The District would be forced to purchase, catalog, and re-shelve the removed titles. And Plaintiffs' request that this Court preliminarily enjoin the District's elected board (along with its agents, attorneys, servants and other representatives) "from removing books from ESD libraries because of the ideas contained in the books," Pl. Mot. 30, would leave the District unable to make decisions regarding the curation of its school libraries until the end of this litigation. Every book contains ideas. It is precisely the role of a school board to determine which ideas are supportive of a school's educational mission.

V. The Public Interest Weighs Against A Preliminary Injunction

Finally, the public interest is in the District's favor at this preliminary stage. As argued above, it is uncontroversial that a District may remove titles from its libraries; the only potential limitation on this power is a removal for narrow, partisan reasons. To the extent Plaintiffs' claims are at all colorable, this Court will need to closely examine the specifics of the removal decision for each title before second-guessing the District's decision. *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) ("Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems, and which do not directly and sharply implicate basic constitutional values."). The decision to remove the titles was the result of an open and public process undertaken by a duly elected school board. This is precisely how public bodies like the school board should deliberate matters of pedagogy and instruction. An injunction on these facts will encourage such decisions to be made out of the public eye and suppress community debate on the purpose of a school district's library collection.

CONCLUSION

The plaintiffs' motion for preliminary injunction should be denied.

Dated: January 27, 2025

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CERTIFICATE OF SERVICE

I certify that on January 27, 2025, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following email addresses:

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s/
FIRST & FOURTEENTH PLLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**Declaration of Dan Snowberger, Superintendent, Elizabeth School District, in
Support of the Opposition to Plaintiffs' Motion for Preliminary Injunction**

I, Dan Snowberger, being over 18 years of age, submit the following declaration in support of the Elizabeth School District's opposition to the plaintiffs' motion for preliminary injunction and state as follows:

1. I have reviewed and am familiar with the plaintiffs' complaint and motion for preliminary injunction.
2. I make this declaration based on personal knowledge.
3. I am the Superintendent of Schools for the Elizabeth School District (ESD). I have held this role since March 13, 2023, when I was unanimously appointed by the then-Board of Education.
4. This is my 39th year in the public-education system. I have held numerous positions, starting as a paraprofessional, teacher, curriculum-resource teacher, assistant principal, principal, central-office administrator, and superintendent. I hold a bachelor of science degree in elementary education, a master's degree in educational leadership,

and a superintendent's license. I'm proud of the experience I have gained serving diverse communities in Florida, California, and Colorado. I also have several years of experience in the private sector working to support charter schools across the country. Before coming to the Elizabeth School District, I held the following leadership positions in other Colorado schools and school districts: Director of Educational Programs — Education ReEnvisioned BOCES, Monument, CO 2022–23; Zone Superintendent — El Paso Co School District 49, Falcon, CO 2021–22; Superintendent of Schools — Durango School District, Durango, CO 2012–21; and Executive Director & Assistant Superintendent — Harrison School District, Colorado Springs, CO 2007–12.

ESD's efforts to improve the curriculum

5. The Elizabeth School District comprises four traditional public schools that serve students from preschool age through high school:¹

- Running Creek Elementary (RCE) - preschool through fifth grade (ages 3–11)
- Singing Hills Elementary (SHE) - preschool through fifth grade (ages 3–11)
- Elizabeth Middle School (EMS) - sixth to eighth grade (ages 11–14)
- Elizabeth High School (EHS) - ninth to twelfth grade (ages 14–18)

The Elizabeth School District Board of Education (“School Board”) is the body responsible for guiding these schools and the district through me, the superintendent.

6. As superintendent, I serve as the chief executive and operations officer of the district, maintaining responsibility for the primary instructional, financial, and operational functions of the district and its personnel. Among other things, I continually

¹ Legacy Academy, a charter school, is also located in the Elizabeth School District. It has its own board of directors and operates independently from the four traditional public schools in the Elizabeth School District.

communicate and collaborate with the school board on all issues that may impact the district, assess all district procedures and programs for effectiveness and efficiency, review and make recommendations to the school board for revisions or creation of policies, supervise and evaluate the performance of central administrative personnel and building principals, and develop a comprehensive district budget within the constraints of the Colorado School Finance Act, the goals and objectives of the School Board, and the financial needs of the overall instructional program.

7. In addition, one particularly essential part of my role is to ensure the curriculum and materials used in classroom instruction align with the school board's vision and the values of the community. Since becoming superintendent, I have collaborated extensively with the school board on a variety of efforts to create a unified district curriculum and improve the quality and consistency of that curriculum.² Before I started with the Elizabeth School District, there was tremendous variety in what students (even those in the same grade level) were learning in the classroom, and there was very little integration between grade levels and between the elementary school, middle school, and high school. Recognizing the critical importance of providing an integrated approach from preschool through twelfth grade, where all students of the same level are taught the same core competencies and where the curriculum from grade to grade builds and complements those competencies, the district has worked tirelessly the past few years to improve the curriculum across the board.

² Although we still have a lot of work to do, I am proud that student performance in ESD has steadily improved over the past few years. Our 2022 Final Transitional Performance Framework, prepared by the Colorado Department of Education, indicated the ESD was "Accredited: Low Participation" based on 63.6/100 points earned. Our 2023 and 2024 Final District Performance Frameworks, however, indicated ESD's status had improved to "Accredited" and its points earned notably increased (65.5/100 points in 2023 and 67.8/100 points in 2024).

8. For example, during the 2023–24 school year, the School Board extensively vetted science curricula before purchasing and implementing the Discovery Education Science. In that same period, the School Board examined our performance and recognized many opportunities to improve our students’ proficiency rate in reading. The School Board is also evaluating the social-studies curriculum and has opted to pilot Core Knowledge Social Studies at the middle-school level before making a permanent decision on programs.

9. Our district’s efforts to improve the curriculum addressed not only what is taught in the classroom but also what materials are available to students through the school library. See Ex. 1 (ESD Policy IJ — Instructional Resources and Materials) (establishing that all instructional resources and materials, including “for school classrooms and school libraries,” “shall be aligned with the district’s academic standards and support the district’s educational objectives”). The school library is an essential part of our students’ education. Through it, the school can curate a set of books designed to support, reinforce, and expand the classroom curriculum. Unlike research or public libraries—which serve a much broader age demographic and strive to provide a wide array of materials that will appeal to a variety of readers with diverse interests, goals, and entertainment preferences—the purpose of the Elizabeth School District’s library collection is first and foremost to provide materials with educational value to the Elizabeth School District’s students and teachers.³

10. Notwithstanding the importance of the school library for enhancing and reinforcing the curriculum taught in the classroom, due to resource constraints, the libraries in our district have been operated by support staff who do not hold degrees in

³ Although it is possible for community members to reserve library space, they cannot use or check out library materials.

Library Science. As a result, books have been ordered without much regard to curricular purpose or function.

11. In approximately September 2023, the School Board became aware of a significant disconnect between its curricular goals and the content of the school district's library collection. Around that time, School Board member Mike Calahan reported that his then 11-year-old daughter (a sixth grader at Elizabeth Middle School) had checked out a book from her school library that was recommended by the publisher for "age 14+" and contained profanity and explicit sexual content.⁴ After reviewing the book and determining that it was not appropriate for middle schoolers, it was removed from the middle-school library.⁵ Shortly thereafter, the School Board tasked the Board Curriculum Review Committee ("Curriculum Committee") with reviewing the school district's extensive library collection and proposing a protocol to guide that review and address student access to potentially controversial library content. Although the School Board has expressed a long-term desire to mirror schools that have controlled school and classroom library collections comprising only classics and soon-to-be-classics (similar to the approach used by the wildly successful Liberty Commons in Fort Collins led by former Senator Bob Schaffer), the fiscal reality is that the Elizabeth School District cannot make a district-wide change immediately. Rather than shut down the school

⁴ See Common Sense Media review of *The Sun is Also a Star* (available at <https://www.commonsensemedia.org/book-reviews/the-sun-is-also-a-star>) (indicating, among other things, the book contains "passionate kissing that almost leads to sex," a description of the chemical "released during orgasm," "penis-size and masturbation jokes," and "strong language: 'a--hole,' 's--t,' 'f--k,' 'f--ked up,' 'f--king,' 'dick,' 'douche,' 'Jesus Christ,' 'bastards,' 'damn,' 'bag of dicks,' one 'motherf--ker,' and more").

⁵ This book also was (and still is) available in the Elizabeth High School library. The plaintiffs are not suing over the removal of that book from the middle-school library, nor are they seeking a preliminary injunction that would order its return to the middle-school library's shelves.

district's libraries completely, the school board decided to undertake the significant task of reviewing its existing collection.

12. Importantly, until recently, and much like the district's fragmented and decentralized curriculum, the Elizabeth School District did not have a uniform approach for purchasing library books or for reviewing and weeding those materials. Purchase decisions were ad hoc and often did not meaningfully consider each book's suitability for an educational setting, the age of the students who would access it, and how the book would support and reinforce the curriculum for that age group. Compounding the problem, publishers offer discounted rates for bulk purchases and schools often receive large book donations from a variety of sources, causing many books of questionable or no educational value to be included in the Elizabeth School District's libraries. Book weeding decisions were similarly ad hoc and made on the individual school level without coordination across schools and without clear communication to parents, students, and teachers.

13. Both the school board and I thought it essential to align the district's library collection with its curriculum both prospectively (through more informed purchase decisions in the future) and retrospectively (by weeding the existing collection), and to do so in a transparent manner. Although it is common for schools to weed their library collections during the summer or simply remove a book from the library when a parent raises a concern, the school board and I decided to create a transparent process for reviewing and removing content from the school district's libraries. This transparency is consistent with both the school library's important role in reinforcing and expanding on classroom curriculum and the parents' "Bill of Rights" that our district adopted in October 2023, which makes clear that parents and caregivers have the right "[t]o know what

curriculum and instructional materials are being used in their student's school.” Ex. 9 (Parents Rights and Responsibilities), at 2.

The Library Protocols, Sensitive Topics List, and Suspended Books List

14. The result of this push for a transparent process was the Library Services Guiding Protocols (“Library Protocols”). The Library Protocols were created in conjunction with the Curriculum Committee and recommended to the School Board for adoption in August 2024. See Ex. 2 (Request for Board Action: 9.7 Library Sensitive Topic Protocol and Book Lists). The school board unanimously adopted the Library Protocols at its August 12, 2024, Business Session. See Ex. 4 (Aug. 12, 2024, Meeting Minutes), at 6. At a high level, the Library Protocols provide guidelines for how the district: (1) analyzes, selects, and reviews library materials; (2) develops and maintains sensitive content catalogs (called “Sensitive Topic Lists”); and (3) provides full parental access to the library catalog and their student’s library account. See Ex. 2 at 2–5. Although the district continues to have discretion to decide what educational materials will remain available in the library, the protocols provide a framework for exercising that discretion in a manner that is more consistent across schools and transparent to parents.

15. In conjunction with adopting the Library Protocols, the school board considered the Curriculum Committee’s draft list of titles to place on the Sensitive Topics List, see *id.* at 7–9, and its additional recommendation to temporarily suspend 19 other titles listed on a Suspended Books List pending further review by the public and the School Board, see *id.* at 6. Those 19 titles were: *Speak* by Laurie Anderson; *The Hate U Give* by Angie Thomas; *Beloved* by Toni Morrison; *The Bluest Eye* by Toni Morrison; *The Kite Runner* by Khaled Hosseini; *You Should See Me in a Crown* by Leah Johnson; *#Pride: Championing LGBTQ Rights* by Rebecca Felix; *Melissa/George* by Alex Gino;

It's Your World—If You Don't Like It, Change It by Mikki Halpin; *The Perks of Being a Wallflower* by Stephen Chbosky; *Thirteen Reasons Why* by Jay Asher; *Looking for Alaska* by John Green; *Nineteen Minutes* by Jodi Picoult; and *Crank, Glass, Fallout, Identical, Burned, and Smoke*, all by Ellen Hopkins. The school board agreed to temporarily take these titles out of circulation and, thereafter, I made 18 of those 19 books available for public review at the district office for a period of 25 days.⁶

16. Specifically, in August 2024, I sent multiple communications to our entire community,⁷ inviting anyone interested in doing so to review the 18 suspended titles and provide the school board with feedback. See Ex. 10 (August 15, 2024, Superintendent Update — Welcome Back to School); Ex. 12 (August 16, 2024, Letter Re: Parent Opportunity to Review Library Materials). In one communication, I indicated that the physical books were available for review Monday through Friday between 7:30 A.M. and 4:00 P.M., and I also provided three days that the books would be available for review outside the district office's normal business hours. See Ex. 12 at 1–2. Because many parents work during the day, we thought it was important to offer evening opportunities for the community to access the books. In that letter, I also made clear that the district's "goal is to implement a system where parents are empowered to make important decisions on the content their children will be able to access and be alerted when sensitive content is checked out by their children." *Id.* at 2.

17. I personally reviewed all the book-review forms submitted by community members. This community feedback indicated a clear preference for permanently

⁶ Only 18 titles were made available for public review because one of the titles (*Speak*) had a single book in circulation, which had been checked out and not returned at the time of the public review period.

⁷ All community communications that I send as ESD Superintendent are emailed to parents/guardians of current ESD students and all ESD staff (including the teachers, principals, and librarians at all four schools).

removing the suspended titles, although some favored returning the 18 titles to the libraries.⁸

18. In addition to reviewing written community feedback, I attended all school board meetings where the issue of removing the suspended titles was discussed and the public had an opportunity to comment, communicated individually with numerous community members about the issue, independently researched and evaluated the at-issue titles, and collaborated with the School Board regarding its concerns. Although I do not vote on school-board actions, and my support is not required by the school board, I fully supported the decision it made at the September 9, 2024, board meeting to permanently remove the at-issue titles. See Ex. 5 (Sept. 9, 2024 Business Session Meeting Minutes), at 6. These titles warranted removal given a variety of factors, including the highly sensitive nature of content (e.g., excessive graphic violence, explicit sexual content, extreme drug and alcohol use, ideations of self-harm), concerns regarding age-group appropriateness, lack of clear educational value in a public-school setting or a connection to a public-school curriculum (e.g., titles containing advocacy on divisive social issues that implicate core family values), and clear community feedback favoring removal.⁹

19. For instance, board members read aloud the following excerpts from five of the titles at the August 26, 2024 board meeting:

- *Thirteen Reasons Why*:

⁸ Most individuals filled out one form per title, although some individuals addressed multiple titles on a single form. In addition, most individuals who provided substantive reasons for their recommendation only reviewed one or a handful of the at-issue titles, as opposed to reviewing each at-issue title.

⁹ I should note that I am unable to send intra-district emails or attachments that contain quotes or detailed descriptions of concerning passages in these titles because such content is blocked by federally required firewalls and internet filters that are designed to limit students' web access and protect them from harmful material.

Okay, I'll say it. I thought about suicide. ...I thought about suicide. ...I wish I would die. ...What about hanging? Well, what would I use? Where would I do it? And even if I knew what and where, I could never get beyond the visual of someone finding me- swinging- inches from the floor. ...You took pills. That, we all know. Some say you passed out and drowned in a bathtub full of water.

- *Melissa/George:*

She immersed her body in the warm water and tried not to think about what was between her legs, but there it was, bobbing in front of her. ... So George knew it could be done. A boy could become a girl. She had since read on the Internet that you could take girl hormones that would change your body, and you could get a bunch of different surgeries if you wanted them and had the money. This was called transitioning. You could even start before you were eighteen with pills called androgen blockers that stopped the boy hormones already inside you from turning your body into a man's. But for that, you needed your parents' permission.

- *Nineteen Minutes:*

One of his front teeth was crooked, his Adam's apple looked fist-sized, his knuckles were knotty and chapped. He was crying quietly, and it might have been enough to engender sympathy had he not been wearing a t-shirt splattered with the blood of other students. "Do you feel alright, Peter?" Patrick asked. "Are you hungry?" The boy shook his head. "Can I get you anything else?" Peter put his head down on the table. "I want my mom," he whispered. Patrick looked at the part in the boy's hair. Had he brushed it that morning, thinking, Today's the day I'm going to kill ten students?

- *Looking for Alaska*

Alaska read the sticker that was on the top of the video. The bitches of Madison County, now ain't that just delightful. We ran with it to the TV room, closed the blinds, locked the door, and watched the movie. It opened with woman standing on a bridge while a guy knelt down in front of her giving her oral sex. No time for dialogue, I suppose. By the time they started doing it, Alaska commenced with her righteous indignation, "they just don't make

sex fun for women. The girl is just an object. Look. Look at that.” I was already looking, needless to say. A woman crouched on her hands and knees, while a guy knelt behind her. She kept saying “Give it to me” and moaning. And though her eyes were brown and blank, betraying her lack of interest, I couldn’t help but take mental notes. Hands on her shoulders, I noted, fast but not too fast or it’s going to be over fast. Keep your grunting to a minimum.

- *The Bluest Eye*

She might wonder again, for the six hundredth time, what it would be like to have that feeling while her husband's penis is inside her. The closest thing to it was the time she was walking down the street and her napkin slipped free of her sanitary belt. It moved gently between her legs as she walked. Gently, ever so gently. And then a slight and distinctly delicious sensation collected in her crotch. As the delight grew, she had to stop in the street, hold her thighs together to contain it. That must be what it is like, she thinks, but it never happens while he is inside her. When he withdraws, she pulls her nightgown down, slips out of the bed and into the bathroom with relief. ... Or as she sits reading the uplifting thoughts of the Liberty Magazine, the cat will jump into her lap. She will fondle that soft hill of hair and let the warmth of the animal’s body seep over and into the deeply private areas of her lap. Sometimes the magazine drops as she opens her legs.

I agree with the School Board that this sort of content should be removed from the Elizabeth School District’s libraries. My agreement with the Board is not based on “partisan or political” motives, nor is it motivated by a desire to suppress viewpoints in these titles. It is based on specific content, such as what was read aloud by the board, that is incompatible with the educational mission of the Elizabeth School District.

20. Our district’s slogan is that “children are at the heart of everything we do.” District leadership makes decisions with this first principle in mind. As a devoted public servant and educator of nearly forty years, I believe that serving children in this district necessarily requires our schools to focus on the curriculum and leave parenting

decisions to parents. While public schools certainly teach about and promote certain noncontroversial values (e.g., no bullying, no violence, no racism, no drugs), there are controversial social issues where the school district should defer to and not subvert parents' authority to direct their family's values (e.g., related to abortion, transgender and homosexual behavior, etc.). With respect to those controversial social issues, students should leave school each day with the same family values they arrived with..

21. Since the Curriculum Committee recommended temporary suspension and public review of the initial 19 titles, an additional title (*Redwood and Ponytail* by K.A. Holt) has been flagged for further review. For example, in September 2024, a parent expressed concern about *Redwood and Ponytail* after his elementary-school student had checked out from the Running Creek Elementary library, and suggested that the book be added to the Sensitive Topics List and reviewed by the Curriculum Committee because the book's content was inappropriate for elementary-school students. In response, the School Board's president (Rhonda Olsen) had the physical book removed from the Running Creek Elementary library shelf for further review. The title remains in the Elizabeth School District library catalog until a formal decision is made. I put the physical book in my office with the intent of making it available to the community along with any other books that may be flagged for further review, using the same process that the district used for the 18 disputed titles that were made available for review.

Information related to the student plaintiffs, the removed titles, and titles still available in the ESD library collection.

22. In the ordinary course of my job, my staff and I have access to the Elizabeth School District's student records, including attendance and library records, and the school district's library catalog, book-acquisition records, and book-weeding records. These records are created, updated, and maintained as part of the Elizabeth

School District's regular practice and in the course of its regular activities. I have reviewed these sources of information with respect to "C.C." and "E.S.," the two students on whose behalf this lawsuit was filed, and the 19 book titles that are at issue in the motion for preliminary injunction. (These 19 book titles include the 18 of the 19 titles that the School Board voted to remove, plus *Redwood and Ponytail*. They do not include *Speak*, which the plaintiffs are not seeking to return in their motion for preliminary injunction.) I can verify the accuracy of the facts presented in the following paragraphs.

23. The high-school student referred to as "C.C." has been enrolled as a student in Elizabeth High School since fall 2022.

24. The preschool student referred to as "E.S." has been enrolled as a student at Running Creek Elementary School since the fall 2024.

25. Students in the Elizabeth School District have no ability to check out or access library books held at school libraries other than the school that they attend. High-school students cannot check out books from the middle-school library, and vice versa. And neither high-school nor middle-school students can check out books from the elementary-school libraries, and vice versa. Students cannot even access books in other school libraries or browse or take them from the library shelves, because the school district's libraries remain open only during school hours and students cannot access other schools in the district during the school day.

26. Between the four schools in the district, the school district's library collection has approximately 50,000 books. The 19 disputed titles represented fewer than 25 physical books, including duplicate copies. So the decision to remove those titles affected less than 0.05% of the Elizabeth School District's library collection.

27. The removal of the disputed titles did not affect each of the four school libraries equally. First, all 19 titles did not appear in each school's library: two titles were removed from Running Creek Elementary School (*Melissa/George* and *Redwood and Ponytail*), five titles were removed from Elizabeth Middle School (*The Hate U Give*; *Thirteen Reasons Why*; *#Pride: Championing LGBTQ Rights*; *You Should See Me in a Crown*; and *It's Your World—If You Don't Like It, Change It: Activism for Teenagers*), and 14 titles were removed from Elizabeth High School (*The Hate U Give*; *Thirteen Reasons Why*; *The Kite Runner*; *Beloved*; *The Bluest Eye*; *The Perks of Being a Wallflower*; *Looking for Alaska*; *Nineteen Minutes*; *Identical*; *Fallout*; *Glass*; *Crank*; *Smoke*; and *Burned*). Second, titles that appeared in two libraries weren't necessarily removed from both. For example, *It's Your World—If You Don't Like It, Change It: Activism for Teenagers*, was in both the middle-school library and the high-school library, but it was removed only from the middle-school library due to concerns that the content was not age appropriate for students aged 11 through 14. Thus, this particular title is still available in the Elizabeth School District's library collection, but only in the high school library.

28. Despite being in the school district's library collection for years, eight of the at-issue titles had never been checked out before (*#Pride: Championing LGBTQ Rights*; *You Should See Me in a Crown*; *It's Your World—If You Don't Like It, Change It: Activism for Teenagers*; *Beloved*; *The Bluest Eye*; *Nineteen Minutes*; *Identical*; and *Fallout*), and eight had been checked out five times or fewer, even including renewals by the same student (*The Kite Runner*; *The Perks of Being a Wallflower*; *Looking for Alaska*; *Speak*; *Glass*; *Crank*; *Smoke*; and *Burned*) .

29. An online search of the Pines and Plains catalog,¹⁰ the local public library, shows all but two of the at-issue titles are on the shelf, online, or both. Importantly, it appears that all of the titles C.C. identified in her declaration as ones that she has been wanting to read or browse can be checked out through the local public library. *Compare* ECF No. 9-1 (Decl. of C.C.) ¶¶ 10-12, *with* Appendix 1.

30. The 19 at-issue titles reflect the work of 13 discrete authors. Of those 13 authors, eight currently have at least one work in the Elizabeth School District's library collection.

31. A chart summarizing the information outlined in paragraphs 27 to 31 is attached to my declaration as Appendix 1.

32. It is also worth noting that 16 of the 19 at-issue titles were reviewed by BookLooks.org and rated a "3" or "4." See Ex. 11 (BookLooks Ratings). BookLooks was one of many sources that the Curriculum Committee reviewers and the school board used to assess titles. According to BookLooks, its rating system is designed to assess the appropriateness of a book for a child or young adult based on the content of the book taken as a whole. *Id.* at 1. A "3" rating means "Minor Restricted: Under 18 requires guidance of a parent or guardian"; a "4" rating means "No Minors: Adult content. No child under 18." *Id.* at 2. Although BookLooks ratings were not dispositive of whether a particular title was removed from an school district library, ratings of 3 or 4 corroborate the School Board's concerns regarding educational value and age appropriateness.

33. I have reviewed the plaintiffs' motion for preliminary injunction and supporting materials. Through these filings, I understand the plaintiffs to be suggesting that the removal of the 19 disputed titles from the Elizabeth School District's libraries reflects a concerted School Board effort to "target[] LGBTQ people," "prohibit students

¹⁰ Available at <https://pplibraries.org>

from learning about LGBTQ+ identities” and “people of color,” “silence the voices of minorities,” and generally prevent students from “accessing information and ideas about racism, discrimination, and LGBTQ people.” ECF No. 9-1 (Decl. of C.C.) ¶¶ 6-8, 16-17; ECF No. 9-3 (Decl. of Mindy Smith as parent of E.S.) ¶ 11; ECF No. 9 (Mot. for Preliminary Injunction), 2, 21. These accusations are patently and demonstrably false.

34. The Elizabeth School District catalog includes topical “tags” for each book. Most of the time, those tags are determined by the publisher and automatically become part of the Elizabeth School District catalog when a book is added to the library system.

35. After reviewing the Complaint, I directed my staff to perform searches in the Elizabeth School District catalog for the following tags: “gay,” “transgender,” “LGBTQ,” “homosexual,” and “lesbian.” I reviewed the results of those searches, which include dozens of titles spanning the four school libraries. Below are some examples of titles that hit for the selected tags and that explicitly portray LGBTQ characters, provide LGBTQ personal narratives/testimonials, and include content related to LGBTQ history and identities:

Sample of titles from ESD catalog search for "gay" "transgender" "LGBTQ" "homosexual" "lesbian"		
Title	Author	Library
The List of Things That Will Not Change	Rebecca Stead	RCE & SHE
The Night Owl from Dogfish	Holly Sloan	EMS
Growing up LGBTQ	Duchess Harris	EMS
Being Transgender in America	Duchess Harris	EMS
Zenobia July	Lisa Bunker	EMS
Two Teenagers in 20 writings by Gay and Lesbian Youth	Ann Heron	EHS
Gay power! The Stonewall Riots and the Gay Rights Movement	Betsy Kuhn	EHS
Families Like Mine: Children of Gay Parents Tell It Like It Is	Abigail Garner	EHS
Gays in the Military	Debra Miller	EHS
Echo After Echo	Amy Capetta	EHS
The Upside of Unrequited	Becky Albertalli	EHS
We Got the Beat	Jenna Miller	EHS
The Electric Heir	Victoria Lee	EHS
Playing A Part	Daria Wilke	EHS
No Compromise: The Story of Harvey Milk	David Aretha	EHS
Six Impossible Things	Fiona Wood	EHS
Landmark Decisions of the United States Supreme Court II	Maureen Johnson	EHS

36. In the same timeframe, I also directed my staff to perform searches in the ESD catalog for the following tags: "black history" and "African American."¹¹ I reviewed the results of those searches, which include well over 50 titles spanning the four school libraries. Below are some examples of titles that hit for the selected tags and address issues related to racism, provide historical accounts, and provide diverse perspectives on the African American perspective in America:

¹¹ I recognize there are many other groups that could qualify as minorities. I searched for these terms by way of illustration.

Sample titles from ESD catalog search for "black history" "African American"		
Title	Author	Library
Let It Shine: Stories of Black Women Freedom Fighters	Andrea Pinkney	SHE
From Slave to Soldier: Based on a True Civil War story	Deborah Hopkinson	SHE
Vision of Beauty: The Story of Sarah Breedlove Walker	Kathryn Lasky	SHE
African-American Children's Stories: A Treasury of Tradition and Pride	Angela Jarecki, Gwendolyn Lavert	RCE
The Real McCoy: The Life of an African-American Inventor	Wendy Towle	RCE
Slavery and Reconstruction: The Struggle for Black Civil Rights	Elliott Smith	EMS
Tell All the Children Our Story: Memories and Mementos of Being Young and Black in America	Tonya Bolden	EMS
Rosa Parks Stays Seated	Duchess Harris	EMS
Langston Hughes	Chynia Powell	EMS
African American Women Writers	Brenda Wilkinson	EMS
Hidden Figures: The Untold True Story of Four African-American Women Who Helped Launch Our Nation into Space	Margot Shetterly	EMS
Dreaming in Color, Living in Black and White: Our Own Stories of Growing Up Black in America	Laurel Holliday	EHS
Black Pioneers: An Untold Story	William Katz	EHS
A Dream Deferred the Jim Crow Era	Anne Sharp	EHS
Historic Speeches of African Americans	Warren Halburton	EHS
Black Boy (American Hunger: A Record of Childhood and Youth)	Richard Wright	EHS
A Raisin in the Sun	Lorraine Hansberry	EHS

37. Importantly, although the disputed titles have been removed from the Elizabeth School District library collection (save for the one title that was removed only from the middle school and retained at the high school), students remain free to bring the removed titles into school for their personal use, to discuss these works with other students, and to share them outside of school.¹² To be clear, the school board did not

¹² There is a school rule against students sharing physical books in the classroom to respect parents' right to control what literature their student has access to. (Ex. 3 (Aug. 6, 2024 Request for Action: 9.9 Classroom Library Direction); Ex. 8 (Aug. 27, 2024 Superintendent Update – Classroom Libraries).) But this rule does preclude discussion at school or sharing physical books outside of school.

“ban” these books from being present in the Elizabeth School District’s schools, and it did not “ban” discussion of these books. Rather, the school board removed titles from *the school* libraries, leaving it to parents to decide whether and under what circumstances their students are permitted to access them.

38. The School Board and I have also decided to place copies of each of the 19 titles that the School Board voted to remove in the library from which they were taken. These titles will be made available to C.C., E.S., and any student who is either a member of the NAACP — Colorado–Montana–Wyoming State Area Conference ("NAACP"), or who has a parent who is a member of the NAACP. So *Melissa/George* is now available at Running Creek Elementary Library for the plaintiffs or the members or children of members of the NAACP to read, browse, or check out. The five titles that were removed from Elizabeth Middle School (*The Hate U Give*; *Thirteen Reasons Why*; *#Pride: Championing LGBTQ Rights*; *You Should See Me in a Crown*; and *It’s Your World—If You Don’t Like It, Change It: Activism for Teenagers*) are now available at the middle-school library for the plaintiffs or the members or children of members of the NAACP to read, browse, or check out. And the 15 challenged titles that the Board voted to remove from the high school (*The Hate U Give*; *Thirteen Reasons Why*; *The Kite Runner*; *Beloved*; *The Bluest Eye*; *The Perks of Being a Wallflower*; *Looking for Alaska*; *Nineteen Minutes*; *Speak*; *Identical*; *Fallout*; *Glass*; *Crank*; *Smoke*; and *Burned*) are now available in the high-school library for the plaintiffs or the members or children of members of the NAACP to read, browse, or check out. These books are being kept in their respective libraries behind the desk, and are available upon request by any of the individuals described in this paragraph. These books will remain at the libraries for at least the duration of this litigation.

39. As for *Redwood and Ponytail*, that book has been returned to the shelves of Running Creek Elementary Library and will remain there pending the School Board's review of that book. The School Board has not yet voted to remove this book, nor has it decided on the reasons (if any) for why that book should be removed.

40. So the plaintiffs have the same ability to access the 19 disputed titles in the Elizabeth School District's libraries that they had before their removal from the school district's libraries.

41. All of the current members of the School Board are aware of and have approved the return of the disputed books for the purpose of making them available to the plaintiffs in this litigation.

42. Because Heather Booth no longer serves on the School Board, she has no role in the determining ongoing availability of these disputed titles in the Elizabeth School District's libraries. The decision to make the 19 books available only to the plaintiffs—and not to return those 19 books to the library shelves—is attributable solely to the current members of the School Board, who are unwilling to make these books available in the school libraries to anyone other than the named plaintiffs or the members (or children of members) of the NAACP.

43. After decades serving Colorado's students and parents, I believe that education is the key to ensuring that our youth are prepared to become successful citizens in our local community, our state, and our nation. It is the key to ensuring students can achieve economic success and become contributing members of society. I have watched as educators are asked to take on greater and greater roles, often to the detriment of their core purpose—to educate. I am excited by the mission and vision of the School Board, who wish to keep politics out of the classroom and ensure that our teachers remain focused on teaching the basics: reading, writing, math, science, civics,

and history. Further, I am committed to respecting all parents' rights and responsibilities in raising their children and to ensuring that ESD works in partnership with parents to achieve the best educational outcomes possible for each and every student we have the privilege of serving.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 27, 2025, in Elizabeth, Colorado.

DocuSigned by:

Dan Snowberger

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Dan Snowberger
Superintendent
Elizabeth School District

Appendix 1 – Decl. of Superintendent Dan Snowberger

19 At-Issue Titles						
Title	Author	Library	ESD first acquired title	Times checked out	Available via public library ?	Other works by author in the ESD collection?
George / Melissa	Alex Gino	RCE	Jan-21	unknown	Y	You Don't Know Everything, Jilly P.
The Hate U Give	Angie Thomas	EMS & EHS	Aug-17	27	Y	Black Out; On the Come Back
Thirteen Reasons Why	Jay Asher	EMS & EHS	Aug-11	19	Y	What Light; The Future of Us
#Pride: Championing LGBTQ Rights	Rebecca Felix	EMS	Sep-20	0	N	#Women's March: Insisting on Equality; three Spanish-language books
You Should See Me in a Crown	Leah Johnson	EMS	Dec-21	0	Y	
It's Your World---If You Don't Like It, Change It: Activism for Teenagers	Mikki Halpin	EMS*	Apr-07	0	N	<i>*this title is still available in EHS</i>
The Kite Runner	Khaled Hosseini	EHS	Jan-19	4	Y	
Beloved	Toni Morrison	EHS	May-04	0	Y	
The Bluest Eye	Toni Morrison	EHS	Mar-02	0	Y	
The Perks of Being a Wallflower	Stephen Chbosky	EHS	Sep-09	2	Y	
Looking for Alaska	John Green	EHS	Apr-21	1	Y	An Abundance of Katherines; The Fault in Our Stars
Nineteen Minutes	Jodi Picoult	EHS	Jan-10	0	Y	My Sister's Keeper; The Storyteller; The Tenth Circle
Speak	Laurie Anderson	EHS	May-04	4	Y	Catalyst; Fever 1793; The Impossible Knife of Memory; Wintergirls
Identical	Ellen Hopkins	EHS	Apr-11	0	Y	
Fallout	Ellen Hopkins	EHS	Sep-16	0	Y	
Glass	Ellen Hopkins	EHS	Sep-16	1	Y	
Crank	Ellen Hopkins	EHS	Apr-06	5	Y	
Smoke	Ellen Hopkins	EHS	Sep-16	2	Y	
Burned	Ellen Hopkins	EHS	Jan-10	1	Y	
Redwood and Ponytail	K.A. Holt	RCE	Jan-21	2	N	From You to Me, This is Not a Drill

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**Declaration of Kimberly Moore, Chief Academic Officer, Elizabeth School
District, in Support of the Opposition to Plaintiffs’ Motion for Preliminary
Injunction**

I, Kimberly Moore, being over 18 years of age, submit the following declaration in support of Defendant Elizabeth School District’s Opposition to Plaintiffs’ Motion for Preliminary Injunction and state as follows:

1. I make this declaration based on personal knowledge.
2. I am the Chief Academic Officer of the Elizabeth School District (ESD). I have held this role since April 2024, when I was selected for this first-of-its-kind role in the district.
3. I have over two decades of experience in public education. Before coming to ESD, I served as the Chief Academic Officer for the Woodland Park School District (May 2023 to April 2024); the dean of students, then assistant principal, then principal of an elementary school (2015–2023), and as a teacher at both the elementary and middle school levels (2003–2015). I hold an elementary teaching license (K-6) with Special Education endorsement (K–12) and a principal license. I also hold a bachelor of arts in

elementary education and a master's degree in curriculum and instruction, both from Colorado Christian University.

4. As the Chief Academic Officer of the Elizabeth School District, among many other things, I direct the development, implementation, evaluation, and ongoing improvement of the district's curriculum. I am responsible for ensuring general alignment between Colorado Academic Standards, the district's curricular resources, and professional learning for teachers and leaders. I also coordinate the processes used by the district to select and develop the curriculum and ensure consistency with curriculum-related district policies.

The Curriculum Committee and the Library Protocols

5. In my capacity as Chief Academic Officer, I serve as co-chair of the Board Curriculum Review Committee ("Curriculum Committee") alongside a member of the School Board. The Curriculum Committee comprises multiple stakeholders, including parents, community members, teachers, principals, School Board representatives, and a student representative.

6. I have been a co-chair of the Curriculum Committee since I started with the district in April 2024. Although I joined the Curriculum Committee near the end of the 2023–24 school year, I was very involved in the Committee's efforts to develop and recommend to the School Board a set of written protocols ("Library Protocols") for how the Elizabeth School District should review books in its existing library collection and how it should handle books that may contain sensitive topics. See Ex. 2 (August 5, 2024 Request for Board Action: 9.7 Library Sensitive Topic Protocol and Book Lists).

7. The Library Protocols were designed with two goals in mind. First, to further the foundational purpose of library services in the Elizabeth School District "to ensure that students have access to age-appropriate materials necessary to facilitate

the district's mission of providing students with excellent learning opportunities that inspire a passion for learning." (Ex. 2 at 2.) Second, to increase transparency in the Elizabeth School District library system by establishing (i) a well-defined and consistent process for the ongoing evaluation of library resources and for the acquisition of future library materials, (ii) parental access to student circulation history and the library registry, and (iii) a notification system to inform parents and guardians of materials their students are attempting to access that have been flagged for sensitive content. (*Id.*)

8. To achieve these goals, the Library Protocols provide guidance on three discrete areas: (1) Analysis and Selection Process; (2) Sensitive Content Catalogs; and (3) Parental Access to Library Catalog and Student History.

9. The first area relates to the analysis and selection of library materials and lays out the process by which the library, school-district staff, and Curriculum Committee members will evaluate the existing library collection, as well as materials identified as problematic by parents or guardians, for potential age-level sensitive content based on third-party resources that review books (e.g., Goodreads, BookLooks.org, Trigger Warning Database, Book Trigger Warnings, and Junior Library Guild). (*Id.* at 1-3.) Although *any* concern about sensitive content "will be considered for age-level appropriateness," the protocols instruct that seven specific topics should be given "special attention." (*Id.* at 3.) Below is a chart showing the sensitive topics that require special attention:

Sensitive Topics	
1. Graphic violence	5. Sexual content
2. Profanity/obscenity	6. Racism/discrimination
3. Ideations of self-harm or mental illness	7. Drug or excessive alcohol use
4. Religious viewpoints	

10. The Library Protocols make clear that “[a]ll materials will be evaluated first with regard to educational merit and attainment of course objectives as they relate to Board-adopted academic standards and as to whether they contain Sensitive Topics.” (*Id.* at 4.) If materials are flagged for Sensitive Topics, or if they are determined to be inappropriate based on age level or lacking educational merit, the protocols outline a process by which those materials are presented to the Curriculum Committee, which will make a recommendation to the Chief Academic Officer and School Board. (*Id.* at 3-4.)

11. The second area outlines the process for developing and maintaining sensitive content catalogs, which the district refers to as the Sensitive Topic List. In essence, the protocols require that books identified as containing age-level sensitive content be flagged in Destiny (the school district’s platform for library services) as containing sensitive topics and placed on the Sensitive Topic List. The Sensitive Topic List is to be made available upon request. Under the Library Protocols, if students try to check out a book on the Sensitive Topic List, their parents or guardians receive an automatic email from Destiny. The protocol further contemplates that parents or guardians can opt out of allowing their student to check out books from the Sensitive Topics List altogether.

12. The third area allows parents to access the entire school library catalog and as well as open access to their student’s library account.

Implementation of the Library Protocols

13. At its August 12, 2024, meeting, the School Board approved the Library Protocols that I and the other members of the Curriculum Committee had developed. (Ex. 4 (August 12, 2024 Meeting Minutes), 6.). In addition, the School Board considered the Curriculum Committee’s draft Sensitive Topics List (Ex. 2 at 7-9), and it accepted our

recommendation to temporarily suspend 19 titles that contained highly sensitive topics pending public review (*id.* at 6).

14. At its September 9, 2024, meeting, the School Board approved a revised Sensitive Topics List and voted to permanently remove the 18 of the 19 titles that the Curriculum Committee had flagged for further comment. (Ex. 5 (September 9, 2024 Meeting Minutes), 6; Ex. 6 (Approved Sensitive Topics List, as revised by September 9, 2024 Meeting Minutes).) The 19th title was not removed because a copy was not available for public comment. It remains temporarily removed.

15. As Chief Academic Officer, I helped implement the Board's decision to remove the 18 titles. I was in favor of removing the 18 titles, especially because of the open and transparent process the Board used before making the decision.

16. In addition, I was one of the district leaders who directed the implementation of the Library Protocols, ensuring that books on the Sensitive Topics List were marked as such in Destiny and creating a process for notifying parents when their students check out books on that list.

17. District leadership has never physically posted the Sensitive Topic List in any library or classroom in the Elizabeth School District, nor have we directed or approved as much. The list is available on the district's website and upon request. Further, books that appear on the Sensitive Topic List are not shelved or displayed differently from books not on the list; they are interspersed throughout the library and do not bear any physical indication of their status on the Sensitive Topic List. Unless a student or teacher had independent knowledge of the books on the Sensitive Topic List, there is nothing in the school libraries that would alert them that a specific title appears on the list.

18. I have also personally confirmed that the Elizabeth School District staff who help students check out library books do not receive a real-time notification each time someone attempts to check out a book on the Sensitive Topics List. Rather, school-district staff receive a real-time notification only if a student whose parent has opted out of allowing the student to check out books on the Sensitive Topics List attempts to check out such a book. The ESD staff member would then inform the student that the book cannot be checked out because their parent opted them out of this content. For students whose parents have not opted them out, there is nothing that occurs during the check-out process to alert library staff that the book being checked out is on the Sensitive Topics List.

19. I also reviewed and approved the content of the email that is automatically sent to parents through Destiny when a student (whose parent has *not* opted out) checks out a book on the Sensitive Topics list. The notification email states: “Your student has checked out a book that is on the District Sensitive Topic List. If you have any questions or concerns please contact the school librarian.”

20. Another aspect of implementing the Library Protocols required changes to how the school district decides to purchase new materials for classroom and school libraries. Unlike past practice, where purchase decisions were made on an ad hoc basis by a variety of individuals without regard to the district’s curricular and educational objective and goals, under the Library Protocols, I (as the Chief Academic Officer) must approve all materials suggested for purchase. See Ex. 2 at 3. This change was designed to ensure that the district spends its limited financial resources on library materials that have been individually and deliberately chosen for educational and grade-level appropriateness by a trained educator who has a deep understanding of both the curriculum at each grade level and the curricular and educational goals of the district

more broadly. By ensuring careful selection of library materials through well-informed, educated purchase decisions, the district can move closer toward its goal of cultivating a library collection that enriches and builds on the educational curriculum.

Review of classroom libraries

21. At the same time the School Board was considering the Library Protocols, it was also considering a separate recommendation to remove classroom libraries and instead encourage students to check out books from the school library or bring books from home. See Ex. 3 (Request for Board Action: Classroom Library Direction). The change was meant to prevent access to content from classroom libraries that a student's parent opted them out of accessing from the school library.

22. The School Board approved the classroom library recommendation at its August 12, 2024, meeting, see Ex. 4 at 7, but it "paused" that effort when it became evident that school-district staff strongly disagreed with the recommendation. After soliciting input and ideas from staff, in August 2024 the School Board shifted its direction to allow teachers to maintain their classroom libraries and create a process for parents to opt out their children from using the classroom library. See Ex. 10 (August 15, 2024: Superintendent Update – Welcome Back to School). In addition, the new direction required teachers to provide a list of titles in their classroom libraries for their principal and the Chief Academic Officer to review. Once approved, those classroom lists would be provided to parents on a regular basis. The School Board's new direction on classroom libraries also made clear that students could bring books from home to read but that students could not physically share books in the classroom to respect parents' right to control what literature their children have access to. See *id.*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 27, 2025, in Elizabeth, Colorado.

Signed by:

Kimberly Moore

006F5E999F2420...

Kim Moore

Chief Academic Officer

Elizabeth School District

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**Declaration of Rhonda Olsen, President of the
Elizabeth School District Board of Education, in Support of
the Opposition to Plaintiffs’ Motion for Preliminary Injunction**

I, Rhonda Olsen, being over 18 years of age, submit the following declaration in support of Defendant Elizabeth School District’s Opposition to Plaintiffs’ Motion for Preliminary Injunction and state as follows:

1. I make this declaration based on personal knowledge.
2. I am the President of the Elizabeth School District Board of Education (School Board). I have served on the School Board since the fall of 2021. Like all School Board members, I serve as a volunteer and do not receive compensation for my work on behalf of students in the Elizabeth School District.
3. My service on the School Board started in fall of 2021 when I was appointed to fill a vacant seat. I became the Board President in spring of 2023. I retained my role as President after I was elected to the Board in November 2023. As President, I run the Board meetings, work with the Superintendent to set meeting agendas, ensure that all Board members are kept informed, respond to emails, sign off

on contracts and agreements, and appear on behalf of the Board in actions brought against it, among other things.

4. Outside of my School Board involvement, I work as the Director of Information Technology at Arapahoe Community College (ACC). I have held this position since 2022. I started working at ACC in 2000, and I have held various roles of increasing responsibility over the past 25 years. I have been involved in many significant IT projects at ACC over the years, and I played an instrumental role in helping ACC transition faculty, staff, and students to remote working and learning during the COVID pandemic. Between 1997 and 2000, I worked in accounting.

5. I love serving my community through the School Board, and I am passionate about the role we play in ensuring that all students in the district receive the best education possible. A solid educational foundation is the key to long-term success for our students and can help them overcome any potential obstacles in life. I view parents as our critical partners in providing that.

The Board's efforts to improve curriculum in District classrooms and libraries

6. Having served as a School Board member for several years, and now as the Board President, I am very familiar with Elizabeth School District and the Board's role in supporting the district. The district's mission is to provide students with excellent and diverse learning opportunities that inspire passion for learning, develop individual potential, and prepare them for a successful future. The Board comprises five elected citizen volunteers, and its basic purpose is to help fulfill the district's mission by keeping students at the heart of every decision it makes, growing the district in a positive direction, and focusing on student success at every level. The Board performs several specific functions, including guiding the Elizabeth School District through the Superintendent; engaging stakeholders; ensuring alignment of policy, resources, and

structure; measuring and celebrating achievement; and modeling excellence. To facilitate community participation, accountability, and engagement, the Board also has three committees: the District Advisory Committee, the Finance Advisory Council, and the Board Curriculum Review Committee (“Curriculum Committee”). There is at least one Board member on each committee. I currently serve as the Board representative of the District Advisory Committee.

7. From November 2023 through January 13, 2025, the Board has been composed of the following members: me (President), Heather Booth (Vice President), Mary Powell (Secretary), Mike Calahan (Treasurer), and Jonathan Waller (Assistant Secretary/Treasurer).¹ As a Board, we have deliberately focused the district’s limited resources on increasing student achievement and investing in excellence for all students. Implementing a quality, proven curriculum is critical to the academic success of our students and their overall achievements.

8. The Curriculum Committee—which comprises parents, teachers, administrators, and community members—has played an important role in these efforts by reviewing proposed changes to the school district’s curriculum materials and making curriculum selection and purchase recommendations to the Board. In the 2023–24 school year specifically, the Curriculum Committee had five curriculum-related charges, including to “[e]ngage librarians across the district to gain an understanding of how books and resources are selected for the library and what decision-making process exists regarding the materials,” and to “consider [the] process by which controversial materials in our libraries are accessed by students and determine if any changes are recommended to this process.”

¹ On January 13, 2025, Heather Booth stepped down due to medical issues.

9. As part of the Curriculum Committee's work to address those charges, it developed and recommended protocols (Library Protocols) for how the school district should handle books that may contain sensitive topics. See Ex. 2 (August 5, 2024, Request for Board Action re 9.7 Library Sensitive Topic Protocol and Book Lists) at 2–5.) In particular, the Library Protocols provided guidelines for evaluating existing library materials for potential age-level sensitive content and creating a sensitive topic book catalog that would be available to parents. See *id.* The Curriculum Committee also used the Library Protocols to identify titles in the school district's library collection that it recommended be (i) included on a Sensitive Topics List and flagged in Destiny, the Elizabeth School District's library catalog system, see *id.* at 7–9; and (ii) temporarily suspended because they contained *highly* sensitive content and warranted public review to guide the decision whether they should remain in the library collection, see *id.* at 6.

Board actions related to the library collection and the Curriculum Committee's recommendations

10. At its August 12, 2024, meeting, the School Board unanimously approved the Committee's proposed Library Protocols and accepted the Committee's recommendation to suspend the 19 titles it identified containing highly sensitive content. See Ex. 4 (August 12, 2024 Meeting Minutes) at 6. Those 19 titles were: *Speak* by Laurie Anderson; *The Hate U Give* by Angie Thomas; *Beloved* by Toni Morrison; *The Bluest Eye* by Toni Morrison; *The Kite Runner* by Khaled Hosseini; *You Should See Me in a Crown* by Leah Johnson; *#Pride: Championing LGBTQ Rights* by Rebecca Felix; *Melissa/George* by Alex Gino; *It's Your World—If You Don't Like It, Change It* by Mikki Halpin; *The Perks of Being a Wallflower* by Stephen Chbosky; *Thirteen Reasons Why* by Jay Asher; *Looking for Alaska* by John Green; *Nineteen Minutes* by Jodi Picoult; and

Crank, Glass, Fallout, Identical, Burned, and Smoke, all by Ellen Hopkins. I was present at that meeting and voted in favor of both decisions.

11. I was also present at the next Board meeting on August 26, 2024, where the Board heard public comment related to the suspended titles and where all five Board members read aloud excerpts from five of those titles. See Ex. 7 (August 26, 2024 Meeting Minutes). The excerpts read were:

Thirteen Reasons Why:

Okay, I'll say it. I thought about suicide. ...I thought about suicide. ...I wish I would die. ...What about hanging? Well, what would I use? Where would I do it? And even if I knew what and where, I could never get beyond the visual of someone finding me- swinging- inches from the floor. ...You took pills. That, we all know. Some say you passed out and drowned in a bathtub full of water.

Melissa/George:

She immersed her body in the warm water and tried not to think about what was between her legs, but there it was, bobbing in front of her. ... So George knew it could be done. A boy could become a girl. She had since read on the Internet that you could take girl hormones that would change your body, and you could get a bunch of different surgeries if you wanted them and had the money. This was called transitioning. You could even start before you were eighteen with pills called androgen blockers that stopped the boy hormones already inside you from turning your body into a man's. But for that, you needed your parents' permission.

Nineteen Minutes:

One of his front teeth was crooked, his Adam's apple looked fist-sized, his knuckles were knobby and chapped. He was crying quietly, and it might have been enough to engender sympathy had he not been wearing a t-shirt splattered with the blood of other students. "Do you feel alright, Peter?" Patrick asked. "Are you hungry?" The boy shook his head. "Can I get you anything else?" Peter put his head down on the table. "I want my mom," he whispered. Patrick looked at

the part in the boy's hair. Had he brushed it that morning, thinking, Today's the day I'm going to kill ten students?

Looking for Alaska:

Alaska read the sticker that was on the top of the video. The bitches of Madison County, now ain't that just delightful. We ran with it to the TV room, closed the blinds, locked the door, and watched the movie. It opened with woman standing on a bridge while a guy knelt down in front of her giving her oral sex. No time for dialogue, I suppose. By the time they started doing it, Alaska commenced with her righteous indignation, "they just don't make sex fun for women. The girl is just an object. Look. Look at that." I was already looking, needless to say. A woman crouched on her hands and knees, while a guy knelt behind her. She kept saying "Give it to me" and moaning. And though her eyes were brown and blank, betraying her lack of interest, I couldn't help but take mental notes. Hands on her shoulders, I noted, fast but not too fast or it's going to be over fast. Keep your grunting to a minimum.

The Bluest Eye:

She might wonder again, for the six hundredth time, what it would be like to have that feeling while her husband's penis is inside her. The closest thing to it was the time she was walking down the street and her napkin slipped free of her sanitary belt. It moved gently between her legs as she walked. Gently, ever so gently. And then a slight and distinctly delicious sensation collected in her crotch. As the delight grew, she had to stop in the street, hold her thighs together to contain it. That must be what it is like, she thinks, but it never happens while he is inside her. When he withdraws, she pulls her nightgown down, slips out of the bed and into the bathroom with relief. ... Or as she sits reading the uplifting thoughts of the Liberty Magazine, the cat will jump into her lap. She will fondle that soft hill of hair and let the warmth of the animal's body seep over and into the deeply private areas of her lap. Sometimes the magazine drops as she opens her legs.

12. I was also one of the four Board members present at the September 2024 Board meeting, when we voted 4-0 to permanently remove 18 of the 19 disputed titles from one or more Elizabeth School District's libraries. See Ex. 5 (September 9, 2024 Meeting Minutes) at 6. The 19th title, *Speak*, by Laurie Anderson was not permanently

removed because a copy was not available for public review. That title remains temporarily suspended. The Board did not take the decision to remove titles from the school library collection lightly or make it reflexively. After receiving the Curriculum Committee's recommendation to temporarily suspend the 19 titles, we solicited public comment and made 18 of the books available at the district office for review over a 25-day period. We reviewed written feedback from the community. We heard directly from community members who participated in the "public comments" portion of Board meetings. We spoke with individual community members who preferred to share their feedback in a one-on-one setting. We researched the titles and read the problematic excerpts. We discussed the reasons for and against removing the titles, considering their educational value and age appropriateness. And we consulted with the Superintendent and the Chief Academic Officer.

13. The plaintiffs and their attorneys claim to know my subjective motivations for supporting the removal of each of these 19 disputed titles, and they accuse me of supporting removal of these titles:

- because I "disagree[] with the ideas contained in the books";²
- because I believe that the school board's "mandate is to imbue its own brand of conservative politics in ESD schools";³
- because I want to "remov[e] books that discuss LGBTQ+ and race-related topics";⁴

2. Pls.' Mot. for Prelim. Inj., ECF No. 9, at 1 ("Defendant Elizabeth School District ('the District'), by and through its Board of Education ('the Board'), has removed at least nineteen books from school libraries in the District because of the Board's disagreement with the ideas contained in the books.').

3. Pls.' Mot. for Prelim. Inj., ECF No. 9, at 5 ("The Board believes its mandate is to imbue its own brand of conservative politics in ESD schools.").

4. Pls.' Mot. for Prelim. Inj., ECF No. 9, at 5 ("Removing books that discuss LGBTQ+ and race-related topics . . . is one step in fulfilling that mandate.").

- as a means of sending a notice that Elizabeth School District “is not welcoming to anyone who is not, straight and politically conservative”⁵
- because I found each of the 19 disputed books “disgusting” and “out of line with the so-called ‘conservative values’ they intended to promote”;⁶
- because I “sought to remove any books that acknowledge LGBTQ+ identities”;⁷
- because I “disagree[] with” the “viewpoints and worldviews” expressed in the 19 disputed books;⁸
- because of my “disdain” for the “ideas” contained in the 19 disputed books;⁹

-
5. Pls.’ Mot. for Prelim Inj., ECF No. 9, at 9 (“Some parents also opposed the Board’s decision to remove books from school libraries because of the stigmatizing messages the Board was sending, noting, for instance, that the list of removed books ‘is not welcoming to anyone who is not white, straight and politically conservative,’”)
 6. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 10 (“[B]ecause Board members found the eighteen ‘temporarily suspended’ books ‘disgusting,’ and out of line with the so-called ‘conservative values’ they intended to promote in ESD, they determined that all eighteen books would be permanently banished from school libraries.”); *see also id.* at 19.
 7. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 10 (“[T]he Board sought to remove any books that acknowledge LGBTQ+ identities.”).
 8. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 12–13 (“Because the Board disagrees with these authors’ viewpoints and worldviews, the authors can no longer share them with ESD students.”); *see also id.* at 12 (“Plaintiff the Authors Guild (“Guild”) includes authors whose books were removed from ESD libraries because of the viewpoints expressed therein.”); *id.* at 25 (“[T]he Board’s removal of books from ESD libraries [was] because of its disagreement with the viewpoints expressed therein.”).
 9. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 18 (“[T]he Board did—and continues to—remove books because of the ideas they contain.”); *id.* at 19 (“[T]he Board members made clear their disdain for the ideas contained therein.”).

- because “each book contained LGBTQ characters, expressed views on race that the Board members disagree with, or otherwise failed to align with the Board’s brand of ‘conservative values’”;¹⁰
- because the books “fail to conform with the Board’s partisan, political orthodoxy”;¹¹
- for no reason other than a “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”¹²

The plaintiffs and their lawyers also claim that I share all beliefs expressed by community members who supported removal of the 19 disputed titles.¹³ Each of these accusations is false.

14. I did not vote to remove any of the 19 disputed titles from the school district’s libraries because of the “ideas,” “viewpoints,” or “worldviews” contained or expressed in any of those books.

15. I do not believe—and I never have believed—that the school board’s “mandate” is to “imbue its own brand of conservative politics in ESD schools,” I have consistently said we need to keep politics out of the classrooms. I did not vote to remove any of the 19 disputed titles from the school district’s libraries because they

10. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 21 (“All Board members ultimately voted not to return any of the Removed Books to ESD libraries because each book contained LGBTQ characters, expressed views on race that the Board members disagree with, or otherwise failed to align with the Board’s brand of “conservative values.”).

11. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 3 (“[T]he Board has become increasingly militant about banishing viewpoints that fail to conform with the partisan, political orthodoxy that they seek to impose in ESD.”);

12. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 22 (“[T]he District’s removal decisions were based on no more than a ‘mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint’”).

13. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 6–7.

were “out of line with . . . conservative values.” Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 10. The only evidence that the plaintiffs cite to support this accusation against me are three e-mails written by Heather Booth that discuss “conservative values.” See Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 5. Heather Booth does not speak for me, and she does not speak for the School Board as a collective entity. I would have voted to remove these 19 disputed titles even if Heather Booth had never sent those e-mails mentioning her commitment to “conservative values,” and Ms. Booth’s emails did not in the slightest degree influence my decision to support the book removals. The plaintiffs’ belief that I and other members of the School Board cannot think independently and make a decision not based on politics is false and offensive. I would never vote to remove a book from our school district’s libraries because of its supposed incompatibility with “conservative politics” or “conservative values.” It is not about politics to me when it comes to the books in our libraries. It is about academic value.

16. I did not vote to remove any of the 19 disputed titles from the school district’s libraries because they “discuss LGBTQ+ and race-related topics,” “acknowledge LGBTQ+ identities,” or “contained LGBTQ characters.” Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 5, 10, 21. I do not oppose the presence of books in our school district’s libraries that discuss LGBTQ+ and race-related topics, or that acknowledge LGBTQ+ identities or contain LGBTQ characters. And I am aware of many books that remain in our school district’s libraries that discuss these topics or that acknowledge LGBTQ+ identities or characters and I have no desire or intention to remove them based on that. The plaintiffs’ claim that I voted to remove these books “because they discuss LGBTQ+ and race-related topics,” “acknowledge LGBTQ+ identities,” or “contained LGBTQ characters” is false and maligns the School Board. My

intent has always been and continues to be to fill our library full of rich, academic-based content that aligns with the curriculum we are implementing.

17. The plaintiffs' brief in support of their motion for preliminary injunction falsely says that I told Mary Powell that any book with "gender identity ideology" should not be put "out there at all" by the School Board. Pls.' Mot. for Prelim. Inj., ECF No. 9, at 7. I don't recall making any such statement to Mary Powell, and I do not believe this statement that the plaintiffs and their lawyers falsely attribute to me. I have repeatedly emphasized the need to look at the academic value of what we have in our libraries. If it has no academic value, we should consider not having it in our libraries. When reviewing the list of suspended books, I took several things into consideration such as age-appropriateness, overall feedback and academic value. The *#Pride* and *Crown* books were also located in our middle-school library, for which I thought content was age-inappropriate, especially considering our middle school serves 6th graders.

18. I do not share the view that the plaintiffs and their lawyers attribute to Heather Booth, claiming that Ms. Booth thinks that LGBTQ is the "only" sexual "preference" that "doesn't belong in any school." Pls.' Mot. for Prelim. Inj., ECF No. 9, at 7. I did not decide to support the removal of *#Pride* or *Crown* out of a belief that books with LGBTQ topics do not belong in our schools.

19. The plaintiffs' claim that I voted to remove the 19 disputed titles to send a message that the Elizabeth School District "is not welcoming to anyone who is not white, straight and politically conservative" is false. See Pls.' Mot. for Prelim Inj., ECF No. 9, at 9. Many books remain in our library that are written by authors who are not white, straight, or politically conservative, and I have no desire or intention of removing those books.

20. The plaintiffs' claim that I voted to remove all of the 19 disputed titles from the school district's libraries because I found each of the 19 books "disgusting" is false. See Pls.' Mot. for Prelim. Inj., ECF No. 9, at 10. I described only one passage from one book—*The Bluest Eye* by Toni Morrison—as "disgusting," and I made this comment after Mr. Waller read the following passage at the school board's meeting of August 26, 2024:

She might wonder again, for the six hundredth time, what it would be like to have that feeling while her husband's penis is inside her. The closest thing to it was the time she was walking down the street and her napkin slipped free of her sanitary belt. It moved gently between her legs as she walked. Gently, ever so gently. And then a slight and distinctly delicious sensation collected in her crotch. As the delight grew, she had to stop in the street, hold her thighs together to contain it. That must be what it is like, she thinks, but it never happens while he is inside her. When he withdraws, she pulls her nightgown down, slips out of the bed and into the bathroom with relief.

I described the passage in this book as "disgusting" because of its sexually explicit content, not because of any "viewpoint" or "idea" or "worldview" that might have been expressed in the book.

21. I did not vote to remove any of the 19 disputed titles from the school district's libraries because the books "fail to conform with the Board's partisan, political orthodoxy." Pls.' Mot. for Prelim. Inj., ECF No. 9, at 21. I did not even consider the partisan or political views that might be expressed in any of the 19 books when deciding whether to support their removal from the school district's library. I fully support the inclusion of school-library books with partisan or political viewpoints that differ from my own, and I have never voted and would never vote to remove a title from the school district's libraries for "partisan" or "political" reasons.

22. I did not vote to remove any of the 19 disputed titles out of a “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 22.

23. I did not adopt and do not share each of the particular sentiments expressed by members of the community that appear in Exhibit 13 to the plaintiffs’ motion for preliminary injunction. See ECF No. 9-13. It is untenable and absurd for the plaintiffs to attribute the beliefs espoused by community members in these book-review forms to me and to the School Board as a collective entity. See Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 6–7.

24. On page 24 of their motion for preliminary injunction, Plaintiffs accuse me, as a School Board Member of attempting to divine that a majority of Elizabeth School District parents “vehemently support police decisions to use force” and “disagree with any notion that anti-Black racism persists in modern society,” and then using this “divined” information as the basis for my vote to remove the eighteen titles at issue in this litigation. See Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 24. This is false. My decision to remove each title was not based on any cartoonish characterization of the views of Elizabeth School District parents, but rather on specific content which I believed to be incompatible with the educational mission of the Elizabeth School District.

25. On page 25 of their motion for preliminary injunction, Plaintiffs accuse me, as a School Board Member of basing my decision to remove the nineteen titles at issue from Elizabeth School District libraries on the basis of Elizabeth School District parents’ sincere belief “that teenagers should never question their sexuality or develop romantic feelings for people of the same gender.” Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 25. While I am certain that some Elizabeth School District parents believe that teenagers should be confident in their identities as young men and women, I did not base my

decision to remove the titles on such beliefs, but rather on specific content which I believed to be incompatible with to the educational mission of the Elizabeth School District.

26. Neither the plaintiffs nor their lawyers at the ACLU have powers of telepathy, and I resent their claiming to know my subjective motivations as well as their attempts to impute statements made by others to me and my colleagues.

27. My actual reasons and motivations for supporting the removal of each of the 19 disputed books—rather than the reasons and motivations that the plaintiffs and their lawyers have invented and falsely attribute to me—appear below.

28. First, I support the removal of the 19 disputed titles from our school district's libraries because they contain graphic sexual content, as well as filthy and profane language, that is inappropriate for a library used by schoolchildren. This problematic content is described in detail in Exhibit 11 to our brief opposing the plaintiffs' motion for preliminary injunction, and I reviewed and was aware of all the material described in that exhibit when I voted to remove these 19 titles from our school district's libraries. Exhibit 11 explains the content in the disputed books that persuaded me to support the removal of those books, including inappropriate sexual passages such as the one quoted above, descriptions of drug use and suicide ideation, and repeated uses of words such as "f-ck," "sh-t," "n-gger," "f-ggot," and "p-ssy." My objections are based on the age-inappropriate *content* that appears in these books, and they have nothing to do with the "viewpoints," "ideas," or "worldviews" expressed by the authors, or the fact that some of the books "discussed LGBTQ+ and race-related topics." I would oppose the inclusion of books with this type of content in our school libraries even if those books supported conservative viewpoints, ideas, or worldviews, and even if they discussed topics other than LGBTQ or race-related issues.

29. The *Crown* book was an interesting, fictional story but it did, toward the middle of the book, venture into kissing and feeling sexually stimulated, which is inappropriate for middle-schoolers. It also lacked academic value. The *#Pride* book also contained topics I do not believe are age-appropriate for middle school. Again, our middle school serves 6th graders. The book *It's Your World* contained many topics considered controversial that are not, in my view, appropriate for a middle-school audience. Additionally, the focus is on activism and it lacked academic value.

30. I also support removing the 19 disputed titles because so many parents opposed the continued inclusion of those books in our school libraries. As a member of the School Board, I am accountable to the voters who elected me and the taxpayers who pay for our schools and their libraries, and I must take their desires into account when deciding whether to include or exclude materials from our school district's libraries. I did not adopt or endorse any particular community member's *reasons* for supporting exclusion of the books, and the plaintiffs and their lawyers are wrong to assert that the particular objections expressed by community members were shared by me or by my colleagues on the School Board. But I did consider and give weight to the *fact* that so many of my constituents—and a clear majority of those who reviewed the books and filled out the forms—supported the removal of these 19 titles from the school district's libraries. That is my duty as an elected official, because I work for and answer to the people who elected me and the taxpayers who fund our school district and its activities.

31. Finally, I do not believe that the educational value of these books is sufficient to outweigh their problematic and age-inappropriate content, or the fact that so many parents opposed their continued inclusion in our school district's libraries. I am not categorically opposed to having books in our school district's library whose presence in

our school library is opposed by so many members of our community. But the educational value of those type of books must be great enough to justify their inclusion in our school district's library collection at the expense of other books. Library shelf space is limited and should be reserved for books that do the most to advance the curricular and educational goals of the Elizabeth School District.

32. The plaintiffs' motion for preliminary injunction claims that the "Board" removed *Redwood and Ponytail* by K.A. Holt from Running Creek Elementary School Library, and that the "Board" removed this book because it "sought to remove any books that acknowledge LGBTQ+ identities." Pls.' Mot. for Prelim. Inj., ECF No. 9, at 10. These statements are false. The "Board" did not "remove" *Redwood and Ponytail* from Running Creek Elementary School Library. I acted unilaterally to remove the book after a parent complained to me about it. And I did not remove *Redwood and Ponytail* from our elementary-school library because I am seeking to purge the school district's libraries of "any books that acknowledge LGBTQ+ identities." I removed *Redwood and Ponytail* because books containing *content* about sexuality are not appropriate for *elementary*-school students, regardless of the "ideas" or "viewpoints" or "worldviews" they express.

33. The plaintiffs and their lawyers accuse me of acting in a "narrowly partisan or political manner" in supporting the removal of the 19 challenged titles, as well as engaging in "viewpoint discrimination." Each of these claims is false. I was not motivated by and did not consider "political" or "partisan" ideas in supporting the removal of these 19 disputed books from our school district's libraries. Nor did I consider or vote to remove books based on the "viewpoints" expressed by the authors. Supporting the removal of school library books based on *content* that is sexually explicit, vulgar, or age-inappropriate is not "viewpoint discrimination." It is also false for the

plaintiffs and their lawyers to suggest that the School Board members are homogenous or monolithic in their “political” views. Each member brings his or her own unique views (political and otherwise) to the School Board, and all views are welcomed and assist in informing the School Board’s decision-making.

34. I am confident that each Board member did his or her level best to set aside personal beliefs in voting to permanently remove the suspended titles and with respect to the other library-related decisions. I saw this play out explicitly when the Board determined that it was appropriate to list *The Bible* on the Sensitive Topics List, even though several board members are devoted Christians and found it difficult to identify *The Bible* as a “sensitive” book. Despite any personal misgivings, the entire Board recognized the need for evenhandedness, such that *all* content expressing religious viewpoints was included on the Sensitive Topics List, whether the viewpoint endorsed Christianity or Islam or Mormonism.

35. The School Board has decided to place copies of each of the 19 titles that the School Board voted to remove in the library from which they were taken. These titles will be made available to C.C., E.S., and any student who is either a member of the NAACP — Colorado–Montana–Wyoming State Area Conference (“NAACP”), or who has a parent who is a member of the NAACP. So *Melissa/George* is now available at Running Creek Elementary Library for the plaintiffs or the members or children of members of the NAACP to read, browse, or check out. The five titles that were removed from Elizabeth Middle School (*The Hate U Give*; *Thirteen Reasons Why*; *#Pride: Championing LGBTQ Rights*; *You Should See Me in a Crown*; and *It’s Your World—If You Don’t Like It, Change It: Activism for Teenagers*) are now available at the middle-school library for the plaintiffs or the members or children of members of the NAACP to read, browse, or check out. And the 15 challenged titles that the Board voted to remove

from the high school (*The Hate U Give*; *Thirteen Reasons Why*; *The Kite Runner*; *Beloved*; *The Bluest Eye*; *The Perks of Being a Wallflower*; *Looking for Alaska*; *Nineteen Minutes*; *Speak*; *Identical*; *Fallout*; *Glass*; *Crank*; *Smoke*; and *Burned*) are now available in the high-school library for the plaintiffs or the members or children of members of the NAACP to read, browse, or check out. These books are being kept in their respective libraries behind the desk, and are available upon request by any of the individuals described in this paragraph. These books will remain at the libraries for at least the duration of this litigation.

36. As for *Redwood and Ponytail*, that book has been returned to the shelves of Running Creek Elementary Library and will remain there pending the School Board's review of that book. The School Board has not yet voted to remove this book, nor has it decided on the reasons (if any) for why that book should be removed.

37. So, the plaintiffs have the same ability to access the 19 disputed titles in the Elizabeth School District's libraries that they had before their removal from the school district's libraries.

38. All of the current members of the School Board are aware of and have approved the return of the disputed books for the purpose of making them available to the plaintiffs in this litigation.

39. Because Heather Booth no longer serves on the School Board, she has no role in determining ongoing availability of these disputed titles in the Elizabeth School District's libraries. The decision to make the 19 books available only to the plaintiffs—and not to return those 19 books to the library shelves—is attributable solely to the current members of the School Board, who are unwilling to make these books available in the school libraries to anyone other than the named plaintiffs or the members (or children of members) of the NAACP.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 27, 2025, in Elizabeth, Colorado.

Signed by:

Rhonda Olsen

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Rhonda Olsen

President

Elizabeth School District Board of Education

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**Declaration of Mary Powell, Secretary,
Elizabeth School District Board of Education,
in Support of the Opposition to Plaintiffs' Motion for Preliminary Injunction**

I, Mary Powell, being over 18 years of age, submit the following declaration in support of Defendant Elizabeth School District's Opposition to Plaintiffs' Motion for Preliminary Injunction and state as follows:

1. I make this declaration based on personal knowledge.
2. I am the Secretary of the Elizabeth School District Board of Education (School Board). I have served on the School Board since March 2023. Like all School Board members, I serve as a volunteer and do not receive compensation for my work on behalf of students in the Elizabeth School District.
3. I was first appointed to the School Board in March 2023, after the previous board members resigned. I then ran for election in November 2023, and I was elected by an overwhelming majority. Before serving on the Board, I worked for many years, including as a paralegal for three different law firms in Denver (13 years), an associate manager for a retirement savings plan and insurance provider (6 years), and a senior

contracts manager for a large company that sells cochlear implants and other implantable hearing devices to hospitals (11 years).

4. I am aware that the plaintiffs in this case are challenging the School Board's decision to permanently remove 18 titles from one or more of the school district's libraries. Those titles were: *The Hate U Give* by Angie Thomas; *Beloved* by Toni Morrison; *The Bluest Eye* by Toni Morrison; *The Kite Runner* by Khaled Hosseini; *You Should See Me in a Crown* by Leah Johnson; *#Pride: Championing LGBTQ Rights* by Rebecca Felix; *Melissa/George* by Alex Gino; *It's Your World—If You Don't Like It, Change It* by Mikki Halpin; *The Perks of Being a Wallflower* by Stephen Chbosky; *Thirteen Reasons Why* by Jay Asher; *Looking for Alaska* by John Green; *Nineteen Minutes* by Jodi Picoult; and *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke*, all by Ellen Hopkins. I am also aware that the plaintiffs are challenging the School Board's decision to temporarily remove *Speak*, by Laurie Anderson.

5. The plaintiffs are also suing over the decision to remove *Redwood and Ponytail* from the Running Creek Elementary School Library, but the School Board did not vote on that decision and I had nothing to do with it.

6. The 19 titles that the School Board voted to remove were initially identified by the Board Curriculum Review Committee (Curriculum Committee), which had been instructed by the School Board to develop a process for reviewing the entire library collection and identifying books that may contain sensitive content. Heather Booth and I were the two Board representatives on the Curriculum Committee. Although Heather contributed to the Curriculum Committee's overall work, I co-chaired the committee and was the primary Board member involved in the committee's efforts to review content in the school libraries. In particular, I helped develop the written set of protocols (Library Protocols) for how ESD should review books for addition to its existing library collection

and how it should handle books that may contain sensitive topics. See Ex. 2 (August 5, 2024 Request for Board Action: 9.7 Library Sensitive Topic Protocol and Book Lists) at 2–5. I was also one of three Curriculum Committee members who reviewed the school district’s library materials and identified titles that should be considered for: (i) inclusion on a list of titles that contain sensitive topics (Sensitive Topics List) and that should be flagged as “sensitive” in the library catalog (Destiny), or (ii) potential removal from one or more of the school district’s library (*id.* at 1).

7. Because the Elizabeth School District’s library collection spans four different libraries that serve different age groups and contain tens of thousands of titles, the other reviewers and I first had to figure out where to start. We landed on a triage approach, where each reviewer was assigned a subset of titles that had appeared on lists of frequently challenged books that they would then check against the the school district’s library catalog.¹ If a title from a list of frequently challenged books appeared in one of our school district’s libraries, or if the reviewer identified a potentially problematic title through another source, then the reviewer would conduct a second-layer review to evaluate the work for potential age-level sensitive content. That second-layer review included: (i) referring to one or more third-party sources that evaluate books for younger audiences (e.g., BookLooks.org, Goodreads, Trigger Warning Database, Book Trigger Warnings or the Junior Library Guild); and (ii) determining whether the work contained any of the topics listed in the Library Protocols (i.e., graphic violence, sexual content, profanity/obscenity, ideations of self-harm or mental illness, religious viewpoints, drug or excessive alcohol use, racism/discrimination). If this second-layer review revealed

¹ Because each school library has a unique collection of books and a school-specific catalog, reviewers had to search each title four times: one time per school.

concerns about age-appropriate sensitive content, the title would be added to her reviewer-specific spreadsheet.

8. Each reviewer submitted her spreadsheet to Kim Moore, the Chief Academic Officer, who combined them to create a single draft list to submit to the School Board. The Board then had an opportunity to review and discuss the list. Through that process, the Board Members decided that some titles should not be on the Sensitive Topics List. For a few of those, we removed the title from the draft list after ensuring age appropriateness or curriculum support; for others, we thought it was a closer call so we left the title on the draft list for further Board consideration.² The version of the Sensitive Topics List that the School Board approved contained several changes compared to the draft lists the Curriculum-Committee reviewers submitted and Kim compiled. See Ex. 6 (Approved Sensitive Topics List, as modified by the meeting minutes); Ex. 5 (September 9, 2024 Meeting Minutes) at 6. Some of those changes (made in green) reflect the Board's determination that certain titles did not contain sensitive content for the age group that could access it. Other changes (made in red) reflect the Board's decision to permanently remove certain titles that had been inadvertently included in the Sensitive List. The Board considered the Sensitive Topics list that it approved to be a work in progress. The list was not expected to be final or static; it was expected be refined and potentially expanded in the future.

9. In addition to identifying titles for potential inclusion on the Sensitive Topics List, the Curriculum-Committee reviewers identified 19 titles that contained highly sensitive content that warranted further review. See Ex. 2 at 6. Those titles were: *Speak* by Laurie Anderson; *The Hate U Give* by Angie Thomas; *Beloved* by Toni Morrison; *The*

² I personally changed my view of a few titles on the draft Sensitive Topics List, and asked to take them off the list, after speaking with a middle-school teacher who explained the titles' historical and educational value in her curriculum.

Bluest Eye by Toni Morrison; *The Kite Runner* by Khaled Hosseini; *You Should See Me in a Crown* by Leah Johnson; *#Pride: Championing LGBTQ Rights* by Rebecca Felix; *Melissa/George* by Alex Gino; *It's Your World—If You Don't Like It, Change It* by Mikki Halpin; *The Perks of Being a Wallflower* by Stephen Chbosky; *Thirteen Reasons Why* by Jay Asher; *Looking for Alaska* by John Green; *Nineteen Minutes* by Jodi Picoult; and *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke*, all by Ellen Hopkins. We identified these titles using the process described in paragraphs 5–7 and recommended that the School Board temporarily suspend those 19 titles from circulation pending further review. See Ex. 2 at 1.

10. At its meeting of August 12, 2024, the School Board unanimously approved the Committee's proposed Library Protocols and accepted its recommendation to suspend the 19 titles. See Ex. 4 (August 12, 2024, Meeting Minutes) at 6. I was present at that meeting and voted in favor of both decisions.

11. I was also present at the next Board meeting on August 26, 2024, where the Board heard public comment related to the 19 titles and where all five Board members read aloud short excerpts from five of these titles. See Ex. 7 (August 26, 2024, Meeting Minutes). The excerpts read were:

Thirteen Reasons Why:

Okay, I'll say it. I thought about suicide. ...I thought about suicide. ...I wish I would die. ...What about hanging? Well, what would I use? Where would I do it? And even if I knew what and where, I could never get beyond the visual of someone finding me- swinging- inches from the floor. ...You took pills. That, we all know. Some say you passed out and drowned in a bathtub full of water.

Melissa/George:

She immersed her body in the warm water and tried not to think about what was between her legs, but there it was, bobbing in front

of her. ... So George knew it could be done. A boy could become a girl. She had since read on the Internet that you could take girl hormones that would change your body, and you could get a bunch of different surgeries if you wanted them and had the money. This was called transitioning. You could even start before you were eighteen with pills called androgen blockers that stopped the boy hormones already inside you from turning your body into a man's. But for that, you needed your parents' permission.

Nineteen Minutes:

One of his front teeth was crooked, his Adam's apple looked fist-sized, his knuckles were knotty and chapped. He was crying quietly, and it might have been enough to engender sympathy had he not been wearing a t-shirt splattered with the blood of other students. "Do you feel alright, Peter?" Patrick asked. "Are you hungry?" The boy shook his head. "Can I get you anything else?" Peter put his head down on the table. "I want my mom," he whispered. Patrick looked at the part in the boy's hair. Had he brushed it that morning, thinking, Today's the day I'm going to kill ten students?

Looking for Alaska:

Alaska read the sticker that was on the top of the video. The bitches of Madison County, now ain't that just delightful. We ran with it to the TV room, closed the blinds, locked the door, and watched the movie. It opened with a woman standing on a bridge while a guy knelt down in front of her giving her oral sex. No time for dialogue, I suppose. By the time they started doing it, Alaska commenced with her righteous indignation, "they just don't make sex fun for women. The girl is just an object. Look. Look at that." I was already looking, needless to say. A woman crouched on her hands and knees, while a guy knelt behind her. She kept saying "Give it to me" and moaning. And though her eyes were brown and blank, betraying her lack of interest, I couldn't help but take mental notes. Hands on her shoulders, I noted, fast but not too fast or it's going to be over fast. Keep your grunting to a minimum.

The Bluest Eye:

She might wonder again, for the six hundredth time, what it would be like to have that feeling while her husband's penis is inside her. The closest thing to it was the time she was walking down the street and her napkin slipped free of her sanitary belt. It moved gently between her legs as she walked. Gently, ever so gently. And then a slight and

distinctly delicious sensation collected in her crotch. As the delight grew, she had to stop in the street, hold her thighs together to contain it. That must be what it is like, she thinks, but it never happens while he is inside her. When he withdraws, she pulls her nightgown down, slips out of the bed and into the bathroom with relief. ... Or as she sits reading the uplifting thoughts of the Liberty Magazine, the cat will jump into her lap. She will fondle that soft hill of hair and let the warmth of the animal's body seep over and into the deeply private areas of her lap. Sometimes the magazine drops as she opens her legs.

12. I was also one of the four Board members present at the September 2024 Board meeting, where we voted 4-0 to permanently remove each of the 18 of the 19 titles from one or more of the school district's libraries. See Ex. 5 (September 9, 2024, Meeting Minutes) at 6. As an individual Board member, I voted in favor of removing the challenged titles after conducting detailed research on each title; reading reviews of each title, *see e.g.*, Ex. 11 (BookLooks Ratings) and, in some cases, reading extensive sections of the work; and considering feedback from the community, the other Board members, and district leadership. The remaining title, *Speak*, by Laurie Anderson remains temporarily removed because no copy of the book was available for public comment before the September 2024 Board meeting.

13. The plaintiffs and their attorneys claim to know my subjective motivations for supporting the removal of each of these 19 disputed titles, and they accuse me of supporting removal of these titles:

- because I “disagree[] with the ideas contained in the books”;³

³. Pls.' Mot. for Prelim. Inj., ECF No. 9, at 1 (“Defendant Elizabeth School District (‘the District’), by and through its Board of Education (‘the Board’), has removed at least nineteen books from school libraries in the District because of the Board’s disagreement with the ideas contained in the books.’).

- because I believe that the school board's "mandate is to imbue its own brand of conservative politics in ESD schools";⁴
- because I want to "remov[e] books that discuss LGBTQ+ and race-related topics";⁵
- as a means of sending a notice that Elizabeth School District "is not welcoming to anyone who is not, straight and politically conservative"⁶
- because I found each of the 19 disputed books "disgusting" and "out of line with the so-called 'conservative values' they intended to promote";⁷
- because I "sought to remove any books that acknowledge LGBTQ+ identities";⁸
- because I "disagree[] with" the "viewpoints and worldviews" expressed in the 19 disputed books;⁹

4. Pls.' Mot. for Prelim. Inj., ECF No. 9, at 5 ("The Board believes its mandate is to imbue its own brand of conservative politics in ESD schools.").

5. Pls.' Mot. for Prelim. Inj., ECF No. 9, at 5 ("Removing books that discuss LGBTQ+ and race-related topics . . . is one step in fulfilling that mandate.").

6. Pls.' Mot. for Prelim Inj., ECF No. 9, at 9 ("Some parents also opposed the Board's decision to remove books from school libraries because of the stigmatizing messages the Board was sending, noting, for instance, that the list of removed books 'is not welcoming to anyone who is not white, straight and politically conservative,'")

7. Pls.' Mot. for Prelim. Inj., ECF No. 9, at 10 ("[B]ecause Board members found the eighteen 'temporarily suspended' books 'disgusting,' and out of line with the so-called 'conservative values' they intended to promote in ESD, they determined that all eighteen books would be permanently banished from school libraries."); *see also id.* at 19.

8. Pls.' Mot. for Prelim. Inj., ECF No. 9, at 10 ("[T]he Board sought to remove any books that acknowledge LGBTQ+ identities.").

9. Pls.' Mot. for Prelim. Inj., ECF No. 9, at 12–13 ("Because the Board disagrees with these authors' viewpoints and worldviews, the authors can no longer share them with ESD students."); *see also id.* at 12 ("Plaintiff the Authors Guild ("Guild") includes authors whose books were removed from ESD libraries because of the viewpoints expressed therein."); *id.* at 25 ("[T]he Board's removal of books from ESD libraries [was] because of its disagreement with the viewpoints expressed therein.").

- because of my “disdain” for the “ideas” contained in the 19 disputed books;¹⁰
- because “each book contained LGBTQ characters, expressed views on race that the Board members disagree with, or otherwise failed to align with the Board’s brand of ‘conservative values’”;¹¹
- because the books “fail to conform with the Board’s partisan, political orthodoxy”;¹²
- for no reason other than a “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”¹³

The plaintiffs and their lawyers also claim that I share each of the beliefs expressed by community members who supported removal of the 19 disputed titles.¹⁴ Each of these accusations is patently false and defamatory.

14. I did not vote to remove any of the 19 disputed titles from the school district’s libraries because of the “ideas,” “viewpoints,” or “worldviews” contained or expressed in any of those books.

15. I do not believe—and I never have believed—that the school board’s “mandate” is to “imbue its own brand of conservative politics in ESD schools,” and I did

¹⁰. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 18 (“[T]he Board did—and continues to—remove books because of the ideas they contain.”); *id.* at 19 (“[T]he Board members made clear their disdain for the ideas contained therein.”).

¹¹. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 21 (“All Board members ultimately voted not to return any of the Removed Books to ESD libraries because each book contained LGBTQ characters, expressed views on race that the Board members disagree with, or otherwise failed to align with the Board’s brand of “conservative values.”).

¹². Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 3 (“[T]he Board has become increasingly militant about banishing viewpoints that fail to conform with the partisan, political orthodoxy that they seek to impose in ESD.”);

¹³. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 22 (“[T]he District’s removal decisions were based on no more than a ‘mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint’”).

¹⁴. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 6–7.

not vote to remove any of the 19 disputed titles from the school district's libraries because they were "out of line with . . . conservative values." Pls.' Mot. for Prelim. Inj., ECF No. 9, at 10. The only evidence that the plaintiffs cite to support this accusation against me are three e-mails written by Heather Booth that discuss "conservative values." See Pls.' Mot. for Prelim. Inj., ECF No. 9, at 5. Heather Booth does not speak for me, and she does not speak for the School Board as a collective entity. While I did listen to and consider the views expressed by my colleagues on the School Board, as well as the views expressed by the community members who commented on the books, I ultimately relied upon my own opinion, and whether the content of the books was age-appropriate and supported the curriculum in the schools. I also considered whether the books contained content that is more appropriate to be taught and discussed at home with parents, rather than in the school. The plaintiffs' belief that they can somehow impute Heather Booth's subjective motivations to me and each our colleagues on the School Board is false and offensive. I would never vote to remove a book from our school district's libraries solely because of its supposed incompatibility with "conservative politics" or "conservative values." I fully support the inclusion of books in our school district's libraries that criticize or attack conservative views or that espouse non-conservative politics or values, if they are age-appropriate.

16. I did not vote to remove any of the 19 disputed titles from the school district's libraries because they "discuss LGBTQ+ and race-related topics," "acknowledge LGBTQ+ identities," or "contained LGBTQ characters." Pls.' Mot. for Prelim. Inj., ECF No. 9, at 5, 10, 21. I do not oppose the presence of books in our school district's libraries that discuss LGBTQ+ and race-related topics, or that acknowledge LGBTQ+ identities or contain LGBTQ characters, to the extent that they provide an age-appropriate educational element to the students. The plaintiffs' claim

that I voted to remove these books “because they discuss LGBTQ+ and race-related topics,” “acknowledge LGBTQ+ identities,” or “contained LGBTQ characters” is false and maligns the School Board.

17. The plaintiffs’ brief in support of their motion for preliminary injunction falsely says that my e-mail of September 7, 2024, “suggested that *#Pride: Championing LGBTQ Rights* and *You Should See Me in a Crown* be returned to ESD libraries.” Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 7. Each of these books was removed from the middle-school library, and I never “suggested” or even considered the possibility of having these books “returned” to the middle-school library. My e-mail of September 7, 2024, suggested that these books be *moved to the high-school library and put on the Sensitive List*, not “returned” to the middle-school library from which they were removed. See E-mail of September 7, 2024, ECF No. 9-12 (“I voted ‘Move to Sensitive List and move up to EHS’ on *#Pride*”); *id.* (“I voted same on ‘Crown’”).

18. I do not share the view expressed by Heather Booth that “LGBTQ is only regarding sexual preference which doesn’t belong in any school.” Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 7. I did not decide to support the removal of *#Pride* or *Crown* out of a belief that books with LGBTQ topics do not belong in our schools.

19. I identified *#Pride* and *You Should See Me in a Crown* as books for potential removal through the triage process discussed in Paragraph 6 above. They were, as I recall, found when a library listing for a book I looked up listed other books that could also be of interest.

20. I initially identified the *#Pride* book due to its extended title “Championing LGBTQ Rights.” My initial concern was that it would have content that should be taught and discussed at home rather than at school. When I looked at it once it was pulled from the shelves, I thought perhaps it would be more suitable at the high-school level

but on the Sensitive List, since it discussed historical information about the LGBTQ movement. In considering my final vote on this book, I took into consideration community feedback, in which a couple of parents specifically commented that the themes in this book were more appropriate for parents to be discussing with their children, rather than be available in a school library. Since that was my initial concern when I originally identified the book for potential removal, my final vote was to remove it.

21. I initially identified *You Should See Me in a Crown* from a Goodreads synopsis that implied there was a same-sex relationship as part of the story. After seeing other books with graphic and explicit descriptions of various sexual relationships, I feared this book would also have graphic and explicit content that would be inappropriate for a schoolchildren. I could not find detailed information on the *Crown* book in booklooks.org, so I personally read about 75% of this book. As I read it, I felt it could have been a good role-model book for young black women, since the main character was a 4.0 student, hard worker, and goal-oriented, even though she was fighting an uphill battle to become prom queen in a predominantly non-black school. About halfway through the book, the reader finds out that the main character has a same-sex relationship with another girl who is also running for prom queen. I was disappointed because I did not think that was necessary to the story, but I did not see a lot of graphic description of this relationship in the book. Therefore, my initial vote was to move it to the high-school library from the middle-school library and put it on the Sensitive List. But one parent who reviewed the book pointed out that the initial pages of the book acknowledged that SEVENTEEN Magazine stated in its review that this book is for recent high-school graduates or college students. That SEVENTEEN review was highly influential on my decision to remove the book entirely from our school libraries.

22. The plaintiffs' claim that I voted to remove the 19 disputed titles to send a message that the Elizabeth School District "is not welcoming to anyone who is not white, straight and politically conservative" is false. See Pls.' Mot. for Prelim Inj., ECF No. 9, at 9. Many books remain in our library that are written by authors who are not white, straight, or politically conservative, and I have no desire or intention of removing those books.

23. I did not vote to remove the 19 disputed titles from the school district's libraries because I found all of the books "disgusting," as the plaintiffs claim in their brief. Pls.' Mot. for Prelim. Inj., ECF No. 9, at 10.

24. I did not vote to remove any of the 19 disputed titles from the school district's libraries because the books "fail to conform with the Board's partisan, political orthodoxy." Pls.' Mot. for Prelim. Inj., ECF No. 9, at 21. I did not even consider the partisan or political views that might be expressed in any of the 19 books when deciding whether to support their removal from the school district's library. I fully support the inclusion of school-library books with partisan or political viewpoints that differ from my own, and I have never voted and would never vote to remove a title from the school district's libraries for "partisan" or "political" reasons.

25. I did not vote to remove any of the 9 disputed titles out of a "mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." Pls.' Mot. for Prelim. Inj., ECF No. 9, at 22.

26. I did not adopt and do not share each of the particular sentiments expressed by members of the community that appear in Exhibit 13 to the plaintiffs' motion for preliminary injunction. See ECF No. 9-13. It is untenable and absurd for the plaintiffs to attribute all of the beliefs espoused by community members in these book-

review forms to me and to the School Board as a collective entity. See Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 6–7.

27. On page 24 of their motion for preliminary injunction, Plaintiffs accuse me, as a School Board Member of attempting to divine that a majority of Elizabeth School District parents “vehemently support police decisions to use force” and “disagree with any notion that anti-Black racism persists in modern society,” and then using this “divined” information as the basis for my vote to remove the eighteen titles at issue in this litigation. See Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 24. This is false. My decision to remove each title was not based on any cartoonish characterization of the views of Elizabeth School District parents, but rather on specific content which I believed to be incompatible with the educational mission of the Elizabeth School District.

28. On page 25 of their motion for preliminary injunction, Plaintiffs accuse me, as a School Board Member of basing my decision to remove the nineteen titles at issue from Elizabeth School District libraries on the basis of Elizabeth School District parents’ sincere belief “that teenagers should never question their sexuality or develop romantic feelings for people of the same gender.” Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 25. While I am certain that some Elizabeth School District parents believe that teenagers should be confident in their identities as young men and women, I did not base my decision to remove the titles on such beliefs, but rather on specific content which I believed to be incompatible with to the educational mission of the Elizabeth School District.

29. Neither the plaintiffs nor their lawyers at the ACLU have powers of telepathy, and I resent their claiming to know my subjective motivations as well as their attempts to impute statements made by others to me and my colleagues.

30. My actual reasons and motivations for supporting the removal of each of the 19 disputed books—rather than the reasons and motivations that the plaintiffs and their lawyers have invented and falsely attribute to me—appear below.

31. First, I support the removal of the 19 disputed titles from our school district's libraries because they contain graphic sexual content, as well as filthy and profane language, that is inappropriate for a library used by schoolchildren. All of this problematic content is described in detail in Exhibit 11 to our brief opposing the plaintiffs' motion for preliminary injunction, and I reviewed and was aware of all the material described in that exhibit when I voted to remove these 19 titles from our school district's libraries. As an example, *The Bluest Eye* by Toni Morrison includes this passage on page 83:

She might wonder again, for the six hundredth time, what it would be like to have that feeling while her husband's penis is inside her. The closest thing to it was the time she was walking down the street and her napkin slipped free of her sanitary belt. It moved gently between her legs as she walked. Gently, ever so gently. And then a slight and distinctly delicious sensation collected in her crotch. As the delight grew, she had to stop in the street, hold her thighs together to contain it. That must be what it is like, she thinks, but it never happens while he is inside her. When he withdraws, she pulls her nightgown down, slips out of the bed and into the bathroom with relief.

Exhibit 11 explains the content in the disputed books that persuaded me to support the removal of those books, including inappropriate sexual passages such as the one quoted above, descriptions of drug use and suicide ideation, and repeated uses of words such as “f-ck,” “sh-t,” “n-gger,” “f-ggot,” and “p-ssy.” My objections are based on the age-inappropriate *content* that appears in these books, and they have nothing to do with the “viewpoints,” “ideas,” or “worldviews” expressed by the authors, or the fact that some of the books “discussed LGBTQ+ and race-related topics.” I would oppose the inclusion of books with this type of content in our school libraries even if those books

supported conservative viewpoints, ideas, or worldviews, and even if they discussed topics other than LGBTQ or race-related issues.

32. My initial concern about the book *It's Your World, If You Don't Like It, Change It* was that, like *#Pride* and *Crown*, it contained content and addressed topics that, in my view, should be discussed and dealt with at home rather than at school, and that children should learn from their parents, according to their parents' own values. While many of the chapters were benign, e.g., helping animals, saving the environment, etc., there were several chapters that clearly and explicitly addressed issues that should come from the home. Examples are "Defending Women's Rights," (which included abortion rights), "Protecting Civil Rights and Civil Liberty," and "Promoting Tolerance Toward Lesbian, Gay, Bisexual, Transgender and Questioning Youth." I initially pulled it because I believed that these latter chapters, along with some of the resources listed at the end of the book, involved topics that should be taught at home rather than at school.

33. But in discussion with administration and another board member, a case was made that the book didn't appear to have any directly offensive language or discussion, but that activism discussed in the book is better suited for high school rather than middle school. Therefore, we considered moving the book to the high-school library and putting it on the Sensitive List, so parents would be alerted if their student checked it out. After parent reviews occurred, however, several parent comments indicated that, in their review, they found evidence that the book encouraged students to go against their parents, and perhaps even promoted activism against parents themselves. I appreciated the detailed review of community/parent reviewers. Since our district promotes parents' rights and responsibilities, and any literature that would encourage a student to disregard their parent's guidance would be opposite to

supporting parents' rights, I believed this book was inappropriate for the school library to have on its shelves, and my final vote was to remove it.

34. It was easier to determine that the 16 books with vulgar, inappropriate sexual and graphic content were age-inappropriate for our school libraries. But the three books on which my decisions changed over the course of review, contemplation, community input and board discussion, were more difficult. Ultimately, however, as discussed above in paragraphs 19–20 and 28–29, I concluded that the best decision was to remove these books.

35. I also support removing the 19 disputed titles because so many parents opposed the continued inclusion of those books in our school libraries. As a member of the School Board, I am accountable to the voters who elected me and the taxpayers who pay for our schools and their libraries, and I must take their desires into account when deciding whether to include or exclude materials from our school district's libraries. I also considered and give weight to the *fact* that so many of my constituents—and a clear majority of those who reviewed the books and filled out the forms—supported the removal of these 19 titles from the school district's libraries. That is my duty as an elected official, because I work for and answer to the people who elected me and the taxpayers who fund our school district and its activities.

36. Finally, I do not believe that the educational value of these books is sufficient to outweigh their problematic and age-inappropriate content, or the fact that so many parents opposed their continued inclusion in our school district's libraries. When books contain graphic or explicit sexual content, the educational value of those type of books must be great enough to justify their inclusion in our school district's library collection at the expense of other books. Library shelf space is limited and should be

reserved for books that do the most to advance the curricular and educational goals of the Elizabeth School District.

37. Many of the disputed titles included graphic violence, excessive obscenity, and explicit descriptions of sexual acts, and some titles included troubling portrayals of suicide attempts and school shootings. As a Board member, I believe very strongly that we have a duty to protect children from such content and not provide it through school-sponsored resources such as library books. Further, the 19 titles did not serve a clear educational purpose. Many of the 19 titles had never been checked out or were checked out only a handful of times over many years. And those with greater usage were more geared to offering “entertainment” value than educational value. As discussed above, there were a few titles in the middle school library that I struggled with, and I went back on forth on whether to vote to (i) remove them permanently, or (ii) add them to the Sensitive Topics List and move the titles up to the high school. I ultimately voted to remove these titles because I felt they addressed divisive social issues that should be addressed at home, not in the public-school setting. Given that the majority of parents favored removal, I believed that the only way to respect *all* parents’ rights to direct their family values was to remove these titles.

38. The plaintiffs and their lawyers accuse me of acting in a “narrowly partisan or political manner” in supporting the removal of the 19 challenged titles, as well as engaging in “viewpoint discrimination.” Each of these claims is categorically false. I was not motivated by and did not even consider “political” or “partisan” ideas in supporting the removal of these 19 disputed books from our school district’s libraries. Nor did I consider or vote to remove books based on the “viewpoints” expressed by the authors. Supporting the removal of school-library books based on *content* that is sexually explicit, vulgar, or age-inappropriate is not “viewpoint discrimination.” It is also false for

the plaintiffs and their lawyers to suggest that the School Board members are homogenous or monolithic in their “political” views. Each member brings his or her own views (political and otherwise) to the School Board, and all views are welcomed and assist in informing the Schools Board’s decision-making.

39. The School Board has decided to place copies of each of the 19 titles that the School Board voted to remove in the library from which they were taken. These titles will be made available to C.C., E.S., and any student who, at the time of filing of this Motion for Preliminary Injunction, was either a member of the NAACP — Colorado–Montana–Wyoming State Area Conference (“NAACP”), or who has a parent who was a member of the NAACP when this action was filed. So *Melissa/George* is now available at Running Creek Elementary Library for the plaintiffs or the members or children of members of the NAACP to read, browse, or check out. The five titles that were removed from Elizabeth Middle School (*The Hate U Give*; *Thirteen Reasons Why*; *#Pride: Championing LGBTQ Rights*; *You Should See Me in a Crown*; and *It’s Your World—If You Don’t Like It, Change It: Activism for Teenagers*) are now available at Elizabeth Middle School Library for the plaintiffs or the members or children of members of the NAACP to read, browse, or check out. And the 15 challenged titles that the Board voted to remove from the high school (*The Hate U Give*; *Thirteen Reasons Why*; *The Kite Runner*; *Beloved*; *The Bluest Eye*; *The Perks of Being a Wallflower*; *Looking for Alaska*; *Nineteen Minutes*; *Speak*; *Identical*; *Fallout*; *Glass*; *Crank*; *Smoke*; and *Burned*) are now available in the high-school library for the plaintiffs or the members or children of members of the NAACP as of the date of filing of this complaint, to read, browse, or check out. These books are being kept in their respective libraries behind the desk, and are available upon request by any of the individuals described in this paragraph. These books will remain at the libraries for at least the duration of this litigation.

40. As for *Redwood and Ponytail*, that book has been returned to the shelves of Running Creek Elementary Library and will remain there pending the School Board's review of that book. The School Board has not yet voted to remove this book, nor has it decided on the reasons (if any) for why that book should be removed.

41. So the plaintiffs have the same ability to access the 19 disputed titles in the Elizabeth School District's libraries that they had before their removal from the school district's libraries.

42. All of the current members of the School Board are aware of and have approved the return of the disputed books for the purpose of making them available to the plaintiffs in this litigation.

43. Because Heather Booth no longer serves on the School Board, she has no role in determining ongoing availability of these disputed titles in the Elizabeth School District's libraries. The decision to make the 19 books available only to the plaintiffs—and not to return those 19 books to the library shelves—is attributable solely to the current members of the School Board, who are unwilling to make these books available in the school libraries to anyone other than the named plaintiffs or the members (or children of members), as of the date of filing of this action, of the NAACP.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 27, 2025, in Elizabeth, Colorado.

Signed by:

Mary Powell

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Mary Powell

Secretary

Elizabeth School District Board of Education

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**Declaration of Jonathan Waller, Assistant Secretary/Treasurer
Elizabeth School District Board of Education, in Support of the Opposition to
Plaintiffs' Motion for Preliminary Injunction**

I, Jonathan Waller, being over 18 years of age, submit the following declaration in support of Defendant Elizabeth School District's Opposition to Plaintiffs' Motion for Preliminary Injunction and state as follows:

1. I make this declaration based on personal knowledge.
2. I am the Assistant Secretary/Treasurer of the Elizabeth School District Board of Education (School Board). I have served on the Board for two years. I was initially appointed to the Board to fill a vacancy, and then I ran for the position and was elected by an overwhelming majority of voters in April 2023. Like all School Board members, I serve as a volunteer and do not receive compensation for my work on behalf of students in the Elizabeth School District.
3. I decided to run for the School Board because serving my community is what I do. In 2000, after building a successful landscaping and tree-cutting business, I

sold my business and became a deputy for the Arapahoe County Sheriff's Office. I spent the next 21 years in law enforcement and am now retired.

4. I love serving as a School Board member. I raised five children, who are now adults and thriving: a doctor, engineer, stay-at-home mom, attorney, and Air Force crew chief. I was always very involved with their education and sports, and I want to help ensure that the children in the Elizabeth School District receive a strong education so they also have the opportunity to thrive as adults.

5. I am aware that Plaintiffs in this case are challenging the School Board's decision to permanently remove 18 titles from one or more of the school district's libraries. Those 18 titles are: *The Hate U Give* by Angie Thomas; *Beloved* by Toni Morrison; *The Bluest Eye* by Toni Morrison; *The Kite Runner* by Khaled Hosseini; *You Should See Me in a Crown* by Leah Johnson; *#Pride: Championing LGBTQ Rights* by Rebecca Felix; *Melissa/George* by Alex Gino; *It's Your World—If You Don't Like It, Change It* by Mikki Halpin; *The Perks of Being a Wallflower* by Stephen Chbosky; *Thirteen Reasons Why* by Jay Asher; *Looking for Alaska* by John Green; *Nineteen Minutes* by Jodi Picoult; and *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke*, all by Ellen Hopkins. I am also aware that the plaintiffs are challenging the School Board's decision to temporarily remove *Speak*, by Laurie Anderson.

6. The plaintiffs are also suing over the decision to remove *Redwood and Ponytail* from the Running Creek Elementary School Library, but the School Board did not vote on that decision and I had nothing to do with it.

7. The 19 challenged titles were initially identified by the Board Curriculum Review Committee (Curriculum Committee). I was present at the School Board meeting on August 12, 2024, where I and three other Board members voted unanimously to approve the library-review protocols that the Curriculum Committee had created. See

Ex. 4 (August 12, 2024 Meeting Minutes) at 6. We also accepted the Committee's recommendation to temporarily suspend the 19 titles. (*Id.*) The Committee had identified these titles, which represented a very small fraction of the school district's library collection, as containing highly sensitive topics and recommended that they be offered for public review. Consistent with that recommendation, the Board made the books available to the public at the district office for a 25-day period.

8. I was also present at the next Board meeting on August 26, 2024, where the Board heard public comment related to the 19 titles and where all five Board members read aloud excerpts from the suspended titles. See Ex. 7 (August 26, 2024 Meeting Minutes). It was very uncomfortable to read these passages aloud, but the Board felt it was necessary to provide concrete examples in case not all meeting attendees had reviewed the questioned content. The excerpts read were:

Thirteen Reasons Why:

Okay, I'll say it. I thought about suicide. ...I thought about suicide. ...I wish I would die. ...What about hanging? Well, what would I use? Where would I do it? And even if I knew what and where, I could never get beyond the visual of someone finding me- swinging- inches from the floor. ...You took pills. That, we all know. Some say you passed out and drowned in a bathtub full of water.

Melissa/George:

She immersed her body in the warm water and tried not to think about what was between her legs, but there it was, bobbing in front of her. ... So George knew it could be done. A boy could become a girl. She had since read on the Internet that you could take girl hormones that would change your body, and you could get a bunch of different surgeries if you wanted them and had the money. This was called transitioning. You could even start before you were eighteen with pills called androgen blockers that stopped the boy hormones already inside you from turning your body into a man's. But for that, you needed your parents' permission.

Nineteen Minutes:

One of his front teeth was crooked, his Adam's apple looked fist-sized, his knuckles were knotty and chapped. He was crying quietly, and it might have been enough to engender sympathy had he not been wearing a t-shirt splattered with the blood of other students. "Do you feel alright, Peter?" Patrick asked. "Are you hungry?" The boy shook his head. "Can I get you anything else?" Peter put his head down on the table. "I want my mom," he whispered. Patrick looked at the part in the boy's hair. Had he brushed it that morning, thinking, Today's the day I'm going to kill ten students?

Looking for Alaska:

Alaska read the sticker that was on the top of the video. The bitches of Madison County, now ain't that just delightful. We ran with it to the TV room, closed the blinds, locked the door, and watched the movie. It opened with a woman standing on a bridge while a guy knelt down in front of her giving her oral sex. No time for dialogue, I suppose. By the time they started doing it, Alaska commenced with her righteous indignation, "they just don't make sex fun for women. The girl is just an object. Look. Look at that." I was already looking, needless to say. A woman crouched on her hands and knees, while a guy knelt behind her. She kept saying "Give it to me" and moaning. And though her eyes were brown and blank, betraying her lack of interest, I couldn't help but take mental notes. Hands on her shoulders, I noted, fast but not too fast or it's going to be over fast. Keep your grunting to a minimum.

The Bluest Eye:

She might wonder again, for the six hundredth time, what it would be like to have that feeling while her husband's penis is inside her. The closest thing to it was the time she was walking down the street and her napkin slipped free of her sanitary belt. It moved gently between her legs as she walked. Gently, ever so gently. And then a slight and distinctly delicious sensation collected in her crotch. As the delight grew, she had to stop in the street, hold her thighs together to contain it. That must be what it is like, she thinks, but it never happens while he is inside her. When he withdraws, she pulls her nightgown down, slips out of the bed and into the bathroom with relief. ... Or as she sits reading the uplifting thoughts of the Liberty Magazine, the cat will jump into her lap. She will fondle that soft hill of hair and let the

warmth of the animal's body seep over and into the deeply private areas of her lap. Sometimes the magazine drops as she opens her legs.

9. I was also one of the four Board members present at the September 2024 Board meeting, where we voted 4-0 to permanently remove each of the 18 titles from one or more of the Elizabeth School District's libraries. See Ex. 5 (September 9, 2024 Meeting Minutes) at 6. Heather Booth was not present for that vote and did not vote on the decision to permanently remove these 18 titles.

10. The plaintiffs and their attorneys claim to know my subjective motivations for supporting the removal of each of these 19 disputed titles, and they accuse me of supporting removal of these titles:

- because I “disagree[] with the ideas contained in the books”;¹
- because I believe that the school board's “mandate is to imbue its own brand of conservative politics in ESD schools”;²
- because I want to “remov[e] books that discuss LGBTQ+ and race-related topics”;³
- as a means of sending a notice that Elizabeth School District “is not welcoming to anyone who is not white, straight and politically conservative”⁴

-
1. Pls.' Mot. for Prelim. Inj., ECF No. 9, at 1 (“Defendant Elizabeth School District (‘the District’), by and through its Board of Education (‘the Board’), has removed at least nineteen books from school libraries in the District because of the Board’s disagreement with the ideas contained in the books.’).
 2. Pls.' Mot. for Prelim. Inj., ECF No. 9, at 5 (“The Board believes its mandate is to imbue its own brand of conservative politics in ESD schools.”).
 3. Pls.' Mot. for Prelim. Inj., ECF No. 9, at 5 (“Removing books that discuss LGBTQ+ and race-related topics . . . is one step in fulfilling that mandate.”).
 4. Pls.' Mot. for Prelim Inj., ECF No. 9, at 9 (“Some parents also opposed the Board’s decision to remove books from school libraries because of the stigmatizing messages the Board was sending, noting, for instance, that the list of removed books ‘is not welcoming to anyone who is not white, straight and politically conservative,’”)

- because I found each of the 19 disputed books “disgusting” and “out of line with the so-called ‘conservative values’ they intended to promote”;⁵
- because I “sought to remove any books that acknowledge LGBTQ+ identities”;⁶
- because I “disagree[] with” the “viewpoints and worldviews” expressed in the 19 disputed books;⁷
- because of my “disdain” for the “ideas” contained in the 19 disputed books;⁸
- because “each book contained LGBTQ characters, expressed views on race that the Board members disagree with, or otherwise failed to align with the Board’s brand of ‘conservative values’”;⁹

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5. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 10 (“[B]ecause Board members found the eighteen ‘temporarily suspended’ books ‘disgusting,’ and out of line with the so-called ‘conservative values’ they intended to promote in ESD, they determined that all eighteen books would be permanently banished from school libraries.”); *see also id.* at 19.
 6. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 10 (“[T]he Board sought to remove any books that acknowledge LGBTQ+ identities.”).
 7. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 12–13 (“Because the Board disagrees with these authors’ viewpoints and worldviews, the authors can no longer share them with ESD students.”); *see also id.* at 12 (“Plaintiff the Authors Guild (“Guild”) includes authors whose books were removed from ESD libraries because of the viewpoints expressed therein.”); *id.* at 25 (“[T]he Board’s removal of books from ESD libraries [was] because of its disagreement with the viewpoints expressed therein.”).
 8. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 18 (“[T]he Board did—and continues to—remove books because of the ideas they contain.”); *id.* at 19 (“[T]he Board members made clear their disdain for the ideas contained therein.”).
 9. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 21 (“All Board members ultimately voted not to return any of the Removed Books to ESD libraries because each book contained LGBTQ characters, expressed views on race that the Board members disagree with, or otherwise failed to align with the Board’s brand of “conservative values.”).

- because the books “fail to conform with the Board’s partisan, political orthodoxy”;¹⁰
- for no reason other than a “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”¹¹

The plaintiffs and their lawyers also claim that I share the beliefs expressed by community members who supported removal of the 19 disputed titles.¹² Each of these accusations is false.

11. I did not vote to remove any of the 19 disputed titles from the school district’s libraries because of the “ideas,” “viewpoints,” or “worldviews” contained or expressed in any of those books.

12. I do not believe—and I never have believed—that the school board’s “mandate” is to “imbue its own brand of conservative politics in ESD schools,” and I did not vote to remove any of the 19 disputed titles from the school district’s libraries because they were “out of line with . . . conservative values.” Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 10. The only evidence that the plaintiffs cite to support this accusation against me are three e-mails written by Heather Booth that discuss “conservative values.” See Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 5. Heather Booth does not speak for me, and she does not speak for the School Board as a collective entity. I would have voted to remove these 19 disputed titles even if Heather Booth had never sent those e-mails mentioning her commitment to “conservative values,” and Ms. Booth’s professed

10. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 3 (“[T]he Board has become increasingly militant about banishing viewpoints that fail to conform with the partisan, political orthodoxy that they seek to impose in ESD.”);

11. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 22 (“[T]he District’s removal decisions were based on no more than a ‘mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint’”).

12. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 6–7.

commitment to “conservative values” did not in the slightest degree influence my decision to support the book removals. The plaintiffs’ belief that they can somehow impute Heather Booth’s subjective motivations to me and each our colleagues on the School Board is false and offensive. I would never vote to remove a book from our school district’s libraries because of its supposed incompatibility with “conservative politics” or “conservative values,” and I fully support the inclusion of books in our school district’s libraries that criticize or attack conservative views or that espouse non-conservative politics or values.

13. I did not vote to remove any of the 19 disputed titles from the school district’s libraries because they “discuss LGBTQ+ and race-related topics,” “acknowledge LGBTQ+ identities,” or “contained LGBTQ characters.” Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 5, 10, 21. I do not oppose the presence of books in our school district’s libraries that discuss LGBTQ+ and race-related topics, or that acknowledge LGBTQ+ identities or contain LGBTQ characters. And I am aware of many books that remain in our school district’s libraries that discuss these topics or that acknowledge LGBTQ+ identities or characters and I have no desire or intention to remove them. The plaintiffs’ claim that I voted to remove these books “because they discuss LGBTQ+ and race-related topics,” “acknowledge LGBTQ+ identities,” or “contained LGBTQ characters” is false and maligns the School Board.

14. The plaintiffs’ claim that I voted to remove the 19 disputed titles to send a message that the Elizabeth School District “is not welcoming to anyone who is not white, straight and politically conservative” is false. See Pls.’ Mot. for Prelim Inj., ECF No. 9, at 9. Many books remain in our library that are written by authors who are not white, straight, or politically conservative, and I have no desire or intention of removing those books.

15. The plaintiffs' claim that I voted to remove all of the 19 disputed titles from the school district's libraries because I found each of the 19 books "disgusting" is false. See Pls.' Mot. for Prelim. Inj., ECF No. 9, at 10. I described only one passage from one book—*The Bluest Eye* by Toni Morrison—as "disgusting," and I made this comment after I read the following passage at the school board's meeting of August 26, 2024:

She might wonder again, for the six hundredth time, what it would be like to have that feeling while her husband's penis is inside her. The closest thing to it was the time she was walking down the street and her napkin slipped free of her sanitary belt. It moved gently between her legs as she walked. Gently, ever so gently. And then a slight and distinctly delicious sensation collected in her crotch. As the delight grew, she had to stop in the street, hold her thighs together to contain it. That must be what it is like, she thinks, but it never happens while he is inside her. When he withdraws, she pulls her nightgown down, slips out of the bed and into the bathroom with relief.

I described the passage in this book as "disgusting" because of its sexually explicit content, not because of any "viewpoint" or "idea" or "worldview" that might have been expressed in the book.

16. I did not vote to remove any of the 19 disputed titles from the school district's libraries because the books "fail to conform with the Board's partisan, political orthodoxy." Pls.' Mot. for Prelim. Inj., ECF No. 9, at 21. I did not even consider the partisan or political views that might be expressed in any of the 19 books when deciding whether to support their removal from the school district's library. I fully support the inclusion of school-library books with partisan or political viewpoints that differ from my own, and I have never voted and would never vote to remove a title from the school district's libraries for "partisan" or "political" reasons

17. I did not vote to remove any of the 19 disputed titles out of a "mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." Pls.' Mot. for Prelim. Inj., ECF No. 9, at 22.

18. I did not adopt and do not share the particular sentiments expressed by members of the community that appear in Exhibit 13 to the plaintiffs' motion for preliminary injunction. See ECF No. 9-13. It is untenable and absurd for the plaintiffs to attribute the beliefs espoused by community members in these book-review forms to me and to the School Board as a collective entity. See Pls.' Mot. for Prelim. Inj., ECF No. 9, at 6–7.

19. On page 24 of their motion for preliminary injunction, Plaintiffs accuse me, as a School Board Member, of attempting to divine that a majority of Elizabeth School District parents “vehemently support police decisions to use force” and “disagree with any notion that anti-Black racism persists in modern society,” and then using this “divined” information as the basis for my vote to remove the 19 titles at issue in this litigation. See Pls.' Mot. for Prelim. Inj., ECF No. 9, at 24. This is false. My decision to remove each title was not based on any cartoonish characterization of the views of Elizabeth School District parents, but rather on specific content which I believed to be incompatible with the educational mission of the Elizabeth School District.

20. On page 25 of their motion for preliminary injunction, Plaintiffs accuse me, as a School Board Member, of basing my decision to remove the 19 titles at issue from Elizabeth School District libraries on the basis of Elizabeth School District parents' sincere belief “that teenagers should never question their sexuality or develop romantic feelings for people of the same gender.” Pls.' Mot. for Prelim. Inj., ECF No. 9, at 25. While I am certain that some Elizabeth School District parents believe that teenagers should be confident in their identities as young men and women, I did not base my decision to remove the titles on such beliefs, but rather on specific content which I believed to be incompatible with to the educational mission of the Elizabeth School District.

21. Neither the plaintiffs nor their lawyers at the ACLU have powers of telepathy, and I resent their claiming to know my subjective motivations as well as their attempts to impute statements made by others to me and my colleagues.

22. My actual reasons and motivations for supporting the removal of each of the 19 disputed books—rather than the reasons and motivations that the plaintiffs and their lawyers have invented and falsely attribute to me—appear below.

23. First, I support the removal of the 19 disputed titles from our school district's libraries because they contain graphic sexual content, as well as filthy and profane language, that is inappropriate for a library used by schoolchildren. All of this problematic content is described in detail in Exhibit 11 to our brief opposing the plaintiffs' motion for preliminary injunction, and I reviewed and was aware of all the material described in that exhibit when I voted to remove these 19 titles from our school district's libraries. The excerpt from *The Bluest Eye* by Toni Morrison that I quoted above is just one example. Exhibit 11 explains the content in each of the 19 titles that persuaded me to support the removal of those books, including inappropriate sexual passages such as the one quoted above, descriptions of drug use and suicide ideation, and repeated uses of words such as "f-ck," "sh-t," "n-gger," "f-ggot," and "p-ssy." My objections are based on the age-inappropriate *content* that appears in these books, and they have nothing to do with the "viewpoints," "ideas," or "worldviews" expressed by the authors, or the fact that some of the books "discussed LGBTQ+ and race-related topics." I would oppose the inclusion of books with this type of content in our school libraries even if those books supported conservative viewpoints, ideas, or worldviews, and even if they discussed topics other than LGBTQ or race-related issues.

24. I also support permanently removing the 18 disputed titles because so many parents opposed the continued inclusion of those books in our school libraries. As

a member of the School Board, I am accountable to the voters who elected me and the taxpayers who pay for our schools and their libraries, and I must take their desires into account when deciding whether to include or exclude materials from our school district's libraries. I did not adopt or endorse any particular community member's *reasons* for supporting exclusion of the books, and the plaintiffs and their lawyers are wrong to assert that the particular objections expressed by community members were shared by me or by my colleagues on the School Board. But I did consider and give weight to the *fact* that so many of my constituents—and a clear majority of those who reviewed the books and filled out the forms—supported the removal of these 18 titles from the school district's libraries. That is my duty as an elected official, because I work for and answer to the people who elected me and the taxpayers who fund our school district and its activities.

25. Finally, I do not believe that the educational value of these books is sufficient to outweigh their problematic and age-inappropriate content, or the fact that so many parents opposed their continued inclusion in our school district's libraries. I am not categorically opposed to having books in our school district's library that contain graphic sexual content or vile and offensive language, or whose presence in our school library is opposed by so many members of our community. But the educational value of those type of books must be great enough to justify their inclusion in our school district's library collection at the expense of other books. Library shelf space is limited and should be reserved for books that do the most to advance the curricular and educational goals of the Elizabeth School District.

26. As an individual Board member, I voted to remove these titles because the weight of these factors favored removal. For example, there was clear parental support for removal. It was important to me to consider what the majority of parents wanted

because we as a School Board are committed to letting parents decide their family's values, whatever they may be. The seriousness of that commitment is reflected in the parents' "Bill of Rights" that the School Board adopted in October 2023 (Ex. 9 (Parents Rights and Responsibilities).) Further, after reviewing excerpts of the titles and hearing from other Board members who did more extensive research on each, I felt confident that these materials were not aligned with the district's educational goals and our role as public-school educators. Finally, I was comfortable removing the titles because the process had been out in the open. The district's school libraries cannot—and should not—have unlimited content. We have to draw lines, and I was comfortable drawing a line in this instance because the School Board was transparent and involved the community in its decision. I understand that some people disagree with the School Board's decision and felt strongly that the titles should stay on the shelves. I genuinely considered that perspective before I voted, but I ultimately disagreed.

27. The plaintiffs and their lawyers accuse me of acting in a "narrowly partisan or political manner" in supporting the removal of the 19 challenged titles, as well as engaging in "viewpoint discrimination." Each of these claims is categorically false. I was not motivated by and did not even consider "political" or "partisan" ideas in supporting the removal of these 19 disputed books from our school district's libraries. Nor did I consider or vote to remove books based on the "viewpoints" expressed by the authors. Supporting the removal of school-library books based on *content* that is sexually explicit, vulgar, or age-inappropriate is not "viewpoint discrimination." Although I have strong political beliefs, my vote to remove the titles was not about me—it was about what I, as an elected official, believe is best for the children in primary and secondary educational settings and what the majority of parents wanted for their children. It is also false for the plaintiffs and their lawyers to suggest that the School Board members are

homogenous or monolithic in their “political” views. Each member brings his or her own unique views (political and otherwise) to the School Board, and all views are welcomed and assist in informing the Schools Board’s decision-making.

28. The School Board has decided to place copies of each of the 18 titles that the School Board voted to permanently remove in the library from which they were taken. These titles will be made available to C.C., E.S., and any student who is either a member of the NAACP — Colorado–Montana–Wyoming State Area Conference (“NAACP”), or who has a parent who is a member of the NAACP. So *Melissa/George* is now available at Running Creek Elementary Library for the plaintiffs or the members or children of members of the NAACP to read, browse, or check out. The five titles that were removed from Elizabeth Middle School (*The Hate U Give*; *Thirteen Reasons Why*; *#Pride: Championing LGBTQ Rights*; *You Should See Me in a Crown*; and *It’s Your World—If You Don’t Like It, Change It: Activism for Teenagers*) are now available at the middle-school library for the plaintiffs or the members or children of members of the NAACP to read, browse, or check out. And the 15 challenged titles that the Board voted to remove from the high school (*The Hate U Give*; *Thirteen Reasons Why*; *The Kite Runner*; *Beloved*; *The Bluest Eye*; *The Perks of Being a Wallflower*; *Looking for Alaska*; *Nineteen Minutes*; *Speak*; *Identical*; *Fallout*; *Glass*; *Crank*; *Smoke*; and *Burned*) are now available in the high-school library for the plaintiffs or the members or children of members of the NAACP to read, browse, or check out. These books are being kept in their respective libraries behind the desk, and are available upon request by any of the individuals described in this paragraph. These books will remain at the libraries for at least the duration of this litigation.

29. As for *Redwood and Ponytail*, that book has been returned to the shelves of Running Creek Elementary Library and will remain there pending the School Board’s

review of that book. The School Board has not yet voted to remove this book, nor has it decided on the reasons (if any) for why that book should be removed.

30. So, the plaintiffs have the same ability to access the disputed titles in the Elizabeth School District's libraries that they had before their removal from the school district's libraries.

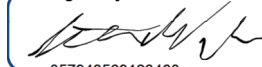
31. All of the current members of the School Board are aware of and have approved the return of the disputed books for the purpose of making them available to the plaintiffs in this litigation.

32. Because Heather Booth no longer serves on the School Board, she has no role in the determining ongoing availability of these disputed titles in the Elizabeth School District's libraries. The decision to make the 18 books available only to the plaintiffs—and not to return those 89 books to the library shelves—is attributable solely to the current members of the School Board, who are unwilling to make these books available in the school libraries to anyone other than the named plaintiffs or the members (or children of members) of the NAACP.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 27, 2025, in Elizabeth, Colorado.

Signed by:



067043560123460...

Jonathan Waller

Assistant Secretary/Treasurer

Elizabeth School District Board of Education

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**Declaration of Mike Calahan, Treasurer, Elizabeth School District
Board of Education, in Support of the Opposition to Plaintiffs’
Motion for Preliminary Injunction**

I, Mike Calahan, being over 18 years of age, submit the following declaration in support of Defendant Elizabeth School District’s Opposition to Plaintiffs’ Motion for Preliminary Injunction and state as follows:

1. I make this declaration based on personal knowledge.
2. I am the Treasurer of the Elizabeth School District Board of Education (School Board). I have served on the School Board since April 2023. Like all School Board members, I serve as a volunteer and do not receive compensation for my work on behalf of students in the Elizabeth School District.
3. Outside of my involvement on the School Board, I own and operate Calahan & Associates, LLC, an accounting firm that I started in 2007, which specializes in helping business and individual clients thrive. I am also the proud parent of five children, all of whom attend school in the Elizabeth School District: two in elementary school, one in middle school, and two in high school. My children inspired me to get

involved on the School Board. I want them to have a great education, but I had concerns about the lack of school security and our district's ability to retain great teachers.

4. I was first appointed to the School Board in April 2023, after three members resigned. I then ran for election in November 2023 and was elected by an overwhelming majority. Because of my background in accounting, I serve as the School Board's treasurer and as a member of the district's Financial Advisory Committee.

5. I am aware that the plaintiffs in this case are challenging the School Board's decision to permanently remove 18 titles from one or more of the school district's libraries. Those 18 titles are: *The Hate U Give* by Angie Thomas; *Beloved* by Toni Morrison; *The Bluest Eye* by Toni Morrison; *The Kite Runner* by Khaled Hosseini; *You Should See Me in a Crown* by Leah Johnson; *#Pride: Championing LGBTQ Rights* by Rebecca Felix; *Melissa/George* by Alex Gino; *It's Your World—If You Don't Like It, Change It* by Mikki Halpin; *The Perks of Being a Wallflower* by Stephen Chbosky; *Thirteen Reasons Why* by Jay Asher; *Looking for Alaska* by John Green; *Nineteen Minutes* by Jodi Picoult; and *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke*, all by Ellen Hopkins. I am also aware that the plaintiffs are challenging the School Board's decision to temporarily remove *Speak*, by Laurie Anderson.

6. The plaintiffs are also suing over the decision to remove *Redwood and Ponytail* from the Running Creek Elementary School Library, but the School Board did not vote on that decision and I had nothing to do with it.

7. In September 2023, well before the School Board made the decision to remove the challenged titles, my then-11-year-old daughter (a 6th grader at Elizabeth Middle School) checked out a book from the school library called *The Sun is Also a Star* by Nicola Yoon. This concerned me as a parent because the book contains profanity,

filthy language, and explicit sexual content that are entirely inappropriate for a middle-school audience. Among other things, the book has penis-size and masturbation jokes,, and uses each of the following words or expressions: “a--hole,” “s--t,” “f--k,” “f--ked up,” “f--king,” “dick,” “douche,” “Jesus Christ,” “bastards,” “bag of dicks,” and “motherf--ker.”

8. I raised my concern about the content of that book and its presence in our middle-school library with the Superintendent and other School Board members, which led to a broader discussion about the district’s library collection and the need to ensure that its content is age appropriate and consistent with the broader curriculum. To assist in that effort, the School Board instructed the Board Curriculum Review Committee (Curriculum Committee) to develop a process for reviewing the entire library collection.

9. At the School Board meeting on August 12, 2024, the Board unanimously approved the library-review protocols that the Curriculum Committee had created. The Board also accepted the Committee’s recommendation to temporarily suspend 18 titles from the school libraries pending further review and public comment. See Ex. 4 (August 12, 2024 Meeting Minutes), at 6. I was not present at the meeting and I did not vote on these decisions, but I supported and agreed with the Board’s decision. I was present at the next Board meeting on August 26, 2024, where the Board heard public comment related to the 19 titles that the Curriculum Committee had flagged for further review and where all five Board members read aloud excerpts from five of those titles. See Ex. 7 (August 26, 2024 Meeting Minutes). The excerpts read were:

Thirteen Reasons Why:

Okay, I’ll say it. I thought about suicide. ...I thought about suicide. ...I wish I would die. ...What about hanging? Well, what would I use? Where would I do it? And even if I knew what and where, I could never get beyond the visual of someone finding me- swinging- inches from the floor. ...You took pills. That, we all know. Some say you passed out and drowned in a bathtub full of water.

Melissa/George:

She immersed her body in the warm water and tried not to think about what was between her legs, but there it was, bobbing in front of her. ... So George knew it could be done. A boy could become a girl. She had since read on the Internet that you could take girl hormones that would change your body, and you could get a bunch of different surgeries if you wanted them and had the money. This was called transitioning. You could even start before you were eighteen with pills called androgen blockers that stopped the boy hormones already inside you from turning your body into a man's. But for that, you needed your parents' permission.

Nineteen Minutes:

One of his front teeth was crooked, his Adam's apple looked fist-sized, his knuckles were knotty and chapped. He was crying quietly, and it might have been enough to engender sympathy had he not been wearing a t-shirt splattered with the blood of other students. "Do you feel alright, Peter?" Patrick asked. "Are you hungry?" The boy shook his head. "Can I get you anything else?" Peter put his head down on the table. "I want my mom," he whispered. Patrick looked at the part in the boy's hair. Had he brushed it that morning, thinking, Today's the day I'm going to kill ten students?

Looking for Alaska:

Alaska read the sticker that was on the top of the video. The bitches of Madison County, now ain't that just delightful. We ran with it to the TV room, closed the blinds, locked the door, and watched the movie. It opened with a woman standing on a bridge while a guy knelt down in front of her giving her oral sex. No time for dialogue, I suppose. By the time they started doing it, Alaska commenced with her righteous indignation, "they just don't make sex fun for women. The girl is just an object. Look. Look at that." I was already looking, needless to say. A woman crouched on her hands and knees, while a guy knelt behind her. She kept saying "Give it to me" and moaning. And though her eyes were brown and blank, betraying her lack of interest, I couldn't help but take mental notes. Hands on her shoulders, I noted, fast but not too fast or it's going to be over fast. Keep your grunting to a minimum.

The Bluest Eye:

She might wonder again, for the six hundredth time, what it would be like to have that feeling while her husband's penis is inside her. The closest thing to it was the time she was walking down the street and her napkin slipped free of her sanitary belt. It moved gently between her legs as she walked. Gently, ever so gently. And then a slight and distinctly delicious sensation collected in her crotch. As the delight grew, she had to stop in the street, hold her thighs together to contain it. That must be what it is like, she thinks, but it never happens while he is inside her. When he withdraws, she pulls her nightgown down, slips out of the bed and into the bathroom with relief. ... Or as she sits reading the uplifting thoughts of the Liberty Magazine, the cat will jump into her lap. She will fondle that soft hill of hair and let the warmth of the animal's body seep over and into the deeply private areas of her lap. Sometimes the magazine drops as she opens her legs.

10. I was also one of the four Board members present at the September 2024 Board meeting, where we voted 4-0 to permanently remove each of the 18 disputed titles from one or more of the Elizabeth School District's libraries. See Ex. 5 (September 9, 2024 Meeting Minutes), at 6.

11. The plaintiffs and their attorneys claim to know my subjective motivations for supporting the removal of each of these 19 disputed titles, and they accuse me of supporting removal of these titles:

- because I "disagree[] with the ideas contained in the books";¹
- because I believe that the school board's "mandate is to imbue its own brand of conservative politics in ESD schools";²

1. Pls.' Mot. for Prelim. Inj., ECF No. 9, at 1 ("Defendant Elizabeth School District ('the District'), by and through its Board of Education ('the Board'), has removed at least nineteen books from school libraries in the District because of the Board's disagreement with the ideas contained in the books.').

2. Pls.' Mot. for Prelim. Inj., ECF No. 9, at 5 ("The Board believes its mandate is to imbue its own brand of conservative politics in ESD schools.").

- because I want to “remov[e] books that discuss LGBTQ+ and race-related topics”;³
- as a means of sending a notice that Elizabeth School District “is not welcoming to anyone who is not white, straight and politically conservative”⁴
- because I found each of the 19 disputed books “disgusting” and “out of line with the so-called ‘conservative values’ they intended to promote”;⁵
- because I “sought to remove any books that acknowledge LGBTQ+ identities”;⁶
- because I “disagree[] with” the “viewpoints and worldviews” expressed in the 19 disputed books;⁷
- because of my “disdain” for the “ideas” contained in the 19 disputed books;⁸

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3. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 5 (“Removing books that discuss LGBTQ+ and race-related topics . . . is one step in fulfilling that mandate.”).
 4. Pls.’ Mot. for Prelim Inj., ECF No. 9, at 9 (“Some parents also opposed the Board’s decision to remove books from school libraries because of the stigmatizing messages the Board was sending, noting, for instance, that the list of removed books ‘is not welcoming to anyone who is not white, straight and politically conservative,’”)
 5. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 10 (“[B]ecause Board members found the eighteen ‘temporarily suspended’ books ‘disgusting,’ and out of line with the so-called ‘conservative values’ they intended to promote in ESD, they determined that all eighteen books would be permanently banished from school libraries.”); *see also id.* at 19.
 6. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 10 (“[T]he Board sought to remove any books that acknowledge LGBTQ+ identities.”).
 7. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 12–13 (“Because the Board disagrees with these authors’ viewpoints and worldviews, the authors can no longer share them with ESD students.”); *see also id.* at 12 (“Plaintiff the Authors Guild (“Guild”) includes authors whose books were removed from ESD libraries because of the viewpoints expressed therein.”); *id.* at 25 (“[T]he Board’s removal of books from ESD libraries [was] because of its disagreement with the viewpoints expressed therein.”).
 8. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 18 (“[T]he Board did—and continues to—remove books because of the ideas they contain.”); *id.* at 19 (“[T]he Board members made clear their disdain for the ideas contained therein.”).

- because “each book contained LGBTQ characters, expressed views on race that the Board members disagree with, or otherwise failed to align with the Board’s brand of ‘conservative values’”;⁹
- because the books “fail to conform with the Board’s partisan, political orthodoxy”;¹⁰
- for no reason other than a “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”¹¹

The plaintiffs and their lawyers also claim that I share the beliefs expressed by community members who supported removal of the 19 disputed titles.¹² Each of these accusations is false.

12. I did not vote to remove any of the 19 disputed titles from the school district’s libraries because of the “ideas,” “viewpoints,” or “worldviews” contained or expressed in any of those books.

13. I do not believe—and I never have believed—that the school board’s “mandate” is to “imbue its own brand of conservative politics in ESD schools,” and I did not vote to remove any of the 19 disputed titles from the school district’s libraries because they were “out of line with . . . conservative values.” Pls.’ Mot. for Prelim. Inj.,

9. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 21 (“All Board members ultimately voted not to return any of the Removed Books to ESD libraries because each book contained LGBTQ characters, expressed views on race that the Board members disagree with, or otherwise failed to align with the Board’s brand of “conservative values.”).

10. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 3 (“[T]he Board has become increasingly militant about banishing viewpoints that fail to conform with the partisan, political orthodoxy that they seek to impose in ESD.”);

11. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 22 (“[T]he District’s removal decisions were based on no more than a ‘mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint’”).

12. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 6–7.

ECF No. 9, at 10. The only evidence that the plaintiffs cite to support this accusation against me are three e-mails written by Heather Booth that discuss “conservative values.” See Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 5. Heather Booth does not speak for me, and she does not speak for the School Board as a collective entity. I would have voted to remove these 19 disputed titles even if Heather Booth had never sent those e-mails mentioning her commitment to “conservative values,” and Ms. Booth’s professed commitment to “conservative values” did not in the slightest degree influence my decision to support the book removals. The plaintiffs’ belief that they can somehow impute Heather Booth’s subjective motivations to me and each our colleagues on the School Board is false and offensive. I would never vote to remove a book from our school district’s libraries because of its supposed incompatibility with “conservative politics” or “conservative values,” and I fully support the inclusion of books in our school district’s libraries that criticize or attack conservative views or that espouse non-conservative politics or values.

14. I did not vote to remove any of the 19 disputed titles from the school district’s libraries because they “discuss LGBTQ+ and race-related topics,” “acknowledge LGBTQ+ identities,” or “contained LGBTQ characters.” Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 5, 10, 21. I do not oppose the presence of books in our school district’s libraries that discuss LGBTQ+ and race-related topics, or that acknowledge LGBTQ+ identities or contain LGBTQ characters. And I am aware of many books that remain in our school district’s libraries that discuss these topics or that acknowledge LGBTQ+ identities or characters and I have no desire or intention to remove them. The plaintiffs’ claim that I voted to remove these books “because they discuss LGBTQ+ and race-related topics,” “acknowledge LGBTQ+ identities,” or “contained LGBTQ characters” is false and maligns the School Board.

15. The plaintiffs' claim that I voted to remove the 19 disputed titles to send a message that the Elizabeth School District "is not welcoming to anyone who is not white, straight and politically conservative" is false. See Pls.' Mot. for Prelim Inj., ECF No. 9, at 9. Many books remain in our library that are written by authors who are not white, straight, or politically conservative, and I have no desire or intention of removing those books.

16. I did not vote to remove any of the 19 disputed titles from the school district's libraries because I found the books "disgusting." Pls.' Mot. for Prelim. Inj., ECF No. 9, at 10.

17. I did not vote to remove any of the 19 disputed titles from the school district's libraries because the books "fail to conform with the Board's partisan, political orthodoxy." Pls.' Mot. for Prelim. Inj., ECF No. 9, at 21. I did not even consider the partisan or political views that might be expressed in any of the 19 books when deciding whether to support their removal from the school district's library. I fully support the inclusion of school-library books with partisan or political viewpoints that differ from my own, and I have never voted and would never vote to remove a title from the school district's libraries for "partisan" or "political" reasons.

18. I did not vote to remove any of the 19 disputed titles out of a "mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." Pls.' Mot. for Prelim. Inj., ECF No. 9, at 22.

19. I did not adopt and do not share the particular sentiments expressed by members of the community that appear in Exhibit 13 to the plaintiffs' motion for preliminary injunction. See ECF No. 9-13. It is untenable and absurd for the plaintiffs to attribute the beliefs espoused by community members in these book-review forms to me

and to the School Board as a collective entity. See Pls.' Mot. for Prelim. Inj., ECF No. 9, at 6–7.

20. On page 24 of their motion for preliminary injunction, Plaintiffs accuse me, as a School Board Member of attempting to divine that a majority of Elizabeth School District parents “vehemently support police decisions to use force” and “disagree with any notion that anti-Black racism persists in modern society,” and then using this “divined” information as the basis for my vote to remove the eighteen titles at issue in this litigation. See Pls.' Mot. for Prelim. Inj., ECF No. 9, at 24. This is false. My decision to remove each title was not based on any cartoonish characterization of the views of Elizabeth School District parents, but rather on specific content which I believed to be incompatible with the educational mission of the Elizabeth School District.

21. On page 25 of their motion for preliminary injunction, Plaintiffs accuse me, as a School Board Member of basing my decision to remove the nineteen titles at issue from Elizabeth School District libraries on the basis of Elizabeth School District parents' sincere belief “that teenagers should never question their sexuality or develop romantic feelings for people of the same gender.” Pls.' Mot. for Prelim. Inj., ECF No. 9, at 25. While I am certain that some Elizabeth School District parents believe that teenagers should be confident in their identities as young men and women, I did not base my decision to remove the titles on such beliefs, but rather on specific content which I believed to be incompatible with to the educational mission of the Elizabeth School District.

22. Neither the plaintiffs nor their lawyers at the ACLU have powers of telepathy, and I resent their claiming to know my subjective motivations as well as their attempts to impute statements made by others to me and my colleagues.

23. My actual reasons and motivations for supporting the removal of each of the 19 disputed books—rather than the reasons and motivations that the plaintiffs and their lawyers have invented and falsely attribute to me—appear below.

24. First, I support the removal of the 19 disputed titles from our school district's libraries because they contain graphic sexual content, as well as filthy and profane language, that is inappropriate for a library used by schoolchildren. All of this problematic content is described in detail in Exhibit 11 to our brief opposing the plaintiffs' motion for preliminary injunction, and I reviewed and was aware of all the material described in that exhibit when I voted to remove these 19 titles from our school district's libraries. As an example, *The Bluest Eye* by Toni Morrison includes this passage on page 83:

She might wonder again, for the six hundredth time, what it would be like to have that feeling while her husband's penis is inside her. The closest thing to it was the time she was walking down the street and her napkin slipped free of her sanitary belt. It moved gently between her legs as she walked. Gently, ever so gently. And then a slight and distinctly delicious sensation collected in her crotch. As the delight grew, she had to stop in the street, hold her thighs together to contain it. That must be what it is like, she thinks, but it never happens while he is inside her. When he withdraws, she pulls her nightgown down, slips out of the bed and into the bathroom with relief.

Exhibit 11 explains the content in each of the 19 titles that persuaded me to support the removal of those books, including inappropriate sexual passages such as the one quoted above, descriptions of drug use and suicide ideation, and repeated uses of words such as “f-ck,” “sh-t,” “n-gger,” “f-ggot,” and “p-ssy.” My objections are based on the age-inappropriate *content* that appears in these books, and they have nothing to do with the “viewpoints,” “ideas,” or “worldviews” expressed by the authors, or the fact that some of the books “discussed LGBTQ+ and race-related topics.” I would oppose the inclusion of books with this type of content in our school libraries even if those books

supported conservative viewpoints, ideas, or worldviews, and even if they discussed topics other than LGBTQ or race-related issues.

25. I also support removing the 19 disputed titles because so many parents opposed the continued inclusion of those books in our school libraries. As a member of the School Board, I am accountable to the voters who elected me and the taxpayers who pay for our schools and their libraries, and I must take their desires into account when deciding whether to include or exclude materials from our school district's libraries. I did not adopt or endorse any particular community member's *reasons* for supporting exclusion of the books, and the plaintiffs and their lawyers are wrong to assert that the particular objections expressed by community members were shared by me or by my colleagues on the School Board. But I did consider and give weight to the *fact* that so many of my constituents—and a clear majority of those who reviewed the books and filled out the forms—supported the removal of these 19 titles from the school district's libraries. That is my duty as an elected official, because I work for and answer to the people who elected me and the taxpayers who fund our school district and its activities.

26. Finally, I do not believe that the educational value of these books is sufficient to outweigh their problematic and age-inappropriate content, or the fact that so many parents opposed their continued inclusion in our school district's libraries. I am not categorically opposed to having books in our school district's library that contain graphic sexual content or vile and offensive language, or whose presence in our school library is opposed by so many members of our community. But the educational value of those type of books must be great enough to justify their inclusion in our school district's library collection at the expense of other books. Library shelf space is limited and should

be reserved for books that do the most to advance the curricular and educational goals of the Elizabeth School District.

27. The plaintiffs and their lawyers accuse me of acting in a “narrowly partisan or political manner” in supporting the removal of the 19 challenged titles, as well as engaging in “viewpoint discrimination.” Each of these claims is false. I was not motivated by and did not even consider “political” or “partisan” ideas in supporting the removal of these 19 disputed books from our school district’s libraries. Nor did I consider or vote to remove books based on the “viewpoints” expressed by the authors. Supporting the removal of school-library books based on *content* that is sexually explicit, vulgar, or age-inappropriate is not “viewpoint discrimination.” It is also false for the plaintiffs and their lawyers to suggest that the School Board members are homogenous or monolithic in their “political” views. Each member brings his or her own unique views (political and otherwise) to the School Board, and all views are welcomed and assist in informing the Schools Board’s decision-making.

28. The School Board has decided to place copies of each of the 19 titles that the School Board voted to remove in the library from which they were taken. These titles will be made available to C.C., E.S., and any student who is either a member of the NAACP — Colorado–Montana–Wyoming State Area Conference ("NAACP"), or who has a parent who is a member of the NAACP. So *Melissa/George* is now available at Running Creek Elementary Library for the plaintiffs or the members or children of members of the NAACP to read, browse, or check out. The five titles that were removed from Elizabeth Middle School (*The Hate U Give*; *Thirteen Reasons Why*; *#Pride: Championing LGBTQ Rights*; *You Should See Me in a Crown*; and *It’s Your World—If You Don’t Like It, Change It: Activism for Teenagers*) are now available at the middle-school library for the plaintiffs or the members or children of members of the NAACP to

read, browse, or check out. And the 15 challenged titles that the Board voted to remove from the high school (*The Hate U Give*; *Thirteen Reasons Why*; *The Kite Runner*; *Beloved*; *The Bluest Eye*; *The Perks of Being a Wallflower*; *Looking for Alaska*; *Nineteen Minutes*; *Speak*; *Identical*; *Fallout*; *Glass*; *Crank*; *Smoke*; and *Burned*) are now available in the high-school library for the plaintiffs or the members or children of members of the NAACP to read, browse, or check out. These books are being kept in their respective libraries behind the desk, and are available upon request by any of the individuals described in this paragraph. These books will remain at the libraries for at least the duration of this litigation.

29. As for *Redwood and Ponytail*, that book has been returned to the shelves of Running Creek Elementary Library and will remain there pending the School Board's review of that book. The School Board has not yet voted to remove this book, nor has it decided on the reasons (if any) for why that book should be removed.

30. So, the plaintiffs have the same ability to access the 19 disputed titles in the Elizabeth School District's libraries that they had before their removal from the school district's libraries.


31. All of the current members of the School Board are aware of and have approved the return of the disputed books for the purpose of making them available to the plaintiffs in this litigation.

32. Because Heather Booth no longer serves on the School Board, she has no role in the determining ongoing availability of these disputed titles in the Elizabeth School District's libraries. The decision to make the 19 books available only to the plaintiffs—and not to return those 19 books to the library shelves—is attributable solely to the current members of the School Board, who are unwilling to make these books

available in the school libraries to anyone other than the named plaintiffs or the members (or children of members) of the NAACP.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 27, 2025, in Elizabeth, Colorado.

Signed by:

F008F62ED3CD459...
Mike Calahan
Treasurer
Elizabeth School District Board of Education

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**Declaration of Heather Booth, Former Vice President, Elizabeth School District
Board of Education, in Support of the Opposition to Plaintiffs'**

I, Heather Booth, being over 18 years of age, submit the following declaration in support of Defendant Elizabeth School District's Opposition to Plaintiffs' Motion for Preliminary Injunction and state as follows:

1. I make this declaration based on personal knowledge.
2. I am the former Vice President of the Elizabeth School District Board of Education (School Board). I served on the School Board from November 2021 until January 2025. Like all Board members, I served as a volunteer and did not receive compensation for my work on behalf of students in the Elizabeth School District.
3. I have lived in Elizabeth for over two decades. I am a wife and a mother to four wonderful children. I have been a full-time stay-at-home mother since 2004, when my third child was born extremely early, prompting me to leave my job. Over the years, I have been an active volunteer and spokesperson in the community, including serving as deacon at my church, assisting the local food bank, and helping run the Parent–Teacher Community Organization at one of the district's elementary schools. My community

involvement slowed down a little from 2016–18, when I was diagnosed with MS and needed some time to learn how to manage the condition. After finding my footing, I resumed volunteering. In 2021, several community members encouraged me to run for the School Board, and I ended up being elected by the voters. I proudly served on the Board until my recent resignation on January 13, 2025. My MS relapsed in 2023, but I was hoping to serve until my term ended in November 2025. Due to increasing health complications, I had to make the difficult and heartbreaking decision to resign.

4. I am aware that the plaintiffs in this case are challenging the School Board's decision to permanently remove 18 titles from one or more of the Elizabeth School District's libraries. Those 18 titles are: *The Hate U Give* by Angie Thomas; *Beloved* by Toni Morrison; *The Bluest Eye* by Toni Morrison; *The Kite Runner* by Khaled Hosseini; *You Should See Me in a Crown* by Leah Johnson; *#Pride: Championing LGBTQ Rights* by Rebecca Felix; *Melissa/George* by Alex Gino; *It's Your World—If You Don't Like It, Change It* by Mikki Halpin; *The Perks of Being a Wallflower* by Stephen Chbosky; *Thirteen Reasons Why* by Jay Asher; *Looking for Alaska* by John Green; *Nineteen Minutes* by Jodi Picoult; and *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke*, all by Ellen Hopkins. I am also aware that the plaintiffs are challenging the School Board's decision to temporarily remove *Speak*, by Laurie Anderson.

5. Because I no longer serve on the School Board, I have no role in the continued and ongoing exclusion of these 19 titles from one or more of the Elizabeth School District's libraries. The present-day exclusion of these titles is attributable to the current membership of the School Board, which is maintaining the policy that excludes these titles from the library.

6. The plaintiffs are also suing over the decision to remove *Redwood and Ponytail* from the Running Creek Elementary School Library, but I was not involved that decision and had nothing to do with it.

7. These 19 challenged titles were initially identified by the Board Curriculum Review Committee (Curriculum Committee), which the School Board had tasked with developing a process for reviewing the entire library collection and identifying books that may contain sensitive content. Mary Powell and I were the two Board representatives on the Curriculum Committee. I actively contributed to the Committee's work, but Ms. Powell was much more intimately involved with the library-review effort.

8. I was present at the School Board meeting on August 12, 2024, where I and three other Board members voted unanimously to approve the library-review protocols that the Curriculum Committee had created and recommended to us. See Ex. 4 (August 12, 2024 Meeting Minutes) at 6. At the same time, we accepted the Committee's recommendation to temporarily suspend 19 titles that the Committee had identified as containing highly sensitive topics and recommended be offered for public comment. (*Id.*) Although I was a member of the Committee, I was not directly involved in identifying the 19 titles that were recommended for suspension. I was also present at the next Board meeting on August 26, 2024, where the Board heard public comment related to the 19 titles and where all five Board members read aloud excerpts from five of those titles. See Ex. 7 (August 26, 2024 Meeting Minutes). The excerpts read were:

- *Thirteen Reasons Why:*

Okay, I'll say it. I thought about suicide. ...I thought about suicide. ...I wish I would die. ...What about hanging? Well, what would I use? Where would I do it? And even if I knew what and where, I could never get beyond the visual of someone finding me- swinging- inches from the floor. ...You took pills. That, we all know. Some say you passed out and drowned in a bathtub full of water.

- *Melissa/George:*

She immersed her body in the warm water and tried not to think about what was between her legs, but there it was, bobbing in front of her. ... So George knew it could be done. A boy could become a girl. She had since read on the Internet that you could take girl hormones that would change your body, and you could get a bunch of different surgeries if you wanted them and had the money. This was called transitioning. You could even start before you were eighteen with pills called androgen blockers that stopped the boy hormones already inside you from turning your body into a man's. But for that, you needed your parents' permission.

- *Nineteen Minutes:*

One of his front teeth was crooked, his Adam's apple looked fist-sized, his knuckles were knotty and chapped. He was crying quietly, and it might have been enough to engender sympathy had he not been wearing a t-shirt splattered with the blood of other students. "Do you feel alright, Peter?" Patrick asked. "Are you hungry?" The boy shook his head. "Can I get you anything else?" Peter put his head down on the table. "I want my mom," he whispered. Patrick looked at the part in the boy's hair. Had he brushed it that morning, thinking, Today's the day I'm going to kill ten students?

- *Looking for Alaska*

Alaska read the sticker that was on the top of the video. The bitches of Madison County, now ain't that just delightful. We ran with it to the TV room, closed the blinds, locked the door, and watched the movie. It opened with woman standing on a bridge while a guy knelt down in front of her giving her oral sex. No time for dialogue, I suppose. By the time they started doing it, Alaska commenced with her righteous indignation, "they just don't make sex fun for women. The girl is just an object. Look. Look at that." I was already looking, needless to say. A woman crouched on her hands and knees, while a guy knelt behind her. She kept saying "Give it to me" and moaning. And though her eyes were brown and blank, betraying her lack of interest, I couldn't help but take mental notes. Hands on her shoulders, I noted, fast but not too fast or it's going to be over fast. Keep your grunting to a minimum.

- *The Bluest Eye*

She might wonder again, for the six hundredth time, what it would be like to have that feeling while her husband's penis is inside her. The closest thing to it was the time she was walking down the street and her napkin slipped free of her sanitary belt. It moved gently between her legs as she walked. Gently, ever so gently. And then a slight and distinctly delicious sensation collected in her crotch. As the delight grew, she had to stop in the street, hold her thighs together to contain it. That must be what it is like, she thinks, but it never happens while he is inside her. When he withdraws, she pulls her nightgown down, slips out of the bed and into the bathroom with relief. ... Or as she sits reading the uplifting thoughts of the Liberty Magazine, the cat will jump into her lap. She will fondle that soft hill of hair and let the warmth of the animal's body seep over and into the deeply private areas of her lap. Sometimes the magazine drops as she opens her legs.

9. Due to a preplanned family trip, I was not present at the September 2024 Board meeting where the four other Board members voted to permanently remove each of the 19 titles from one or more of the Elizabeth School District's libraries. See Ex. 5 (September 9, 2024 Meeting Minutes) at 1, 6.

10. From the time of my colleagues' decision on September 9, 2024, to permanently remove the books until the time of my resignation from the Board on January 13, 2025, I did not seek to reverse my colleagues' decision to permanently remove any of the 19 disputed titles from the Elizabeth School District's libraries, and I was content to leave my colleagues' decision in place.

11. The plaintiffs and their attorneys claim to know my subjective motivations for supporting the temporary suspension of the 19 disputed titles, and they accuse me of supporting the suspension of these titles:

- because I “disagree[] with the ideas contained in the books”;¹
- because I believe that the school board’s “mandate is to imbue its own brand of conservative politics in ESD schools”;²
- because I want to “remov[e] books that discuss LGBTQ+ and race-related topics”;³
- as a means of sending a notice that Elizabeth School District “is not welcoming to anyone who is not, straight and politically conservative”⁴
- because I found each of the 19 disputed books “disgusting” and “out of line with the so-called ‘conservative values’ they intended to promote”;⁵
- because I “sought to remove any books that acknowledge LGBTQ+ identities”;⁶

-
1. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 1 (“Defendant Elizabeth School District (‘the District’), by and through its Board of Education (‘the Board’), has removed at least nineteen books from school libraries in the District because of the Board’s disagreement with the ideas contained in the books.’).
 2. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 5 (“The Board believes its mandate is to imbue its own brand of conservative politics in ESD schools.”).
 3. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 5 (“Removing books that discuss LGBTQ+ and race-related topics . . . is one step in fulfilling that mandate.”).
 4. Pls.’ Mot. for Prelim Inj., ECF No. 9, at 9 (“Some parents also opposed the Board’s decision to remove books from school libraries because of the stigmatizing messages the Board was sending, noting, for instance, that the list of removed books ‘is not welcoming to anyone who is not white, straight and politically conservative,’”)
 5. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 10 (“[B]ecause Board members found the eighteen ‘temporarily suspended’ books ‘disgusting,’ and out of line with the so-called ‘conservative values’ they intended to promote in ESD, they determined that all eighteen books would be permanently banished from school libraries.”); *see also id.* at 19.
 6. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 10 (“[T]he Board sought to remove any books that acknowledge LGBTQ+ identities.”).

- because I “disagree[] with” the “viewpoints and worldviews” expressed in the 19 disputed books;⁷
- because of my “disdain” for the “ideas” contained in the 19 disputed books;⁸
- because “each book contained LGBTQ characters, expressed views on race that the Board members disagree with, or otherwise failed to align with the Board’s brand of ‘conservative values’”;⁹
- because the books “fail to conform with the Board’s partisan, political orthodoxy”;¹⁰
- for no reason other than a “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”¹¹

7. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 12–13 (“Because the Board disagrees with these authors’ viewpoints and worldviews, the authors can no longer share them with ESD students.”); *see also id.* at 12 (“Plaintiff the Authors Guild (“Guild”) includes authors whose books were removed from ESD libraries because of the viewpoints expressed therein.”); *id.* at 25 (“[T]he Board’s removal of books from ESD libraries [was] because of its disagreement with the viewpoints expressed therein.”).

8. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 18 (“[T]he Board did—and continues to—remove books because of the ideas they contain.”); *id.* at 19 (“[T]he Board members made clear their disdain for the ideas contained therein.”).

9. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 21 (“All Board members ultimately voted not to return any of the Removed Books to ESD libraries because each book contained LGBTQ characters, expressed views on race that the Board members disagree with, or otherwise failed to align with the Board’s brand of “conservative values.”).

10. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 3 (“[T]he Board has become increasingly militant about banishing viewpoints that fail to conform with the partisan, political orthodoxy that they seek to impose in ESD.”);

11. Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 22 (“[T]he District’s removal decisions were based on no more than a ‘mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint’”).

The plaintiffs and their lawyers also claim that I share all of the beliefs expressed by community members who supported removal of the 19 disputed titles.¹² Each of these accusations is false.

12. I did not vote to suspend any of the 19 disputed titles from the school district's libraries because of the "ideas," "viewpoints," or "worldviews" contained or expressed in any of those books.

13. I do not believe—and I never have believed—that the school board's "mandate" is to "imbue its own brand of conservative politics in ESD schools," and I did not vote to suspend any of the 19 disputed titles from the school district's libraries because they were "out of line with . . . conservative values." Pls.' Mot. for Prelim. Inj., ECF No. 9, at 10. The only evidence that the plaintiffs cite to support this accusation against me are three e-mails that I wrote that discuss "conservative values." See Pls.' Mot. for Prelim. Inj., ECF No. 9, at 5. Although I support conservative values and campaigned on them, I do not believe and have never believed that school libraries should be purged of books that do not align with "conservative values." I have never voted and would never vote to suspend or remove a book from our school district's libraries because of its supposed incompatibility with "conservative politics" or "conservative values," and I fully support the inclusion of books in our school district's libraries that espouse non-conservative perspectives.

14. I did not vote to suspend any of the 19 disputed titles from the school district's libraries because they "discuss LGBTQ+ and race-related topics," "acknowledge LGBTQ+ identities," or "contained LGBTQ characters." Pls.' Mot. for Prelim. Inj., ECF No. 9, at 5, 10, 21. I voted to suspend the books that contain LGBTQ

¹² Pls.' Mot. for Prelim. Inj., ECF No. 9, at 6–7.

materials because I do not believe that *any* books about sexuality or sexual orientation belong in a public-school library, and that those topics should be addressed at home rather than at school. I am equally opposed to the presence of school-library books that discuss or promote other sexual orientations, or that criticize or attack homosexuality or homosexual behavior. My objection was *not* that the books supported homosexual or transgender behavior, but that they contained *any content* related to sexuality or gender transitioning, which is (in my view) inappropriate content for a school library.

15. The plaintiffs claim that I targeted books that promote or support homosexuality or transgenderism because I wrote in an e-mail that “LGBTQ is only regarding sexual preference which doesn’t belong in any school.” E-mail of September 7, 2024, ECF No. 9-12. The plaintiffs are misrepresenting what I said in that e-mail. My e-mail says that *any* book regarding sexual preference does not belong in schools, and I hold that view because issues of sexuality and sexual behavior should be addressed at home and not at school. I was not saying that LGBTQ is the “only” sexual preference that doesn’t belong in schools. I was saying that LGBTQ is “only regarding sexual preference,” and that books about sexual preference of any type do not belong in school. My view is that no book that says anything about sexual preference or sexual orientation belongs in a school library, regardless of whether the book promotes or condemns LGBTQ behavior, and even if the book supports or promotes heterosexual behaviors and orientations.

16. I did not vote to suspend the 19 disputed titles from the school district’s libraries because I found all of the books “disgusting.” Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 10.

17. I did not vote to suspend any of the 19 disputed titles from the school district’s libraries because the books “fail to conform with the Board’s partisan, political

orthodoxy.” Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 21. I did not even consider the partisan or political views that might be expressed in any of the 19 books when deciding whether to support their removal from the school district’s library. I fully support the inclusion of school-library books with partisan or political viewpoints that differ from my own, and I have never voted and would never vote to remove a title from the school district’s libraries for “partisan” or “political” reasons.

18. I did not vote to suspend any of the 19 disputed titles out of a “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 22.

19. I did not adopt and do not share the particular sentiments expressed by members of the community that appear in Exhibit 13 to the plaintiffs’ motion for preliminary injunction. See ECF No. 9-13. It is untenable and absurd for the plaintiffs to attribute the beliefs espoused by community members in these book-review forms to me and to the School Board as a collective entity. See Pls.’ Mot. for Prelim. Inj., ECF No. 9, at 6–7.

20. Neither the plaintiffs nor their lawyers at the ACLU have powers of telepathy, and I resent their claiming to know my subjective motivations as well as their attempts to impute statements made by others to me and my colleagues.

21. My actual reasons and motivations for supporting the suspension of each of the 19 disputed books—rather than the reasons and motivations that the plaintiffs and their lawyers have invented and falsely attribute to me—appear below.

22. First, I supported the decision to suspend the 19 disputed titles from our school district’s libraries because they contain graphic sexual content, as well as filthy and profane language, that is inappropriate for a library used by schoolchildren. All of this problematic content is described in detail in Exhibit 11 to our brief opposing the

plaintiffs' motion for preliminary injunction, and I reviewed and was aware of all the material described in that exhibit when I voted to remove these 19 titles from our school district's libraries. As an example, *The Bluest Eye* by Toni Morrison includes this passage on page 83:

She might wonder again, for the six hundredth time, what it would be like to have that feeling while her husband's penis is inside her. The closest thing to it was the time she was walking down the street and her napkin slipped free of her sanitary belt. It moved gently between her legs as she walked. Gently, ever so gently. And then a slight and distinctly delicious sensation collected in her crotch. As the delight grew, she had to stop in the street, hold her thighs together to contain it. That must be what it is like, she thinks, but it never happens while he is inside her. When he withdraws, she pulls her nightgown down, slips out of the bed and into the bathroom with relief.

Exhibit 11 explains the content in the disputed books that persuaded me to support the suspension of those books, including inappropriate sexual passages such as the one quoted above, descriptions of drug use and suicide ideation, and repeated uses of words such as “f-ck,” “sh-t,” “n-gger,” “f-ggot,” and “p-ssy.” My objections are based on the age-inappropriate *content* that appears in these books, and they have nothing to do with the “viewpoints,” “ideas,” or “worldviews” expressed by the authors, or the fact that some of the books “discussed LGBTQ+ and race-related topics.” I would oppose the inclusion of books with this type of content in our school libraries even if those books supported conservative viewpoints, ideas, or worldviews, and even if they discussed topics other than LGBTQ or race-related issues. I also do not believe that books with content pertaining to sexuality or gender transitioning are appropriate for a school library, regardless of the “viewpoints,” “ideas,” or “worldviews” that might be expressed in those books.

23. I also supported suspending the 19 disputed titles because so many parents opposed the continued inclusion of those books in our school libraries. As a

member of the School Board, I am accountable to the voters who elected me and the taxpayers who pay for our schools and their libraries, and I must take their desires into account when deciding whether to include or exclude materials from our school district's libraries. I did not adopt or endorse any particular community member's *reasons* for supporting exclusion of the books, and the plaintiffs and their lawyers are wrong to assert that the each of the particular objections expressed by community members was shared by me or by my colleagues on the School Board. But I did consider and give weight to the *fact* that so many of my constituents—and a clear majority of those who reviewed the books and filled out the forms—supported the removal of these 19 titles from the school district's libraries. That is my duty as an elected official, because I work for and answer to the people who elected me and the taxpayers who fund our school district and its activities.

24. Finally, I do not believe that the educational value of these books is sufficient to outweigh their problematic and age-inappropriate content, or the fact that so many parents opposed their continued inclusion in our school district's libraries. I am not categorically opposed to having books in our school district's library whose presence in is opposed by so many members of our community. But the educational value of those type of books must be great enough to justify their inclusion in our school district's library collection at the expense of other books. Library shelf space is limited and should be reserved for books that do the most to advance the curricular and educational goals of the Elizabeth School District.

25. From my individual perspective, the decision to suspend the 19 titles was warranted. After receiving the Committee's list of 19 titles, I conducted my own research to understand the areas of concern and to evaluate the potential educational value of each title. I read every single book-review form submitted to the district by community

members, and I had several private discussions with parents who did not feel comfortable sharing their opinions publicly. By far, the resounding consensus was in favor of removal. I also communicated with and thoroughly considered the opinions of other Board members, the Superintendent, and the Chief of Academic Affairs. Based on all that information, I concluded that the titles were not appropriate in a school library, where the goal of the content should be to enhance and supplement the school curriculum. I also believed that removal was most consistent with the Board's strong commitment to let parents decide their own family's values and to keep school resources focused on education, not entertainment or other non-curricular goals.

26. The plaintiffs and their lawyers accuse me of acting in a "narrowly partisan or political manner" in supporting the removal of the 19 challenged titles, as well as engaging in "viewpoint discrimination." Each of these claims is categorically false. I was not motivated by and did not even consider "political" or "partisan" ideas in supporting the removal of these 19 disputed books from our school district's libraries. Nor did I consider or vote to remove books based on the "viewpoints" expressed by the authors. Supporting the removal of school-library books based on *content* that is sexually explicit, vulgar, or age-inappropriate is not "viewpoint discrimination." It is also false for the plaintiffs and their lawyers to suggest that the School Board members are homogenous or monolithic in their "political" views. Each member brings his or her own views (political and otherwise) to the School Board, and all views are welcomed and assist in informing the Schools Board's decision-making.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 27, 2025, in Elizabeth, Colorado.

s/ Heather Booth
Heather Booth
Former Vice President
Elizabeth School District Board of Education

File: IJ

Adopted August 20, 1980
Revised to conform with practice: date of manual adoption
Revised January 8, 1997
Revised September 9, 1999
Revised November 10, 2014 (replaces IJJ, IJK, IJL)

Instructional Resources and Materials

As the governing body of the school district, the Board is legally responsible for the selection of instructional materials. Since the Board is a policymaking body, it delegates to the district's professional personnel the authority for the selection of instructional and library materials in accordance with this policy.

Instructional materials for school classrooms and school libraries shall be selected by the appropriate professional personnel in consultation with the administration, teachers and students. Final decision on purchase shall rest with the superintendent or designee, subject to approval by the Board. All instructional resources and materials shall be aligned with the district's academic standards and support the district's educational objectives.

All textbooks, library materials and other instructional resources and materials shall be available for inspection by students' parents/guardians.

LEGAL REFS.:

C.R.S. 22-32-109
(1)(t) *(Board duty to determine educational programs and prescribe textbooks)*
C.R.S. 22-32-110 (1)(r) *(Board power to exclude immoral or pernicious materials and books)*
C.R.S. 22-54-105 (1) *(budgeting for instructional supplies and materials)*

CROSS REFS.: DB, Annual Budget, and subcodes

IMB, Teaching about
Controversial/Sensitive Issues
KEC, Public Concerns/Complaints about Instructional Resources



REQUEST FOR BOARD ACTION

To: ESD Board of Education
From: ESD Chief Academic Officer, Kim Moore
Date: August 5, 2024
Business Date: August 12, 2024
Subject: 9.7 Library Sensitive Topic Protocol and Book Lists

Recommendation

Approve protocol and book lists as presented.

Background and Findings:

During the 2023-24 school year, the Board Curriculum Review Committee (BCRC), worked to develop a protocol regarding handling books that may contain sensitive topics. The BCRC drafted a protocol that would provide guidelines for identifying books and creating a sensitive topic book catalog that would be available to parents. The protocol also provides an option for parents to opt their children out from being able to check out identified books. It also provides guidance that parents will receive an email if their child does check a book that is identified as being in the sensitive topic list.

The BCRC also worked during the spring to identify books that should be flagged in Destiny that contain sensitive topics. The list should be reviewed and approved by the BOE before books are flagged in Destiny.

Members of the BCRC also identified books that were considered to contain highly sensitive topics and suggested these be further scrutinized by public review and determined if they should remain in the library collection. These books are suggested to be offered for public review and then a determination made by the board as to whether they should be weeded from the library collection. The list of identified books is attached along with a suggested public input form that will accompany the public display in the district office.



Elizabeth School District Library Services Guiding Protocols

The Elizabeth School District's mission is to provide students with excellent learning opportunities that inspire a passion for learning, develop individual potential, and prepare them for a successful future. This requires access to resources facilitating such passion and interest. Additionally, Elizabeth School District believes that parental involvement and community collaboration are equally necessary to ensure students' most effective educational services pursuant to the District's educational philosophies and goals. To that end, the Board Curriculum Review Committee, and pursuant to District policy, has developed the following guiding protocols to ensure a consistent, transparent, and balanced approach to library services.

Purpose of Library Services

Library services in the Elizabeth School District aim to ensure students have access to age-appropriate materials necessary to facilitate the district's mission of providing students with excellent learning opportunities that inspire a passion for learning.

System of Transparency

The system of transparency within the Elizabeth School District library system is anchored in three primary protocols: a well-defined and consistent process for the ongoing analysis of resources and obtaining future materials, parental access to their student's circulation history and the library registry, and a notification system to inform parents and guardians of materials their students is attempting to access which have been flagged for sensitive content.

Library materials include any print or nonprint materials that are available to students for general use through the District schools' libraries and classrooms, including books, e-books, material available in a digital library database, streaming videos, sound recordings, periodicals, newspapers, applications and subscription content in any form, along with any films or videos in any format.

Protocol 1 - Analysis and Selection Process

This protocol, in conjunction with related District policies, is established to ensure the review of library materials in the District is conducted in a manner that promotes the educational needs and values of the community and considers age-appropriateness. It seeks to ensure transparency in the management of library materials in the District and aims to promote openness and accountability in providing access to educational resources for students and the school community.

- Library and/or district staff as well as members of the BCRC will evaluate existing library materials for potential age-level sensitive content using the following

resources: Goodreads, Trigger Warning Database, Book Trigger Warnings, booklooks.org, and/or Junior Library Guild. Staff will also evaluate any parent/guardian identified books of concern which are brought to the BCRC or district administration for review. Although any flag for sensitive content will be considered for age-level appropriateness, special attention will be given to: graphic violence, sexual content, profanity/obscenity, ideations of self-harm or mental illness, religious viewpoints, drug or excessive alcohol use, racism/discrimination. Materials reviewed and flagged may be purchased if the school principal confirms that such library materials will contribute to the attainment of course objectives directly related to Board-adopted academic standards. However, these materials will be considered for labeling as sensitive content and reported to the BCRC in the annual library services summary, or as otherwise required.

- All materials maintained and purchased by schools are to facilitate the district's mission of providing students with excellent learning opportunities that inspire a passion for learning, developing individual potential, and preparing them for a successful future.
- Library and/or district staff as well as members of the BCRC will analyze the school library resources on an ongoing basis to determine the needs and appropriateness of library materials reporting at least annually to the Chief Academic Officer, the BCRC, and BOE. At a minimum, this includes:
 - Conducting an analysis of the catalog of all materials within the library catalog to determine which of them may require further consideration;
 - Comparing the catalog against an appropriate book list as recommended by the Board Curriculum Review Committee. Any materials identified as potentially concerning will be shared with the Chief Academic Officer who will share with the Board Curriculum Review Committee (BCRC) annually in a library services summary before December 1st of each school year, and as otherwise required when specific library materials are brought up as a concern by a parent/guardian.
 - Purchases may be made from any vendor unless specifically excluded by School Board direction. All suggested material purchases will be approved by the Chief Academic Officer prior to purchase.
 - In the event that materials are provided directly to the school from library services (such as bulk shipments), and not deliberately chosen by the school's library staff, staff will review each item for educational and grade-level appropriateness, and will evaluate the material using the previously referenced resources for flags of sensitive content.
- In the event any materials are determined to be inappropriate based on age level, flags, or lacking educational merit, these materials will be brought to the principal of the school for further consideration. The principal will bring the materials to the Chief Academic Officer who will present the information to the

BCRC which will make a recommendation to the Chief Academic Officer and the Elizabeth School Board of Education. Examples include adding or deleting titles on the sensitive content catalog.

Protocol 2 - Sensitive Content Catalogs

Elizabeth School District will develop and maintain ***sensitive content catalogs according to these protocols and applicable District policy***. This catalog will be created through the review of current materials and review of materials prior to purchase using the BCRC recommended book review sites. The books identified as containing age level sensitive content, will be flagged within Destiny as containing sensitive topics and placed on the Sensitive Topic Catalog list which will be updated throughout the year.

All parents/guardians will be automatically set up to have control over their student's access to materials listed in the sensitive content catalog by the following criteria:

- All parents will automatically receive an email from Destiny when their student checks out a book from the Sensitive Topic Catalog.
- If parents/guardians choose, they may OPT OUT their student from being able to check out any book in the Sensitive Topic Catalog.
- If parents/guardians OPT OUT their student from the Sensitive Topic Catalog, the student will be told by the librarian, "According to your parents, you are not allowed to check out this book."
- The student will be advised that if they want to check out the book, they will need to talk with their parents and have their parents/guardians contact the librarian directly.

Protocol 3 - Parental Access to Library Catalog and Student History

Elizabeth School District recognizes parent/guardian rights and responsibilities as they pertain to the educational system for their students. This requires transparency not only in the process but also in access. Therefore, Elizabeth School District shall maintain open access for parents and guardians to their student's library account through a parental portal as well as full access to the entire school library catalog. This permits parents/guardians to review, at their discretion and convenience, any materials their student is checking out through the school library.

The following protocols outline the process and guidelines for sensitive topic catalogs:

- All materials will be evaluated first with regard to educational merit and attainment of course objectives as they relate to Board-adopted academic standards and as to whether they contain Sensitive Topics as described: graphic violence, sexual content, profanity/obscenity, ideations of self-harm or mental illness, religious viewpoints, drug or excessive alcohol use, racism/discrimination.
- Sensitive Topic Catalogs will exist, and be available upon request.
- Items will be added to the sensitive topic catalog at the school and/or district's discretion based on flags as outlined in Protocol 1.
- Titles not in the sensitive content catalog may be referred to the school or district by parents for consideration and will be evaluated as outlined in Protocol 1.

- District will ensure the Destiny Catalog system issues a pop-up warning when a student attempts to check the material out on a sensitive topic catalog.

Temporarily Suspended Books		
Title	Author	Location
The Hate U Give	Angie Thomas	EMS & EHS
Thirteen Reasons Why	Jay Asher	EMS & EHS
#Pride: Championing LGBTQ Rights	Rebecca Felix	EMS
You Should See Me in a Crown	Leah Johnson	EMS
It's Your World---If You Don't Like It, Change It	Mikki Halpin	EMS
The Kite Runner	Khaled Hosseini	EHS
Beloved	Toni Morrison	EHS
The Bluest Ey	Toni Morrison	EHS
The Perks of Being a Wallflower	Stephen Chbosky	EHS
Looking for Alaska	John Green	EHS
Nineteen Minutes	Jodi Picoult	EHS
Speak	Laurie Anderson	EHS
Identical	Ellen Hopkins	EHS
Fallout	Ellen Hopkins	EHS
Glass	Ellen Hopkins	EHS
Burned	Ellen Hopkins	EHS
Crank	Ellen Hopkins	EHS
Smoke	Ellen Hopkins	EHS
George	Alex Gino	RCE

ESD Sensitive Topic Draft Book List			
Title	Author	School Catalog	Flagged for:
1984 George Orwell	George Orwell	EHS	Graphic Violence
A Clockwork Orange	Anthony Burgess	EHS	Graphic Violence
Anne Frank: Diary of a Young Girl	Anne Frank	EHS	Sexual Content
Ashes to Ashes	Jenny Han and Siobhan Vivian	EHS	Graphic Violence
Assassins	Tim LaHaye and Jerry B. Jenkins	EHS	Religious Viewpoints
Athletic Shorts	Chris Crutcher	EHS	Sexual Content
Beloved	Toni Morrison	EHS	Sexual Content
Beyond Magenta - Transgender teens speak out	Susan Kuklin	EHS	Sexual Content
Bhagavad Gita Annotated and Explained	Shri Purohit Swami	EHS	Religious Viewpoints
Bhagavad Gita for modern times - secrets to attaining inner peace & harmony	Call # 294.5 BHA	EHS	Religious Viewpoints
Bless Me Ultima	Rudolfo Anaya	EHS	Profanity/Obscenity
Bless Me, Ultima	Rudolfo Anaya	EHS	Profanity/Obscenity
Brave New World	Aldous Huxley	EHS	Sexual Content
Brigham Young pioneer prophet	John G. Turner	EHS	Religious Viewpoints
Buddhism	Winston King	EHS	Religious Viewpoints
Buddhism	Patricia D. Netzley	EHS	Religious Viewpoints
Buddhists, Hindus and Sikhs in America	Gurinder Singh Mann	EHS	Religious Viewpoints
Burn for Burn	Jenny Han and Siobhan Vivian	EHS	Graphic Violence
Burned	Ellen Hopkins	EHS	Drug or excessive ...
Catcher in the Rye	JD Salinger	EHS	Profanity/Obscenity
Critical Perspectives on Islam and the Western World	JONathan Johansen	EHS	Religious Viewpoints
Decoding the past secrets of the Koran	DVD - Hlstory Channel	EHS	Religious Viewpoints
Desecration	Tim LaHaye and Jerry B. Jenkins	EHS	Religious Viewpoints
Drinking and driving kills	Danielle Dardashti	EHS	Drug or excessive ...
Early Islam	Stewart Desmond	EHS	Religious Viewpoints
Eleanor & Park	Rainbow Rowell	EHS	Sexual Content
Empire of the Islamic World	Robin S. Doak	EHS	Religious Viewpoints
Ender's Game	Orson Scott Card	EHS	Graphic Violence
Fallen Angels	Walter Dean Myers	EHS	Graphic Violence
Fallen Angels	Walter Dean Meyers	EHS	Profanity/Obscenity
Fire with Fire	Jenny Han and Siobhan Vivian	EHS	Graphic Violence
Gay Power! the Stonewall Riots and the gay rights movement 1969	Betsy Kuhn	EHS	Sexual Content
Glass	Ellen Hopkins	EHS	Drug or excessive ...
Go Ask Alice	Anonymous	EHS	Sexual Content
Hinduism	Gregory Kozlowski	EHS	Religious Viewpoints
Hinduism	Madhu Bazaz Wangu	EHS	Religious Viewpoints
Hinduism	Thomas Streissguth	EHS	Religious Viewpoints
House of Night (series)	P.C. Cast	EHS	Sexual Content
I know Why the Caged Bird Sings	Maya Angelou	EHS	Sexual Content
I Know Why the Caged Bird Sings	Maya Angelou	EHS	Sexual Content
Inside Mecca	DVD	EHS	Religious Viewpoints
Into the Bright Open - A Secret Garden Remix	Cherie Dimaline	EHS	Sexual Content
Islam	Charles Adams	EHS	Religious Viewpoints
Islam	Lauri S. Friedman	EHS	Religious Viewpoints
Islam empire of faith	Jonathan Grupper	EHS	Religious Viewpoints
Islam World Religions	Matthew S. Gordon	EHS	Religious Viewpoints
Islamophobia	Dedria Bryfonski	EHS	Religious Viewpoints
Joseph Smith	Robert Vincent Remini	EHS	Religious Viewpoints
Kaffir Boy	Mark Mathabane	EHS	Sexual Content
Leah on the Offbeat	Becky Albertalli	EHS	Sexual Content
Monster	Walter Dean Meyers	EHS	Graphic Violence
More Than a Carpenter	Josh McDowell	EHS	Religious Viewpoints
Mormons in America	Claudia Lauper Bushman	EHS	Religious Viewpoints
Night	Elie Wiesel	EHS	Graphic Violence
One Flew Over the Cukoo"s Nest	Ken Kesey	EHS	Sexual Content
Slaughterhouse Five	Kurt Vonnegut	EHS	Graphic Violence
The Remnant	Tim LaHaye and Jerry B. Jenkins	EHS	Religious Viewpoints
The Absolutely True Diary of a Part-Time Indian	Sherman Alexie	EHS	Sexual Content

The Bluest Eye	Toni Morrison	EHS	Graphic Violence
The book of Mormon - an account written by the hand of Mormon upon plates taken from...	Joseph Smith	EHS	Religious Viewpoints
The Chocolate War	Robert Cormier	EHS	Profanity/Obscenity
The Color Purple	Alice Walker	EHS	Racism/discrimination
The Color Purple	Alice Walker	EHS	Graphic Violence
The Essence of Buddhism - how to bring spiritual meaning into every day	Carole M. Cusak	EHS	Religious Viewpoints
The Giver	Lois Lowry	EHS	Ideations of Self-H...
The Handmaid's Tale	Margaret Atwood	EHS	Sexual Content
The Holy Bible	Holy Spirit	EHS	Religious Viewpoints
The Hunger Games	Suzanne Collins	EHS	Graphic Violence
The Indwelling	Tim LaHaye and Jerry B. Jenkins	EHS	Religious Viewpoints
The Kite Runner	Khaled Hosseini	EHS	Sexual Content
The Koran	Series - Bantam Classic	EHS	Religious Viewpoints
The Koran - a very short introduction	Michael Cook	EHS	Religious Viewpoints
The Mark	Tim LaHaye and Jerry B. Jenkins	EHS	Religious Viewpoints
The night trilogy - NIGHT, DAWN, DAY	Elie Wiesel	EHS	Graphic Violence
The Perks of Being a Wallflower	Stephen Chbosky	EHS	Sexual Content
The Spread of Islam	John Dunn	EHS	Religious Viewpoints
To Kill a Mockingbird	Harper Lee	EHS	Racism/discrimination
Tokyo Ghoul 7 (NOTE there is an entire series, apparently up to 10)	Sui Ishida	EHS	Graphic Violence
Twilight	Elie Wiesel	EHS	Graphic Violence
Understanding Islam	Beverly A. James	EHS	Religious Viewpoints
Women in Islam	Margaret Speaker Yuan	EHS	Religious Viewpoints
BHA	Jan Thompson	EMS	Religious Viewpoints
Anne Frank: Diary of a Young Girl	Anne Frank	EMS	Sexual Content
Averroes (Ibn Rushd): Scholar of Classical and Islamic Philosophy	Bridget Lim	EMS	Religious Viewpoints
Being Transgender in America (Part of above series)	Duchess Harris, JD, PhD	EMS	Sexual Content
Buddhism	Anita Ganeri	EMS	Religious Viewpoints
Buddhism	Mel Thompson	EMS	Religious Viewpoints
Buddhist Festivals Throughout the Year	Anita Ganeri	EMS	Religious Viewpoints
Eleanor & Park	Rainbow Rowell	EMS	Sexual Content
Ender's Game	Orson Scott Card	EMS	Graphic Violence
Growing up LGBTQ (PART OF A SERIES: Being LGBTQ in America)	Duchess Harris, JD, PhD	EMS	Sexual Content
Hindu Festivals Throughout the Year	Anita Ganeri	EMS	Religious Viewpoints
Hinduism	Das Rasamandala	EMS	Religious Viewpoints
Hinduism	Ranchor Prime	EMS	Religious Viewpoints
His Dark Materials Series Bk 1 The Golden Compass	Phillip Pullman	EMS	Religious Viewpoints
House of Night (series)	P.C. Cast	EMS	Sexual Content
Islam	David Self	EMS	Religious Viewpoints
Muslim Festivals Throughout the Year	Anita Ganeri	EMS	Religious Viewpoints
My Brother Sam is dead	James Lincoln Collier	EMS	Profanity/Obscenity
Nasreen's Secret School	Jeanette Winter	EMS	Religious Viewpoints
Speak Up!	Rebecca Burgess	EMS	Sexual Content
The Giver	Lois Lowry	EMS	Ideations of Self-H...
The Hunger Games	Suzanne Collins	EMS	Graphic Violence
The Kids Book of World Religions	Jennifer Glossop	EMS	Religious Viewpoints
The King James Bible: Christianity's Definitive Text	Phyllis Corzine	EMS	Religious Viewpoints
To Kill a Mockingbird	Harper Lee	EMS	Racism/discrimination
Zenobia July	Lisa Bunker	EMS	Sexual Content
Bridge to Terabithia	Katherine Patterson	Running Creek	Religious Viewpoints
Ender's Game	Orson Scott Card	Running Creek	Graphic Violence
House of Night (series)	P.C. Cast	Running Creek	Sexual Content
Noah's Ark	Jerry Pinkney	Running Creek	Religious Viewpoints
Skippyjon Jones (series)	Judith Schachner	Running Creek	Racism/discrimination
The Camel in the Sun	Griffin Ondaatje	Running Creek	Religious Viewpoints
The Creation	Stephen Mitchell	Running Creek	Religious Viewpoints
The Giver	Lois Lowry	Running Creek	Ideations of Self-H...
The proudest blue: a story of hijab and family	Ibitha Muhammad	Running Creek	Religious Viewpoints
Two by Two	Barbara Reid	Running Creek	Religious Viewpoints
Daughters of Eve - Strong Women of the Bible	Lillian Hammer Ross	Singing Hills	Religious Viewpoints

Dinner in the Lions' Den	Bob Hartman	Singing Hills	Religious Viewpoints
Illustrated dictionary of religions: rituals, beliefs and practices from around the world	Philip Wilkinson	Singing Hills	Religious Viewpoints
Noah	Patricia Lee Gauch	Singing Hills	Religious Viewpoints
Noah's Ark	CALL# E SPI	Singing Hills	Religious Viewpoints
Noah's Ark	Jerry Pinkney	Singing Hills	Religious Viewpoints
Ramadan	Kieran Walsh	Singing Hills	Religious Viewpoints
Ramadan	Molly Aloian	Singing Hills	Religious Viewpoints
Scary Stories to tell in the Dark	Alvin Schwartz	Singing Hills	Graphic Violence
Skippyjon Jones (series)	Judith Schachner	Singing Hills	Racism/discrimination
The Bible Story (Individual listings for Volumes 1 - 10)	Arthur Maxwell	Singing Hills	Religious Viewpoints
The Children's Illustrated Bible	Selina Hastings	Singing Hills	Religious Viewpoints
The Christmas Star	Marcus Pfister	Singing Hills	Religious Viewpoints
The Giver	Lois Lowry	Singing Hills	Ideations of Self-H...
The Librarian of Basra	Jeanette Winter	Singing Hills	Graphic Violence
The Little Lama of Tibet	Lois Raimondo	Singing Hills	Religious Viewpoints
The mysterious visitor - Stories of the Prophet Elijah	Nina Jaffe	Singing Hills	Religious Viewpoints
The Stable Where Jesus was Born	Rhonda Gowler Greene	Singing Hills	Religious Viewpoints
The Ten Commandments	Patricia Daniels	Singing Hills	Religious Viewpoints
What I believe	Alan Brown	Singing Hills	Religious Viewpoints



REQUEST FOR BOARD ACTION

TO: ESD Board of Education
FROM: Dan Snowberger, Superintendent
Kim Moore, Chief Academic Officer
DATE: August 6, 2024
BUSINESS DATE: August 12, 2024
SUBJECT: 9.9 Classroom Library Direction

RECOMMENDATION:

That the board direct that no classroom libraries of books are maintain within the Elizabeth School District and that students are encouraged to keep a book either from the school library or from home in their desk to utilize when necessary.

BACKGROUND AND FINDINGS

As we've discussed over the past year, some parents have expressed concern over their children's access to materials in school that may be contradictory to their personal family values. The curriculum review committee has spent time reviewing the Library protocol and how sensitive content will be managed allowing parents to "opt out" of student access to books identified with sensitive content. A number of possible strategies have been discussed to prevent students from having access to similar content from classroom libraries recognizing that teachers can't take on the added burden of being aware of each and every individual preference of their families. Instead of adding the burden to our teachers or principals, it is felt that the best way to manage this situation is to suggest that classroom libraries be removed and that children be encouraged to check out a library book or bring a book from home selected with their parent to use when free time exists. Books will not be shared between students.



RECORD OF PROCEEDINGS

**BOARD OF EDUCATION
BOARD ROOM, DISTRICT OFFICE
MINUTES OF MEETING
August 12, 2024 – (Business Session)**

A Business Session Board Meeting of the Elizabeth School District was held on August 12, 2024, in the Board Room, District Office.

1.0 CALL TO ORDER – AUDIO 00:05:34

Director Rhonda Olsen called the BOE Business Meeting to order at 6:00 p.m.

2.0 ROLL CALL: - AUDIO 00:05:53

The following BOE Directors were present:

Director Heather Booth – aye

Director Michael Calahan – absent

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

Also present: Superintendent Dan Snowberger, Chief Academic Officer Kim Moore, and Executive Assistant Jaimee Glazebrook

3.0 PLEDGE OF ALLEGIANCE – AUDIO 00:06:03

Director Rhonda Olsen led the audience in the Pledge of Allegiance.

4.0 APPROVAL OF *AMENDED* AGENDA/ADDITIONS/DELETIONS/BLANKET MOTION – AUDIO 00:06:35

A motion was made to approve the *amended* agenda.

Motion moved by Director Olsen

Motion seconded by Director Booth

ROLL CALL:

Director Heather Booth - aye

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

The motion carries 4-0

5.0 APPROVAL OF MINUTES – AUDIO 00:06:54

5.1 A motion was made to approve the minutes from the June 24, 2024, July 1, 2024, and July 17, 2024 Elizabeth Schools Board of Education meeting.

Motion moved by Director Olsen

Motion seconded by Director Booth



RECORD OF PROCEEDINGS

ROLL CALL:

Director Heather Booth - aye
Director Rhonda Olsen - aye
Director Mary Powell - aye
Director Jonathan Waller - aye

The motion carries 4-0

6.0 COMMUNICATIONS – AUDIO 00:07:30

6.1 Board Member Reports

6.2 Superintendent Report

7.0 PUBLIC COMMENT

No Public Comment

8.0 CONSENT ITEMS - AUDIO 00:18:14

A motion was made to approve the consent items 8.1-8.3.

Motion moved by Director Olsen

Motion seconded by Director Powell

ROLL CALL:

Director Heather Booth - aye
Director Rhonda Olsen - aye
Director Mary Powell - aye
Director Jonathan Waller - aye

The motion carries 4-0

8.1 New Hires/Re-Hires

Britegam, Nik, SPED Teacher, EMS
Dunlap, Denis, LA Teacher, EMS
Jones, Jessica, Teacher 5th Grade, RCE
Schmidt, David, Armed Security, District
Shewmake, Michelle, Social Worker, SPED District
Toback, Jeffrey, Armed Security, District
Williams, Zach, Teacher STEM/Computer, EMS
Schauls, Natalie, LA Teacher, EMS
Wolff, Megan, SPED Bus Para, Transportation
Wilson, Hollie, Childcare Site Director, RCE
Waller, Shalyn, Ass't. Childcare Teacher, SHE
Terry, James, Bus Driver, Transportation
Sullivan Zoller, Carrie, Lib Tech, EMS
Ruskauff, Michelle, Registrar, SHE



RECORD OF PROCEEDINGS

Riveron, Tyffany, Instructional Para, EMS
 McCarty, Tammy, Driver, Transportation
 Livingston, Evan, Recess/Playground Para, SHE
 Hackley, Emily, Childcare Lead Teacher, RCE
 George, Alfred, Custodian, EHS
 Dowell, Tiffany, Childcare Lead Teacher, RCE
 Dosa, Heather, Custodian, EMS
 Brodeur, Mary, Bus Para, Transportation
 Berry, Margrett, Head Custodian, EMS
 Bass, Alexandra, Ass't. Childcare Teacher, Childcare Infant1
 Wahlstrom, Alex, Math Teacher, EMS

8.2 Employment Separations

Patty Richardson, Health Aide, EMS
 Greg Watkins, Security, EMS
 Tristan Phillips, Custodian, EMS
 Ian Livingston, Recess/Lunch Supervisor, RCE
 Ariella Smolin, Art Teacher, EHS
 Sabine Livingston, ELA Teacher, EMS

8.3 Extra Duty Pay

Zoesch, Michael, Head Varsity Coach, EHS
 Martinez, Brian, Varsity Assistant Coach, EHS
 Barrett, Ty, Varsity Assistant Coach, EHS
 Taff, Brandon, Varsity Assistant Coach/JV Coach, EHS
 Stone, Aaron, Varsity Assistant Coach/JV Coach, EHS
 Carter, Dan, Varsity Assistant Coach, EHS
 Merz, Duane, Varsity Assistant Coach, EHS
 Weber, Vince, Varsity Assistant Coach/JV Coach, EHS
 Robinson, Ryan, Head Varsity Coach, EHS
 Taylor, Brian, Varsity Assistant Coach, EHS
 Weber, Vince, Varsity Assistant Coach/JV Coach, EHS
 Elliot, Tyler, Varsity Assistant Coach/C Team Coach, EHS
 Katzoff, Summer, Head Varsity Coach, EHS
 Salansky, Steven, Varsity Assistant Coach, EHS
 Schmalz, Jaime, Varsity Assistant Coach/JV Coach, EHS
 Miller, Rebecca, Head Varsity Coach, EHS
 Rucker, Rachel, Varsity Assistant Coach, EHS
 Blanchard, Bailey, JV Head Coach EHS
 Mason, Matt, JV Assistant Coach, EHS
 Folmar, Stacey, Head Varsity Coach, EHS
 Kloppinger, Val, Varsity Assistant Coach/JV Coach, EHS
 Deichsel, Ray, Head Varsity Coach, EHS
 Katzoff, Summer, Head Varsity Coach, EHS



RECORD OF PROCEEDINGS

Salansky, Steven, Assistant Varsity Coach, EHS
 Knox, Justin, Assistant Varsity Coach, EHS
 Stabler, Alex, Assistant Varsity Coach/JV Coach, EHS
 Rusk, Amber, Head Varsity Coach, EHS
 Rusk, Amber, Head Varsity Coach, EHS
 Newton, Brooke, Assistant Varsity Coach, EHS
 Newton, Brooke, Assistant Varsity Coach, EHS
 Beaudoin, Steve, Head Varsity Coach, EHS
 Wages, Madison, Assistant Varsity Coach, EHS
 Beaudoin, Steve, Head Varsity Coach, EHS
 Wages, Madison, Assistant Varsity Coach, EHS
 Martinez, Chris, Head Varsity Coach, EHS
 Martinez, Sarah, Assistant Varsity Coach/JV Coach, EHS
 Eylar, Jacy, Assistant Varsity Coach/C Team Coach, EHS
 Stone, Aaron, Head Varsity Coach, EHS
 Martinez, Brian, Assistant Varsity Coach/JV Coach, EHS
 Walter, JD, Assistant Varsity Coach/C Team Coach, EHS
 Wilson, Jim, Assistant Varsity Coach, EHS
 Kierstead, Manser, Head Varsity Coach, EHS
 Mazingo, Kevin, Head Varsity Coach, EHS
 Wait, Tracy, Head Varsity Coach, EHS
 Wolf, Kindal, Assistant Varsity Coach/JV Coach, EHS
 Jones, Michelle, Assistant Varsity Coach/C Team Coach, EHS
 Gallegos, Rick, Head Varsity Coach, EHS
 Antons, Travis, Assistant Varsity Coach, EHS
 McArthur, Michael, Assistant Varsity Coach, EHS
 Jeremy Hanak, Head Coach, EMS
 Mark Mankin, Football Assistant, EMS
 Bo Vincelet, Football Assistant, EMS
 Sebastian Aviles, Football Assistant, EMS
 Najela Grenz, Head Coach 8th, EMS
 Jordan Atencio, Head Coach 7th, EMS
 Robin Neeley, Head Coach, EMS
 Gwenda Alltop, Head Coach A, EMS
 Jim Carrikier, Head Coach B, EMS
 Adam Keele, Head Coach 8th, EMS
 Ryan Robinson, Head Coach 7th, EMS
 Jake Kane, Head Coach 6th, EMS
 Becca Miller, Head Coach 8th, EMS
 Assistant Coach, Assistant Coach, EMS
 Jake Kane, Head Coach 6th, EMS
 Tanner McClarren, Head Coach, EMS
 Madison Wages, Head Coach, EMS
 Jim Carrikier, Director, EMS



RECORD OF PROCEEDINGS

Gwenda Alltop, Assistant, EMS

9.0 ACTION ITEMS – AUDIO 00:18:39

9.1 A motion was made to approve the 1st Reading of Revised Policy GBEE*, Staff Use of the Internet and Electronic Communications.

Motion moved by Director Olsen

Motion seconded by Director Booth

ROLL CALL:

Director Heather Booth - aye

Director Rhonda Olsen - aye

Director Mary Powell - aye

Director Jonathan Waller - aye

The motion carries 4-0

9.2 A motion was made to approve the 1st Reading of Revised Policy GBEE*-E, Staff Use of District Technology Resources (Acceptable use Agreement).

Motion moved by Director Olsen

Motion seconded by Director Booth

ROLL CALL:

Director Heather Booth - aye

Director Rhonda Olsen - aye

Director Mary Powell - aye

Director Jonathan Waller - aye

The motion carries 4-0

9.3 Discussion of New Policy GBEE*-E – Social Media

No action taken

9.4 A motion was made to approve the 1st and Final Reading of Revised Policy KBD – Public's Right to Know/Freedom of Information.

Motion moved by Director Olsen

Motion seconded by Director Booth

ROLL CALL:

Director Heather Booth - aye

Director Rhonda Olsen - aye

Director Mary Powell - aye

Director Jonathan Waller - aye

The motion carries 4-0



RECORD OF PROCEEDINGS

9.5 A motion was made to approve the review of Policy KBD-R – Public’s Right to Know/Freedom of Information.

Motion moved by Director Olsen

Motion seconded by Director Powell

ROLL CALL:

Director Heather Booth - aye

Director Rhonda Olsen - aye

Director Mary Powell - aye

Director Jonathan Waller - aye

The motion carries 4-0

9.6 A motion was made to repeal Policies JIBB – Student Member of the School Board and JIBB-R – Student Member of the School Board Regulation.

Motion moved by Director Olsen

Motion seconded by Director Booth

ROLL CALL:

Director Heather Booth - aye

Director Rhonda Olsen - aye

Director Mary Powell - aye

Director Jonathan Waller - aye

The motion carries 4-0

9.7 A motion was made to approve the Library Sensitive Topic Protocol and Book Lists

Motion moved by Director Olsen

Motion seconded by Director Booth

ROLL CALL:

Director Heather Booth - aye

Director Rhonda Olsen - aye

Director Mary Powell - aye

Director Jonathan Waller - aye

The motion carries 4-0

9.8 A motion was made to approve the Curriculum Adoption 2024-2025

Motion moved by Director Olsen

Motion seconded by Director Booth

ROLL CALL:



RECORD OF PROCEEDINGS

Director Heather Booth - aye

Director Rhonda Olsen - aye

Director Mary Powell - aye

Director Jonathan Waller - aye

The motion carries 4-0

9.9 A motion was made to approve the Classroom Library Direction

Motion moved by Director Olsen

Motion seconded by Director Booth

ROLL CALL:

Director Heather Booth - aye

Director Rhonda Olsen - aye

Director Mary Powell - aye

Director Jonathan Waller - aye

The motion carries 4-0

9.10 A motion was made to approve the Singing Hills Well Pump Repair

Motion moved by Director Olsen

Motion seconded by Director Booth

ROLL CALL:

Director Heather Booth - aye

Director Rhonda Olsen - aye

Director Mary Powell - aye

Director Jonathan Waller - aye

The motion carries 4-0

10.0 BOE PLANNING/NEW BUSINESS – AUDIO 01:21:55

10.1 The next Board of Education meeting working session, is scheduled for August 26, 2024, at 6 p.m. in the Elizabeth School District Board Room.

11.0 ADJOURNMENT – AUDIO 01:22:09

The regular board meeting adjourned at 7:17 p.m.



RECORD OF PROCEEDINGS

Respectfully Submitted,

Rhonda Olsen, President

Heather Booth, Vice President

Mary Powell, Secretary

Michael Calahan, Treasurer

Jonathan Waller, Assistant Secretary/Treasurer

Recorded by: Jaimee Glazebrook



RECORD OF PROCEEDINGS

BOARD OF EDUCATION BOARD ROOM, DISTRICT OFFICE MINUTES OF MEETING

September 9, 2024 – (Business Session)

A Business Session Board Meeting of the Elizabeth School District was held on September 9, 2024, in the Board Room, District Office.

1.0 CALL TO ORDER – AUDIO 00:04:04

Director Rhonda Olsen called the BOE Business Meeting to order at 6:00 p.m.

2.0 ROLL CALL: - AUDIO 00:04:24

The following BOE Directors were present:

Director Heather Booth – absent

Director Michael Calahan – aye

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

Also present: Superintendent Dan Snowberger and Executive Assistant Jaimee Glazebrook

3.0 PLEDGE OF ALLEGIANCE – AUDIO 00:4:45

Director Rhonda Olsen led the audience in the Pledge of Allegiance.

4.0 APPROVAL OF AGENDA/ADDITIONS/DELETIONS/BLANKET MOTION – AUDIO 00:05:27

A motion was made to approve the agenda.

Motion moved by Director Olsen

Motion seconded by Director Powell

ROLL CALL:

Director Michael Calahan – aye

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

The motion carries 4-0

5.0 APPROVAL OF MINUTES – AUDIO 00:05:47

5.1 A motion was made to approve the minutes from the August 26, 2024 Elizabeth Schools Board of Education meeting.

Motion moved by Director Olsen

Motion seconded by Director Waller



RECORD OF PROCEEDINGS

ROLL CALL:

Director Michael Calahan – aye

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

The motion carries 4-0

6.0 COMMUNICATIONS – AUDIO 00:06:05

6.1 Running Creek Elementary Showcase

6.2 Transportation Showcase

6.3 Board Member Reports

6.2 Superintendent Report

7.0 PUBLIC COMMENT – AUDIO 00:57:00

1. Michelle Guzinski

2. Claire Waller

3. Suni Mills for Roxanne Nicole

4. Tom Peterson

5. David Fletcher

8.0 CONSENT ITEMS - AUDIO 01:12:56

A motion was made to approve the consent items 8.1-8.10.

Motion moved by Director Olsen

Motion seconded by Director Calahan

ROLL CALL:

Director Michael Calahan – aye

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

The motion carries 4-0

8.1 New Hires/Re-Hires

Andrew Ponn, Teacher, EHS

Jennifer Morrell, Teacher, EHS

Esprit Bennett, SPED Para, RCE

Shelby Fulbright, Custodian, RCE

Jessica Haigh, SPED Para, SHE

Kary Hertz, Asst. Teacher, RCE



RECORD OF PROCEEDINGS

Pierre Hoard, Custodian, EMS
Elleanor Hockstad, Custodian, EHS
Jaclyn Skaggs, Recess/Playground Para, SHE
Christine Vanderhoof, Recess/Playground Para, RCE
Mackenzie Wilson, Asst. Teacher, District
Kensey Simms, Teacher, EHS
Amy Lunt, Small Vehicle Driver, Transportation
Gabrielle Lunt, Small Vehicle Driver, Transportation
Tonya Barnes, Cook, EHS
Sara Barr, SPED Para, SHE

8.2 Employment Separations

Valerie Boswell, SPED Para, RCE
Rochelle Hawkes, SPED Para, EMS

8.3 Revised Policy GBEE* - Staff use of the Internet and Electronic Communications

8.4 Revised Policy GBEE*-E – Staff Use of District Technology Resources (Acceptable Use Agreement)

8.5 Revised Policy GCE/GCF – Professional Staff Recruiting and Hiring (minor revisions and legal ref)

8.6 Revised Policy GBJ – Personnel Records and Files (minor revisions and legal ref)

8.7 Revised Policy GDE/GDF – Support Staff Recruiting/Hiring (minor revisions and legal ref)

8.8 Revised Policy GBA – Open Hiring/Equal Employment Opportunity (legal ref)

8.9 Food Services Memorandum of Understanding with Legacy Academy Charter School

8.10 Security Officer Memorandum of Understanding with Legacy Academy Charter School

9.0 ACTION ITEMS – AUDIO 01:13:00

9.1 A motion was made to approve the 2nd and final Reading of Revised Policy GBEE*-E-1, Social Media.

Motion moved by Director Olsen

Motion seconded by Director Calahan

ROLL CALL:

Director Michael Calahan – aye

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

The motion carries 4-0



RECORD OF PROCEEDINGS

9.2 A motion was made to approve the 1st Reading of Revised Policy IKFB – Graduation Exercises.

Motion moved by Director Olsen

Motion seconded by Director Powell

ROLL CALL:

Director Michael Calahan – aye

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

The motion carries 4-0

9.3 A motion was made to approve the 1st Reading of Revised Policy JB – Equal Educational Opportunities.

Motion moved by Director Olsen

Motion seconded by Director Calahan

ROLL CALL:

Director Michael Calahan – aye

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

The motion carries 4-0

9.4 A motion was made to approve the 1st Reading of Revised Policy JF – Admission and Denial of Admission.

Motion moved by Director Olsen

Motion seconded by Director Calahan

ROLL CALL:

Director Michael Calahan – aye

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

The motion carries 4-0

9.5 A motion was made to approve the 1st Reading of Revised Policy JICA – Student Dress Code.

Motion moved by Director Olsen

Motion seconded by Director Calahan



RECORD OF PROCEEDINGS

ROLL CALL:

Director Michael Calahan – aye

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

The motion carries 4-0

9.6 A motion was made to approved the 1st Reading of Revised Policy JICDD – Violent and Aggressive Behavior.

Motion moved by Director Olsen

Motion seconded by Director Powell

ROLL CALL:

Director Michael Calahan – aye

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

The motion carries 4-0

9.7 A motion was made to approve the membership into the Colorado Leaders for Academic Success.

Motion moved by Director Olsen

Motion seconded by Director Powell

ROLL CALL:

Director Michael Calahan – aye

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

The motion carries 4-0

9.8 A motion was made to approve the updated DAC membership.

Motion moved by Director Olsen

Motion seconded by Director Powell

ROLL CALL:

Director Michael Calahan – aye

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

The motion carries 4-0



RECORD OF PROCEEDINGS

9.9 A motion was made to permanently remove the 18 books that were temporarily displayed in the district office for parent feedback in the last 25 days.

Motion moved by Director Olsen

Motion seconded by Director Powell

ROLL CALL:

Director Michael Calahan – aye

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

The motion carries 4-0

9.10 A motion was made to approve the changes to the Sensitive Book List as attached.

Motion moved by Director Olsen

Motion seconded by Director Waller

The motion was amended to include the changes to the sensitive book list with The Diary of Anne Frank removed from the sensitive list in the Elizabeth Middle School and The Perks of Being a Wallflower removed from the list all together.

Motion moved by Director Olsen

Motion seconded by Director Waller

ROLL CALL:

Director Michael Calahan – aye

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

The motion carries 4-0

9.11 A motion was made to approve the charges for both the District Accountability Committee and the Financial Advisory Committee.

Motion moved by Director Olsen

Motion seconded by Director Calahan

ROLL CALL:

Director Michael Calahan – aye

Director Rhonda Olsen – aye

Director Mary Powell – aye

Director Jonathan Waller – aye

The motion carries 4-0



RECORD OF PROCEEDINGS

10.0 BOE PLANNING/NEW BUSINESS – AUDIO 01:43:44

10.1 The next Board of Education meeting working session, is scheduled for September 23, 2024, at 6 p.m. in the Elizabeth School District Board Room.

11.0 ADJOURNMENT – AUDIO 01:45:40

The regular board meeting adjourned at 7:42 p.m.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Rhonda Olsen", written over a horizontal line.

Rhonda Olsen, President

Heather Booth, Vice President

A handwritten signature in black ink, appearing to read "Mary Powell", written over a horizontal line.

Mary Powell, Secretary

A handwritten signature in black ink, appearing to read "Michael Calahan", written over a horizontal line.

Michael Calahan, Treasurer

A handwritten signature in black ink, appearing to read "Jonathan Waller", written over a horizontal line.

Jonathan Waller, Assistant Secretary/Treasurer

Recorded by: Jaimee Glazebrook

ESD Sensitive Topic Book List				
Title	Author	School Catalog	Flagged for:	
1984 George Orwell	George Orwell	EHS	Graphic Violence	Not to be flagged
A Clockwork Orange	Anthony Burgess	EHS	Graphic Violence	
Anne Frank: Diary of a Young Girl	Anne Frank	EHS	Sexual Content	Not to be flagged
Ashes to Ashes	Jenny Han and Siobhan Vivian	EHS	Graphic Violence	
Assassins	Tim LaHaye and Jerry B. Jenkins	EHS	Religious Viewpoints	
Athletic Shorts	Chris Crutcher	EHS	Sexual Content	
Beloved	Toni Morrison	EHS	Sexual Content	On temp suspended list
Beyond Magenta - Transgender teens speak out	Susan Kuklin	EHS	Sexual Content	
Bhagavad Gita Annotated and Explained	Shri Purohit Swami	EHS	Religious Viewpoints	
Bhagavad Gita for modern times - secrets to attaining inner peace & harmony	Call # 294.5 BHA	EHS	Religious Viewpoints	
Bless Me Ultima	Rudolfo Anaya	EHS	Profanity/Obscenity	
Bless Me, Ultima	Rudolfo Anaya	EHS	Profanity/Obscenity	
Brave New World	Aldous Huxley	EHS	Sexual Content	Not to be flagged
Brigham Young pioneer prophet	John G. Turner	EHS	Religious Viewpoints	
Buddhism	Winston King	EHS	Religious Viewpoints	
Buddhism	Patricia D. Netzeley	EHS	Religious Viewpoints	
Buddhists, Hindus and Sikhs in America	Gurinder Singh Mann	EHS	Religious Viewpoints	
Burn for Burn	Jenny Han and Siobhan Vivian	EHS	Graphic Violence	
Burned	Ellen Hopkins	EHS	Drug or excessive ...	On temp suspended list
Catcher in the Rye	JD Salinger	EHS	Profanity/Obscenity	
Critical Perspectives on Islam and the Western World	JOnathan Johansen	EHS	Religious Viewpoints	
Decoding the past secrets of the Koran	DVD - Hlstory Channel	EHS	Religious Viewpoints	
Desecration	Tim LaHaye and Jerry B. Jenkins	EHS	Religious Viewpoints	
Drinking and driving kills	Danielle Dardashti	EHS	Drug or excessive ...	
Early Islam	Stewart Desmond	EHS	Religious Viewpoints	
Eleanor & Park	Rainbow Rowell	EHS	Sexual Content	
Empire of the Islamic World	Robin S. Doak	EHS	Religious Viewpoints	
Ender's Game	Orson Scott Card	EHS	Graphic Violence	
Fallen Angels	Walter Dean Myers	EHS	Graphic Violence	
Fallen Angels	Walter Dean Meyers	EHS	Profanity/Obscenity	
Fire with Fire	Jenny Han and Siobhan Vivian	EHS	Graphic Violence	
Gay Power! the Stonewall Riots and the gay rights movement 1969	Betsy Kuhn	EHS	Sexual Content	
Glass	Ellen Hopkins	EHS	Drug or excessive ...	On temp suspended list
Go Ask Alice	Anonymouse	EHS	Sexual Content	
Hinduism	Gregory Kozlowski	EHS	Religious Viewpoints	
Hinduism	Madhu Bazaz Wangu	EHS	Religious Viewpoints	
Hinduism	Thomas Streissguth	EHS	Religious Viewpoints	
House of Night (series)	P.C. Cast	EHS	Sexual Content	
I know Why the Caged Bird Sings	Maya Angelou	EHS	Sexual Content	
I Know Why the Caged Bird Sings	Maya Angelou	EHS	Sexual Content	
Inside Mecca	DVD	EHS	Religious Viewpoints	
Into the Bright Open - A Secret Garden Remix	Cherie Dimaline	EHS	Sexual Content	
Islam	Charles Adams	EHS	Religious Viewpoints	
Islam	Lauri S. Friedman	EHS	Religious Viewpoints	
Islam empire of faith	Jonathan Grupper	EHS	Religious Viewpoints	
Islam World Religions	Matthew S. Gordon	EHS	Religious Viewpoints	
Islamophobia	Dedria Bryfonski	EHS	Religious Viewpoints	
Joseph Smith	Robert Vincent Remini	EHS	Religious Viewpoints	
Kaffir Boy	Mark Mathabane	EHS	Sexual Content	
Leah on the Offbeat	Becky Albertalli	EHS	Sexual Content	
Monster	Walter Dean Meyers	EHS	Graphic Violence	
More Than a Carpenter	Josh McDowell	EHS	Religious Viewpoints	
Mormons in America	Claudia Lauper Bushman	EHS	Religious Viewpoints	
Night	Elie Wiesel	EHS	Graphic Violence	
One Flew Over the Cukoo"s Nest	Ken Kesey	EHS	Sexual Content	
Slaughterhouse Five	Kurt Vonnegut	EHS	Graphic Violence	
The Remnant	Tim LaHaye and Jerry B. Jenkins	EHS	Religious Viewpoints	
The Absolutely True Diary of a Part-Time Indian	Sherman Alexie	EHS	Sexual Content	
The Bluest Eye	Toni Morrison	EHS	Graphic Violence	On temp suspended list
The book of Mormon - an account written by the hand of Mormon upon plates taken from...	Joseph Smith	EHS	Religious Viewpoints	
The Chocolate War	Robert Cormier	EHS	Profanity/Obscenity	
The Color Purple	Alice Walker	EHS	Racism/discrimination	
The Color Purple	Alice Walker	EHS	Graphic Violence	
The Essence of Buddhism - how to bring spiritual meaning into every day	Carole M. Cusak	EHS	Religious Viewpoints	
The Giver	Lois Lowry	EHS	Ideations of Self-H...	
The Handmaid's Tale	Margaret Atwood	EHS	Sexual Content	
The Holy Bible	Holy Spirit	EHS	Religious Viewpoints	
The Hunger Games	Suzanne Collins	EHS	Graphic Violence	
The Indwelling	Tim LaHaye and Jerry B. Jenkins	EHS	Religious Viewpoints	
The Kite Runner	Khaled Hosseini	EHS	Sexual Content	On temp suspended list
The Koran	Series - Bantam Classic	EHS	Religious Viewpoints	

The Koran - a very short introduction	Michael Cook	EHS	Religious Viewpoints		
The Mark	Tim LaHaye and Jerry B. Jenkins	EHS	Religious Viewpoints		
The night trilogy - NIGHT, DAWN, DAY	Elie Wiesel	EHS	Graphic Violence		
The Perks of Being a Wallflower	Stephen Chbosky	EHS	Sexual Content		
The Spread of Islam	John Dunn	EHS	Religious Viewpoints		
To Kill a Mockingbird	Harper Lee	EHS	Racism/discrimination		
Tokyo Ghoul 7 (NOTE there is an entire series, apparently up to 10)	Sui Ishida	EHS	Graphic Violence		
Twilight	Elie Wiesel	EHS	Graphic Violence		
Understanding Islam	Beverly A. James	EHS	Religious Viewpoints		
Women in Islam	Margaret Speaker Yuan	EHS	Religious Viewpoints		
BHA	Jan Thompson	EMS	Religious Viewpoints		
Anne Frank: Diary of a Young Girl	Anne Frank	EMS	Sexual Content		
Averroes (Ibn Rushd): Scholar of Classical and Islamic Philosophy	Bridget Lim	EMS	Religious Viewpoints		
Being Transgender in America (Part of above series)	Duchess Harris, JD, PhD	EMS	Sexual Content		
Buddhism	Anita Ganeri	EMS	Religious Viewpoints		
Buddhism	Mel Thompson	EMS	Religious Viewpoints		
Buddhist Festivals Throughout the Year	Anita Ganeri	EMS	Religious Viewpoints		
Eleanor & Park	Rainbow Rowell	EMS	Sexual Content		
Ender's Game	Orson Scott Card	EMS	Graphic Violence		
Growing up LGBTQ (PART OF A SERIES: Being LGBTQ in America)	Duchess Harris, JD, PhD	EMS	Sexual Content		
Hindu Festivals Throughout the Year	Anita Ganeri	EMS	Religious Viewpoints		
Hinduism	Das Rasamandala	EMS	Religious Viewpoints		
Hinduism	Ranchor Prime	EMS	Religious Viewpoints		
His Dark Materials Series Bk 1 The Golden Compass	Phillip Pullman	EMS	Religious Viewpoints		
House of Night (series)	P.C. Cast	EMS	Sexual Content		
Islam	David Self	EMS	Religious Viewpoints		
Muslim Festivals Throughout the Year	Anita Ganeri	EMS	Religious Viewpoints		
My Brother Sam is dead	James Lincoln Collier	EMS	Profanity/Obscenity		
Nasreen's Secret School	Jeanette Winter	EMS	Religious Viewpoints		
Speak Up!	Rebecca Burgess	EMS	Sexual Content		
The Giver	Lois Lowry	EMS	Ideations of Self-H...		
The Hunger Games	Suzanne Collins	EMS	Graphic Violence		
The Kids Book of World Religions	Jennifer Glossop	EMS	Religious Viewpoints		
The King James Bible: Christianity's Definitive Text	Phyllis Corzine	EMS	Religious Viewpoints		
To Kill a Mockingbird	Harper Lee	EMS	Racism/discrimination		
Zenobia July	Lisa Bunker	EMS	Sexual Content		
Bridge to Terabithia	Katherine Patterson	Running Creek	Religious Viewpoints		
Ender's Game	Orson Scott Card	Running Creek	Graphic Violence		
House of Night (series)	P.C. Cast	Running Creek	Sexual Content		
Noah's Ark	Jerry Pinkney	Running Creek	Religious Viewpoints		
Skippyjon Jones (series)	Judith Schachner	Running Creek	Racism/discrimination	Not to be flagged	
The Camel in the Sun	Griffin Ondaatje	Running Creek	Religious Viewpoints		
The Creation	Stephen Mitchell	Running Creek	Religious Viewpoints		
The Giver	Lois Lowry	Running Creek	Ideations of Self-H...		
The proudest blue: a story of hijab and family	Ibitha Muhammad	Running Creek	Religious Viewpoints		
Two by Two	Barbara Reid	Running Creek	Religious Viewpoints		
Daughters of Eve - Strong Women of the Bible	Lillian Hammer Ross	Singing Hills	Religious Viewpoints		
Dinner in the Lions' Den	Bob Hartman	Singing Hills	Religious Viewpoints		
Illustrated dictionary of religions: rituals, beliefs and practices from around the world	Philip Wilkinson	Singing Hills	Religious Viewpoints		
Noah	Patricia Lee Gauch	Singing Hills	Religious Viewpoints		
Noah's Ark	CALL# E SPI	Singing Hills	Religious Viewpoints		
Noah's Ark	Jerry Pinkney	Singing Hills	Religious Viewpoints		
Ramadan	Kieran Walsh	Singing Hills	Religious Viewpoints		
Ramadan	Molly Aloian	Singing Hills	Religious Viewpoints		
Scary Stories to tell in the Dark	Alvin Schwartz	Singing Hills	Graphic Violence		
Skippyjon Jones (series)	Judith Schachner	Singing Hills	Racism/discrimination		
The Bible Story (Individual listings for Volumes 1 - 10)	Arthur Maxwell	Singing Hills	Religious Viewpoints		
The Children's Illustrated Bible	Selina Hastings	Singing Hills	Religious Viewpoints		
The Christmas Star	Marcus Pfister	Singing Hills	Religious Viewpoints		
The Giver	Lois Lowry	Singing Hills	Ideations of Self-H...		
The Librarian of Basra	Jeanette Winter	Singing Hills	Graphic Violence		
The Little Lama of Tibet	Lois Raimondo	Singing Hills	Religious Viewpoints		
The mysterious visitor - Stories of the Prophet Elijah	Nina Jaffe	Singing Hills	Religious Viewpoints		
The Stable Where Jesus was Born	Rhonda Gowler Greene	Singing Hills	Religious Viewpoints		
The Ten Commandments	Patricia Daniels	Singing Hills	Religious Viewpoints		
What I believe	Alan Brown	Singing Hills	Religious Viewpoints		
To Review in September 2024					
Aristotle and Dante discover the secrets of the universe	Benjamin Alire Saenz	EHS	Sexual Content		
Two teenagers in 20 writings by gay and lesbian youth	Ann Heron	EHS	Sexual Content		
Playing a Part	Darla Wilke	EHS	Sexual Content		
Families Like Mine - Children of gay parents tell it like it is	Abigail Garner	EHS	Sexual Content		
Date Rape Drugs	Suellen May	EHS	Drug or excessive ...		
Date Rape	Norah Piehl	EHS	Graphic Violence		
Sanctuary	William Faulkner	EHS	Sexual Content		

All My Trials, Lord - selections from women's slave narratives	Mary Young	EHS	Racism/discrimination		
Voices of Rape	Janet Bode	EHS	Graphic Violence		
The Tenth Circle	Jodi Picoult	EHS	Sexual Content		
Dreamland	Sarah Dessen	EHS	Drug or excessive ...		
My Sister's Keeper, a novel	Jodi Picoult	EHS	Ideations of Self-H...		
The Storyteller: a novel	Jodi Picoult	EHS	Ideations of Self-H...		
My Book of Life by Angel	Martine Leavitt	EHS	Sexual Content		
To Nightowl from Dogfish	Holly Goldberg Sloan and Meg Wolitzer	EMS	Sexual Content		
They Both Die at the End	Adam Silvera	EMS	Sexual Content		
The Cloud Chamber	Joyce Maynard	EMS	Ideations of Self-H...		
Project Semicolon: Your Story Isn't Over	Amy Bleuel	EMS	Ideations of Self-H...		
How to Love	Katie Cotugno	EMS	Drug or excessive ...		
The List of Things That Will Not Change	Rebecca Stead	Singing Hills	Sexual Content		
The List of Things That Will Not Change	Rebecca Stead	Running Creek	Sexual Content		



RECORD OF PROCEEDINGS

**BOARD OF EDUCATION
BOARD ROOM, DISTRICT OFFICE
MINUTES OF MEETING
August 26, 2024 – (Working Session)**

A Working Session Board Meeting of the Elizabeth School District was held on August 26, 2024, in the Board Room, District Office.

1.0 CALL TO ORDER – AUDIO 00:04:30

Director Rhonda Olsen called the BOE Business Meeting to order at 6:00 p.m.

2.0 ROLL CALL: - AUDIO 00:04:34

The following BOE Directors were present:

Director Heather Booth – aye
Director Michael Calahan – aye
Director Rhonda Olsen – aye
Director Mary Powell – aye
Director Jonathan Waller – aye

Also present: Superintendent Dan Snowberger and Executive Assistant Jaimee Glazebrook

3.0 PLEDGE OF ALLEGIANCE – AUDIO 00:04:43

Director Rhonda Olsen led the audience in the Pledge of Allegiance.

4.0 APPROVAL OF AGENDA/ADDITIONS/DELETIONS/BLANKET MOTION – AUDIO 00:05:17

A motion was made to approve the agenda.

Motion moved by Director Olsen
Motion seconded by Director Booth

ROLL CALL:

Director Heather Booth – aye
Director Michael Calahan – aye
Director Rhonda Olsen – aye
Director Mary Powell – aye
Director Jonathan Waller – aye

The motion carries 5-0

5.0 APPROVAL OF MINUTES – AUDIO 00:05:35

5.1 A motion was made to approve the minutes from the August 12, 2024 Elizabeth Schools Board of Education meeting.

Motion moved by Director Olsen
Motion seconded by Director Booth



RECORD OF PROCEEDINGS

ROLL CALL:

Director Heather Booth – aye
Director Michael Calahan – abstain
Director Rhonda Olsen – aye
Director Mary Powell – aye
Director Jonathan Waller – aye

The motion carries 4-0

6.0 COMMUNICATIONS – AUDIO 00:06:02

6.1 Board Member Reports

6.2 Superintendent Report

7.0 PUBLIC COMMENT AUDIO 00:19:42

- 1. Crisy Howell**
- 2. Shelly Manning**
- 3. Bert Debrousse**
- 4. David Fletcher**
- 5. Tom Peterson**
- 6. William King**
- 7. Zach Quinby**
- 8. Ken Madsen**
- 9. Andrea Richardson**
- 10. Lisa Beach**
- 11. Michael Morrison**
- 12. Jim Vigil**

8.0 DISCUSSION ITEMS – AUDIO 00:55:10

8.1 Revised Policy GBEE*, Staff Use of the Internet and Electronic Communications

8.2 Revised Policy GBEE*-E, Staff Use of District Technology Resources (Acceptable use Agreement)

8.3 New Policy GBEE*-E – Social Media

8.4 Revised Policy GCE/GCF – Professional Staff Recruiting and Hiring (minor revisions and legal ref)

8.5 Revised Policy GBJ – Personnel Records and Files (minor revisions and legal ref)

8.6 Revised Policy GDE/GDF – Support Staff Recruiting/Hiring (minor revisions and legal ref)

8.7 Revised Policy GBA – Open Hiring/Equal Employment Opportunity (legal ref)

8.8 Review of Library Sensitive Topic Book Lists

**Elizabeth**
SCHOOL DISTRICT

RECORD OF PROCEEDINGS

8.9 Classroom Library Direction

8.10 October 14th Meeting moved to October 7th

9.0 BOE PLANNING/NEW BUSINESS – AUDIO 02:02:29

9.1 The next Board of Education meeting business session, is scheduled for September 9, 2024, at 6 p.m. in the Elizabeth School District Board Room.

10.0 ADJOURNMENT – AUDIO 02:06:13

The regular board meeting adjourned at 8:02 p.m.

Respectfully Submitted,

Rhonda Olsen, President

Heather Booth, Vice President

Mary Powell, Secretary

Michael Calahan, Treasurer

Jonathan Waller, Assistant Secretary/Treasurer

Recorded by: Jaimee Glazebrook



Dan Snowberger <dsnowberger@esdk12.org>

Superintendent Update: Classroom Libraries

1 message

Jeff Maher <jmaher@esdk12.org>

Tue, Aug 27, 2024 at 8:58 AM

Reply-To: Jeff Maher <jmaher@esdk12.org>

To: dsnowberger@esdk12.org



Superintendent Update: Classroom Libraries

Dear Parents,

Thank you for your patience as we've worked through our alignment of district policy regarding our use of classroom libraries. We know how important it is to have ready access to reading material in our classrooms. As you know, our board was attempting to align their Library Protocol adopted two weeks ago with children's access to reading material by having students access all books from the library. When it became evident that this was problematic, they paused their decision to remove classroom libraries to gather staff ideas on how to solve this challenge. We appreciate the many ideas staff provided our Board.

Our classroom library issue affects our elementary and middle schools only. Last night, the board made the following shift in the direction on this matter:

- Teachers will maintain their classroom libraries at this time
- Parents may "Opt Out" their children from using that classroom library at any time by using this form ([Classroom Opt Out Form](#))
- Teachers will create a list of all books in their classroom libraries over the next month and provide that to their principals and Chief Academic Officer for review
- Classroom libraries will be purged of books (if any) that contain graphic violence, sexual content, ideations of self harm, drug or alcohol use, religious content, or racism/discrimination.

Add 371
EXHIBIT 8

1/23/25, 2:53 PM

esdk12.org Mail Superintendent Update: Classroom Libraries

pg 2 of 2

Appellate Case: 25-1105 Document: 28-2 Date Filed: 04/03/2025 Page: 379

- Once finalized, lists of books in the classroom libraries will be provided on a regular basis to parents for on-going review.
- Parents may rescind or implement an “Opt Out” from classroom libraries at any time
- Of course, parents may send students with books from home to read and students may always keep books in their desk for reading time from the library.
- Students are not permitted to share books in the classroom physically as we want to respect parental rights in ensuring that they control what literature students have access to.

I know we live in a community where there are different opinions on these matters. Our staff is working hard to implement the policies that are being adopted and ensuring that we honor the wishes of our parents. None of these policies are meant to infringe on the individual rights of our students or our families, but to ensure we respect your rights and values.

If you have any questions, please do reach out to me or your principal.

Sincerely,

Dan Snowberger

Superintendent



You are receiving this email because of your relationship with Elizabeth School District. If you wish to stop receiving email updates sent through the Finals site service, please [unsubscribe](#).

Elizabeth School District | [634 S. Elbert St.](#) PO Box 610, Elizabeth, CO 80107 | 303-646-1853

Add 372
EXHIBIT 8

File: KBB

Adopted October 9, 2023

Parents Rights and Responsibilities

Purpose: To clarify the rights and responsibilities of our students' parents and guardians as strategic partners in their childrens' education. This policy links to the corresponding District policies of the rights and responsibilities for more details.

Preamble: The policy on parent* rights and responsibilities enumerate both positive and negative rights as well as corresponding responsibilities held by parent stakeholders in Elizabeth School District. Just as the first ten amendments to the U.S. Constitution did not *create* inalienable rights (but codified rights that were understood to be natural or God-given in a Bill of Rights), this document draws on law, regulation, and policy to enumerate rights that parents already have with regard to parenting, communications, and decision- making. Parents and students have rights, and parents and the school district must uphold their responsibilities in order to help the students achieve their individual and collective goals. This enumerated list of rights and responsibilities is not exhaustive, but it highlights the covenant and interdependence required for success. Other rights may be added to this list, but it is understood that there are no rights without accompanying responsibilities.

In Elizabeth School District, Parents have the following rights, along with responsibilities enumerated on the following pages:

- ♦ • Choice: To access available seats at a public school of their choosing.
- Choice: To access space available in specialized programs, including concurrent college enrollment.
- Choice: To access accelerated coursework, work-based learning and other college and career readiness opportunities.
- Choice: To retain full control of their child's education through schooling at home.
- Choice: To enroll their student in courses that best meet the child's needs, aptitudes and potential.
- Choice: To direct the health care services provided to their child by means of giving consent prior to the administration of any medicines or mental health services.

File: KBB

- Access: To access digital devices and home broadband services to support the educational needs of their student.
- Achievement/Outcomes: To ensure their student is reading and doing math on grade level.
- Achievement/Outcomes: To ensure that their student graduates ready for postsecondary success.
- Security/Safety: Parents have the right to expect systematic protection of private and confidential information.
- Security/Safety: Parents have the right to expect safe conditions on buses, school campuses, and in other school settings.
- Transparency: To know what curriculum and instructional materials are being used in their student's school.
- Transparency: To know how their student's school performs relative to state standards and to other schools.
- Transparency: To access their student's academic records, evaluations and any other data or records about their child.
- Transparency: Parents have the right to review clear expectations for student behavior.
- Transparency: Parents have the right to due process during investigations and disciplinary meetings.
- Transparency: Parents have the right to know the credentials and status of their student's teacher(s) and administrators.
- Transparency: Parents have the right to know the amount of public funding being provided for their student's education.
- Transparency: Parents have the right to expect that their child, our teachers and all employees of the district, shall NOT compel nor be compelled to affirm, believe, profess or adhere to any idea that violates their beliefs, values or religion. The School Board believes that education must focus on academic subjects, and, without exception, should not include personal bias or personal political opinion.

* Recognizing that guardians, foster parents, custodial grandparents, and other designated adults may fulfill the role of parents, the term parents, employed throughout this document, references all such adults.

File: KBB

Parent rights and responsibilities are described in the following Elizabeth School District Policies, as well as any supporting regulations (-R), any supporting exhibits (-E) and the statutes, rules, and key court decisions referenced within.

Click items in this column to link jump to more elaborate descriptions

Click items in this column directly to full policy documents.

Educational Choice	JFBA: Intra-District Choice/Open Enrollment JFAB: Continuing Enrollment of Students Who Become Nonresidents IHCDA: Concurrent Enrollment IHBG: Home Schooling
Academic Access	IJNDAB: Instruction through Online Learning ILBC: Early Literacy and Reading Comprehension Assessments (Colorado READ Act) JHB: Truancy
Academic Excellence	IHBK: Preparation for Postsecondary and Workforce Success IMB: Teaching about Controversial Issues and Use of Controversial Materials IK: Academic Achievement ILBC: Early Literacy and Reading Comprehension Assessments (Colorado READ Act)
Educational Data and Privacy	JRCB-R: Privacy and Protection of Confidential Student Information KBBA: Custodial and Noncustodial Parent Rights and Responsibilities JRCB: Privacy and Protection of Confidential Student Information EHC: Safeguarding Personal Identifying Information
School Safety and Behavior	JICDA: Code of Conduct JICDD: Violent and Aggressive Behavior JICDE: Bullying Prevention and Education JICDF: Cyber Bullying JKBA: Disciplinary Removal from Classroom

File: KBB

Organizational Transparency	KDB: Public's Right to Know/Freedom of Information KD: Public Information and Communications DAB: Financial Administration DB: Annual Budget DBD: Determination of Budget Priorities DIE: Audits/Financial Monitoring
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SECTION ONE: Educational Choice

Parent Rights	Parent and School Responsibilities
<ul style="list-style-type: none"> Parents have the right to access available seats at a public school of their choosing for their student, regardless of where they live. Parents have the right to access space available for their student, in specialized programs, including concurrent college enrollment. Parents have the right to access accelerated coursework, work-based learning and other college and career readiness opportunities for their student. Parent's Parent-s have the right to retain full control of their child's education through schooling at home. 	<ul style="list-style-type: none"> Parents are responsible to be informed consumers of educational options-choosing the school or program that best serves their children. Parents are responsible to ensure that their student understands good behavior is a condition of maintaining enrollment at a school of their choosing, and furthermore parents are responsible to partner with the school's staff to select strategies for behavioral improvement if needed. Parents are responsible to ensure their student meets attendance expectations at the school of choice. Parents are responsible to participate in school and district information sessions about accelerated coursework, work-based learning and other college and career readiness opportunities. Parents who school at home are responsible for notifications and periodic assessments. Schools are responsible to provide accurate and accessible information (through publications, presentations, and other communications) about school programs and options. Schools are responsible to host informational sessions about accelerated coursework, work-based learning and other college and career readiness opportunities. Schools are responsible to use fair processes and restorative practices to address behavior before revoking choice.
<p>JFBA: Intra-District Choice/Open Enrollment JFAB: Continuing Enrollment of Students Who Become Nonresidents IHCD: Concurrent Enrollment IHBG: Home Schooling</p>	

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SECTION TWO: Academic Access

Parent Rights	Parent and School Responsibilities	
<ul style="list-style-type: none"> Parents have the right to know what curriculum is being used in their student's school as well as the homework assignments, assessments and other classwork expected to be completed by their student. Parents have the right to access digital devices and home broadband services to support the educational needs of their student. 	<ul style="list-style-type: none"> Parents are responsible to review their student's syllabi and assignments to inform questions about classwork expectations. Parents are responsible to ensure help support their student when it comes to is completing homework and should support the school's recommendations for tutoring or other academic interventions and supports. Parents are responsible to inform the school of need-based digital device and home broadband requirements to support the education of their student. Parents are responsible to engage with school planning, curriculum, and program evaluation through the school accountability committee and other systems and processes. Parents are responsible to adhere to the Elizabeth School District Student Issued Device Program Agreement. Parents and schools share responsibility to ensure that students attend school in compliance with compulsory attendance laws. Schools are responsible to collaborate with parents when Policy IMB, "Teaching About Controversial Issues and Use of Controversial Materials," is invoked and to document the resolution to inform future claims. Schools are responsible to notify parents when teaching about controversial subjects as defined in Policy IMB. Schools are responsible to be responsive to need-based requests for digital devices and home broadband access. 	<div>Formatted: Font: (Default) Arial</div> <div>Formatted: Font: (Default) Arial</div> <div>Formatted: Font: (Default) Arial</div> <div>Formatted: Font: (Default) Arial</div> <div>Formatted: Font: (Default) Arial</div> <div>Formatted: Font: (Default) Arial</div> <div>Formatted: Font: (Default) Arial</div> <div>Formatted: Font: (Default) Arial</div> <div>Formatted: Font: (Default) Arial</div> <div>Formatted: Font: (Default) Arial</div>

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AEA: Standards Based Education
IG: Curriculum Development
IMB: Teaching about Controversial Issues and Use of Controversial Materials
JNDAB: Instruction through Online Courses
ILBC: Early Literacy and Reading Comprehension Assessments (Colorado READ Act)
JHB: Truancy
KDB: Public's Right to Know/Freedom of Information

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SECTION THREE: Academic Excellence

Parent Rights	Parent and School Responsibilities	
<ul style="list-style-type: none">Parents have the right to know whether their student is reading and doing math on grade level and whether their child graduates is on track to be ready for postsecondary success.Parents have the right to enroll their student in courses that best meet the child's needs, aptitudes and potential.Parents have the right to know how their student's school performs relative to state standards and to other schools in the district of record.	<ul style="list-style-type: none">Parents are responsible to work with schools to determine the optimal pathways for their student and portfolio option that achieves the desired outcome.Parents are responsible to review the district and school performance frameworks to inform conversations about relative performance.Schools are responsible to collaborate with parents when Policy IMB, "Teaching About Controversial Issues and Use of Controversial Materials," is invoked and to document the resolution to inform future claims.Schools are responsible to use formative and summative evaluations to assess student progress at, above, or below grade level and work with parents to implement interventions that restore students' math and reading performance that is commensurate with their grade level and puts them on the path to graduation and postsecondary success.Schools are responsible to be responsive to need-based requests for digital devices and home broadband access.Schools are responsible to use standardized tests, internal and external accountability measures, and student mastery to assess school performance, which will be aggregated by the district to assess performance between schools, within schools, and against other districts.Schools are responsible to offer aptitude screeners and other assessments that indicate a student's readiness for engagement with curriculum that maximizes their potential and connects them to their desired pathway.	Formatted: Font: (Default) Arial
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		IHBK: Preparation for Postsecondary and Workforce Success
IMB: Teaching about Controversial Issues and Use of Controversial Materials JK: Academic Achievement		Formatted: Font: (Default) Arial, No underline, Underline color: Auto, Font color: Auto
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SECTION FOUR: Educational Data and Privacy

Parent Rights	Parent and School Responsibilities
<ul style="list-style-type: none">Parents have the right to access their student's academic records, evaluations and any other data or records that a school has compiled on their child.Parents have the right to expect systematic protection of private and confidential information.	<ul style="list-style-type: none">Parents are responsible to ensure that data in the student information system reflects current contact and custodial status to facilitate access to their student's record under the Family Educational Rights and Privacy Act (FERPA).School officials are responsible to safeguard student's personally identifiable information (PII) and only release student records to authorized individuals who are identifiable as such in the student information system (SIS).
JRCB-R: Privacy and Protection of Confidential Student Information (Hearing and Complaint Procedures) KBBA: Custodial and Noncustodial Parent Rights and Responsibilities JRCB: Privacy and Protection of Confidential Student Information EHC: Safeguarding Personal Identifying Information	

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SECTION FIVE: School Safety and Behavior

Parent Rights	Parent and School Responsibilities
<ul style="list-style-type: none">Parents have the right to expect safe conditions on buses, school campuses, and in other school settings.Parents have the right to review clear expectations for student behavior.Parents have the right to due process during investigations and disciplinary meetings.	<ul style="list-style-type: none">Parents are responsible to review behavioral expectations with their children and support accountability for misconduct.Schools are responsible to use fair processes and restorative practices to address behavior and use exclusion (suspension or expulsion) only in limited cases.
ADD: Safe Schools JICDA: Code of Conduct JICDD: Violent and Aggressive Behavior JICDE: Bullying Prevention and Education JICDF: Cyber Bullying JKBA: Disciplinary Removal from Classroom	

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SECTION SIX: Organizational Transparency

Parent Rights	Parent and School Responsibilities	
<ul style="list-style-type: none"> Parents have the right to know the credentials of their student's teacher(s) and administrators, including whether the teacher is teaching out-of-field. 	<ul style="list-style-type: none"> Parents are responsible to check with the school and school administration to verify a teacher or administrator's licensure status before initiating teacher qualification conversations. 	Formatted: Font: (Default) Arial
<ul style="list-style-type: none"> Parents have the right to know the amount of public funding being provided for their student's education. 	<ul style="list-style-type: none"> Parents are responsible to review the district's financial transparency webpage before initiating conversations about utilization of per pupil revenue. 	Formatted: Font: (Default) Arial
<ul style="list-style-type: none"> Parents have the right to review transaction-specific information about program, school, and district finances. 	<ul style="list-style-type: none"> Schools are responsible to engage with parents who still have questions about a teacher's qualifications after the parents have accessed CDE's licensure database. 	Formatted: Font: (Default) Arial
<ul style="list-style-type: none"> Parents have the right to prior notification of surveys or other research items that address any of the eight protected areas specified in the <u>Protection of Pupil Right Amendment</u>, available at: https://studentprivacy.ed.gov/training/what-protection-pupil-rights-amendment 	<ul style="list-style-type: none"> Schools are responsible to host School Accountability Committee meetings where parents can review the district's financial transparency. 	Formatted: Font: (Default) Arial
<p>KDB: Public's Right to Know/Freedom of Information KD: Public Information and Communications DAB: Financial Administration DB Annual Budget DBD: Determination of Budget Priorities DIE: Audits/Financial Monitoring GCS Professional Research and Publishing IMB: Teaching About Controversial Issues and Use of Controversial Materials</p>		Formatted: Font: (Default) Arial



Superintendent Update: Welcome Back to School!

Dear Parents & Members of the Elizabeth Community,

It's hard to believe that summer 2024 is drawing to a close and that the start of the school year is upon us. I hope that each of you had a great summer break. It was a busy one for us in the school district. I wanted to share important dates with you:

- Wednesday, August 14: Grades 6 & 9, Orientation day (½ day of school)
- Thursday, August 15: Grades 6-12 - First day of school for all students
- Thursday & Friday, August 15 & 16: Assessment/Meet your Teacher Days - Elementary
- Monday, August 19: First day of school for all Elementary & PreSchool Students
- Thursday, August 22: First late start day
- Friday, August 23: Welcome Back BBQ, 4-6 pm - Sponsored by Board of Education, Elizabeth High School, followed by a Home Football Game vs. Battle Mountain HS at 7P
- Monday, September 2: Labor Day Holiday - No School

Library Protocol: There has been quite a buzz in the community about an effort underway to empower parents in our community. I wanted to clarify what this is all about. While many districts have removed books that some find objectionable to groups in the community, our Board has taken a different approach in cooperation with our Curriculum Review Committee. While reviewing national book lists, we have worked this summer to identify books that contain sensitive topics that include material in one of the following categories: graphic violence, sexual content, profanity/obscenity, ideations of self harm or mental illness, religious viewpoints, drug or excessive alcohol use, and racism/discrimination. Of course the degree of sensitivity is age based as we consider the level these books appear in (elem/middle/high). Parents will be empowered to opt their children out of being able to check out books if they choose. If a parent does not take that action, they will receive an email when a book is checked out to their child with any of this content in case they choose to review the book in advance. For a parent that has no concern - no change occurs. Sadly, this is not being reported accurately in some media outlets, but I do believe it is a balanced approach being taken by our board.

Concerning Materials: During the review of materials in our libraries, some members of our Curriculum Review Committee did identify a handful of books that contained some extreme content in their view. Those books have been pulled for public review and we are asking parents to review them and provide input on how they would like the district to handle them. A separate communication will be sent with those titles along with times and locations those books can be reviewed. Based on public feedback, those books could be added to the sensitive topic lists or could be weeded from the collections in our libraries.

Classroom Libraries: With all the work done by our Curriculum Review Committee on empowering parents, the board felt that it was best to encourage students to access our libraries to secure reading material. This ensures that parent direction guides that book access. Instead of burdening our teachers with having to constantly review their books against a sensitive book list, the board felt that removing libraries made sense and having students access books from the library may be best. Yesterday, the board suspended their direction and will be working with staff to determine if there is a better solution. Our teachers have so much on their plate and the intent was not to add one more thing to their “to do” list. At their next work session, the board will review the staff feedback and determine how to proceed to ensure we honor that parental choice and guidance in all material access.

Transportation: We are excited that we were able to purchase 10 new buses this summer. Many of our fleet were approaching the end of life and the new buses are a welcome addition to our fleet. We also are excited to reach full staffing and be able to add back many routes that had been removed in the past. We are excited to be able to offer transportation to our Legacy families. We regret that due to some challenges with data uploads, we’ve had some delay in getting those student stops into our system but look forward to getting those students into our transportation system soon.

We had a great kick-off with our staff and focused on our slogan - Students are at the heart of everything we do. Our new Public Information Officer helped us create a comprehensive video that highlights the opportunities our students have here in Elizabeth at each grade level. I wanted to [share that video](#) with you so that you have an idea of what Elizabeth has to offer our students and how it truly is a team effort to make it all happen. I am so proud of our staff and what the Elizabeth School District offers the children of our community!

I appreciate your patience as we work out new processes and procedures this year. Expect more communication early next week from me on other initiatives in the district.

Welcome back!



Dan Snowberger
Superintendent



BookLooks.org



Book Rating System

We developed this rating system to provide a means of assessing the appropriateness of a book for a child or young adult, based on the content of the book. This rating system is meant to be a quick guide for busy parents who want to know what objectionable material is found between a book's covers.

Our reports include a wide array of potentially controversial content. Some of the included content may not seem controversial at all to some, but it is included so parents can be aware and guide their child's reading as they see fit. In developing our rating scale and the driving criteria, we took inspiration from existing systems for movies, television, and video games while trying to tailor our criteria for books and the current public discussion surrounding them. We have provided graphics outlining our rating system, the driving criteria for each rating, and associated definitions we used in this system's development below.

Our rating determination is for the work taken as a whole- while the cited content alone may justify a higher rating, the work taken as a whole may have mitigating factors that lead to a lower rating. A good example of this is *To Kill a Mockingbird*. The book contains terrible instances of racism that would fit well in the "Minor Restricted" (3) rating. However, taken as a whole, the book has a positive narrative rebuking racism and contains significant historical value. Therefore, we have assigned it the "Teen Guidance" (2) rating. In some instances, a work may have mitigating factors, but we may find those factors as not enough to justify a reduced rating due to the severity of the cited content.

We strive to be as objective and judicious in our reports as possible, but ultimately the ratings assigned are our opinions. We hope our assessments are useful to individual parents and the community at large.

"Pending Final Review" indicates a book that is pending our full review, but contains verified information provided to us by third party individuals. We have screened the citations and confirmed they are contained within the relevant work, however we have not read the work in full and as such cannot assign a final rating.

CONTENT BASED RATING

For Everyone
Content is appropriate for all ages

0

- Mild Inexplicit violence
- No Hate
- No Nudity
- No Profanity
- No References to Sexuality, Gender Ideologies, or Sexual Activities
- No Drug or Alcohol Use

Child Guidance
Some content may not be appropriate for very young children

1

- Mild violence
- Mild/Infrequent Hate
- Mild/Infrequent Profanity
- Non-Sexual Nudity excluding genitalia
- No References to Sexual Activities
- No Drug or Alcohol Use
- Inexplicit Sexuality
- Inexplicit Gender Ideologies

Teen Guidance
Some content may not be appropriate for children under 13.

2

- Moderate Violence
- Moderate Hate
- Moderate Profanity
- Non-Sexual Nudity involving genitalia
- Inexplicit Sexual Nudity/Sexual Activities
- Drug or Alcohol Use
- Explicit Sexuality
- Explicit Gender Ideologies

Minor Restricted
Under 18 requires guidance of parent or guardian

3

- Excessive/Explicit violence
- Extreme/Frequent Hate
- Excessive/Frequent Profanity
- References to Sexual Activities (NOT involving penetration, cunnilingus, fellatio, or ejaculation)
- Drug or Alcohol Abuse

No Minors
Adult content. No child under 18.

4

- Explicit Sexual Nudity (depictions of sexual organs in a state of arousal)
- "Obscene" References to Sexual Activities (involving anal, oral, or vaginal intercourse; fingering, anilingus, or ejaculation)

Aberrant Content
Adult only

5

- Explicit References to Aberrant Sexual Activities (sexual assault/battery, bestiality, or sadomasochistic abuse)

DEFINITIONS

Aberrant: deviant

Drug/Alcohol Abuse: the habitual use of illicit drugs/alcohol

Excess: exceeding a reasonable limit; extreme in frequency, intensity or severity.

Explicit Sexuality/Gender Ideology: descriptive reference(s) to one's sexuality or gender identity, e.g. "Jake thinks he's bisexual because he gets equally as excited by thoughts of having sex with Jane as with John" or "John takes hormones to transition his body to a female."

Explicit Violence: Realistic depictions of physical conflict. May involve extreme and/or realistic depictions of human injury/death involving blood, gore.

Inexplicit Sexuality/Gender Ideology: nondescript reference(s) to one's sexual or gender identity, e.g. "Jake and Bob are gay and married to each other" or "John was born a boy but feels like a girl."

Mild: low frequency, intensity or severity.

Moderate: reasonable limit; not extreme in frequency, intensity or severity.

Nudity: Depiction of human male or female genitals, pubic area, or of a female breast without a covering of any portion thereof below the top of the nipple, or of male genitals in a turgid state.

Obscene: material "the average person, applying contemporary community standards," would judge as appealing primarily to prurient interests; (2) "the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law"; and (3) the work "lacks serious literary, artistic, political, or scientific value."

Violence: behavior involving physical force intended to hurt, damage, or kill someone or something.

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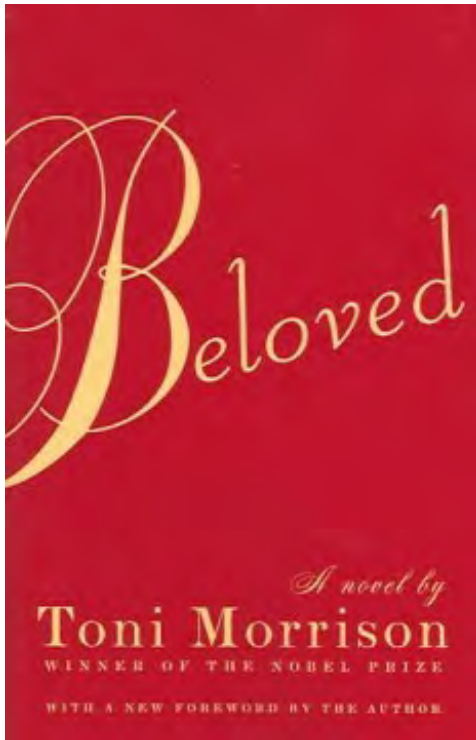
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BELOVED



Young Adult

By Toni Morrison

ISBN: 0-8124-7213-6

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3
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Minor Restricted
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Page	Content
xvi	In the eighties, the debate was still roiling: equal pay, equal treatment, access to professions, schools... and choice without stigma. To marry or not. To have children or not. Inevitably these thoughts led me to the different history of black women in this country—a history in which marriage was discouraged, impossible, or illegal; in which birthing children was required, but “having” them, being responsible for them—being, in other words, their parent—was as out of the question as freedom.
xvii	Assertions of parenthood under conditions peculiar to the logic of institutional enslavement were criminal. ...A newspaper clipping in The Black Book summarized the story of Margaret Garner, a young mother who, having escaped slavery, was arrested for killing one of her children (and trying to kill the others) rather than let them be returned to the owner’s plantation.
7	Boys hanging from the most beautiful sycamores in the world. It shamed her—remembering the wonderful soughing trees rather than the boys.
11	If a Negro got legs he ought to use them. Sit down too long, somebody will figure out a way to tie them up. ...The five Sweet Home men looked at the new girl and decided to let her be. They were young and so sick with the absence of women they had taken to calves.
12	It took her a year to choose—a long, tough year of thrashing on pallets eaten up with dreams of her. A year of yearning, when rape seemed the solitary gift of life. ...“Beg to differ, Garner. Ain’t no nigger men.”
13	And so they were: Paul D Garner, Paul F Garner, Paul A Garner, Halle Suggs and Sixo, the wild man. All in their twenties, minus women, fucking cows, dreaming of rape, thrashing on pallets, rubbing their thighs and waiting for the new girl—the one who took Baby Suggs’ place after Halle bought her with five years of Sundays.
19	I told that to the women in the wagon. Told them to put sugar water in cloth to suck from so when I got there in a few days she wouldn’t have forgot me. The milk would be there and I would be there with it.” “Men don’t know nothing much,” said Paul D, tucking his pouch back into his vest pocket, “but they do know a suckling can’t be away from its mother for long.” “Then they know what it’s like to send your children off when your breasts are full.” ...“After I left you, those boys came in there and took my milk. That’s what they came in there for. Held me down and took it. I told Mrs. Garner on em. She had that lump and couldn’t speak but her eyes rolled out tears. Them boys found out I told on em. Schoolteacher made one open my back and when it closed it made a tree. It grows there still.” ...“They used cowhide on you?” ...“And they took my milk.” ...“They beat you and you was pregnant?” ...“And they took my milk!”
20	As she raised up from the heat she felt Paul D behind her and his hands under her breasts.



Page	Content
	...Behind her, bending down, his body an arc of kindness, he held her breasts in the palms of his hands.
24	Overwhelmed as much by the down-right luck of finding her house and her in it as by the certainty of giving her his sex, Paul D dropped twenty-five years from his recent memory. A stair step before him was Baby Suggs' replacement, the new girl they dreamed of at night and fucked cows for at dawn while waiting for her to choose. ...It was over before they could get their clothes off. Half-dressed and short of breath, they lay side by side resentful of one another and the skylight above them.
25	Sethe lay on her back, her head turned from him. Out of the corner of his eye, Paul D saw the float of her breasts and disliked it, the spread-away, flat roundness of them that he could definitely live without, never mind that downstairs he had held them as though they were the most expensive part of himself.
30	Nothing could be as good as the sex with her Paul D had been imagining off and on for twenty-five years.
31	And there on top of a mattress on top of the dirt floor of the cabin they coupled for the third time, the first two having been in the tiny cornfield Mr. Garner kept because it was a crop animals could use as well as humans. Both Halle and Sethe were under the impression that they were hidden. Scrunched down among the stalks they couldn't see anything, including the corn tops waving over their heads and visible to everyone else. Sethe smiled at her and Halle's stupidity. Even the crows knew and came to look. Uncrossing her ankles, she managed not to laugh aloud. The jump, thought Paul D, from a calf to a girl wasn't all that mighty. Not the leap Halle believed it would be. And taking her in the corn rather than her quarters, a yard away from the cabins of the others who had lost out, was a gesture of tenderness.
49	After Alfred he had shut down a generous portion of his head, operating on the part that helped him walk, eat, sleep, sing. If he could do those things—with a little work and a little sex thrown in—he asked for no more, for more required him to dwell on Halle's face and Sixo laughing.
58	Two pennies and an insult were well spent if it meant seeing the spectacle of whitefolks making a spectacle of themselves. ...When Wild African Savage shook his bars and said wa wa, Paul D told everybody he knew him back in Roanoke.
73	"What happened to her?" "Hung. By the time they cut her down nobody could tell whether she had a circle and a cross or not, least of all me and I did look."
81	"The day I came in here. You said they stole your milk. I never knew what it was that messed him up. That was it, I guess. All I knew was that something broke him. Not a one of them years of Saturdays, Sundays and nighttime extra never touched him. But whatever he saw go on in that barn that day broke him like a twig." "He saw?" Sethe was gripping her elbows as though to keep them from flying



Page	Content
	<p>away.</p> <p>"He saw. Must have."</p> <p>"He saw them boys do that to me and let them keep on breathing air? He saw? He saw? He saw?"</p>
83	<p>I am full God damn it of two boys with mossy teeth, one sucking on my breast the other holding me down, their book-reading teacher watching and writing it up. I am still full of that, God damn it, I can't go back and add more. Add my husband to it, watching, above me in the loft—hiding close by—the one place he thought no one would look for him, looking down on what I couldn't look at at all. And not stopping them—looking and letting it happen. But my greedy brain says, Oh thanks, I'd love more—so I add more.</p>
90	<p>She said there ain't nothing to go by with whitepeople. You don't know how they'll jump. Say one thing, do another. But if you looked at the mouth sometimes you could tell by that.</p>
128	<p>Only when she was dead would they be safe. The successful ones—the ones who had been there enough years to have maimed, mutilated, maybe even buried her—kept watch over the others who were still in her cock-teasing hug, caring and looking forward, remembering and looking back. They were the ones whose eyes said, "Help me, 's bad" or "Look out," meaning this might be the day I bay or eat my own mess or run, and it was this last that had to be guarded against, for if one pitched and ran—all, all forty-six, would be yanked by the chain that bound them and no telling who or how many would be killed. A man could risk his own life, but not his brother's. So the eyes said, "Steady now," and "Hang by me."</p>
137	<p>"I want you to touch me on the inside part and call me my name."</p> <p>Paul D never worried about his little tobacco tin anymore. It was rusted shut. So, while she hoisted her skirts and turned her head over her shoulder the way the turtles had, he just looked at the lard can, silvery in the moonlight, and spoke quietly.</p> <p>"When good people take you in and treat you good, you ought to try to be good back. You don't...Sethe loves you. Much as her own daughter. You know that."</p> <p>Beloved dropped her skirts as he spoke and looked at him with empty eyes. She took a step he could not hear and stood close behind him.</p> <p>"She don't love me like I love her. I don't love nobody but her."</p> <p>"Then what you come in here for?"</p> <p>"I want you to touch me on the inside part and call me my name."</p> <p>"Go on back in that house and get to bed."</p> <p>"You have to touch me. On the inside part. And you have to call me my name."</p> <p>As long as his eyes were locked on the silver of the lard can he was safe. If he trembled like Lot's wife and felt some womanish need to see the nature of the sin behind him; feel a sympathy, perhaps, for the cursing curse, or want to hold it in his arms out of respect for the connection between them, he too would be lost.</p> <p>"Call me my name."</p> <p>"No."</p> <p>"Please call it. I'll go if you call it."</p> <p>"Beloved."" He said it, but she did not go. She moved closer with a footfall he didn't hear and he didn't hear the whisper that the flakes of rust made either as</p>

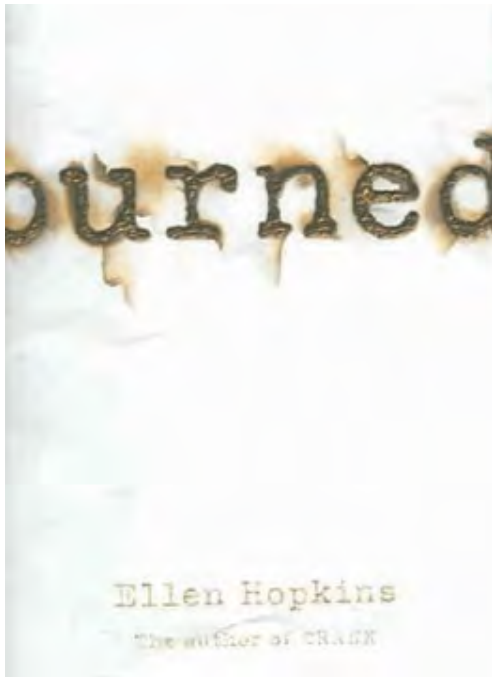


Page	Content
	they fell away from the seams of his tobacco tin. So when the lid gave he didn't know it. What he know was that when he reached the inside part he was saying, "" Red heart. Red heart, "" over and over again. Softly and then so loud it woke Denver, then Paul D. himself. "Red heart. Red heart. Red heart."
148	If schoolteacher was right it explained how he had come to be a rag doll—picked up and put back down anywhere any time by a girl young enough to be his daughter. Fucking her when he was convinced he didn't want to. Whenever she turned her behind up, the calves of his youth (was that it?) cracked his resolve. But it was more than appetite that humiliated him and made him wonder if schoolteacher was right. It was being moved, placed where she wanted him, and there was nothing he was able to do about it.
149	"Well, ah, this is not the, a man can't, see, but aw listen here, it ain't that, it really ain't, Ole Garner, what I mean is, it ain't a weakness, the kind of weakness I can fight 'cause 'cause something is happening to me, that girl is doing it, I know you think I never liked her nohow, but she is doing it to me. Fixing me. Sethe, she's fixed me and I can't break it." What? A grown man fixed by a girl? But what if the girl was not a girl, but something in disguise? A lowdown something that looked like a sweet young girl and fucking her or not was not the point, it was not being able to stay or go where he wished in 124, and the danger was in losing Sethe because he was not man enough to break out, so he needed her, Sethe, to help him, to know about it, and it shamed him to have to ask the woman he wanted to protect to help him do it, God damn it to hell.
154	White cotton sheets had never crossed his mind. He fell in with a groan and the woman helped him pretend he was making love to her and not her bed linen.
155	Tucked into the well of his arm, Sethe recalled Paul D's face in the street when he asked her to have a baby for him. Although she laughed and took his hand, it had frightened her. She thought quickly of how good the sex would be if that is what he wanted, but mostly she was frightened by the thought of having a baby once more.
212	Eighteen seventy-four and whitefolks were still on the loose. Whole towns wiped clean of Negroes; eighty-seven lynchings in one year alone in Kentucky; four colored schools burned to the ground; grown men whipped like children; children whipped like adults; black women raped by the crew; property taken, necks broken.
239	My love was too thick. What he know about it? Who in the world is he willing to die for? Would he give his privates to a stranger in return for a carving?
240	Some of them drank liquor to keep from feeling what they felt.



Profanity/Derogatory Term	Count
Ass	1
Bitch	6
Cock	1
Coon	1
Faggot	2
Fuck	4
Goddamn	3
Nigger	37
Shit	2

BURNED



Young Adult

By Ellen Hopkins

ISBN: 978-1-4391-0657-0

Summary of Concerns:

This book contains sexual activities; sexual nudity; drug and alcohol use and abuse; profanity and derogatory terms; suicidal ideation; and violence including child abuse.

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Minor Restricted
BookLooks Review Rating



Page	Content
3	<p>But I do know things really began to spin out of control after my first sex dream. As sex dreams go, there wasn't much sex, just a collage of very hot kisses, and Justin Proud's hands, exploring every inch of my body, at my fervent invitation. As a stalwart Mormon high school junior, drilled ceaselessly about the dire catastrophe awaiting those who harbored impure thoughts, I had never kissed a boy, had never even considered that I might enjoy such an unclean thing, until literature opened my eyes.</p>
16	<p>Mar. 15. Justin Proud smiled at me today. I can't believe it! And I can't believe how it made me feel. Kind of tingly all over, like I had an itch I didn't want to scratch. An itch you-know-where.</p> <p>Mar. 17. I dreamed about Justin last night. Dreamed he kissed me, and I kissed him back, and I let him touch me all over my body and I woke up all hot and blushing. Blushing! Like I'd done something wrong.</p>
46	<p>I was nobody. Someday, would another nobody slide his arm around my substantial waist, walk his hand up under my homemade blouse? And would I draw back into the curve of him, close my eyes, and take pleasure in his heat?</p>
121	<p>Went to a party at Brent's last night. Okay, more like a drink-smoke-and-make-out fest. But, hey, I was with Derek, and for the first time in my life, people looked at me with respect. Maybe even envy.</p> <p>Went to a party at Brent's last night. Okay, more like a drink-smoke-and-make-out fest. But, hey, I was with Derek, and for the first time in my life, people looked at me with respect. Maybe even envy.</p> <p>The Ward dance started at seven. Derek picked me up at eight. By nine, he had convinced me to try a sip of his beer. "Jesus turned water into wine, didn't He?"</p> <p>...I'm probably already damned, for dating a nonbeliever. What could a sip or three or four—of beer hurt? Odd taste, not great, but drink enough, who cares? Loose. I let loose. Not all the way loose, but I laughed at not-real-funny jokes and let Derek pull me up into his lap. And when he kissed me, I full-on kissed back. I even let his hands wander.</p> <p>At first I said no, of course. I really thought I wasn't at all that kind of girl. Guess what. I am! He was good, too. First he rubbed my back. Then he lifted my hair and kissed my neck, and I've never had goose bumps like that before.</p> <p>Then he slid his hands around the front of me, lifting my breasts and touching my nipples. I wouldn't let him go under my blouse, but even over my clothes, the way he made my body feel is hard to describe.</p> <p>Alive.</p> <p>On edge.</p> <p>In need.</p> <p>In danger of spontaneous combustion. Virtue was the last thing on my mind.</p>
125	<p>I wanted to be with him all the time, wanted the taste of his lips on mine, his roaming fingers on my hungry skin. His fire to thaw my ice.</p> <p>But, though I was very much in lust with him, I knew from the start we were nothing like "forever."</p>
131	<p>One Problem with Alcohol</p> <p>Is the more you drink it the more you want it. If a little lets you forget a bit of your pain, more lets you crawl into a fuzzy space where nothing hurts at all. Amen.</p>



Page	Content
	Saturdays became drinking days—don't think the irony is one iota lost on me. Derek would meet me in the desert, painkiller in hand. First beer, then hard stuff. The only thing I insisted on was no Johnnie WB. Okay, it's a weird psychology but something inside of me maintained only Johnnie could hook me for good. The higher I got, the harder it got to hang on to my jeans. Derek was skillful, coloring his need to look like desire, like I was all he'd ever wanted.
132	He Almost Got His Chance The first Saturday in May. I'd gone for my usual "target practice," which by then, of course, meant an overheated session with Derek. By noon, we had downed a half pint of tequila, my buttons were askew, and Derek was trying to escape his zipper when I noticed a lone figure striding our way.
153	He only used you for sex. ..."We never had sex." That's not what he said. Not only that, he said it was lousy sex.
159	"Love is just another word for sex."
160	Sex? Sex! Tell me what you know about sex! Did that awful boy touch you? Put it in you? I couldn't resist that lead-in. "Put what in me?" You know very well what I'm talking about. Did he take his pants off? Did you let him? Now it was a game. "Let him? What if I encouraged him?" Pattyn Scarlet Von Stratten. Exactly what are you saying? Surely you can't mean you wanted to have sex? A vicious game. "Don't you want to have sex, Mom?"
299	But things had definitely heated up. A time or two, cradled in his lap, kissing until his desire became obvious, I had almost wanted to.
328	We shed our shirts, unzipped our jeans, and would have made love right that minute except for just about then . . .
332	Has anyone ever told you how great you look with your shirt off? I glanced down at my chest, covered only by a thin sports bra and a sheen of sweat.
340	After dinner, Ethan and I talked. Talked and kissed. Kissed and touched. Touched. ...He loves me. And all I can think of, lying here in bed, despite all that happened this incredible day, is I wish Ethan was lying next to me.
376	A Couple More Beers Made Daddy's face disappear, but mostly because the rest of the day is pretty much a blur.
377	And I settled into his arms, minus the buzz, plus a pounding headache, and I said, "Make love to me."
378	Okay, we did it. Ethan and I made love. Twice. The first time it kind of hurt, and maybe I had too much beer to really understand what a big step it was. Huge. ...The second time it was better, even if I didn't feel so hot. (My first hangover—ugh!) Ethan is so gentle, so caring. Derek would have attacked, done the deed, and disappeared. I'm so glad it was Ethan. There were a couple of bad moments—I'll be sore for days.



Page	Content
411	Sometimes Dad gets home, already half-drunk. I always hope he'll get home totally drunk so maybe he'll pass out right away. ...He can't hit Mom because of the baby.
441	One of Those Times I can't remember exactly which day, only that it was in the cool of morning, Ethan rolled away and said, Oh my God. I knew instantly that God had already closed His ears. "What's wrong?" Don't panic, Pattyn, but the condom tore. My parents had never let me take sex ed, but panic seemed appropriate.
463	I admitted almost everything about Ethan, omitting only the part about making love.
472	As I wiggle off in new form-fitting jeans, I heard Carmen hiss, Are you checking her out?
476	Especially those liberal loudmouths.
530	Plans Made I am sitting on the hard cement railing of a freeway overpass. Legs dangling, I watch the unrelenting motion of normal people in daily transit. Mind-boggling, how so many separate lives travel in such remarkable unison. Soul searching, I know that I will never squeeze into such a common mold. Brain racing, I struggle to reach a decision. God, whoever He is, only knows which way I'll go. Heart breaking, I think that if Dad, staring down the sight of a 10mm, would only tell me he loves me, I could easily change my mind but he won't.
51	One son dead, the other shunned, Molly folded. Don't you know how much I miss you? Put a .357 into her mouth, pulled the trigger. Oh God, Molly, please stop crying.
115	He Kissed Me Not an over-the-top, hard demanding kiss, not even a kiss hinting passion. No tongue, no spit, just a sweet first kiss, Derek's soft full lips gifting mine with a gentle caress.
123	Derek took me home, and as we kissed a very long good-bye,...
224	We were only kids ourselves, of course, and like most kids that age, our love moved way beyond kissing.
281	Ethan reached down, kissed me, long and deep and sweet as a mountain spring. And in that kiss was little doubt of anything. Especially love.
282	It Was the Kiss You Dream About The one that makes you understand what all the hype is about. Nothing I'd done with Derek had produced the kind of electricity now sizzling through my arteries.
287	Our second kiss, though shorter, was every bit as memorable as the first.
292	God, what a feeling! Beneath a layer of denim, the gelding's muscles flexed and pulsed as we picked up speed. I buried my face in Ethan's shirt, closed my eyes. I was flying, no less than an eagle. I was belly to back with the most incredible man in the world, a man who had kissed me like I never expected to be kissed. Ever.
296	I reached up, put my arms around his neck, and this time I kissed him.



Page	Content
297	His kisses? When he kisses me, it's like being born again.
307	He kissed me. In front of the whole restaurant.
312	He kissed me, delicious as honey.
326	His Body Settled Gently upon mine. He kissed my eyes, my lips, my neck, then his mouth crept softly down the length of my torso. Something stirred beneath my skin, some being inside I'd only suspected existed, demon or angel, I couldn't say. Either way, it woke a desire so bold it shook me to my core, made me cry out for more. I wanted all of Ethan. And he wanted me, I felt it in the fire of his kiss, in the way his body trembled. And yet, he hesitated. Only if you're sure. The old Pattyn had vanished, smoke.
369	Then he kissed me with a passion he'd not before revealed.
370	And, buzzed as I was, I knew in my heart it wasn't just the beer talking.
371	We both had another beer, thinking we should postpone the inevitable. Finally, I flopped down on my back, inviting his kiss . . . and more. If I kiss you, I won't want to stop, don't know if I could. ...And so he kissed me, everywhere, making me want to say yes even more. And he wanted me, too, and he showed me how to make him want me more. It all felt so right, so how it should be, that I begged him not to stop. But he paused, long enough to find the protection he'd brought along. While I waited, every nerve shouted out to be pacified. And when he did . . .
400	Did they, too, find a private spot, unroll a quilted sleeping bag in the bed of the pickup? Did they talk and kiss and ultimately shed their clothes to lay naked beneath a sea of stars?
458	And I tasted in our last barrage of delectable kisses a growing sense of dread.
471	I couldn't wait to see him, fall into his kisses, fold into his body.
519	I flew through the door, into his arms, and the warmth of his kisses.

Profanity	Count
Ass	4
Bitch	8
Fag	1
Fuck	9
Goddammit/Goddamn	8
Gook	3
Piss	5
Prick	1
Shit	11

CRANK



Young Adult

By Ellen Hopkins

ISBN: 978-1442471818



Summary of Concerns:

This book contains explicit sexual activities; sexual battery; profanity; and drug abuse.

3
/5

Minor Restricted
BookLooks Review Rating



Page	Content
67	Been smokin' pot since I was 13, couldn't quit if I tried. ...The white stuff was a different story. He'd stay up all night, eating zip, bowling and snorting line after line. Rent money, right up the nose.
68	We used to do coke, till "Just Say No" put the stuff out of reach. Now it's crank. Meth. The Monster. It's a bitch on the body but damn do you fly.
69	You fly until you crash
85	So when he asked about getting high, I didn't think, I agreed. We smoked some good California green. Took three tries to put me in the place he said I should be. ...I wanted to meet the monster. Why go down if you can go up? Sleepy. Not "high" at all, but real low. And real slow.
86	Some good green bud around. You're gonna love it. You'll see ...Like magic, a mirror and razor blade appeared.
87	I watched him pour powder, yellowish-white. It will take you to heaven. Used the blade to chop the chunks fine, draw two crooked lines. Make you want to fly all night. He held the mirror to my face, handed me a saw toothed straw. Make you want to make love to me.
88	You start to climb crank-crank-crank
89	...that's exactly how it feels when you shake hands with the monster.
92	...he says, Tell me how you feel. So you can't stand it one more second, and you, your eyes, daring him to kiss you. So he does, and it's electric, high voltage, stun-gun strength desire jolting sinew and bone. And he asks, How 'bout another line?
94	If a Little's Good more must be great right?
95	...everything off, nothing left to chance, all the wway in?
96	Because it wasn't that it was gentle persuasion. I can't get enough of you. Sweetest coercion. Let me eat you up. Skin to skin, belly to shoulder. Sweet as puddin'. It was body rush after body rush, intensity building. Touch me there. Hot flush, raging blush, quick-start ignition. See how much I need you? Ice flash, instant crash, voices outside the door. No! Don't stop now! ...I've got to have all of you.



Page	Content
	It was hands, exploring taboo places. Oh, God! You're perfect! Lips and tongue, not far behind.
99	We were busted. I was busted. And I didn't give a damn
101	Wha' the fuck you up to, Buddy? ...You two been messing' around? ...Okay then. Fix me a line.
102	Like an idiot I took one too. ...there I was, snorting crank with my dad, boyfriend, and his other girlfriend.
104	Whoa, baby. Keep it in your pants, at least. Till I take it out of them.
113	Yo, I think this bitch has been crankin'. That was license enough. Bodies bumped, pushed me into a doorway, blocked Ever done a three-fer?
114	Hands covered my mouth, rough, held my arms, strong tore my clothes, vicious. Fear danced up my spine, jolted my brain, dripped onto the ground. No! I screamed into dirty flesh. Not this way! Buttons burst, zippers opened, I closed my eyes, braced for pain.
129	Somewhere between the transvestite who slapped (her?) mother's boyfriend and the perky blond (transvestite?) evening weathergirl.
138	The monster rose up hard then, hard in her She looked like an animal, crazy mad, diseased Spit in every word, she swore she'd get back at you, at me. ...Crankin', they said, and she was. Oh, yes, she was.
161	He pulled a bindle from his pocket, tapped the sparkly powder inside. Cooked up fresh yesterday. ...That's my girl. Let's forget the bullshit and fly.
163	Adam took me in his arms kisses melting hurt, forgotten ice Unhurried hands lifted my shirt Pump. Pump. Pump. Passion rose up in my heart and a bit farther south The monster-fueled inferno built thigh to belly button Adam's mouth moved lower, inch by trembling inch I was ready to do it oh, so ready. Right that very instant.
264	You really wanna piss her off, try a piercing. Want to see mine? I couldn't find studs in his ears, lips, or tongue, which pretty much left one place. "Didn't it hurt?" Like a mother. But it feels awesome now. He guided my hand south of his zipper. ...Bree was Bree, to Chase's great pleasure. ...So want to take a little ride? Got my truck outside.
265	I've got a little toot, if you're so inclined.
266	I mean I'd thought about the monster dreamed about the monster lusted for the monster



Page	Content
	regretted knowing the monster but I hadn't touched the monster...in over a month. Hadn't even seen it. ...No mirrors, no blades, Chase reached deep inside a pocket, withdrew an amber bottle and a tiny spoon attached to the lid. He set it on his knee.
268	It was the monster desire that made me tremble. Chase noticed.
269	One spoon. I was cool. Two, I was too cool. Three, sub-Arctic. Four, my mouth hit monster mode. Chase could barely keep up.
274	Talk about your strange bedfellows. I was in line for that menage a trois.
278	Two guys in one day? Almost too much to consider, although Bree found the prospect quite intriguing.
305	...pot made you buddy up with Satan... ...Far fuckin' out! Beer's in back.
308	Pot smoke hung, a skunky green curtain, but I didn't want to fall low so I indulged in another big snort before inhaling a couple of tiny tokes mostly to satisfy the incredible urge to pollute my lungs. I topped that off with Marlboro, landing on just about the perfect plane, just about the place I wanted to be. Not too speedy, not even close to straight falling into the yo-yo rhythm of crank, pot, beer, tobacco, the sensational motion and emotion, up and down
310	As he pulled me onto his lap, I wondered if I should confess my double identity. Instead, I let him kiss me. Hard. Hot. Oh, man. I'm hot. He shed his shirt and the moon revealed perfect, tanned muscles. He started to unbutton mine, silencing my protest. Shhh. Don't say no. "I can't. I mean, I never...." Crank-enhanced goosebumps lifted as he moved his hands gently across my skin. "Stop." You know you want to. "I do, Brendan, I really do. But I can't. It's the wrong time of the month." I'd decked him. He slapped back. Then, why did you call? I let Bree answer. "Not to get laid, incredible as you are. Is that all you think I'm about? What if I told you I'm a virgin?" I'd call you a liar.
312	Brendan softened immediately, offered to forgive me if only I promised to let him be the first. ...I said okay, then proceeded to thank him as only Bree- and the monster- could.
315	High For two days, too much crank, no sleep, liquid diet.
337	Called Brendan for a date and asked him to make a buy. "Can you get me an eighth ball? Figured an eighth of an ounce would last awhile. It cost me \$250, which I was saving to buy my first car.
339	...the voice of my virginity nagged, the lure of the monster was stronger. Besides, I could always say "no."



Page	Content
	<p>Couldn't I?</p> <p>...As we drove up the mountains, his hand crept up my leg.</p> <p>I let it do exactly that as I watched for a safe spot to pull over. We drove back off the highway, and into a grove of fresh-scented evergreens.</p>
340	<p>He pulled out a bindle, which looked a bit short, and a six-pack of beer. For the next twenty minutes, we snorted and drank, climbing to a very tall buzz.</p>
341	<p>It started with a kiss crank-revved, pistons firing full bore, passion firecrackered in tiny bursts from thigh to belly button.</p> <p>Oh, baby.</p> <p>I want you so bad!</p> <p>"B-b-bad to the bone?" We laughed, but it wasn't alright.</p> <p>Not for long.</p> <p>My shirt tore open. "Wait."</p> <p>I've waited for weeks.</p> <p>Put up and shut up.</p> <p>Kissed segued to bites. Bruises. Pain rippled through my body. "Brendan, please stop."</p> <p>No. You promised, You damn little tease.</p> <p>Off came my shorts. Down went his zipper. I realized I was in serious trouble. "I'll scream."</p> <p>Go ahead. No one can hear but skunks and coyotes.</p> <p>Still, as I opened my mouth, his hand slapped down on it. Those sublime muscles hardened.</p> <p>Just relax. You'll love it.</p> <p>My brand-new Victoria's Secrets shredded, and I felt the worst of Brendan pause, savoring my terror.</p> <p>They all love it.</p> <p>Had he done it a different way, I might have responded with excitement. Instead, I froze as he pushed inside.</p> <p>There it is.</p> <p>Oh, God. There it goes.</p> <p>It went, all right, with an audible tear. Pain mushroomed into agony and all I could do was go stiff.</p> <p>You weren't lying, you bitch!</p> <p>I laid there, sobbing, as he worked and sweated over me. Stoked by the monster, it took him a long time to finish.</p> <p>Give me a line,</p> <p>I'll give you an encore.</p> <p>He pulled away sticky and bloody.</p> <p>Throbbing inside and out, I didn't move, didn't dare look him in the eye.</p> <p>What the hell is the matter, Bree?</p> <p>I stared up at the clouds, gathering into gloom, shutting out the moon.</p>
344	<p>It was Bree who got me to my feet helped me to the car put me on the seat kept me semiupright on the long ride home</p> <p>Bree, who staunched the blood</p> <p>straightened up my clothes unsmeared my makeup brushed my hair smooth</p>



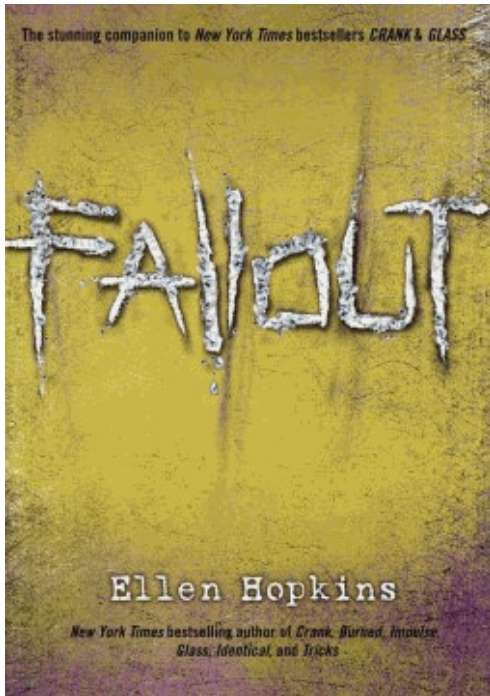
Page	Content
	willed strength against the aching claiming body and soul Bree, who understood that, wasted on crank, there was nothing I could do but plot future revenge.
352	I've got two boyfriends. One is too busy trying to keep me out of trouble. The other just raped in I think it was rape, anyway. Can you define the word for me? Oops I'm sounding bitter. Better close now. I need to cry. (Maybe you didn't want to hear that.)
378	Don't tell me your still snorting. Have you ever tried smoking it? She was the first to even suggest it. Robyn the Reno High cheerleader proceeded to show me a whole new way to get down with the monster.
379	Robyn produced a V of crusty foil, tapped in the crumbs of powder. This little bit will right to your brain and won't clog your sinuses.
401	Can't rape the willing. "That's what I've heard." I turned to his side. "How about you? Are you willing?"
402	I started crankin' to keep up with schoolwork around gymnastics, cheerleading, student body council, and other extracurricular crap.
402	When I told him to stop, he said, "It's a long way back even if you don't get lost. Anyway we both know what kind of a girl you are." That stung, but not much.
403	All I could do was more crank so maybe I could halfway enjoy it. I was dirty. ...after he started, he got mean. He did things to me- terrible things, I've still got the scars- things no sane person would ever do. Of course he wasn't exactly sane. Afterward, neither was I.
404	...coaxing myself mostly awake with a whiff of white.
412	How to get high and stay that way? (Coming down was a bitch and a half.) Finding crank wasn't difficult. Most of my new crowd knew someone who dealt (or knew someone who knew someone who did).
437	I Don't know whose blade it was, whose idea it was. I don't remember saying yes. I know I didn't say no. The knife was sharp. One nick at my wrist. It didn't even hurt. It didn't seem wrong. Rust in my mouth. Rich red salt. I drank it down, asked for more. Offered my own to those who would partake. Fever. Fire. I was on fire.



Page	Content
439	"Make love to me. Please? I don't care who sees." He might have. But just then his watch beeped "two." No way. Come on, let's go!
485	Finally, I went to the pay phone and made two calls. One to Planned Parenthood. The other to Chase.
490	I Already knew my options I listened patiently as the saccharine Ms. Sweetwater outlined them again. She did confirm that should I choose abortion, my parents would not have to know. All I needed was \$500 and someone to drive me home.
502	The bitch queen? What would I tell her now? That I was pregnant? That I was pregnant because I was raped? That I was raped because I would have done anything for just one more taste of the monster?
503	Where would I find such nerve without crank to put in my mouth?

Profanity	Count
Bitch	8
Fuck	4
Piss	5
Shit	3

FALLOUT



Young Adult

By Ellen Hopkins

ISBN: 1-41695009-5



Summary of Concerns:

This book contains sexual activities; sexual nudity; profanity; drug abuse and alcohol use.

3/5

Minor Restricted
BookLooks Review Rating



Page	Content
2	We hear that life was good before she met the monster,... ...Kristina wrote that chapter of her history before we were even whispers in her womb. The monster stopped our lives, without our ever touching it.
7	It started with a court-ordered summer visit to Kristina's druggie dad. ...Mom says he wandered in late to my baptism, dragging Kristina along, both of them wearing the stench of monster sweat. ...They'd been up all night, catching a monstrous buzz. It wasn't the first time they'd partied together. That was in Albuquerque, where dear old Gramps lives, and where Kristina met the guy who popped her just-say-no-to-drugs cherry.
11	yes, and then there's her body. I'm not sure what perfect measurements are, but Nikki's got them, all wrapped up in skin like wheat-colored suede. Delicious, from lips to ankles, and she's mine. Mine to touch, mine to hold. Mine to kiss all over her flawless deliciousness. Plus, she's got her own place, a sweet little house near campus, where I can do all that kissing- not to mention what comes after the kissing-in private. I'm done with classes for the day and on my way to Nikki's, with a little extra fun tucked inside my pocket. Yeah, I know getting high isn't so smart. Ask me if I care.
12	A little weed, a little coke. Never tried meth. Don't think I out to take a chance on that monster. Catching a buzz is one thing.
14	Who was her man of the month? I've been told she slept with more than a few, but which was the one whose lucky sperm connected with the proper egg?
15	In Mom's book the story goes Kristina was date-raped by some low-life druggie lifeguard dealer. ...Who wants to believe they were conceived of a rape, even if the rape might have been somehow solicited?
16	I'm smart (Except when loaded. Then I can be kind of stupid. At least till the buzz wears off.)
20	She only smokes weed on special occasions.
22	It was an awful mistake, and it only happened once, post-football-game beer binge. God, that girl—a Vegas Rebels fan, and so a rival meant to be jeered at, not laid—was a real piece of work. Anorexic as hell, but high- horsepower motor, revved to the max...
25	The sheets on her bed are black satin. Slick beneath desire- dampened skin. Her hair is like a sunburst against the onyx-colored pillowcase. Its perfume spices the air with ginger and some exotic bloom. The scent fuels my hunger for her body. I want to own it, merge with it, become part of her. Hurry, she urges. But the tease is almost the best part of the game, so I bring her close and closer with my hands and mouth and finally I am inside her. I can't get enough, so we go and go until the only thing left is to finish. And still I want more. Problem 4: Problem
38	He moves toward me, trembling slightly. I should'a beat that boy more.



Page	Content
46	The monster is what they called their crystal.
47	So along comes the monster. Then what? Sex, obviously, or I wouldn't be here. Good sex? Bad sex? Group sex? All of the above? I mean, why did any of that have to change because they decided to get high together? I don't understand. Did they go gay in lockup? Decide they liked same-sex sex better than sex with each other?
49	I'm fifteen now and though Zoe is no longer Dad's lay of the day, I'll never forget her or how he closed his eyes to the ugly things she did to me regularly. He never said a word about the swollen red places. Never told her to stop. He had to know, and if he didn't, she must have been one magical piece of ass.
55	Maybe that's why I have also felt the gnawing desire to try crystal, despite knowing what it did to Barely There Dad to Rarely There Mom.
57	"Not since the day a wind sprint almost sent me to the hospital because my asthma (which can no doubt be attributed to your tweaking during the first trimester you were pregnant with me, and smoking the entire nine months) kicked in so hard I could barely suck enough air to keep my face from turning blue."
66	Maybe what I need to do is make us a threesome. If I belonged to some weird religious sect, that's what I'd do. Except don't all those weird religious sects expect two girls to a guy, instead of the obviously better way to go? What is wrong with women, anyway? Two dudes. One you. Yeah, baby. That's what I'm talking about. It's stupid as hell to think that way, but WTF? It's my effing daydream, isn't it? ...I pace the sidewalk, waiting, a sudden realization hits. Two guys. One girl. Can't do that. If I did, I would be my mother.
76	Especially with those DDs encased in a gray angora sweater, and her equally impressive ass advertised by a short, tight navy skirt. Wolf Pack colors are silver and blue. She's a one-of-a-kind fan,...
77	Most of them were already drinking beer.
78	My turn to flirt. "Sweetheart, I am so much better than good." Then I remember, "Hey are you interested in a hot dog?" The girls dissolve into laughter, and I realized how that sounded. I flush, hot despite the nip in the air. "Uh, I meant a Polish sausage." That makes Red laugh even harder. Is Haskins a Polish Name? The brunette's eyes are watering. And just how big is that sausage? Wow. Obnoxious. So why does the thought of a threesome cross my perverted mind? "I've never had a complaint, if that's what you mean."
92	Job Title: Drug manufacturer and trafficker. Job Description: Make easy money cooking meth and moving it, Point A to Point B. (Caveat: Ingredients are volatile.) Job Title: Boy toy. Job Description: Low pay, but all the sex you can ask for. Just lay back and spread your legs. (Caveat: Unprotected sex equals babies.)
102	...despite the fact that lately he's been downing bourbon instead of beer, along with bigger and bigger doses of meds.



Page	Content
105	Trey planted a big, not-brotherly kiss on her lips.
121	Finally she admits, It was Erica. She made me touch her in bad places. It didn't hurt me, though. But she said if I told, she'd make me sorry.
122	He was supposed to keep me safe. No one saw when he came to me, put his hand over my mouth, and said, If you tell, I'll make you sorry. Understand? He was all over me. He was on top of me. He was inside me.
126	I didn't do anything to her, but she did plenty for me.
129	Surely Darla notices the state of her high or the stench of meth sweat.
144	"At least I'm an ex-whore," joked Roselli. ...Rosselli, who has admitted a youthful flirtation with crystal meth, was a vocal supporter of the new requirement for legal prostitutes to pass regular drug tests.
145	Ambitious sex totally rocks. Especially when it leaves her damp hair splayed in silk cords across your chest, and each of her breaths lifts the cherry tips of perfect breasts. Another go-round rocks exponentially.
162	Sex and stress- not to mention weed- make a guy hungry.
163	They didn't find Ron, but they did find three grams of crystal meth, sitting right out in the open on top of her dresser.
164	A twice-convicted felon in possession of a substantial amount of ice?
177	I'd be mad too. Tiffany is a total slut. Almost every guy here has gone all the way around the world with her!
192	His tongue, when it comes, is gently. Inviting. My own tongue is accepting and... ...We are kissing. Tongue on tongue.
199	He chugs cheap beer, and the smell of weed has become a daily welcome home in the two weeks since I've been back.
206	...he yanks me into his lap and our lips weld together. Heated. Urgent. This is not a kiss of friendship. This is a kiss born of lust, and I have never known anything like it. This is unstoppable, no holds barred. This is beautiful. Crazy. A beginning. Betrayal. Addictive. Aggressive. Alive. This is something to be afraid of.
207	He lifts my shirt up over my head, kisses down my neck to the V between my breasts. Pauses. ...I answer, I unclasp my bra, offer myself to his mouth, his tongue, his teeth. ...One hand rises to touch my still exposed right breast. ...It's how I've been kneeling, legs spread across his lap, for twenty minutes.
214	I'm so lost I barely notice when my shirt comes off again, or how the cool breeze plays strange melodies up and down superheated skin. The sharp tang of Kyle's desire rises into the chuffing wind, and when my lips journey his body, they come away with a thin lick of salt. We are moving quickly toward what I didn't come here for, but I am powerless to stop him from unzipping my jeans and peeling them off me before sliding out of his own. Am I ready for this after all? The only things in the way of "all the way" are red cotton boxers and a pair of barely there panties. Ninety-eight percent of me is ready to say okay. I close my eyes against the azure glare. Kyle moves over me, expertly tries to convince the last two percent. Riffs of pleasure trill through my veins. Excite me. Frighten me. Delight



Page	Content
	me. Off go the boxers. On goes the latex. But just as he pulls at the panties, I remember that other girl, in that other town, how she watched, terrified, as the man who was supposed to protect he chose instead to harm her.
215	...trill through my veins. Excite me. Frighten me. Delight me. Off go the boxers. On goes the latex. But just as he pulls at the panties, I remember that other girl, in that other town, how she watched, terrified, as the man who was supposed to protect he chose instead ...
218	But when Kyle lowers himself over me, the kiss that finds my lips is brimming with promise. He lifts my wrists above my head, pins them purposefully to the ground with one strong hand, as if I might complain about his other hand, voyaging over my body, lingering in all the right places. It already knows me. Such intimate awareness deserves trust, and so I open myself to it. And to Kyle. He takes complete control. Instinct or experience? No matter. My body surrenders. Reacts. Invites. He is not gentle. But I am not afraid. And as we rise and rise in symphony, each note completely new to me, I think I might never be frightened again.
225	When she kissed me back, I delivered the coup de grace, making love to her on a bed blanketed thickly with petals.
226	Not only that, but she wanted to host the day for her dad (who, I'm pretty sure, would much rather spend it boinking his boss),...
227	I'm well on my way to a major buzz, here at my buddy Jason's. We're talking Jager, Heineken, and some fat blunts. It's one hell of a party. Nikki's at work, so I'm basically om my own, surrounded by stoners smoking weed. And, in a big bowl on the coffee table, are assorted meds, confiscated from who-knows-where. It's a regular designer potpourri of sleep inducers, mood enhancers, pain reducers, and, for all I know, laxatives. Everyone is welcome to play the pharma game. Only one rule applies: You have to take three.
228	"Leave the damn bowl alone," while the dimwit half asks, "What harm could three little pills do?" To pharm or not to pharm? Ah, what the hell? I close my eyes, reach into the capsule stew, grab three anonymous pills.
247	I'm thinking a serious buzz is in order. Beer will not do.
248	What may do is the pill potpourri still in my pocket. Who knows what they might really do, if anything. I reach for possible Nirvana, swallow it down with two gulps of beer.
254	In health class, Mr. Vega said most self-proclaimed virgins will resort to self-satisfaction. Just his saying the word "masturbation" out loud bellowed embers in my face. I have never...could never...At least I'm pretty sure I could never. Mr. Vega also said that the best way to know what you like is to experiment without a partner. What I like? That's up to me? And anyway, I'm afraid if I happen to figure out what I like, I might never stop doing it. OCD masturbation.
257	Bryce and me nibbling each other for appetizers while the bird roasts and the pies cool on the counter, perfuming the kitchen with cinnamon and nutmeg. Bryce leans me back over the Formica...scratch that. Fantasy, remember? Leans me back over the shiny black granite, kisses me. And not in a nice way. And I kiss him back,



Page	Content
	with every fiber of me screaming, "Go ahead. Say okay, you know you want to. Beg him to—" Except a buzzer goes off.
279	I barely have the door yanked open and we are kissing. Come up here. He pulls me into the truck and into his arms without our mouths unlocking. Lip to lip, he manages, Damn, I love you! I slide my arms around his neck, pull my head back so I can plunge into the aqua deep of his eyes. ...No that I think about it, I can taste it too, lingering on his tongue. It's not quite sweet, and reminds me of how the chem lab smells. Crystal. He uses sometimes, has offered it to me, though not since we've been together. "You buzzed?" The thought half horrifies me, half excites me.
281	To prove it, he touches me suggestively in a very intimate place.
288	Ron beat her up, possibly left a stash of meth where the cops who came calling could, or even would, find it.
292	One time she came to visit so high that she didn't realize the guy she was putting the moves on happened to be my caseworker. Not like we all couldn't tell she was lit. Her sweat-sequined skin leaked a smell like tar remover.
295	Right now I'm thinking how much she resembles a Pekingese, double-inhaling pot smoke up her smashed-in nose, snorting a little with each exhale.
299	The beer arrives. Disappears. A second round comes before the waitress can deliver our meal.
302	And you know the crystal scene. Shit makes you horny as hell. Everyone screwing everyone. Only when me and Kristina hooked up, we had chemistry. Thought for sure it was love, but you think all kinds of crazy shit when you're tweaking. Trey came home from a score and found us mid-dirty.
306	"Sure you won't change your mind?" I slide my hand beneath the ginger-scented blankets, find the satin skin of her thigh, seduce her into that perfect state of not-quite-all-the-way-awake.
311	When she found out who I was, she threw herself at my feet. Actually, a more literal way to put that is she threw herself on her knees. Right in front of me. It may have been my first oral experience, but she for sure had a fair bit of practice.
316	She smiles, leans into me, and I appreciate how beneath her unzipped jacket, a low-cut black sweater reveals truly stunning cleavage. ...I scored some amazing smoke. Thought you might like a taste. Smoke? Argh. Tempting. ...Just keep walking, she says, lighting an already rolled J. Pretend it's a cigarette. I do and she does and somehow we get away with smoking weed out in the open, on a city street. I'd be lying if I said it didn't lift my stomach, roller-coaster-style. Definitely a thrill, getting away with illicit behavior.
318	But she was not so easily dismissed. Her fingers settle gentle on my inner thigh, move slowly higher. Yeah. So? I'm not asking for commitment, and I don't want to mess up your life. I just want to give you a little piece of me.



Page	Content
319	She pulls me down a narrow alleyway, backs me against a splintered garage door. I pretend to protest, but we both know claiming I don't want this would be a lie. Shush, she pleads. Don't say a word. Just let me take care of you. She kisses me again, encourages my hands along the hilly contours of her body. And in one long, sinuous movement, she is on her knees. In total control.
326	Okay, Leah would tempt most any guy with a working pecker.
338	<p>Autumn (me?) has no control as it invites Bryce onto my bed. He pushes me back against my pillow. Peels away his shirt. Unbuttons mine. Stares down at me with love (lust) harbored in his eyes. Wow, he says, before kissing me again. Only this time, his lips move across my neck, down over my collarbone. To the soft mounds beneath. I want to say, "Wait." But it won't let me. I can barely catch my breath, but this time for all the right (wrong!) reasons. My heart jackhammers in my chest. Bryce must hear! His lips stop traveling my toros, long enough to encourage me out of my jeans. His come off too, and I might stop to fold everything correctly, but it insists I just leave our clothes heaped together and take a good long look at Bryce. Except for sex ed pictures, I've never seen a penis before. But I'm def seeing one now. "No," I want to say. But it reaches out. Touches Bryce there. Likes how the skin feels. Likes the heat. "Stop," I want to say, but it makes Autumn (me?) do things she doesn't know how to do. I realize suddenly that it means to make her go all the way. This is like watching a movie, only I can't find the remote. No way to pause. No way to reverse. Off go my panties. Now everything moves slow motion. Finally I find my voice. "Wait. I'm not sure..." It doesn't let me push him away, but it does let me say, "I'm a virgin."</p> <p>That slows him down but he doesn't want to stop. Instead he becomes gentle. You want to, don't you? I want to say, "Maybe not," but it maintains control, kisses him. "Yes. I want to." I won't hurt you, he promises. Let me make you ready. He touches that place. Kisses that place. It moans. No, Autumn moans. No, I moan. And I see that it is really me.</p> <p>Really me here with Bryce, wanting to give him all of me. I'm scared. But he has made me ready. "I love you." The words spill from my mouth just before a bright flash of pain. Breathe. He is in me when he promises again, And I love you. Did it hurt? Can I keep going. He waits for my answer. "Not too much. And yes." He starts to move. Slowly at first. Rhythmically.</p> <p>I follow his lead and together we move faster. Into the tornado. Rocked by an apple-scented maelstrom, skin to skin with the person I love, every vestige of doubt vanishes in white-hot bolts of lightning. No pain now. No sense of wrong. Everything is perfect.</p> <p>For a while, legs knotted, his fingers twisted in my hair. A foreign scent lifts from our skin. After-sex perfume. Not altogether unpleasant. Eventually he says, We should probably clean up. Ever showered with a guy before? For some crazy reason, embarrassment attacks. I've just gone all the way. And suddenly I'm worried about him seeing my naked body? "Never."</p>
344	By the time I get there, the bathroom is rain-forest steamy. We step into the shower together. Hot water streams over my bruised, used body. Bryce picks up the soap. You wash my back and I'll wash yours. He washes more than my back. And I do the same for him. It's all so decadent, all so someone other than me. I'd



Page	Content
	call it fairy-tale, but it's more like pornography. Would you look at that! It's ready for more already. You are some kind of magician. I'm not sure how long it usually takes for it to get ready again, but it definitely is. I don't think magic has anything to do with it. Just a good lather rub. And me. The second time is better than the first. Does it just keep getting better?
346	Nice time and all, but I think you forgot something kind of important. Something important, like protection. You know, birth control.
350	I only want to think about Bryce. Making love.
351	I've had champagne a couple of times. Always very small glasses. I've never, in fact, gotten drunk.
397	"She said you raped her, you son of a bitch."
398	We went out a few times, and we did a lot of crank together. ...Well, here's the deal with meth. You're not always in control, and that night everything got out of hand. I'm not proud of what happened, but the truth is, she kind of asked for it...
399	"...You forced yourself on her when she said no and that's rape." ...I did drugs. Did girls. Stole. Cheated.
401	She sort of blackmailed me into abortion money.
407	Pilfering booze. Sneaking out. Hooking up with Bryce for sex.
408	Grandfather has not missed the short pours of whiskey I've indulged in lately. They say liquor is quicker, and whiskey is definitely quicker than champagne when it comes to a good buzz. A shot or two, nothing scares me, nothing hurts me. I like how that feels.
435	We are kissing and this is not like any first kiss. There is no love here. Only want. He wants me, but that's not what I want. Not now. Not with him. And my head is spinning. And his hands are all over me. "No. Wait..." Ah, come on. You want this as much as I do. And he pushes me against a wall. Dark here. No lights. I could...But I can't. Bryce. I love Bryce. "No. I don't. Stop, please." But he doesn't even slow down. You little prick tease. His breath is run and his hands are rough. And he is strong. Too strong for my drunken struggle. Just as I'm sure he'll do exactly as he pleases, a male voice interrupts.
440	Finally I said, "Make love to me. I need to remember how it feels." It felt rough. Like punishment for his own pain.
479	Well, Wayne was recently arrested for a large quantity of marijuana.
513	The room is neat, except for a collage of empty bottles- wine, beer, gin, Coke, and mineral water.
542	But he only shrugs, puts a box of condoms in the cart.
572	I figure your new to getting laid.
585	That was yesterday and when we made love last night, a blanket of frost settling over the sleeping bag, it was different than ever before. Slower. Gentler. Less demanding, more giving. Hearts quickening in lockstep. Breath like moth wings flutter against moonlight window glass. I love you, he sighed along my skin.



Page	Content
	And I love you, desert wind blown into my hair. And when we were finished, we drew into each other's arms, warmed within our harbor.

Profanity	Count
Ass	18
Bitch	17
Fuck	29
Goddamn	9
Piss	24
Prick	4
Shit	26

GEORGE



Summary of Concerns:

This book contains alternate gender ideologies and transitioning; sexuality; non-sexual nudity; and sexual activities.

GEORGE

ALEX GINO

SCHOLASTIC

Juvenile

By Alex Gino

ISBN: 978-0-545-81258-0

2/5

Teen Guidance
BookLooks Review Rating

Add. 416

EXHIBIT 11



Page	Content
16	"That's my little bro! Growing up and looking at dirty magazines." "Oh," George said out loud. She knew what dirty magazines were. She almost laughed. The girls in the magazines she was looking at wore a lot more clothes than that, even the ones at the beach.
22	Ms. Udell patted George's shoulder. "Don't ever lose that, George, and I know you'll turn into a fine young man." The word man hit like a pile of rocks falling on George's skull. It was a hundred times worse than boy, and she couldn't breathe.
23	George hated the boys' bathroom. It was the worst room in the school. She hated the smell of pee and bleach, and she hated the blue tiles on the wall to remind you where you were, as if the urinals didn't make it obvious enough. The whole room was about being a boy, and when boys were in there, they liked to talk about what was between their legs.
37	Ms. Udell will love that you care so much about the character that you want to play her onstage, even though she's a girl and you're a boy. Plays are all about pretending, right?" ...Playing a girl part wouldn't really be pretending, but George didn't know how to tell Kelly that.
38	"...Did you know that all the characters in Shakespeare's plays were played by men? Even the girl parts. Even when they had to kiss! Can you believe it?" ..."Romeo and Juliet were both played by boys. Boys! Just think. William Shakespeare himself might have played Juliet..."
49	While Mom made dinner, George headed upstairs to take a bath. She took off her shirt while the tub filled, waiting until the last possible moment to take off her pants and underwear. She immersed her body in the warm water and tried not to think about what was between her legs, but there it was, bobbing in front of her.
50	Mom, what if I'm a girl?
51	George had seen an interview on television a few months ago with a beautiful woman named Tina. She had golden-brown skin, thick hair with blond highlights, and long, sparkling fingernails. The interviewer said that Tina had been born a boy, then asked her whether she'd had the surgery. The woman replied that she was a transgender woman and that what she had between her legs was nobody's business but hers and her boyfriend's. So George knew it could be done. A boy could become a girl. She had since read on the Internet that you could take girl hormones that would change your body, and you could get a bunch of different surgeries if you wanted them and had the money. This was called transitioning. You could even start before you were eighteen with pills called androgen blockers that stopped the boy hormones already inside you from turning your body into a man's. But for that, you needed your parents' permission.
55	George wanted to be pink so that people would know she was a girl...
61	"So you want to play a girl onstage. It's not you want to be a girl."
62	...she couldn't say the only words that blared through her brain: I'm a girl.



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63	<p>"Don't be. My dad says that men performing in non-traditional gender roles is good for feminism. He says it's important, as an artist, to be in touch with his feminine side."</p> <p>Last summer, George had seen that phrase in one of her own dad's magazines, and article called 10 WAYS TO GET IN TOUCH WITH YOUR FEMIMINIE SIDE. George had been excited to read it, but the article was disappointing. It talked about taking time to feel your emotions, which George did too much already. Worse, the article kept reminding the reader that finding your feminine side made you more of a man.</p>
70	<p>Ms. Udell would be so relieved that George was good that she wouldn't care that George was a girl. At least, not a regular girl.</p>
90	<p>"They're jerks," said Kelly. "You're not a girl."</p> <p>"What if I am?" George was startled by her own words.</p> <p>Kelly drew back in surprise. "What? That's ridiculous. You're a boy. I mean"- she pointed vaguely downward at George- "you have a you-know-what, right?"</p>
98	<p>"Girl problems?" Scott asked...</p> <p>..."No," George said. She knew that wasn't true. Being a secret girl was a giant problem.</p>
102	<p>"And you know what? If you think you're a girl..."</p> <p>..."Then I think you're a girl too!" Kelly leaped onto her best friend and gave her a hug...</p> <p>..."So you're, like, transgender or something?" Kelly whispered as best she could in her excitement. "I was reading on the internet, and there are lots of people like you. Did you know you can take hormones so that your body, you know, doesn't go all manlike?"</p> <p>"Yeah, I know." George had been reading websites about transitioning since Scott taught her how to clear the web browser history on Mom's computer. "But you need your parents' permission."</p> <p>"Your mom's pretty cool," Kelly said, her eyebrows lifted. "Maybe she'd be okay with it."</p>
103	<p>"Sometimes transgender people don't get rights." George had read on the Internet about transgender people being treated unfairly.</p>
121	<p>A sign in the far corner showed a large rainbow flag flying on a black background. Below the flag, the sign said SUPPORT SAFE SPACES FOR GAY, LESBIAN, BISEXUAL, AND TRANSGENDER YOUTH.</p> <p>Reading the word transgender sent a shiver down George's spine. She wondered where she could find a safe space like that, and if there would be other girls like her there.</p>
123	<p>If she squinted at the mirror, she almost looked like a girl. For now, anyway. Today her skin was smooth, but someday testosterone would grow a terrible beard all over her face.</p>
124	<p>"I mean, being gay is one thing. Kids are coming out much earlier than when I was young. It won't be easy, but we'll deal with it. But being that kind of gay?" Mom shook her head. "That's something else entirely."</p> <p>"I'm not any kind of gay." At least, George didn't think she was gay. She didn't</p>



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	<p>know who she liked, really, boys or girls.</p> <p>"Then why did I find all those girls' magazines in your closet?" Mom raised an eyebrow, and a curved wrinkle formed across her forehead.</p> <p>..."Because I'm a girl."</p> <p>..."...I changed your diapers, and I promise you, you are one hundred percent boy. Besides, you're only ten years old. You don't know how you'll feel in a few years."</p>
130	"Look, do you want your mom to know you're a girl?"
133	<p>"Didn't you tell her you were gay?"</p> <p>..."You know I'm okay with that, right? Before Dad left, he made me promise to take care of. He said you were like that."</p> <p>"I'm not gay," George said. Why did everyone think she was gay?</p> <p>"Whatever. I don't care. My friend Matt is gay. It's no big deal."</p> <p>..."I told her I think I'm a girl."</p> <p>..."That's more than just being gay. No wonder she's freaking out."</p>
135	<p>"...Dude, I thought you had porn or something in there, so I took a peek. You know, just to find out what kind of stuff my little bro was into. So I figured you were gay. But I didn't think you were like that." Scott popped a corn fritter into his mouth. "So, like, do you want to" - he made a gesture with two fingers like a pair of scissors- "go all the way?"</p> <p>George squeezed her legs together.</p> <p>"Maybe someday," she said.</p>
147	"You were totally like a girl." Kelly took George's hand, one of the real ones. "I mean, you totally are a girl."
153	<p>"I didn't even know it was you at first. I thought it was supposed to be Kelly, but then I realized I was seeing my son onstage, and nearly everyone in the audience thought he was a girl"</p> <p>..."I already told you, I'm a girl."</p>
162	<p>"You really do feel like a girl, don't you?"</p> <p>"Yeah, I do. Remember that time I was little, when you found me wearing your skirt as a dress?"</p>
163	George knew that seeing a therapist was the first step secret girls like her took when they wanted everyone to see who they were. "And then maybe I could grow my hair out and be a girl?"
171	<p>And she had never held a skirt in her hands like this before.</p> <p>Together, they felt magical.</p> <p>"I didn't even know you had any skirts," said George.</p> <p>"I don't wear them to school. Boys are dirty and try to look up them."</p> <p>"I'd never try to look up your skirt."</p> <p>"Of course not. You're not a boy."</p> <p>"Oh, right." George laughed. Even she was sometimes fooled by her body.</p>
182	<p>When they stepped out of the World of Insects, Kelly said she needed to use the bathroom. Melissa tensed. There was no way she could make it back home without going as well. She looked down at her skirt. She couldn't go into the boys' bathroom looking like this.</p> <p>"Melissa and I will be right back," Kelly announced, grabbing her best friend by</p>

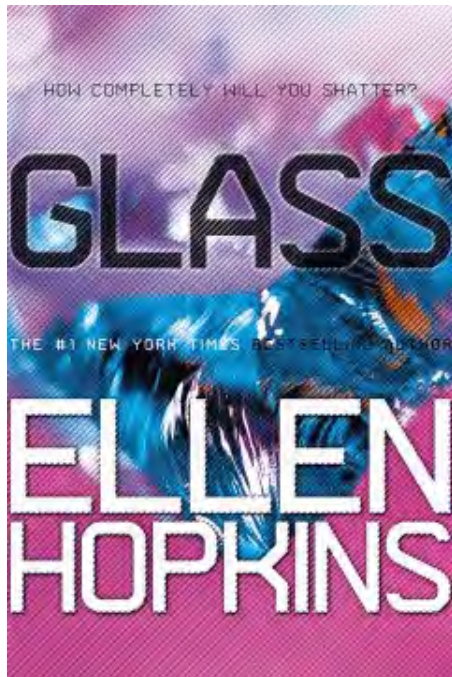


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	<p>the hand before she could protest, dragging her right to a door with a sign with the word LADIES and a stick figure wearing a triangle skirt.</p> <p>...She was standing in the girls' room.</p> <p>...Melissa locked herself in a stall, delighted for the privacy. She lifted her skirt to see her underwear, covered in tiny red hearts. She pulled it down, sat, and peed, just like a girl.</p>
200	<p>Q: Why did you write George?</p> <p>A: ...What I can say is that I didn't grow up with any positive representations of transgender people in books other than media. The first time I encountered the word genderqueer (meaning "neither a boy nor a girl"), I was nineteen, and I took that word and I consumed it- ate it and became it, because it was already me.</p>
201	<p>Q: How do I talk about the main character?</p> <p>A: Call her Melissa. That's the name she likes. If you slip and call her George, no big deal. Correct yourself if you think of it, and move on. Same thing for her pronouns. She is always a she. Always.</p> <p>Melissa is a transgender girl. If you are talking with someone who doesn't know what that means, you can say that she is a girl whom the world sees as a boy, or a girl who was assigned male at birth. You can also say that she is a girl, but she's the only one who knows it. Notice that all of these say first that she is a girl.</p> <p>...Phrases like feels like or identifies as aren't so great either. They sound as though who trans people are is up for debate or discussion. It's better to say "is." Generally, if it sounds weird saying it about a cis-gender (nontrans) person, it's probably not good to say about a trans person. Do you "identify as" your gender? Or is it just who you are?</p> <p>Please be aware that language for trans people is developing and changing as our community grows and matures, questions the ways that we have been talked about, and explores alternatives. And the same words don't work for everyone. For example, some trans people do consider themselves to be in the wrong body. Be open to developing and changing language.</p>
202	<p>Q: I mean, what are your pronouns?</p> <p>A: ...I use the singular they and the honorific Mx. (pronounced "mix"). For example, you might write this about me: When Mx. Gino finishes this FAQ, they will send it to their editor and get themselves a piece of chocolate.</p>
204	<p>Q: Are you a lot like Melissa?</p> <p>A: I'm not that much like Melissa. Melissa is a binary trans girl, which means that she is a girl even though she was assigned male at birth, and she will grow up to be a woman. I'm genderqueer, or nonbinary, so I'm neither a girl nor a boy. Also, Melissa is growing up with access to the Internet and information about being transgender.</p>
206	<p>Using the name a transgender person no longer uses (and that is probably connected with a gender that is not theirs) is called deadnaming, and it is extremely rude.</p>
209	<p>Q: I think I might be transgender (or gay, lesbian, bisexual, queer, etc). What should I do?</p> <p>A:...If you can access the Internet, you can read up on as well as connect with other LGBTQ people.</p>



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212	Probably the most important thing is using someone's name and pronouns. ...When you do make a mistake, apologize, correct yourself, and try not to make a big deal out of it. Please do not go on and on about how bad you feel. The trans person doesn't need to take on your guilt, and it puts them in an awkward social position where the easiest way to end the conversation is to say, "Oh, don't worry about it" or "It's okay." It's not the trans person's job to make you feel better here.
231	Geore is only one story. It is the story of a white, middle-class transgender girl growing up near New York City, written by a white, middle-class genderqueer person who grew up on Staten Island, New York.

GLASS



Young Adult

By Ellen Hopkins

ISBN: 66-20164

Summary of Concerns:

This book contains inexplicit sexual activities; profanity; suicidal ideation; and drug abuse.



Minor Restricted
BookLooks Review Rating



Page	Content
2	All about my dive into the lair of the monster drug some people call crank. Crystal. Tina. Ice.
3	Where "everyday" became another word for making love with the monster.
10	Hard on the make, Brendan shared booze, cigarettes.
12	Not losing my virginity to Brendan's rape. ...He even swore to love me when I told him I was pregnant. Pregnant. And Brendan was the father. Bree considered abortion. Exorcism.
30	One is eighteen and gay, in the city where homosexuality is almost as dirty a word as "Democrat."
38	Get out of school or off work, put on clean clothes, and look for a way to escape reality- whether that's with alcohol, weed, or my all-time favorite: speed. Pot and beer mostly make me tired. I only used to use them when I was buzzed up real high, didn't mind slowing down a little.
41	(...You've hooked up with Robyn- even if she isn't exactly on time- score, toot a little, and start back.)
61	Looking back, I wish I had a different teacher, one who really cared about me. Looking back, I wish I had parted my lips- opened my mouth wide and invited his tongue inside- for Quade.
75	Spoken like a true tweaker. Oh, and speaking of tweak... He reaches down into his sock and produces a plastic bag with some serious-looking crystal.
76	Robyn is making a sizable buy. I sit, growing more anxious with every passing second, watching her weigh a half ounce of meth into eight balls. She's into the deal, heavy. I mean, there she is, holding enough crystal to send her away for a very, very long time. My hands shimmy as I reach for the bundle Robyn passes me. It's different from the meth making the rounds last year. This is hard little rocks and not much powder. Robyn pulls out a glass pipe, but I ask, "Can we do some lines?" I long for that punch to my sinuses. The one that hard-core users can no longer handle because of the gaping sinus-cavity holes. Trey gives me a strange look, and Robyn says, Jeez, it has been a while since you've used, huh? You can't snort glass, Kristina. You have to smoke this...or shoot it. You're not into needles by chance, are you? ...And, apparently, no fine white lines to watch disappear into my nose. ...You can still find street-lab crank. This is Mexican meth, as good as it comes, maybe 90 percent pure. It's pricey, of course. And worth every damn penny. How much is that, I want to know, but before I can query, Robyn drops a sparkling rock into her pip. She lights a Bic, holds it well under the glass, and a fine plume of methamphetamine smoke lifts to greet her open mouth. The pipe travels next to Trey, who indulges, then passes it on to me. My hand trembles, anticipating treasure. Long-lost treasure. One slow, easy inhale sparks little explosions inside my brain, firing directly into the pleasure center, igniting ecstatic bursts from eyebrows to toenails. Trey was right. Whatever it costs, it's worth it. I want to feel this great all the time.
79	Trey said the glass was pricey. Now, he clarifies, So the eight ball is three hundred.
82	Between that and the toot, my mouth won't stop working.
83	His knee rests against mine. The warmth of it fights the crystals chills, and turns me on completely. ...Robyn flashes a tweaker's smile, one that says, Don't fuck with me, or I'll pay you back good.
85	Not a single vicious comment about Daddy the rapist.
88	His hand brushes mine like a summer kiss. Heightened by the meth spinning circles in my brain, his simple touch- not to mention his request- sparks shivers, thigh to neck.



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89	I start to leave. Reconsider, knowing I'll want to stop for a small pick-me-up along the long road home. "Oh, hey. Can you spare a piece of tinfoil and maybe a straw? I've got zip for paraphernalia. Let's make you a pipe, Trey tells me. How about a light bulb, Robyn? She obliges, and in a matter of minutes, Trey turns it into a smoking device.
90	Now just drop a rock, right in there...He demonstrates with one of Robyn's. Hold the lighter right about here...A thin, plume of smoke lifts, and Trey is quick to inhale.
95	I want him all over my body.
98	Halfway home I stop for a small pick-me-up not because I particularly need it (my eyes are wide, wide open), but because I can. I have stash. It's talking to me. One little hit, my heart revs high, then settles into quick-step mode. How I've missed that race and pound. How I've missed the lack of control.
107	But meth and nicotine buddy up real fine.
109	I suck the poison slowly, with great, immediate pleasure. It's almost as good as...
133	I don't want to tell her drugs- and maybe sex- mean more to him than anything, though I know in my heart that's the truth.
135	Of course, the first thing I did when I got up was sneak around for a quick toke.
151	As we pass the counter the smell of fresh tobacco almost makes me reel. Damn, would I love a smoke!
155	So why do I take a little detour, drive up the gravel road toward the quarry, dust sifting over the LTD, find a spot under a tree, and, despite being pretty damned buzzed already, take another short stroll with the grabby monster? ...The crystal is better, true, so I know addiction is even likelier than before.
156	Before, I got high as a way to socialize, to fit in with the crowd, feel less inhibited around guys.
159	Truth be told, I'm wasted.
161	I can't look her in the eye- not with pupils the size of dimes- and I'm afraid if I hug her she'll catch a sold scent of ingested crystal.
182	When my buzz starts to wear off, I find an excuse to sneak off to my car, grab a toke, maintain the very sharp edge I'd honed earlier.
188	I won't even try to sleep tonight. I've spent all day climbing to anxious heights, me and my buddy the glass monster, reaching for a better buzz, a taller head, one more little whiff (what could it hurt?), finally cresting steep cliffs of speed, rising above mundane, towering over ordinary.
199	...I know Dad will be asking to share what's left of my stash,...
213	I want to take you out tomorrow night for your birthday. As you can probably tell, I brought a little go-fast along, but it's mostly gone. I'm thinking you've got stash of your own. Can you spare some? ..."I have a little I can spare," I admit. "But only about a half a gram." If I give you some cash, can you score some more?
221	But I'll want a taste. I hope he means a taste of crystal, not a taste of Kristina.
225	Wonder whose crank they're snorting. Wonder how short the ball will be. (The two-hundred-dollar price tag makes sense now. We're getting street crank, not ice.) Wonder how cut it will be.



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232	I'll go out tonight with Dad and Linda Sue. We'll blow through this awful eight ball. Then I'll move on without the monster breathing against my neck, begging me to do one more little whiff.
236	Okay, I need to get high, totally out-of-my-head wasted, so I don't keep thinking about the same old shit,...
241	...Dad, Linda Sue, and I dive into the half-ass crank. Dad's got a big glass tray, which he sets on the cracked Formica table in their dog-eared motel room. ...He opens the bindle, says nothing about the powder inside. ...Dad draws huge lines. He hands me the straw. The birthday girl always goes first, right? One long, deep inhale up the right nostril, followed by another up the left.
243	He slides the tray under her face. ...A girl only turns eighteen once, you know.
244	...totally nasty, like swap clubs or strip clubs or titty shows...
245	Let's take a snort, then give it a try. He pulls out his little amber bottle, the one with the tiny silver spoon attached to the lid by a little chain.
246	The crank is definitely mediocre, but it does the job if you do enough,...
266	(Speaking of hands, wonder how his will feel, touching me.)
267	Oh my god, the anticipation is making me totally insane! Every nerve in my body buzzes, high-voltage want. I want to get high. I want to be kissed. (How long it has been!) I want to give myself away. I want to be stunned by passion so intense it knocks me right off my feet, down to my knees, where I know I'll surrender to this luscious insanity.
271	He's the whole package. Okay, and I want to unwrap it, explore what's inside, under the denim.
272	He loads his pipe, hands it to me. I can't help but smile at the meth- a clear shard of glass. I inhale gently, gratefully, pass it back for him to do the same, close my eyes to ride the giant rush. Trey is generous. Within a few minutes, I have climbed to a very tall buzz. So what do you think? Was I lying? "It's the best meth I've ever done." He touches my knee. You want more? "Absolutely." (And more glass, too.)
273	To help my decision, he passes the pipe. "I get paid tomorrow. Can you wait?" I'll be here. But I don't want to wait for... We're kissing. Long. Deep. Amazing.
279	Which would come first? The meth? Or me?
285	Sex with him is definitely not out of the question. Maybe even tonight. So am I a whore?
286	The glass makes me brave, sends waves of sensuality throughout my body.
296	I let my fingers creep up his thigh, feel an immediate reaction. ...Trey's right hand falls upon my left, moves it higher up his leg.
306	He kisses me- full on the mouth, hard on the mouth, and when he moves lower, I begin to tremble. Shiver.
311	Trey takes me (and a whole lot of crystal) back to my car.
312	Well, Trey and ice. Every morning before work, I get high. Every day after work I go home, I get high. Not too high, just maintenance high. I'm at a point where that's enough to stay semisane, but not so much that I can't eat.
314	I think he knows I'm high, think he's high himself,...



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315	...Mom always warned me against storeroom sex.
323	We're barely through the front door and already kissing like there won't be a tomorrow, and if there isn't, this time together will be worth every irate word at home.
324	We indulge in a taste of the monster, losing our clothes before we're finished. Then I'm back in his arms and he's doing those things to me again, those things I've only read about before making love with Trey. They're real. He takes his time, shows me new ways to make him feel good too. Fueled by ice, it all takes a very long while, but finally we both ascend about as high as two people can. Despite the glass, we float in a sea of exhaustion.
332	Cigarettes aren't illegal, but crystal meth is, and I won't have that stuff in my house.
334	"Can we catch a buzz?"
336	Got high, talked with Brad. Talked with each other. Kissed. Talked. Kissed some more.
382	...I was the one donating most of the ice. ...He drank. A little. Smoked pot. A little. But no meth, and no tobacco. ...I did it all. Enjoyed doing it all, ...
383	Hey. Can you score more of that crystal? ...I'll take a ball, if you can get it.
384	Good thing I had plenty tonight, to combat the alcohol. I had half a dozen beers, something I've never done before, and beyond the high of the glass is a definite three-point-eight low. That, plus the pot, which I haven't smoked since my days with Chase, have combined to perhaps affect my driving.
399	I omit most of the story- the band, the booze, the monster.
409	He definitely doesn't like the idea of his buddies- or me- dancing with the monster.
414	Another choice: Try to find peace in the twilight zone, or climb into the monster's rocket and lift off. Plenty of time to get buzzed anon.
421	When he leaves the room, Trey pulls me into his lap. God I've missed you. I can't wait to give you your present. He kisses me, hotter this time, and beneath me, through his denim and mine, I can feel the promise of his Christmas gift soon to come.
430	Trey throws back the shower curtain. Are you getting in here or what? He moves to the back, helps me climb in past his soapy body. Hot, soothing water falls all around me, and the herbal scent of shampoo fills my nostrils. Trey snakes my body with slick, lathered arms.
432	Maybe I'm turning into a pervert. (Join the club!)
433	Trey clears his throat, Don't you want my present? "You mean there's more?" I smile. "Of course I do." He hands me a plain brown sack. Sorry. Didn't have time to wrap it. Inside is a pipe- blown glass, milky blue swirls. Luckily, the girls are distracted by toys. I drop the pipe back in the bag. "Maybe we should break this in?" ...I should probably shouldn't smoke first.
445	I am very high. ...With the kids in bed, the guys want to party. I've partied solo for hours. Can I party more, just because I have company? (No-brainer. Ha!)



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	Smoking ice is the weirdest thing. I mean, one minute you're totally pissed at the world (not to mention the people who populate the place).
446	But load the pipe and the "righteous" part vanishes in a puff of smoke.
456	I guess I should go on the pill. But those ob-gyn visits...I haven't even gone in for my postpartum checkup, and I wasn't supposed to have sex again until after some icky doctor with plastered-on concern put his gooey latex gloves in unmentionable places; pushed here, poked there, manipulated internal organs, assessing any damage; and finally, like the act could be a gift, checking mammary glands for signs of blockage. (Whose gift- his or mine?) Nope, I didn't exactly hurry in for that. Too late now. (Hopefully not too, too late.) Shut up. I can't be pregnant because I won't be pregnant. There, I've made up my mind.
458	Possibly, I'm pregnant. Possibly, I've damaged the baby. Possibly, I will choose to abort.
465	Funny thing is, except for the easy supply of meth, life isn't much different here than it was at home.
479	Silent, but for the shush of skin against skin; the sigh of heightened senses; the exclamation of bodies, no longer strangers.
509	The worst part is, he's right. "No he's fucking me..."
514	Smoking. Waiting. Toking. Waiting.
518	It's okay, he whispers, and we're making love.
522	"That girl you told me about?" She's the one. But there have been others. Nothing serious. Sex only. I love you.
534	Now, it doesn't necessarily surprise me that Robyn is whoring for the monster, but I would never have guessed she'd sink so low as to whore for truck drivers and tourists.
535	Just like that, I move from low-to midlevel dealer.
536	If you've never been to a fancy whorehouse (and believe me, I never have before!), you might be surprised. I'm nervous, thinking the Pink Pussycat will be scary- dark, sweaty, with lots of peepholes, maybe.
538	Guess perverts dislike having paid-for sex amidst piles of clutter.
540	I'll get the pipe. I watch her inhale, eyes popping pleasure. Thank God it's not street crank. She talks about the last crank she snorted, a tip from a customer. Oh yeah, trucker love their crank. And when they're all cranked up, they lover other stuff too. The ice opens her mouth and she tells me about it. Some of 'em are really gross. I always make them shower first. No way will I let something dirty up inside me. Condoms? Yeah, they're supposed to wear them. But they pay a lot extra if you don't make them. They also pay extra for oral sex and unusual sex, including threesomes with other girls. Robyn claims she's judicious. But I know how your caution can slip, when you have a threesome with our pal, the monster.
543	I mean, screwing nasty, smelly men (without a condom, yet) to feed your meth habit (no worries about feeding your face).
545	Brad traded speed for some downers. Guess I'll have to borrow a couple.
546	I pop an Ambien and wait...
553	Four cigarettes and two bowls later, Brad calls me downstairs.



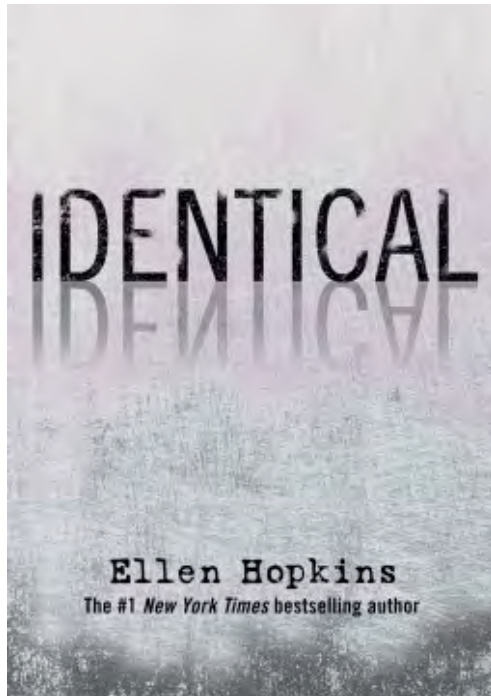
Page	Content
566	The water is high, after our massive winter. It rushes past, calling over the rock, You're not alone. I'm here, aren't I? Coaxing, Oh, the places I can take you. Ride along with me. Cajoling, Come on. It's easy. Just walk to the railing. One quick step over...Chanting, Easy. It's easy. One quick step. It's easy. I'll sing you to sleep. One quick step. I go to the railing, tilt my face over, into a cold, black breeze. Into death, reaching out for me. It touches my face, tempting me, It's easy.
573	I half-expected him to ask to come inside, smoke a little, make love a little.
577	Maybe I should get buzzed. ...We talk for a long while, and after we hang up, I get buzzed.
578	By the time Trey knocks on the door, I am very buzzed and almost beyond caring that he has finally arrived.
582	No, I told you it was sex only.
584	We seal the deal with a kiss- and more. Yeah, I'm still on my period. But you'd be surprised at all the things you can do, anyway. Trey is full of surprises, and not just sexy ones. We make love, but even as our bodies work, my brain is busy.
586	Clean, maintenance-buzzed we take my car home.
592	Can't tell her about my new career, dealing to hookers.
598	And a bottomless supply of the monster.
600	Always, we make up with heart felt apologies and great sex.
612	I'm fucked up? Heh-heh. Guess I am. While you were getting high with an old friend, hey, so was I.
613	As we roll around, I notice the pipe and its contents have spilled into the soiled carpeting. Grady doesn't think twice, rooting around like a hog in the mud. Fine. Let him have it. I wouldn't smoke that dirty stuff now.
619	"We're both crazy. I don't care, as long as you're with me. Kiss me. Make love to me, hard. Don't think about it. Hurt me more."
624	I stash a couple of pipes full, just in case everything goes to shit.
625	I offer Cesar three bills, which leaves us with sixteen whole dollars until we manage. To offer a great deal of glass.
627	Like, we really need to sell some ice right now, and everyone seems to be a little short on cash or set for the foreseeable future. Trey actually goes downtown to peddle small quantities to tourists and card dealers- and inspired way to play. Like, because we're not selling it very quickly, we're tempted to go ahead and smoke it. First the profit goes up in a cloud of exhaled ice.
642	His kisses me, and it's better than our very first kiss because I know it means more than his just wanting to get into my pants.
646	I consider that in the shower scrubbing off yesterday's sweat, last night's sex.
649	fuck
652	We live an endless mindless cycling. Buzzed. Barely buzzed. Crash. Buzzed again. Recycling. Buzzed. Barely buzzed. Crash. Buzzed again. Augmented by a different cycling. Score. Pay up. Deal. Score more. Or, depending on what's due when, Score. Forge checks. Pay up. Score more.
657	Sell a shitload of crystal.
658	We'll go west, to California, where meth was first invented and remains the drug of choice.



Page	Content
665	One of Sacramento's finest has just discovered a half pound of 90 percent pure crystal methamphetamine.
672	No longer will Trey and I share an apartment, a car, a bed. Won't share a pip. A cigarette. A kiss.
673	Guess it's too late to make that appointment with Planned Parenthood.

Profanity	Count
Ass	1
Bitch	6
Fuck	23
Piss	10
Prick	2
Shit	22
Tit	1

IDENTICAL



Young Adult

By Ellen Hopkins

ISBN: 978-1-4169-5005-9

Summary of Concerns:

This book contains explicit sexual activities including sexual assault and child molestation; violence including self-harm and suicidal ideations; profanity and derogatory terms; and drug and alcohol abuse.

CONTENT WARNING

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4
/5

Not For Minors
BookLooks Review Rating



Page	Content
8	There's Daddy who comes home every day, dives straight into a tall amber bottle, falls into a stonewalled well of silence, a place where he can tread the suffocating loneliness.
19	Except for the egg/sperm thing. Would he fall on his knees in front of me, if I were more like Mom and less like him? Would he come, begging, to me, too, let me stay, if he realized I want to love him the way Mom used to?
26	<p>He likes what I give him. I like what he gives me, too, and I'm mostly talking about the bud. I pick up my pace because right under his front seat I know there's a fat, stinky joint with my name on it.</p> <p>...Of course, he expects compensation, and after smoking a big ol' doobie, I'm generally willing to cooperate.</p> <p>Life has gotten better- or at least more bearable- since I was introduced to my good friend, marijuana. You couldn't have a more decent friend. I love everything about it.</p> <p>I love the way it smells- good green bud, anyway, and that's the only kind Mick gets. I guess his brother knows a Humboldt grower. Okay, the pot smells a lot like skunk juice. But somehow, there's a difference. A good one.</p> <p>I love the way the thick smoke tastes, curling across my tongue, snaking down my throat. I love holding it in. Coughing it out. I love head rushes, the creeping warmth that follows.</p> <p>And I love the distant place it takes me to. Everything feels right there. Mellow. Easy. Stress-free. I even love the munchies, the perfect excuse for devouring a pint of Haagen-Dazs. Of course, afterward I have to go stick my finger down my throat. Don't dare get fat. Daddy would not like that.</p>
28	<p>Mick and marijuana await me. I'm ready to pay Mick's going rate for the pot. (And I'm not talking money.) Some people would balk at the price tag.</p> <p>You might think, because of the things I've seen Daddy do, I'd be disgusted by sex. No way. I like how it feels physically, yes. Kisses, hot and prickly as August. Hands, tan and rough against my soft white skin. And the last, extreme punctuation.</p> <p>But getting off myself isn't the best part. I do everything in my power to make sure and that puts me indisputably in control. (He thinks otherwise, and I let him.) It's the only time I am in control. And I like how that feel most of all.</p>
41	Then I kissed him. Hard. Wet. Sharp stabs of tongue. My fingers drifted in between his thighs, finding exactly what they expected. Madison gave a little gasp. "Oh," I said. "Sorry, didn't mean to offend you." I laughed. Mick joined me, then said. That's my cue. See ya, Mad.
42	<p>He reached across the seat, grabbed hold of my arm. Pulled. When I resisted, he yanked harder. Hard enough to hurt. Hard enough to leave purple bruises.</p> <p>Someone smart would have screamed. Someone sane would have waited for a stop sign, thrown themselves free. Someone whole would have said no.</p> <p>Get the fuck over here and don't give me shit.</p> <p>I did as instructed. Worse, I liked that he told me what to do. It meant he cared, really cared. Right? Whatever. "Did you score some bud?" I asked, more to change the subject than anything.</p> <p>Under the seat. Twist one up, okay? We headed out Happy Canyon Road, only horses and cattle to mind our business. We could have gone home- no one there-</p>



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	<p>but I was still too made for sex.</p> <p>You know you want me. You'd take slimy seconds.</p> <p>Gross. "Yeah, right. Like your pimply butt is such a turn-on." It isn't too pimply, and it's kind of a turn-on, but that was beside the point. His hand brushed my left nipple. You love it.</p> <p>"Not while wondering who you're thinking about, Madison or me." I took a deep drag, held it. Took another without passing the joint, exhaling giant smoke puffs right in his face.</p> <p>Bogart. Pass that fucking thing over here.</p> <p>So I did, and once we were totally buzzed he pulled off onto a dirt ranch road, parked. No maid out here. Just birds and squirrels. Defenses lowered by excellent bud, I said okay to a quickie. Totally in control.</p>
57	<p>The bitter perfume of bourbon smacks me as I stumble in. It makes me thirsty. It's late, but never too late for one last shot. I tiptoe past Daddy's snoring, ease the Wild Turkey from the table. Can't really blame him for choosing redemption in a bottle. Two bottles, actually. One holds 750 ml of amber liquid. The other is small enough to fit in a pocket. Daddy has been sentenced to pain abatement a la OxyContin. The accident was eight years ago and his doctor keeps refilling, like he doesn't know about Daddy's dance with the devil.</p> <p>Like I care</p> <p>Truth is, I borrow a little Oxy every now and then too. Not often, though. It's expensive. Daddy would miss it, even if his dimwit doctor didn't. I have to admit it's tempting. It makes me feel like how you feel when you fall in a dream. Only you don't wake up. You just keep falling deeper and deeper into the darkest recesses of sleep. Especially when you help it out with a nip or two of Wild Turkey.</p> <p>Of course, I have to be very careful not to do it when Daddy's not trapped in the snare of sleep too. Wouldn't do to be lying there unaware if he came crawling to me. No, I'd want to be totally ready. But it won't be tonight.</p> <p>Fifth of whiskey beneath my arm, I slip noiselessly into the kitchen, pour two fingers, replace the bottle. Then I slither into Daddy's bathroom, help myself to a small green pill. Just one. Just enough for a free fall totally without a parachute.</p>
60	<p>I chance a sip of Turkey. Have to wet my tongue before letting the Oxy dissolve. Slowly. Nasty. Another sip. Jet fuel, hot and acrid against my taste buds. Another time, another place, I'd let myself cough. Not now. Not here.</p> <p>...I lie flat, give myself up to the Oxy/Turkey merry-go-round. Eyes closed, I star the tumble.</p> <p>Round. Round. Down. Down.</p> <p>Outside, the wind rouses suddenly.</p>
62	<p>I'm frozen solid in place just like I was that night, the first time Daddy came. A night Kaeleigh can't (or won't) remember. But I do.</p> <p>It was a year or so after the accident. Kaeleigh and I were nine, give or take. Mom had gone in for another round of surgery. She was already lost to us. Lost. Long gone.</p> <p>...Daddy smelled of Wild Turkey. Each night, we knew, he drank more and more. That night, he had drunk just enough. Kaeleigh, girl.</p>



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	<p>His voice was a soft hiss. Are you awake? Talk to me. Daddy ish-is-sh-so lonely. I'd never heard him sound like that. Like a stranger. A drunk, slurring stranger. Where was my daddy?</p> <p>Kaeleigh, all sweetness, wanted to comfort Daddy, who drew her onto his lap. Stroked her hair. Kissed her gently on the forehead. Cheeks. Eyes. Finally, on her lips, but not nasty or mean or with tongue or anything but misplaced love. Love meant for Mom.</p> <p>He just held her, kissed her. Breathed Wild Turkey all over her until they both fell asleep, woven together.</p>
64	That one innocent joining was only the beginning, but neither realized it that night. And all I could do was linger in a dark corner, sharp jabs of envy tearing my eyes.
65	<p>I guess I could have offered descriptions o Daddy's "privates" (his word), the way he wears his scars.</p> <p>...Instead, I stood by and watched father love turn to LUST.</p>
66	I fell asleep, thinking about Daddy kissing Kaeleigh, craving his kiss, understanding its significance.
80	No doubt he'll be watching the sway of Kaeleigh's hips, craving her. And a drink. Not sure which one he craves more. But tonight he'll have to play the good (sober) husband and devoted father.
82	I can't imagine her actually getting close enough to someone- anyone- to invite them into her bed, let alone her pants.
90	I eat when I'm sad. I eat when I'm lonely. I eat when I hurt so much inside, it's either eat or find an easy way to die. The only time I can't eat to total contentment is when Daddy's around. No daughter or mine will wear double-digit clothes, he said once, and meant it.
91	What she doesn't look like is a girl, all narrow hips, straight waist, and teacup breasts. And if I have my way, I won't either.
96	We empty our glasses. Mom opens another bottle, pour for us both. I'm getting drunk with my mother, and neither of us can think of a thing to say.
97	In the living room, the TV is on, but Daddy has drunk himself into oblivion.
98	Out, where I should be. Where any self-respecting sixteen-year-old should be on Friday night. Out, getting drunk with friends or, better yet, a really fine guy, instead of tying one on at home with my marble-hearted mother, no less.
99	<p>Sneaking out, getting drunk, getting high. What better way to spend Friday night? Especially after too many hours stuck at home listening to Mom's political bullshit. ...I plan to do a lot in the way of self-medication. Funny term for getting screwed up to the point of passing out. I need to be that messed up to get to sleep at all tonight. I'm totally wound.</p>
100	<p>Great place for a kegger, too. And that's our destination. Mick drives like a maniac, which would be all right except I really, really want to get high, and smoking dope and speeding don't exactly go hand in hand.</p> <p>..."If you slow down a little, I'll roll a nice big joint. And after we smoke it, just maybe I'll mess around with your nice big joint too." Okay, so it isn't eloquent, but</p>



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	<p>it works.</p> <p>He slows to right around the speed limit as I fumble under the seat, searching for his stash. This slow enough for you?</p> <p>...Finally, pay dirt. I reach into the baggie, extract a big bud.</p>
101	He reaches for my left boob.
102	<p>"Give me your lighter." Delectable smoke fills the cab.</p> <p>..."Shut the fuck up." I take a giant hit of pot.</p>
103	Needless to say I don't feel much like messing around with Mick's "nice big joint," not even after killing off the nice big joint wrapped in a rolling paper. Maybe after a beer or ten. And hey, lucky me, looks like the beer's flowing up here on Figueroa Mountain.
105	<p>He looks me up and down like he's shopping. I see. Any plans to come together tonight?</p> <p>"Nope." I part my lips bravely. "Not with him, anyway."</p> <p>He nods his head, stands. How's that beer? Need a refill?</p> <p>I shrug. "Sure. Don't suppose you happen to have anything stronger on you, though?"</p> <p>...He reaches into his jeans pocket, digging for treasure. Maybe I'll dig in there later myself. Meanwhile, I'll content myself with the giant fatty he lights. The pot is the same as (or very similar to) Mick's.</p> <p>"So..." I cough out a big hit. "You and Mick share a connection, huh?"</p> <p>...He draws in a long, deep lungful.</p> <p>I move a little closer, like I can't quite reach the joint. "Since we're sharing a hooter, can we, like, share names?"</p>
108	<p>He reaches across the short distance between us, pulls me right into him, kisses me with unexpected hunger. In the time it takes me to react to that, decide whether or not to invite more, he already has my top button unbuttoned. His hands want to go under the fabric, insist on it, in fact. I should say no. Need to say no. "W-wait," I try, but no little bit of me wants to stop and Ty intuits all of that. He doesn't stop, and I don't try to make him. And it isn't long before I throw every ounce of caution to the nonexistent wind. With only a fleeting thought of Mick, I give in to this insane desire to know this not-quite-stranger in the most intimate way. And so, I sacrifice my inner child, give myself away.</p>
114	<p>Memory strikes suddenly chokes me. Strangles me. It was dark in my room. Very dark.</p> <p>Someone had closed the curtain. I was small. Maybe nine. Mommy wasn't home. But Daddy was. He lurched through my door. That scared me. But why? He'd never hurt me before. Only touched me lovingly. Like any Daddy.</p> <p>...Don't be afraid, little flower. It's only me.</p>
121	<p>Maybe that's why I got so ballsy, had sex with Ty where I knew Mick could find us.</p> <p>...Anyway, most of Mick's brains reside in the general area of his groin. One thing for sure, sex will never be about love with Mick. I don't love him, and he definitely doesn't love me. Still, he semi-fills a gaping black hole inside me. That place wants love, maybe even needs love, but love is something I'm pretty sure doesn't exist.</p>



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122	Besides the easy sex thing, there's still the pot. I know they say marijuana isn't addictive, not like speed or heroin, which claw into you and won't let go. Pot is more of a sweet talker, and I'm all over that sexy voice. I went Saturday without it, but by yesterday afternoon, I was getting antsy.
123	Yeah, well, I could have screwed her Friday night too. I didn't, even though she wanted to.
126	Pinstripes, actually, on dark trousers, snug at the waist and across his hips, before falling loosely down over his thighs. And just as my disgusting brain gloms onto a sick image of what those thighs look like, his voice descends.
150	<p>Someone had closed the curtain. Kaeleigh was scared. I tried to tell her not to worry, but just then, Daddy burst through the door.</p> <p>I closed my eyes tight, made myself no more than a shadow. Something about him was different. I didn't want that something to find me.</p> <p>I cracked my eyes just a slit as he sat on Kaeleigh's bed, pulled her into his lap. He smelled of Brut and Wild Turkey. His peculiar potpourri.</p> <p>I love you so much, my little flower. Daddy needs something from my girl, my sweet rose. Will you give it to me?</p> <p>I wanted to be his little flower, would have given my Daddy anything. What did he want from Kaeleigh? She laid her head on his chest. "What?"</p> <p>I want you to see something, something that proves how much I love you. This is only for you, Kaeleigh girl.</p> <p>He lifted her gently, sat her down on the bed beside him. Then he opened the snaps on the fly of his flannel pajamas.</p> <p>It stood up, stiff as a stalagmite. See how much Daddy loves you? Show me you love me, too. Touch it. He closed her hand around it.</p> <p>I know it sounds bad, but I wanted to touch it too. I didn't know what it meant, only that it made Daddy happy. I wanted to make him happy too.</p> <p>That's right. That's right. His voice rocked in rhythm with his body. Oh, yes, my Kaeleigh loves me. My little flower...</p> <p>...when Daddy finished, he burrowed his face into Kaeleigh's hair and wept. Confused at his tears, and at the sticky stuff icing her hands, still Kaeleigh pleaded, "Don't cry, Daddy. What's the matter? Didn't I love you good enough?"</p> <p>...Yes, you loved me good enough. So very good! But it's our secret, okay? Because if anyone knew how much you love me, they'd be jealous. Now Kaeleigh was really confused. "Can I tell Mama our secret?"</p> <p>No! Especially not Mama. She'd get mad because she doesn't love me like you. She might even go away. You don't want that, do you?</p> <p>She thought it over. Again and again. But she finally agreed, "I won't tell." Daddy pulled her against him. Good. That's very good. It's okay to have secrets between Daddy and his girl. Just remember. No one likes a tattletale. Especially not Daddy.</p>
158	Weird. I always thought cutters were sick. Sicker than me, even. But with a single swipe I understand why they do it. Why they like it, even though they hate it. I let the water runs over the cut, ratchet it hotter, watch the blood slow, stutter, almost halt. I like the way the exposed flesh looks, all pinkish white. It looks new, although I know that isn't right.



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167	It takes all my willpower not to flinch, not to bloat his anger. His fingers catch my cheeks, pinch until my mouth opens. I'll decide what is or isn't trouble. You just follow orders. Understand? Drool dripping from my open mouth, all I can do is nod.
175	Once again we engage in easy sex, hardly a word exchanged between us. We are so not about conversation, and only body-to-body communication.
179	I noticed a definite odor of marijuana in your vehicle. Have you been smoking pot this afternoon?
184	I guess I'm pretty good at sex, but I don't think because the world needs more (even better) sex.
202	I do know a few other people who might have some bud. ...He gave me his number, for the next time you find your mouth watering for a red hot lollipop...
208	He pulls out a baggie, a quarter of some crumbly brown substance. When he cracks the bag, the perfume that escapes smells like heaven. Opiated hash. Ever tried it? I shake my head no, but Ty is quick to remedy that, filling a small pipe bowl with a miniature ball of opium-laced hashish. He takes the first toke, and now heaven's on fire, and smoking. Still holding his hit, Ty cautions around it, Little tokes, now. Don't want to cough this stuff out. Hold it as long as you can. Slowly inhale a taste sweeter than any before. Greedy me wants more, but I remember his warning.
210	Drinking. Smoking. Feeling the creep of the poppy, all along my spine, skull to tailbone. I know the high is mostly hash, not so different from regular cannabis (though even tastier). But the opium topper provides a whole new set of rushes. Body rushes, like little shivers. Head rushes, like turning in circles, round and round, don't fall down. Shall we move the party into the bedroom? Ty reaches over, kisses me. Hard. Harder. ...His teeth rake my bottom lip, move down over my chin, down my neck. Not too hard. Not really. But hard enough. Should I have warn garlic and a silver cross? I laugh out loud at the thought, and I realize how fucked up I am. ...He picks me up, carries me into his bedroom, half throws me onto the bed. When he starts to undress me, I burst into a new fit of giggles. My jeans are so tight, he can't wiggle me out of them. "Want some help, my macho vampire?" I shed everything and he does too, but before we do another thing, he asks, How 'bout another bowl? Something to take you real, real low. He leers like a scary circus clown. Low as a girl can go. True to his word he drops me real, real low. I'm floating on a poppy sea. Naked. Mellow. But a sudden wind rouses the breaks and low tide builds to major swells. Ty kisses me, all fang, pure vampire. "Hey. Take it easy." But somehow my body responds to the pain. And Ty responds to that, clamping one hand around both my wrists, pulling them over my head and pinning me helpless. It is then I notice the nylon cord, one end tied tight to the headboard.



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	<p>Ty's voice is almost a snarl. This is one of my favorite games. He wraps the rope around my wrists, knots it tightly. Escape-proof. I shake my head. "Don't." But he does. Should I scream? Would anyone hear? Would anyone care? The obvious answer softens my plea. "Please?" Haven't you played this game before? I guess I'll have to teach you the rules. The proper response would be, "Please, sir." Say it. My heart yells, "No fucking way." But my brain, the part that understands my daddy, makes me acquiesce. "Please, sir." He flips me onto my belly, yanks my legs apart. I don't have to see the restraints to know they're there. The ankle knots do not surprise me. I am helpless. Exposed. And, strangely, somehow I feel at home this way. Say it, he demands, like I should know he means, Please, sir. Punish me. Deliberate, controlled, he punishes me. I whisper into the pillow, "I understand." I understand why Kaeleigh like the feel of slicing her flesh, releasing bottled-up hurt. Leather snaps against my skin, and I remain still as stagnant water, afraid I might not play by his rules. This is a new game, and the sick thing is, I see quickly that I like it, might ask to play it again. The pain is fuzzy at the edges, blurring toward pleasure. Maybe it's the hash, the gentle arms of opium. And now new leather- human, Ty- falls softly over the heated welts, a soothing balm of sweat-beaded skin. But then heightened pain, forced inside me, stuffed inside me. Seared, branded, likely marked, a moan escapes me and Ty surges. After, knots loosened, a rub of cool eucalyptus oil persuades me I do want to play again. Soon.</p>
228	They're about the same as straight sex and gay sex- some similarities, but different in ways that really count.
232	<p>I slip into Daddy's bathroom, and this time when I "borrow" his Oxy, it's not for me. Okay, one is for me. The other three are for Daddy. I can't slip all three into a single drink or he'd taste it for sure. This will be a seduction. One I know he can't refuse. He finally roars in, and I've already mixed him a highball, long on Turkey, short on Oxy. That will change as the evening progresses. He gives me a look but takes the drink anyway. Thanks. I need this. ...I hand Daddy the Oxy-tainted highball glass as Kaeleigh answers, I didn't mean to be late, Daddy.</p>
235	<p>I watch the two of them stuff their faces, fix Daddy one last drink. Between the rich food, stiff Turkey, and three Oxycontin, he'll be fast asleep in a few minutes. Most of the evening's drama behind us, I slip off to the bathroom. Kaeleigh's disgusting food binge made me want to purge. It's more than a habit. It's a need. Experts even call it a disease. However you classify it, though, it's not about body image. At least not for me. For me, it's all about maintaining a modicum of control, especially when everything goes completely ape-shit.</p>
236	<p>But I do like the cool of the porcelain on my face, the solid of tile beneath my butt. Most of all, I like my belly emptied, even temporarily, of food. Of fat. Of pain.</p>
237	<p>Now that I've evacuated my stomach, I can swallow the Oxy I borrowed for myself. Pop the pill, chase it with whiskey, crawl into bed. Pray such seduction brings dreamless sleep. Seems to take a long time for the sleep aid to kick in.</p>



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	...The gathering haze does not conceal memories of another night. Kaeleigh was ten.
238	<p>Daddy had been back to Kaeleigh for "lollipop licking" (my term) a few times. She had a vague notion that it was "wrong," but she wasn't sure why, and didn't know who to ask. They'd probably just be jealous.</p> <p>That warm summer night, she slept in a thin white nightie, nothing more, nothing at all under. The moon, full, shimmered against the tan of her exposed skin, and her hair whispered over the pillow like a pale waterfall.</p> <p>As usual, the smell of Wild Turkey preceded Daddy. In the bright moonlight, you could see Kaeleigh cringe in shallow sleep. Daddy crept thought the door, to the side of the bed, stood looking down for a very long time before stirring her with a volley of kisses. Cheeks. Forehead. Lips. Oh, little girl. Do you know how beautiful you are? No one was ever as lovely as you, not even your mother when she was a child. I can't believe you're mine.</p> <p>Kaeleigh roused at his words, came into the moment, secure in the aura of Daddy's love. She tried to sit up, but Daddy pushed her gently back down against the mattress. Stay just like that for Daddy. I want to teach you something new. He lifted her nightgown, rolled it up over her belly, coaxed her Thoroughbred legs apart. She squirmed, a paltry protest.</p> <p>Don't move! Daddy's scarlet face underlined his command. I thought he might smack her.</p> <p>But as quickly as his anger flared, it dissipated, smoke. Don't be afraid. This won't hurt. You'll like it. I promise. He kissed the length of her torso, down to the small, naked V.</p> <p>It was only his mouth that night. He didn't even ask her to touch him, prove how much she loved him. Afterward, she worried. Didn't he want her love anymore? What had she done wrong? And yet, he had taught her something new. Something awful.</p> <p>Worse, something wonderful. Something every girl should know the joy of, though, of course, she shouldn't learn it from Daddy.</p> <p>At ten, it isn't exactly easy to separate good touch from bad touch, proper love from improper love, doting daddy from perv.</p>
245	Mom sat on an overstuffed sofa, vacant-eyed, silently sipping vodka on the rocks. Daddy gulped whiskey, and might have passed out quickly except...
259	More drugs. More men. More sex. Do you think there's really such a thing as "enough"?
260	"Let's sneak on outta here and do the dirty."
262	You'll like what I've got. I assume he's talking weed. It's been a couple of days and the truth is, I'm so wanting a buzz. I could call Ty, ask for a bit steeper high (low?). Oh yeah, how low can we go? Loaded question.
265	Truth is, more than missing Mick, I miss catching a lunchtime buzz. I wish I could just buy a personal stash, keep it around.
267	<p>Thought you kind of liked the play. Was I wrong? He reaches up, strokes my cheek gently. No encore?</p> <p>Rough play, he means and I really did like it because I'm sicker than he is.</p>



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	<p>..."An encore would be nice." I smile. "Maybe nice is not the right word, though." Nice works. So how about it? When can we get together again? He winds his fingers into my hair. Tugs gently, brings my face right down against his. Opens his mouth. We are tongue on tongue.</p>
270	<p>I triple promise I'll give him a call. Straight up, I will, because one guy will never be enough for the likes of me. Truth is, I can't believe one anything (guy, girl, whatever you happen to be into) could be enough for anyone.</p>
271	<p>I jump up into the Avalanche, scoot almost into his lap, give him an over-the-top kiss, hoping he doesn't taste guilt.</p> <p>Whatever he tastes, he likes it, wants another dose. I stop his tongue (not to mention his hands) with a single word. "No."</p>
272	<p>He starts to turn south but I stop him, with a hand on a spot too high on his thigh to qualify as "thigh." "Let's go to my house. It's empty."</p> <p>...So Mich and I will smoke up and make out in my bedroom.</p>
280	<p>Desire strikes like a cobra sinks its fangs between my legs, injects its venom. The heady creep wanders from groin to belly.</p> <p>I lift Ian's hands, urge them against the throb beneath my blouse. "Touch me. Please?"</p> <p>He want to, does, and I love his skin on mine. And then he moans, Oh, Kaeleigh...</p> <p>And suddenly a different snake strikes, with lightening ferocity. Not cobra, but python, threading itself around me, squeezing. Hissing, Oh, Kaeleigh. Oh yes, that's right, little flower.</p>
288	<p>I lean forward slightly, notice his eyes fall to what almost passes as cleavage, with a good Victoria's Secret push-up bra helping out.</p> <p>...The entire time, my legs rest gently between his, knees touching the inside of his, and despite my "lunch" with Mick today, I'm starting to feel incredibly, um...aroused.</p>
301	<p>It's not like the two of them do much screwing, at least not with each other.</p>
305	<p>Now I feel the need for liquid fun. Tucked away in a low cabinet is my parent's liquor stash.</p> <p>...The Chopin vodka, stashed in the freezer, is a different song, and I'm so ready to drink that slushy tune. I'll never sleep without it.</p> <p>...I don't really like the taste of vodka, but they say you can't smell it on the breath.</p>
315	<p>Open my skin. Right ankle. Left ankle. White flesh. Red polka dots. Ha! that's funny. Ouch. Stings. Behind right knee. Left knee. Oops. A little deep. Blood pumps. Check it out. Thump. Thump. Oh my God. Can I stop it? Who really cares? The drain runs red.</p>
319	<p>(Doing the dirty.)</p> <p>Shot one: missionary, Daddy on top.</p> <p>Shot two: doggie-style, Daddy on top.</p> <p>Shot three: can't even say it, let alone dwell on the picture, but Daddy's on top. (Always on top.)</p>



Page	Content
320	<p>Wonder who was on TOP when they did have sex.</p> <p>Sex, sex, sex I have really got to stop thinking about it so damn much, you know? Daddy and Hannah; Daddy and Mom; Daddy and Kaeleigh; Daddy and whoever; Mom and Daddy; Mom and whoever; Lawler and whoever; Mick and whoever; Ty...</p> <p>Sex, sex, sex. I have really got to stop wanting to have it, and mor and more of it. Clumsy sex (Mick); choreographed sex (Ty); imagined sex (Lawler, assorted others).</p> <p>I've been half thought about experimenting with a girl or two. Variety is the spice of life.</p> <p>Sex, sex, sex. And what goes with that? Drugs, more drugs, and alcohol, of course.</p>
332	<p>No Mick, no bud. No Ty, no better buzz, and he's much more difficult to manipulate. Dopeless sex? That could not feel good. Could it?</p>
336	<p>I'm kind of liking this blood thing. Fetish? Fixation? Not quite an obsession yet, but I can see it growing into that. Drip. Drip.</p> <p>Steady. Slow. Drip-drip. Quicker yet. Drip-drip-drip. Drip-drip-drip.</p> <p>Drip.</p> <p>Drip.</p> <p>Drip.</p> <p>I'd probably just let myself drip, but I did promise to show up at work and help out with the Halloween decorations.</p>
388	<p>Oxy dessert, to chase his Wild Turkey main course.</p>
393	<p>Kaeleigh was used to Daddy's visits, but that night she, too, felt something different in the air. Rage. Lust. Sorrow. Perversion. All mingled in Daddy's sweat. There was nothing gentle about how he threw back the covers. Already naked, he pushed Kaeleigh roughly to one side, flopped beside her.</p> <p>I could tell she was afraid. This wasn't her Daddy. This was a demon, his evil hard and sharp as steel blade, ready to slice into her. It did.</p> <p>His attack was brutal, bloody, wordless except for vicious Shut the fuck up at her pitiful scream, a plea to please, please no, Daddy, no. It hurts. Oh!</p> <p>I cowered, sick at the sight, but unable to divorce myself from the horror. I felt Kaeleigh's pain. And when Daddy was done and she cried, I cried too.</p>
402	<p>Safe in the far stall I wait for the bell to ring, picking at a scab or two. The one on my ankle is recent. I open it wide, encourage the flow. It's like milking venom from my veins. Wonder how long it would take to bleed out completely.</p>
407	<p>And, are- don't get mad- are you cutting?</p>
415	<p>"This should cover what I smoked. Please take me home now."</p> <p>Don't want your money. His zipper opens, and what escapes is eager. Then he pushes my head down. Haven't you missed me?</p> <p>I could just do it. Get it over with. Pretend it never happened. But I don't think so. It has to be my idea or not at all.</p> <p>"No, Mick. Goddammit, I said no!"</p> <p>But he's all over me and I may not have a choice. He outweighs me by a hundred pounds and he's got me pinned against the door. His fingers, clumsy, work at my own zipper. I try to push him off.</p>



Page	Content
	<p>What's wrong? You know you want to.</p> <p>"No. I really don't." But I can't stop his mouth from covering mine, leaving a wet trail of sobber all over my face.</p> <p>One hand tugs my shirt over my head, the other is inside my bra, twisting, pinching. I could just get it over with.</p> <p>See? Your nipples don't lie. You like it.</p> <p>He's too worked up to manage tight jeans, so he leans up over me, demanding I do him with my mouth. I could bite.</p> <p>But he'd probably kick my ass and finish his business anyway. I've never seen this side of Mick.</p> <p>Or maybe I have and ignored it. I can barely breathe, and the teeth of his zipper are biting into my chin.</p> <p>Atta girl. You can't say no to...</p> <p>Daddy. Daddy? Kaeleigh would just give in. The thought of her wide-eyed surrender gives me a sudden idea. But I have to play things right. First I go limp, pretend to acquiesce. I even give him a taste of what he wants.</p> <p>"Stop for a minute. You're hurting me."</p> <p>He hesitates, looks down into my eyes, which have teared up quite nicely. He draws back ever so slightly.</p> <p>I did down, beyond fear, fine Raeanne again. "If we're going to do this, you don't get to have all the fun. And can we pretty please take another hit first?"</p>
418	<p>I reach down, grab his tray, complete with maybe a half ounce of great bud. Pricey bud. I'm betting on greed.</p> <p>"Hang on. I need some light." I open the door wide, and send the tray sailing like a pot-covered Frisbee.</p>
421	<p>CONGRESSWOMAN'S DAUGHTER ARRESTED for theft of would-be rapist's truck. Says they were smoking pot after curfew when things got out of hand.</p>
441	<p>I'm celebrating pretty good right now, on two Oxy and enough bubbly to give me hiccups for days.</p>
447	<p>The Bad Thing About Puking Regularly is how you come to rely on it.</p> <p>Hungover? Go puke.</p> <p>Feel a bit fat? Go puke.</p> <p>Confused? Go puke.</p> <p>Frightened? Go puke.</p> <p>Entire world falling apart? Hurry up and go puke.</p> <p>All of the above? Puke.</p> <p>Puke.</p> <p>Puke.</p> <p>Puke.</p> <p>And puke some more.</p> <p>Totally Puked Out esophagus acid-etched, I'm ready to face the day.</p> <p>Not.</p>
459	<p>I am your little girl. I am not your girlfriend. I am not your whore. I am not my fucking mother! But he is on top of me and my shout is silenced. He is inside of me and my scream stays there too. He is finished.</p>



Page	Content
	And I don't cry out, but I do cry a bucket of silent tears. He slithers away and at last, I quietly sob no no no no no.
466	I want to know joyous sex. ...I want sex laced with love, and not warped parental love, but the honest kind. I want sex that makes me feel right, not like some freak, some inbred monstrosity. I'm no, am I?
467	Sex feels great with him, too. I guess it might be nice for sex to feel right, like the person you're with might even love you.
471	More drugs. Better drugs. Maybe it's time to graduate from pot, hash, and pills to something stronger. That opiated stuff was great. Wonder what heroin is like. I hear it drops you way down, where pain can't find you. Any Drugs would be good right this moment. Heroin. Cocaine. Maybe ecstasy. Not too sure about psychedelics. They say acid and 'shrooms make you look inside your own head, help you learn about yourself.
472	Not love to us, I'd still like to see Ty. It's been a long week with nothing to smoke.
473	Share a doob? ...A shitload of bud.
476	I'm not even drunk, not stoned, not buzzed on pills. Perfectly straight, still I'm reeling.
481	I know how to swim, have practiced the dead man's float for years, but it's frightening how much I just want to drown in this undertow of booze and pills. I drank a lot tonight, ingested an incomprehensible amount of painkillers, some borrowed from Daddy, the rest pilfered from old Sam, who seems to be suffering a lot from his arthritis. His nightstand is a pharmacy. I doubt he even noticed I lifted a handful of Percodans.
486	My lungs fill with water. Silt. Mud. Now it hurts to breathe. So I won't. I'll settle deep into darkness. And I won't say good-bye.
487	Oh my God. Her face is blue. ...I lean over the side of my bed, jet a big stream of opiate-laced Wild Turkey.
488	What did you take, Kaeleigh? Tell? Don't tell? Who cares? "Percodan." No need to mention Daddy's Oxycontin. The Wild Turkey, they can smell. Hannah sighs. How many? Her voice, sugared, irritates me now. If heaven's host sounds like her multiplied, I'll stay home. "N-not sure. A dozen?"
490	A dozen painkillers, washed down with whiskey. That wasn't an accidental overdose, Ray.
501	...extract eighty bucks from my private stash, pop a single Oxy to steady my nerves,...
503	I swallow one more pill for good measure, steel up courage.
506	Charlotte shared most of her time with a whiskey bottle, and so devoted little to your father or me.



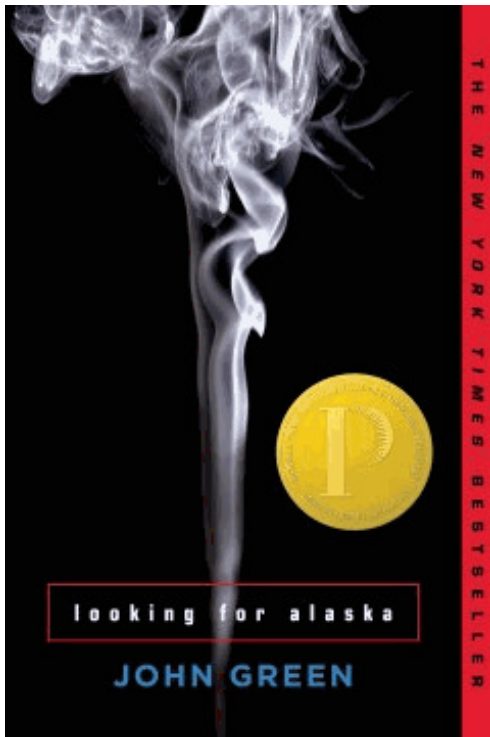
Page	Content
507	I found your father, on a swing with a young girl, about his age. They were naked, playing with each other. Miranda was directing them, and her boyfriend was taking pictures. ...Your father gained his manhood, if you could call it that, at the age of ten. His photographs appeared in magazines, for the pleasure of pedophiles.
516	He comes back with a party in a box. You want to get buzzed, right? I nod and next thing I know, we're smoking black African bud. It's not really black, but it's definitely purple, the buds big around my fist. And it tastes like absolute heaven. Almost immediately, my eyes grow heavy and my tongue thick. "Incredible," I manage, sounding more like "incredible." ...The other part tells the first to shut up, quit trying to fuck my high.
517	How far will you go with me? He kisses my mouth. My throat. Will you let me draw blood? He bites my neck, and a moan escapes my mouth, unbidden. How high will you let me take you? For once, I want to relinquish control. For once, I want to completely let go. "You decide." His grin is pure evil. That's my girl. He yanks my blouse over my head, spills me from my bra. He kisses, bites. I'm already lost, but hungry for more. He pulls me to my feet, hands all over me...
519	I'm right here, and I'm...too fucking stoned to deal with this now.
520	Too much fucking good bud.
523	They tell me it's withdrawal from OxyContin.
530	I told her, "Where Daddy touched me." She looked and her face grew red.
536	Speaking of drugs, I could use a big fatty right about now. How will I ever score after I get out of here? And which one of me is the loadie, anyway? I'm sure getting high isn't good for my "condition," but how can I not, if I have to go home?
537	Fuck that. All he did was have sex with Mom. Probably just one time. ...That, I'm pretty sure, I got from you. "That, and a great sex education." Sex is disgusting.
542	Turns out the electrolyte imbalance is real, the result of not only puking from Oxy withdrawal, but also the binge-and-purge cycle that my alter and I seem to have shared. ..."You eat. I'll throw it up. You'd be a regular oinker if not for me." ..."...And I need to get high." ...Drug abuse. Alcohol. Bulimia... "Don't forget that lovely bit about shaving until you slice yourself open." And that's the easy stuff. Promiscuity. ...And the granddaddy of all- fucking Daddy. "More accurately, letting Daddy fuck you and keeping it to yourself." Even if I tell her every bit of it, there's no guarantee she can fix me. Suicide sounds



Page	Content
	better and better. "Yeah, but you'd have to get it right. Or maybe, just leave that to me."
544	What do I have to live for? Can't think of a single thing.
552	And when he couldn't give me the life I was used to, I fell into addictions. Whiskey. Cigarettes. And, to fight my depression, Prozac.
553	Alcoholism is not a pretty things, and I was an ugly alcoholic. I moved in with a string of men.
555	I was drunk but not too drunk to take in what was going on. Your mother was gone, and your father was washing you. Only the way he was washing you was all wrong. He was touching you in a sexual way. Kaeleigh. I confronted him, but he just laughed in my face.
556	Instead I drank even more to forget. I drank until one day I looked in the mirror and saw death.
563	But I have to admit, I've smoked a little bud. Not that much. I'd probably do more, but it's expensive. And now it's cash-and-carry. I still use food for comfort. I still purge when I get too comfortable. And once in a while, when memory intrudes, I still enjoy a good, deep shave.
564	When I do those things when I use or purge or cut, I'm still not myself.

Profanity	Count
Ass	12
Bitch	9
Faggot	1
Fuck	36
Piss	8
Prick	1
Shit	17

LOOKING FOR ALASKA



Summary of Concerns:

This book contains sexual nudity and sexual activities; moderate profanity use; alcohol use; and gender ideologies.

Young Adult

By John Green

ISBN: 0-525-47506-0

0-525-47506-0



Minor Restricted
BookLooks Review Rating



Page	Content
30	"...I'm in the middle of a sentence about analogies or something and like a hawk he reaches down and he honks my boob. HONK. A much-too-firm, two- to three-second HONK. And the first thing I thought was Okay, how do I extricate this claw from my boob before it leaves permanent marks?..." ..."...She got her boob honked over the summer." She walked over to me with her hand extended, then made a quick move downward at the last moment and pulled down my shorts.
32	"Don't grab my boob." The Colonel gave an obligatory laugh, then asked, "Want a smoke?" I never smoked a cigarette, but when in Rome...
38	"...But there is so much to do: cigarettes to smoke, sex to have, swings to swing on..."
44	Lying naked in bed together ("genital contact" being offense #1), already drunk (#2), they were smoking a joint (#3) when the Eagle burst in on them.
45	...I spent the night surfing the Web (no porn, I swear)...
81	"He loves weed like Alaska loves sex," the Colonel said. "This is a man who once constructed a bong using only the barrel of an air rifle, a ripe pear, and an eight-by-ten glossy photograph of Anna Kournikova. Not the brightest gem in the jewelry shop, but you've got to admire is single-minded dedication to drug abuse."
90	Since we only have four layers of clothes from doing it, I took the opportunity to introduce myself.
92	"Studies show that marijuana is better for your health than those cigarettes," Hank said.
103	"...You thought she was quietly discussing precalc, when she was clearly talking about having hot sex with you..."
104	"She has great breasts,""DO NOT OBJECTIFY WOMEN'S BODIES!" Alaska shouted. Now he looked up, "Sorry. Perky breasts." "That's not any better!" "Sure it is," he said. "Great is a judgement on a woman's body. Perky is merely an observation. They are perky. I mean, Christ."
105	She jumped onto him and wrapped her legs around him (God forbid anyone ever does that to me, I thought. I'll fall over). I'd heard Alaska talk about kissing, but I'd never seen her kiss until then: As he held her by her waist, she leaned forward, her pouty lips parted, her head just slightly tilted, and enveloped his mouth with such passion that I felt I should look away but couldn't.
107	"Did I tell you that Jake is hung like a horse and a beautiful, sensual lover?"
108	"I don't know if this is the best time to tell you this," the Colonel shouted at the Beast, "but Takumi here hooked up with your girlfriend just before the game."
113	"...How will stabbing one another in the back help women to rise above patriarchal oppression?!"
128	I woke up half an hour later, when she sat down on my bed, her butt against my hip. Her underwear, her jeans, the comforter, my corduroys, and my boxers



Page	Content
	between us, I thought. Five layers, and yet I felt it, the nervous warmth of touching- a pale reflection of the fireworks of one mouth on another, but a reflection nonetheless.
130	...and scooted up to put her head in my lap. My corduroys. My boxers. Two layers. I could feel the warmth of her cheek on my thigh. There are times when it is appropriate, even preferable, to get an erection when someone's face is in close proximity to your penis. This was not one of those times. So I stopped thinking about the layers and the warmth, muted the TV, and focused on Decapitation.
137	"He's just happy most everyone's gone. He's probably masturbating for the first time in a month."
139	Her hand above my knee, the palm flat and soft against my jeans and her index finger making slow, lazy circles that crept toward the inside of my thigh, and with one layer between us, God I wanted her. ...And I steeled myself to say them as I stared up at the starriest night, convinced myself that she felt it, too, that her hand so alive and vivid against my leg was more than playful, and fuck Lara and fuck Jake because I do,...
143	"Don't look at my ass," she said, and so I looked at her ass, spreading out wide from her thin waist.
145	"...Sex is pretty fun...." ..."You're hopeless. Wanna go porn hunting?" "Huh?" "We can't love our neighbors till we know how crooked their hearts are. Don't you like porn?" she asked, smiling. "Um," I answered. The truth was that I hadn't seen much porn, but the idea of looking at porn with Alaska had a certain appeal.
146	I was stunned by how many people had booze. Even the Weekday Warriors, who got to go home every weekend, had beer and liquor stashed everywhere from toilet tanks to the bottoms of dirty-clothes hampers. "God, I could have ratted out anyone," Alaska said softly as she unearthed a forty-ounce bottle of Magnum malt liquor from Longwell Chase's closet. ...She stared at it, then pulled out the King James Bible, and there- a purple bottle of Maui Wowie wine cooler.
146	And we found plenty of porn magazines haphazardly stuffed in between mattresses and box springs. It turns out that Hank Walsten did like something other than basketball and pot: he liked Juggs. But we didn't find a movie until Room 32,"The Bitches of Madison County. Well. Ain't that just delightful." We ran with it to the TV room, closed the blinds, locked the door, and watched the movie. It opened with a woman standing on a bridge with her legs spread while a guy knelt in front of her, giving her oral sex. ...A woman crouched on her hands and knees while a guy knelt behind her. She kept saying "Give it to me" and moaning, and though her eyes, brown and blank, betrayed her lack of interest, I couldn't help but take mental notes.

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	<p>Hands on her shoulders, I noted. Fast, but not too fast or it's going to be over, fast. Keep your grunting to a minimum.</p> <p>As if reading my mind, she said, "God, Pudge. Never do it that hard. That would hurt. That looks like torture. And all she can do is just sit there and take it? This is not a man and a woman. It's a penis and a vagina. What's erotic about that? Where's the kissing?"</p> <p>"Given their position, I don't think they can kiss right now," I noted.</p> <p>"That's my point. Just by virtue of how they're doing it, it's objectification. He can't even see her face! This is what can happen to women, Pudge..."</p> <p>..."Look me in the eye and tell me this doesn't turn you one, Pudge."</p> <p>I couldn't. She laughed. It was fine, she said. Healthy.</p>
151	<p>"...All I remember is that she had a lot of sex."</p> <p>"I know. She's my hero," Alaska said without a trace of irony.</p>
155	<p>She said that it was sexist to leave the cooking to women, but better to have good sexist food than crappy boy-prepared food.</p>
158	<p>"COOSA LIQUORS' entire business model is built around selling cigarettes to minor alcohol to adults."</p> <p>...headed to the aforementioned Coosa Liquors.</p> <p>..."Which is great, if all you need is cigarettes. But we need booze. And they card for booze. And my ID blows. But I'll flirt my way through."</p> <p>...Alaska went in alone and walked out the door five minutes later weighed down by two paper bags filled with contraband: three cartons of cigarettes, five bottles of wine, and a fifth of vodka for the Colonel.</p>
162	<p>"Don't you know who you love, Pudge? You love the girl who makes you laugh and shows you porn and drinks wine with you. You don't love the crazy, sullen bitch."</p>
167	<p>"French, Feel, Finger, Fuck. It's like you skipped third grade," Alaska said.</p>
186	<p>I wanted to like booze more than I actually did (which is more or less the precise opposite of how I felt about Alaska). But that night, the booze felt great, as the warmth of the wine in my stomach spread through my body. I didn't like feeling stupid or out of control, but I liked the way it made everything (laughing, crying, peeing in front of your friends) easier. Why did we drink? For me, it was just fun, particularly since we were risking expulsion.</p>
188	<p>"...and neither are the countless bitches that call me lover."</p> <p>..."Oh shit did you just diss the feminine gender/I'll pummel your ass and stick you in a blender..."</p> <p>..."...objectify women and it's fuckin' on..."</p>
191	<p>"We are all going to puke if we just drink. So we'll slow it down with a drinking game. Best Day/Worst Day."</p> <p>..."...The best storyteller doesn't have to drink. Then everybody tells the story of their worst day, and the best storyteller doesn't have to drink..."</p>
204	<p>Soon we were entirely out of our sleeping bags, making out quietly. She lay on top of me, and I held her small waist in my hands. I could feel her breasts against my chest, and she moved slowly on top of me, her legs straddling me. "You feel nice," she said.</p>

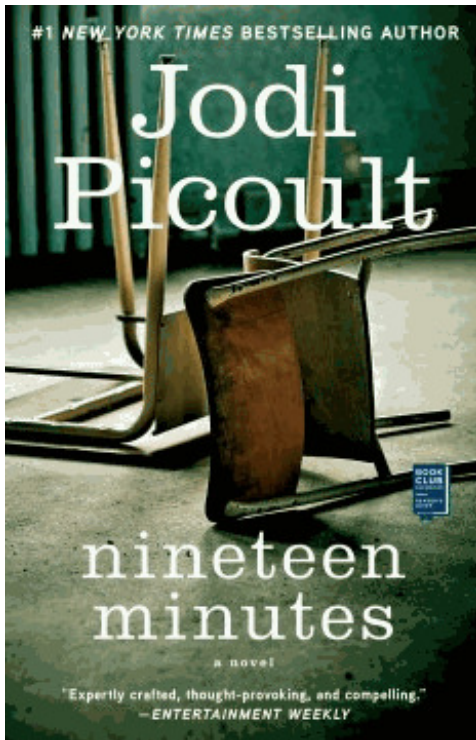
Page	Content
210	<p>"Have you ever gotten a blow job?"</p> <p>..."I've just never given one," she answered, her little voice dripping with seductiveness. It was so brazen. I thought I would explode. I never thought. I mean, from Alaska, hearing that stuff was one thing. But to hear her sweet little Romanian voice go so sexy all of the sudden... "No," I said. "I never have." "Think it would be fun?" DO !!?!?!?!?! "Um. Yeah. I mean, you don't have to." "I think I want to," she said, and we kissed a little, and then. And then with me sitting watching The Brady Bunch, watching Marcia Marcia Marcia up to her Brady antics, Lara unbuttoned my pants and pulled my boxers down a little and pulled out my penis. "Wow," she said. "What?" She looked up at me, but didn't move, her face nanometers away from my penis. "It's weird."</p> <p>"What do you mean weird?" "Just big, I guess." I could live with that kind of weird. And then she wrapped her hand around it and put it into her mouth. And waited. We were both very still. She did not move a muscle in her body, and I did not move a muscle in mine. I knew that at this point something else was supposed to happen, but I wasn't quite sure what. She stayed still. I could feel her nervous breath. For minutes . . . she lay there, stock-still with my penis in her mouth, and I sat there, waiting. And then she took it out of her mouth and looked up at me quizzically. "Should I do something?" "Um. I don't know," I said. Everything I'd learned from watching porn with Alaska suddenly exited my brain. I thought maybe she should move her head up and down, but wouldn't that choke her? So I just stayed quiet. "Should I, like, bite?" "Don't bite! I mean, I don't think. I think---I mean, that felt good. That was nice. I don't know if there's something else." "I mean, you didn't---" "Um. Maybe we should ask Alaska." So we went to her room and asked Alaska. She laughed and laughed. Sitting on her bed, she laughed until she cried. She walked into the bathroom, returned with a tube of toothpaste, and showed us. In detail. Never have I so wanted to be Crest Complete.</p> <p>Lara and I went back to her room, where she did exactly what Alaska told her to do, and I did exactly what Alaska said I would do, which was die a hundred little ecstatic deaths, my fists clenched, my body shaking. It was my first orgasm with a girl, and afterward, I was embarrassed and nervous, and so, clearly, was Lara, who finally broke the silence by asking, "So, want to do some homework?"</p>
217	<p>"Can't make out. Too drunk."</p> <p>..."Hook up with me."</p> <p>So I did.</p> <p>It was that quick. I laughed, looked nervous, and she leaned in and tilted her head to the side, and were kissing. Zero layers between us. Our tongues dancing back and forth in each other's mouth until there was no her mouth and my mouth but only our mouths intertwined. She tasted like cigarettes and Mountain Dew and wine and Chapstick. Her hand came to my face and I felt her soft fingers tracing the line of my jaw. We lay down as we kissed, she on top of me, and I began to move beneath her. I pulled away for a moment, to say, "What is going on here?" and she put one finger to her lips and we kissed again. A hand grabbed one of mine and she placed it on her stomach. I moved slowly on top of her and felt her arching her back fluidly beneath me.</p> <p>I pulled away again. "What about Lara? Jake?" Again, she sshed me. "Less tongue, more lips," she said, and I tried my best. I thought the tongue was the whole</p>



Page	Content
	<p>point, but she was the expert.</p> <p>...She moved my hand from her waist to her breast, and I felt cautiously, my fingers moving slowly under her shirt but over her bra, tracing the outline of her breasts and cupping one in my hand, squeezing softly. "You're good at that," she whispered. Her lips never left mine as she spoke. We moved together, my body between her legs.</p> <p>"This is so fun," she whispered, "but I'm so sleepy. To be continued?" She kissed me for another moment, my mouth straining to stay near hers, and then she moved from beneath me, placed her head on my chest, and fell asleep instantly. We didn't have sex. We never got naked. I never touched her bare breast, and her hands never got lower than my waist.</p>
233	She was warm and soft against my skin, my tongue in her mouth, and she was laughing, trying to teach me, make me better...
236	An hour after the Colonel left, resident stoner Hank Walsten dropped by to offer me some weed, which I graciously turned down.
238	<p>I am sleeping, and Alaska flies into the room. She is naked, and intact. Her breasts, which I felt only very briefly and in the dark, are luminously full as they hung down from her body. She hovers inches above me, her breath warm and sweet against my face like a breeze passing through tall grass.</p> <p>..."I'm so naked," she says, and laughs. "How did I get so naked?"</p>
290	"Is this what you told Lara in the TV room? Because, see, Pudge, they only call it a blow job."
335	<p>"The way young people speak about on another's bodies says a great deal about our society. In today's world, boys are much more likely to objectify girl's bodies than the other way around. Boys will say amongst themselves that so-and-so has a nice rack, while girls will more likely say that a boy is cute, a term that describes both physical and emotional characteristics. This has the effect of turning girls into mere objects, while boys are seen by girls as whole people-</p> <p>..."You're so hot! I wesh you'd shut up and take off your clothes."</p> <p>..."what we have here is a very interesting case study- a female objectifying me, a male. It's so unusual that I can only assume you're making an attempt at humor."</p> <p>..."I'm not keeding! Take off your clothes."</p>

Profanity	Count
Ass	13
Bitch	10
Fuck	24
Piss	19
Shit	29

NINETEEN MINUTES



Book Summary:

The events leading up and the aftermath of a school shooting are uncovered.

Summary of Concerns:

This book contains sexual activities; sexual nudity; profanity and derogatory terms; violence; controversial social and political commentary; controversial religious commentary; alternate sexualities; hate; abortion; and suicide commentary.

Adult

By Jodi Picoult

ISBN: 978-1-4165-3895-0





Page	Content
4	By the time you read this, I hope to be dead. You can't undo something that's happened; you can't take back a word that's already been said out loud. You'll think about me and wish that you had been able to talk me out of this. You'll try to figure out what would have been the one right thing to say, to do. I guess I should tell you, Don't blame yourself; this isn't your fault, but that would be a lie.
9	Before leaving her room, though, she hesitated. She sank down onto her bed and rummaged underneath the nightstand for the Ziploc sandwich bag that she'd tacked to the wooden frame. Inside was a stash of Ambien—pirated one pill at a time from her mother's prescription for insomnia, so she'd never notice. It had taken Josie nearly six months to gather only fifteen pills, but she figured if she washed them down with a fifth of vodka, it would do the trick. It wasn't like she had a strategy, really, to kill herself next Tuesday, or when the snow melted, or anything concrete like that. ..She tacked the pills back beneath her nightstand and headed downstairs. As she walked into the kitchen to load up her backpack, she found her chemistry textbook still wide open—and a long-stemmed red rose marking her place.
16	At other times, it haunted Josie: like right now, when she was standing in the cafeteria line behind Natalie Zlenko, a dyke of the first order who, way back in second grade, had invited Josie over to play and had convinced her to pee on the front lawn like a boy. ...Near the condiment bar were the skanks, who drank black coffee and waited for the bus that would take them to the technical high school three towns over for their afternoon classes; and the druggies, already strung out by nine o'clock in the morning.
17	"The one whose boobs are two different sizes?" ..."The one who always carries a box of tissues for her allergies?" Josie said, sliding into a seat. "Or not," Haley said. "Guess who got sent to rehab for snorting coke." "Get out." "That's not even the whole scandal," Emma added. "Her dealer was the head of the Bible study group that meets after school."
20	Patrick sat at a red light in his unmarked police car, waiting to turn onto the highway. Beside him, on the passenger seat, was a paper bag with a vial of cocaine inside it. The dealer they'd busted at the high school had admitted it was cocaine, and yet Patrick had to waste half his day taking it to the state lab so that someone in a white coat could tell him what he already knew.
26	Apparently, Loomis had escalated his criminal résumé last night when he and two friends decided to go after a drug dealer who didn't bring them enough pot. They got high, hog-tied the guy, and threw him in the trunk. Loomis whacked the dealer over the head with a baseball bat, cracking his skull and sending him into convulsions.
27	Regular sex, for example, was equivalent (happinesswise) to getting a \$ 50,000 raise.



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29	<p>It was not her place to judge a mother for the decision to give up a child. "We can talk about different options, then," Lacy said. At eleven weeks, Alex could still terminate the pregnancy if she wished.</p> <p>"I was going to have an abortion," Alex said, as if she'd read Lacy's mind. "But I missed my appointment." She glanced up. "Twice."</p> <p>Logan had told her to get rid of it. She'd scheduled an abortion, only to forget to write the date and time on her calendar. She rescheduled, but realized too late that her appointment conflicted with a final exam. After that, she'd gone to Logan. It's a sign, she'd said.</p> <p>Maybe, he told her, but it doesn't mean what you're thinking. Be reasonable, Logan had said. A single mother will never make it as a trial attorney. She'd have to choose between her career and this baby.</p> <p>What he really meant was that she'd have to choose between having the baby and having him.</p>
54	<p>Patrick looked at the part in the boy's hair. Had he brushed it that morning, thinking, Today's the day I'm going to kill ten students?</p>
55	<p>Every now and then Patrick and Guenther would grab a few beers together, consuming enough alcohol for the former bodybuilder to tell him stories of women offering to oil him up before a competition or good anecdotes about Arnold, before he became political.</p>
61	<p>He had represented a few students who'd been busted with pot in their glove compartments or who got caught drinking underage at the college in town.</p>
77	<p>"Stop being anti-kindergarten."</p> <p>"I'm not. In fact, I think everything you need to know about the law you learn in kindergarten. You know: Don't hit. Don't take what's not yours. Don't kill people. Don't rape them."</p>
101	<p>Thanks to the sedatives, so much of this seemed unreal—as if she were walking on the spongy floor of a dream—but the moment she thought of Matt, it became authentic and raw.</p> <p>She would never kiss Matt again.</p> <p>She would never hear him laugh.</p> <p>She would never feel the print of his hand on her waist, or read a note he'd slipped through the furrows of her locker, or feel her heart beat into his hand when he unbuttoned her shirt.</p>
110	<p>"We live in a country where American kids are dying because we're sending them overseas to kill people for oil. But when one sad, distraught child who doesn't see the beauty in life goes and wrongly acts on his rage by shooting up a school, people start pointing a finger at heavy metal music. The problem isn't with rock lyrics, it's with the fabric of this society itself."</p>
114	<p>Death wasn't something you could control. In fact, it would always have the upper hand.</p> <p>She ripped the plastic bag open into her palm and stuffed five of the pills into her mouth. She walked into the bathroom and ran the tap, stuck her head close to the faucet until the pills were swimming in the fishbowl of her bulging cheeks.</p> <p>Swallow, she told herself.</p>



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	But instead, Josie fell in front of the toilet and spit the pills out. She emptied the rest of the pills, still clutched in her fist. She flushed before she could think twice.
121	Carnivore scoffed. "Because they say I raped some waitress, and then stabbed her."
131	The office of the Geek Squad, as Patrick affectionately referred to the tech guys who hacked into hard drives to find proof of pornography and downloads from The Anarchist Cookbook, was filled with computers.
132	Two quoted lyrics from the band Death Wish. "This is my personal favorite," Orestes said, and he scrolled down. From: DeathWish To: Hades1991 This town blows. This weekend there is a craft festival where old bags come to show off the tacky tacky shit they made. They should call it a CRAP festival. I'm gonna hide in the bushes outside the church. Target practice as they cross the street—ten points each! Yee ha!
147	Then, in a corner section, Peter would strip without having to listen to anyone make fun of the way his chest sort of caved in at the bottom, or having the elastic of his boxers twisted to give him a wedgie. They called him Peter Homo, instead of Peter Houghton, and even when he was the only one in the locker room he could still hear the slap of their high-fives and the laughter that rolled toward him like an oil slick. ...Peter turned his back to the other locker sections and skimmed off his uniform, then covered himself quickly with a towel. His heart was pounding. He could already imagine what everyone else saw when they looked at him, because he saw it, too, in the mirror: skin white as the belly of a fish; knobs sticking out of his spine and collarbones. Arms without a single rope of muscle. The last thing Peter did was take off his glasses and put them on the shelf of his open locker. It made everything blissfully fuzzy. He ducked his head and walked into the shower, pulling off his towel at the last possible minute. Matt and Drew were already soaping themselves up. Peter let the spray hit him in the forehead. He imagined being an adventurer on some wild white river, being pummeled by a waterfall as he was sucked into a vortex. When he wiped his eyes and turned around, he could see the blurred edges of the bodies that were Matt and Drew. And the dark patch between their legs—pubic hair. Peter didn't have any yet. Matt suddenly twisted sideways. "Jesus Christ. Stop looking at my dick." "Fucking fag," Drew said. ...Worse, what if he got hard right now, which was happening more and more lately? That would mean he was gay, wouldn't it? "I wasn't looking at you," Peter blurted. "I can't see anything." Drew's laughter bounced against the tile walls of the shower. "Maybe your dick's too small, Mattie."
148	He didn't think he felt those things about guys, either; but surely you had to be gay or straight. You couldn't be neither.



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149	<p>Kelly Gamboni was twenty-one years old, orphaned, and had an IQ of 79. She had been gang-raped by three high school boys who were now awaiting trial at a juvy facility in Concord. Kelly lived at a group home for Catholics, so abortion was never an option. But now, an ER doctor had deemed it medically necessary to induce Kelly, at thirty-six weeks. She lay in the hospital bed with a nurse trying ineffectually to comfort her, as Kelly clutched a teddy bear. "Daddy," she cried, to a parent who had died years ago. "Take me home. Daddy, it hurts!"</p> <p>...Lacy looked at Kelly and then walked into the hall; it would do Kelly no good to have them fighting in front of her. "She came in complaining of wetting her underwear for two days. The exam was consistent with premature rupture of membranes," the doctor said. "She's afebrile and the fetal monitor tracing is reactive. It's completely reasonable to induce. And she signed off on the consent form."</p>
151	<p>She could feel her mother's eyes on her as she picked at her food. "What?" she challenged.</p> <p>"Well, you sounded like a spoiled brat, that's all."</p> <p>"Why? Because I don't like fish embryos sitting under my nose? You don't eat them either. I was at least being honest."</p> <p>"And I was being discreet," her mother said. "Don't you think that the waiter is going to tell the chef that Judge Cormier's daughter is a piece of work?"</p> <p>"Like I care?"</p> <p>"I do. What you do reflects on me, and I have a reputation I have to protect."</p> <p>"As what? A suck-up?"</p> <p>"As someone who's above criticism both in and out of the courtroom."</p> <p>Josie tilted her head to one side. "What if I did something bad?"</p> <p>"Bad? How bad?"</p> <p>"Let's say I was smoking pot," Josie said.</p> <p>..."What do you mean, turn you in?"</p> <p>"Call the cops. Hand over my stash." Josie grinned. "Of hash."</p>
154	"Mama's boy," they said. "Does she fight all your battles, homo?"
155	"A porcupine has pricks on the outside."
164	<p>By the time the screen fuzzed out again and her own face came on, Josie was crying. She knew what was coming; she remembered this part. The camera panned back and there was Matt, his arms around her as she sat on his lap on the sand. He had taken off his shirt, and Josie remembered that his skin had been warm where it pressed up against hers.</p> <p>...She watched Matt on the screen the way you might study an animal you had never seen before, if you had to memorize it and tell the world later what you'd found. Matt's hand splayed across her bare stomach, grazed the edge of her bikini top. She watched herself push him away, blush. "Not here," her voice said, a funny voice, a voice that didn't sound like Josie to her own ears. You never did, when you heard yourself on tape.</p> <p>"Then let's go somewhere else," Matt said.</p> <p>Josie rucked up the edge of her pajama top, until she could reach underneath. She spread her own hand across her belly. She edged her thumb up, like Matt had, to the curve of her breast. She tried to pretend it was him.</p>



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176	The leader of the Gay and Lesbian Alliance was still in the hospital: Natalie Zlenko, a yearbook photographer, had come out as a lesbian after her freshman year, when she'd wandered into the GLAAD meeting in Room 233 to see if there was anyone else on this planet like herself.
206	Peter picked his way through the computer until he reached a well-hidden file of downloads and opened up the first porn site. "Is that . . . a dwarf?" Josie murmured. "And a donkey?" Peter tilted his head. "I thought it was a really big cat." "Either way, it's totally gross." She shuddered. "Ugh. How am I going to take a paycheck from that guy's hand now?" Then she looked down at Peter. ...Stop looking at me, homo. He did not tell Josie this, but when he'd first found Mr. Cargrew's porn site, he'd found himself staring at the guys, not the girls.
207	The survey had even considered time allocation: how long a person spent at work, how often he went to church, how many times a week he had sex and with how many partners.
212	"I never thought anything the homo said would be worth listening to, but bridges take you from one place to another," Matt said.
213	When Matt touched her lower lip with his thumb, Josie could feel it everywhere—from her fingertips to her throat to the heat between her legs.
215	Unlike most of the other sophomores who were occasional couples—random hookups at parties, best-friend-with-benefits situations—she and Matt were an item. Matt walked her to her classes and often left her at the door with a kiss that everyone watched.
217	He tumbled down the stone steps as Matt stood over him. "Get away from my girlfriend, homo," Matt said. "Go find a nice little boy to play with."
218	Matt," Peter said, coming up on his knees. "Do you have a big dick?" "Wouldn't you like to know," Matt said. "Not really." Peter staggered to his feet. "I just wondered if it was long enough for you to go fuck yourself." ...Peter shook his head, tears streaming down his cheeks, streaking the blood. "Get . . . off . . ." "I bet you wish you could," Matt sneered.
223	She felt Matt's lips move from her cheek to her neck to the spot behind her ear that always made her feel like she was dissolving. She was a novice at fooling around, but Matt had coaxed her further and further each time they were alone. It's your fault, he'd say, and give her that smile. If you weren't this hot, I'd be able to keep my hands off you. That alone was an aphrodisiac to Josie. Her? Hot? And—just as Matt had promised every time—it did feel good to let him touch her everywhere, to let him taste her. Every incremental intimacy with Matt felt as if she were falling off a cliff—that loss of breath, those butterflies in her stomach. ...Now she felt his hands moving under her T-shirt, slipping beneath the lace of her bra. Her legs tangled with his; he rubbed up against her. When Matt tugged up her shirt, so that the cool air feathered over her skin, she snapped back to reality. "We can't do this," she whispered.



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	<p>Matt's teeth scraped over her shoulder.</p> <p>"We're parked on the side of the road."</p> <p>He looked up at her, drugged, feverish. "But I want you," Matt said, like he had a dozen times.</p> <p>This time, though, she glanced up.</p> <p>I want you.</p> <p>...She heard the rip of a foil condom packet—How long had he been carrying that around? Then he tore at his jeans and hiked up her skirt, as if he still expected her to change her mind. Josie felt Matt pulling aside the elastic of her underwear, the burn of his finger pushing inside her. This was nothing like the times before, when his touch had left a track like a comet over her skin; when she found herself aching after she told him she wanted to stop. Matt shifted his weight and came down on top of her again, only this time there was more burning, more pressure.</p> <p>"Ow," she whimpered, and Matt hesitated.</p> <p>"I don't want to hurt you," he said.</p> <p>She turned her head away. "Just do it," Josie said, and Matt pushed his hips flush against hers. It was the kind of pain that—even though she was expecting it—made her cry out.</p> <p>Matt mistook that for passion. "I know, baby," he groaned. She could feel his heartbeat, but from the inside, and then he started to move faster, bucking against her like a fish released from a hook onto a dock.</p> <p>Josie wanted to ask Matt whether it had hurt the first time he had done it, too. She wondered if it always would hurt. Maybe pain was the price everyone paid for love. She turned her face into Matt's shoulder and tried to understand why, even with him still inside of her, she felt empty.</p>
225	<p>They weren't drinking—it was hockey season, and the players had to sign a contract with the coach—but Drew Girard had rented the uncut version of a teen sex comedy, and the guys were discussing who was hotter, Elisha Cuthbert or Shannon Elizabeth. "I wouldn't throw either of them out of bed," Drew said.</p>
228	<p>"All right," Matt said, "I'll take the homo."</p>
231	<p>It wasn't that he wanted to fool around with a guy—not yet, anyway. He just wanted to know what it was like to be among guys who were gay, and totally okay with it.</p> <p>...He stopped in front of a couple that was going at it in a dark corner. Seeing a guy kiss a guy was strange in real life. Sure, there were gay kisses on television shows—Big Moments that usually were controversial enough to get press, so that Peter knew when they were airing—and he'd sometimes watch them to see if he felt anything, watching them.</p> <p>...He didn't feel particularly excited, though. Curious, sure—did a beard scratch you when you were making out?—and not repulsed, but Peter couldn't say he felt with any great conviction that that was something he wanted to try, too.</p> <p>The men broke away from each other, and one of them narrowed his eyes. "This ain't no peep show," he said, and he shoved Peter away.</p>
232	<p>"Rico, get my young friend here a drink. What would you like?"</p> <p>Peter swallowed. "Pepsi?"</p> <p>The man's teeth flashed. "Yeah, right."</p>



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	<p>"I don't drink."</p> <p>"Ah," he said. "Here, then."</p> <p>He handed a pair of small tubes to Peter, and then took two for himself out of his pocket. There was no powder in them—just air. Peter watched him open the top, inhale deeply, then do the same with the second vial in his other nostril.</p> <p>Mimicking this, Peter felt his head spin, like the one time he'd drunk a six-pack when his parents had gone off to watch Joey play football. But unlike then, when he'd only wanted to fall asleep afterward, Peter now felt every cell of his body buzzing, wide awake.</p> <p>"My name's Kurt," the man said, holding out his hand.</p> <p>"Peter."</p> <p>"Bottom or top?"</p> <p>Peter shrugged, trying to look like he knew what the guy was talking about, when in fact he had no clue.</p> <p>"My God," Kurt said, his jaw dropping. "New blood."</p>
233	<p>"I don't bet for money. How about if I win, I get to take you home. And if you win, you get to take me home."</p> <p>...He was sure that the teacher would call his parents, or rip up his ID in front of him, or ask him why he thought coming to a gay bar in downtown Manchester was a good idea.</p>
235	<p>"I'm not gay."</p> <p>..."I'm not gay," Peter repeated more firmly, and he opened the car door and ran as fast as he could toward his house.</p> <p>..."Geez, Courtney. If I'd known that, I guess I would be having wild sex with you, except for the fact that I love Josie, and she's probably less than three feet away from you right now."</p>
249	<p>"Like, what if Sam tells you he's gay?"</p>
250	<p>"Ed thought that Peter might be trying out the gay and lesbian crowd."</p> <p>"So Peter came to talk to Ed about being gay?"</p> <p>"Oh, no. Ed sought Peter out. We all remember what it was like to be figuring out what was different about us, when we were his age. Worried to death that some other kid who was gay was going to come on to you and blow your cover."</p> <p>..."Gay people don't come clearly marked—it's not like having a different color skin or a physical disability. You learn to pick up on mannerisms, or looks that last just a little too long. You get pretty good at figuring out if someone's gay, or just staring at you because you are."</p> <p>...Peter may have been confused about his sexuality, but it was crystal clear to Ed," Philip said. "That boy is straight."</p> <p>..."I want to talk about the explosives," he said. "Where would a person get something like that?" "At www.boom.com," Peter answered.</p>
251	<p>Jordan just stared at him. "Well, it's not all that far from the truth," Peter said. "I mean, The Anarchist Cookbook is online. So are about ten thousand recipes for Molotov cocktails."</p>
252	<p>"Father Moreno, he's the priest who leads the church services here? He says that if you accept Jesus and repent, you get excused . . . like religion is just some giant freebie hall pass that gets you out of anything and everything. But see, that can't</p>



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	be right . . . because Father Moreno also says that every life is worth something . . . and what about the ten kids who died?"
253	Brady had brought the movie—Josie couldn't even remember the name, but it was one of those movies that had come out after American Pie, hoping to make the same killing at the box office by taking naked girls and daredevil guys and what Hollywood imagined teenage life to be like, and tossing them together like some sort of cosmic salad.
271	It was a specific tangent of post-traumatic stress disorder, one that suggested a woman who'd been repeatedly victimized both mentally and physically might so constantly fear for her life that the line between reality and fantasy blurred, to the point where she felt threatened even when the threat was dormant, or in Joe Riccobono's case, as he lay sleeping off a three-day drinking spree.
279	She leaned forward—cleavage alert—and met Peter's eyes.
285	She wiped her eyes on her sleeve. Lewis would tell her, of course, that it was only sex, not love. That it didn't mean anything.
287	"—so I was already worried about not making it to the top. As it turned out, that wasn't a problem. It was coming back down, because climbing up with the rope between my legs, I got a massive boner."
293	Jordan leaned over her, kissing Selena until—he hoped—she had forgotten she was in the throes of making fun of him. "Let's have another baby," he whispered. "I'm still nursing the first one!" "Then let's practice having another one." There was no one in the world quite like his wife, Jordan thought—statuesque and stunning, smarter than he was (not that he'd ever admit it to her face), and so perfectly attuned to him that he nearly had to concede his skepticism and believe that psychics truly did walk among us. He buried his face in the spot he loved best on Selena: the part where the nape of her neck ran into her shoulder, where her skin was the color of maple syrup and tasted even sweeter.
306	"If I won't let you buy me a drink," Alex said, "then what makes you think I'd take a bottle of wine from you?" Patrick grinned. "I'm not giving it to you. I'm going to open it, and you might just choose to borrow some."
309	You might not even realize it, but your bodies are choreographed: a touch on the hip, a stroke of the hair. A staccato kiss, break away, a longer one, his hand slipping under your shirt. ...It's just the way you've learned to fit, and it's why, when you've been with one guy for a long time, your teeth do not scrape together when you kiss; you do not bump noses or elbows. ...When they started making out, he'd lean in and look at her as if he couldn't possibly see any other part of the world. ...Then he'd kiss her, so slowly that there was hardly pressure on her mouth, until she was the one pushing against him for more. He worked his way down her body, from mouth to neck, from neck to breasts, and then his fingers would do a search-and-rescue mission below the waistband of her jeans. The whole thing lasted about ten minutes, and then Matt would roll off her and take the condom



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	<p>out of his wallet so they could have sex.</p> <p>Not that Josie minded any of it. If she was going to be honest, she liked the pattern. It felt like a roller coaster—going up that hill, knowing what was coming next on track and knowing, too, that she couldn't do anything to stop it.</p> <p>They were in her living room, in the dark, with the television on for background noise. Matt had already peeled off her clothes, and now he was leaning over her like a tidal wave, pulling down his boxers. He sprang free and settled between Josie's legs.</p> <p>"Hey," she said, as he tried to push into her. "Aren't you forgetting something?"</p> <p>"Aw, Jo. Just once, I don't want there to be anything between us."</p> <p>His words could melt her just as surely as his kiss or his touch; she already knew that by now. She hated that rubbery smell that permeated the air the moment he ripped open the Trojan packet and stayed on his hands until they were finished. And God, did anything feel better than having Matt inside her? Josie shifted just a little, felt her body adjust to him, and her legs trembled.</p> <p>... "Every time you have sex, you can get pregnant or you can not get pregnant," her mother said. "That's fifty-fifty. So don't fool yourself into thinking that if you only do it once without protection, the odds are in your favor."</p> <p>Josie pushed at Matt. "I don't think we should do this," she whispered.</p> <p>"Have sex?"</p> <p>"Have sex without . . . you know. Anything."</p> <p>He was disappointed, Josie could tell by the way his face froze for just a moment. But he pulled out and fished for his wallet, found a condom. Josie took it out of his hand, tore open the package, helped him put it on. "One day," she began, and then he kissed her, and Josie forgot what she was going to say.</p>
311	<p>She had gone with a friend to a march at the statehouse in Concord and stood on the steps with a sisterhood of women who held up signs: I'M PRO-CHOICE AND I VOTE... AGAINST ABORTION? DON'T HAVE ONE.</p>
313	<p>"He pinned her hands over her head and ground his hips against hers. She could feel his erection, hot against her stomach. It wasn't the way it normally was, but Josie had to admit that it was exciting. She couldn't remember ever feeling so heavy, as if her heart were beating between her legs. She clawed at matt's back to bring him closer. "Yeah," he groaned, and he pushed her thighs apart. And then suddenly Matt was inside her, pumping so hard that she scooted backward on the carpet, burning the backs of her legs. "Wait," Josie said, trying to roll away beneath him, but he clamped his hand over her mouth and drove harder and harder until Josie felt him come. Semen, stick and hot, pooled on the carpet beneath her.</p>
313	<p>They were on the floor of the living room and they were nearly naked. Josie could taste beer on Matt's breath, but she must have tasted like that, too. They'd both drunk a few at Drew's—not enough to get wasted, just buzzed, enough so that Matt's hands seemed to be all over her at once, so that his skin set fire to hers. She'd been floating along pleasantly in a haze of the familiar. Yes, Matt had kissed her—one short one, then a longer, hungry kiss, as his hand worked open the clasp on her bra. She lay lazy, spread beneath him like a feast, as he pulled off her jeans. But then, instead of doing what usually came next, Matt reared over her</p>



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	<p>again. He kissed her so hard that it hurt. “Mmmph,” she said, pushing at him. “Relax,” Matt murmured, and then he sank his teeth into her shoulder. He pinned her hands over her head and ground his hips against hers. She could feel his erection, hot against her stomach.</p> <p>It wasn’t the way it normally was, but Josie had to admit that it was exciting. She couldn’t remember ever feeling so heavy, as if her heart were beating between her legs. She clawed at Matt’s back to bring him closer.</p> <p>“Yeah,” he groaned, and he pushed her thighs apart. And then suddenly Matt was inside her, pumping so hard that she scooted backward on the carpet, burning the backs of her legs.</p> <p>“Wait,” Josie said, trying to roll away beneath him, but he clamped his hand over her mouth and drove harder and harder until Josie felt him come.</p> <p>Semen, sticky and hot, pooled on the carpet beneath her.</p>
315	<p>She’d already tried to get details out of Josie last night about Matt—important things, like how big a dick he had and if he had a clue how to use it—but Josie had gone all Hilary Duff on her and acted like she’d never heard the word sex before.</p>
321	<p>He was standing, in fact, behind Peter; and in one smooth stroke he hooked his thumbs into the loops of Peter’s pants and yanked them down to his ankles. Peter’s skin was moon-white under the harsh fluorescent lamps of the cafeteria, his penis a tiny spiral shell on a sparse nest of pubic hair. He immediately covered his genitals with his lunch bag, and as he did, he dropped his milk carton. It spilled on the floor between his feet.</p> <p>“Hey, look at that,” Drew said. “Premature ejaculation.”</p>
322	<p>Then Josie got out of bed and booted up her computer. She Googled abortifacient—the word she’d looked up yesterday, the one that meant something that terminates a pregnancy.</p> <p>...Josie had toyed with contacting her father again, which would have taken an enormous helping of humility. He hadn’t wanted Josie born, so theoretically, he’d probably go out of his way to help her have an abortion.</p> <p>...Some she already knew: the old wives’ tales about sticking a knitting needle up inside her, or drinking laxatives or castor oil. Some she’d never imagined: douching with potassium, swallowing gingerroot, eating unripe pineapple. And then there were the herbs: oil infusions of calamus, mugwort, sage, and wintergreen; cocktails made out of black cohosh and pennyroyal. Josie wondered where you even got these things—it wasn’t like they were in the aisle next to the aspirin at CVS.</p> <p>Herbal remedies, the website said, worked 40–45 percent of the time. Which, she supposed, was at least a start.</p> <p>She leaned closer, reading.</p> <p>Don’t start herbal treatment after the sixth week of pregnancy.</p> <p>Keep in mind these are not reliable ways to end pregnancy.</p> <p>Drink the teas day and night, so you don’t ruin the progress you made during the day.</p> <p>Catch the blood and add water to dilute it, and look at the clots and tissue to make sure the placenta has passed.</p> <p>Josie grimaced.</p>

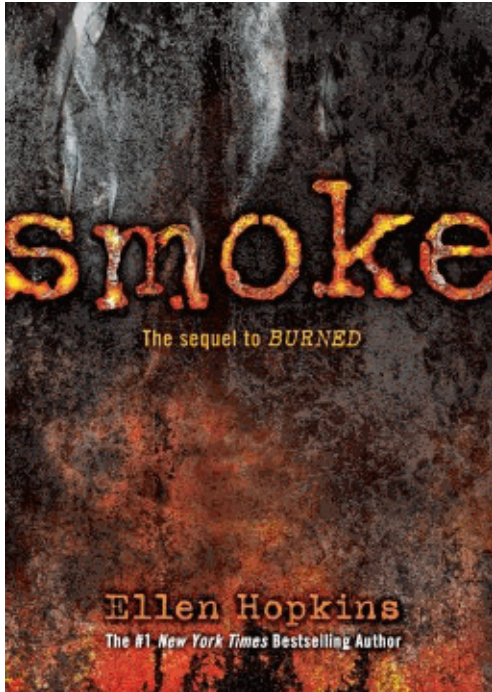


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	<p>Use 1/ 2 to 1 teaspoon of the dried herb per cup of water, 3–4 times a day. Don't confuse tansy with tansy ragwort, which has been fatal to cows that have eaten it growing nearby.</p> <p>Then she found something that looked less, well, medieval: vitamin C. Surely that couldn't be too bad for her? Josie clicked on the link. Ascorbic acid, eight grams, for five days. Menstruation should begin on the sixth or seventh day.</p> <p>Josie got up from her computer and went into her mother's medicine cabinet. There was a big white bottle of vitamin C, along with smaller ones of acidophilus, vitamin B12, and calcium supplements.</p> <p>She opened the bottle and hesitated.</p>
326	<p>Why was Wonder Woman always so bodacious? If you were a 38DD, would you honestly go leaping off buildings and fighting crime without a good jogging bra? Thinking of that reminded Josie that she could barely put on her own bra these days, her breasts were so tender. And that made her recall the pregnancy test that she'd wrapped up in paper towels and thrown away outside in the garbage can so her mother wouldn't find it.</p>
329	<p>She woke up, breathless, and realized that she still felt wet. She sat up, lifted up the covers, and saw the pool of blood beneath her.</p> <p>After three positive pregnancy tests, after her period was three weeks late—she was miscarrying.</p> <p>Thankgodthankgodthankgod. Josie buried her face in the sheets and started to cry.</p>
340	<p>"Every time you have sex, you can get pregnant or you can not get pregnant. That's fifty-fifty."</p>
349	<p>For example, the birth of your child was one thing when you were happily married and planning a family; it was something entirely different when you were sixteen and had gotten a girl knocked up.</p>
405	<p>"Yes. Peter loved his parents, but didn't feel he could rely on them for protection."</p> <p>"Protection from what?"</p> <p>"Troubles in school, feelings he was having, suicide ideation."</p>
410	<p>Matt put the car into reverse and lurched backward. You want to stay? You want to be a slut?</p> <p>...His voice trailed her to the front door: Good. Why would I want to go out with a fucking whore, anyway?</p>
411	<p>On his desk was a bottle of Tylenol and another one, open, of Jim Beam. Josie faced him. Did you—</p> <p>But Matt wrapped his arms around her. He smelled of liquor. You told me not to. I'd do anything for you.</p>
413	<p>"You said that Peter was suffering from suicide ideation."</p> <p>"Yes."</p> <p>"So he wanted to kill himself?"</p> <p>"Yes. That's very common for patients with PTSD."</p>



Profanity	Count
Ass	14
Bitch	6
Dick	7
Fag/Faggot	6
Fuck	47
Goddamn	5
Piss	5
Pussy	2
Shit	22

SMOKE



Young Adult

By Ellen Hopkins

ISBN: 978-1-4169-8328-6

Summary of Concerns:

This book contains sexual activities including sexual assault; sexual nudity; profanity and derogatory terms; alcohol and drug use; and violence including domestic violence and child abuse.





Page	Content
5	Every now and again someone goes in there and then it smells like marijuana, though smoking is prohibited on all Greyhounds.
32	Next thing I knew I was on the floor with my arms pinned over my head, and a hand jammed between my legs. "Please, Caleb. Stop. Don't do this." Ah, c'mon, he said. Pretend that you don't, but you know you want this more than I do. All girls do. Then I felt it, hard behind his jeans. "No!" But it came out a harsh whisper. I was petrified Dad would hear. Maybe even more scared of that than of what was happening to me- one wicked thrust and Caleb drove himself inside me. Something ripped. Something pried. I thought he would tear me apart. But I didn't dare scream, and he pretended that made it okay. See? You like it. I knew you would. All I could do was go limp, tears streaming down and soaking my blouse, until he shuddered his finish, punctuated with a disgusting grunt. And his Amen? Jesus. Look at all the blood.
33	Then he saw me lying there, skirt hiked up, fluids trickling from between my legs. I tried to tell him it wasn't my fault. Caleb stole what he wanted. But Dad wouldn't listen. You came out here to meet him, you goddamn whore. What did you expect? Cookies and milk? You're ruined now. What man will ever want you.
39	"What? No! Dad never would...He never touched me like that." He didn't. But someone else did.
45	The thief! His pants are down, and his body is leaning into the girl, and I have to do something.
46	Except he has forgotten his pants, now twisted around his ankles. Down he goes, in a belly flop onto the dirty linoleum. The girls is on her feet. She looks down at the guy's exposed butt cheeks. Cabron! She gives the guy a vicious kick, straight south of the pimply white rounds. Her aim is good, too. The guy's face blooms, red with pain. Oh, is all he can say.
59	His cruelty did not take the form of incest, although his deviant satisfaction in inflicting pain might well have been substitute sexual pleasure, or maybe even an aphrodisiac. How many nights did we hide our heads under our pillows, trying to dampen the sound of his beating Mom into submission, followed by the rhythmic creaking of their bed, Mom's whimpers of pain turning to moans of whatever?
65	"You don't know, do you? You really don't get it. He could have. He wanted to. I looked into his eyes, Mom. Know what I saw? Lust. There was lust there. Not sex lust. Bloodlust. When my ribs cracked, he heard it. And he smiled."
102	The swabs came back positive for semen, negative for Dad's blood type. Caleb's would match. But all that proves is we had sex.
103	When the doctor said, The Vaginal bruising indicates rape, Mom acted horrified.
123	A woman's worth is contained within her uterus.
131	"I mean, homosexuality is a sin."



Page	Content
136	Weekdays after work, he'd drink just a little- enough to help him sleep, I guess. But once Friday afternoons rolled around, his dance with Johnnie lasted until he passed out Saturday nights. Yet, almost always, he made it to church Sunday mornings, wearing a thick drift of cologne and deodorant to try and mask the faint reminder of Johnnie on his spit, in his sweat. And the bruises Mom often sported. With luck Mom won't ever again have to go to church black and blue.
151	In fact, the only "relationship" I ever had with a Latina resulted in me breaking Carmen's nose, defending my hold on a guy who was only interested in easy sex- so not me.
165	When I insisted no, we're just cousins, she said, "Cousins often marry. It's legal in California."
168	...asking how God would feel about someone whose dreams were soaked with sex.
208	Got away with what, bitch? ..."You raped me." That's a lie. You know you wanted to. You invited me out to that shed and basically attacked me. Attacked him? By sliding my arms up around his neck and parting my lips just a little, asking for his kiss? My cheeks burn and my eyes feel like someone pricked them with needles. "All I wanted was a kiss, Caleb. And if you ever say anything different, I'll...I'll..." You'll what? Kill me? He pushes me and I slip backward, falling hard on my butt.
209	That guy is such an asshole. I thought he only picked on gay guys. Now he's pushing girls around, too.
211	The only other person who has ever called me a bitch is my father.
302	Snap! It's almost like an electric jolt to my brain. I look up, the way I did that night when Pattyn came through the door. Snap! She yells at Dad, Get off her! Dad laughs. I scream. Dad laughs louder. Pattyn backs away. Dad follows.
325	We're kissing. Kissing. I like it a lot, and I'm growing warm in places not talked about except in sex education. But they don't tell you how just kissing can make you want to do those things, even though you know you can't- you're not ready yet. And they don't tell you what to do when you say no but he keeps saying it's okay, that he only wants to make you feel good, but you find out real fast he doesn't care about you at all, only about himself. ...and I see my little sister, only thirteen years old, flirting back with the monster who would do the same thing to her, and I yell, "Leave her alone, pervert!"
346	We shared a simple supper and, since it was New Year's Eve, a little tequila. This lovely warmth began to creep from my stomach, through my body.
350	Still, she is outgoing, warm, and laughs easily at the jokes being passed around as freely as the champagne, which doesn't smell nearly as bad as scotch. It's been offered, but I've declined. There's a little Mormon left inside, although that piece of me isn't any more bothered by the openly gay couples here than the openly heterosexual.

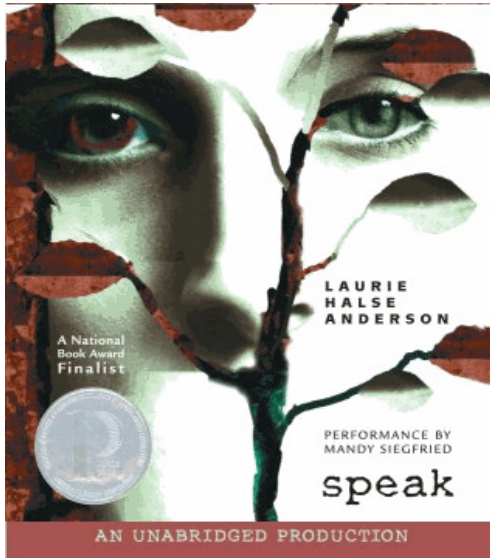


Page	Content
351	Mom Ann thought Bea was a stuck-up dyke.
354	"...I have a half brother I don't even know, because he's gay and Dad disowned him."
381	If I could just get past that, though, could it make me feel even close to the lovely way Percocet did?
382	LOVE YOU. The last two words are almost as good as Percocet.
393	Gavin takes one look at me. Hey. Have you been drinking? He sounds disappointed. I hold out the bottle. "Shorry. I shoulda offered you some." He comes closer, much closer, but he doesn't take the Johnnie. ..."It's jush-just being here, seeing..." I point to the handgun sitting next to the canvas bag. "I...something came back to me. Something awful...important...and I dunno what to do." He comes to me, takes me into his arms. What is it, Jackie? And I love him so much. But still I have to say, "I can't tell you."
408	I know I didn't teach you to use drugs or run around with assault weapons.
422	Caleb just smiles What did I do, faggot? Or should I say son of a faggot? Are lezzies fags or just regular queer?
424	Come on, asshole. I'll show you how a faggot fights.
426	"He r-r-raped me."
459	I walked in just as Caleb put the head of the bat against Shawn's mouth. "You want to suck on something big and hard?" he yelled. "Suck on this." He rammed that thing into Shawn's mouth with enough force to chip teeth and bruise his throat, and who knows what might have happened next if I hadn't interfered?
484	...gay marriage legislation in several states, and isn't it disgusting how some straight people actually support it?

Profanity	Count
Ass	7
Bitch	7
Dyke	1
Faggot/Fag	4
Fuck	5
Piss	1

PENDING FINAL REVIEW

SPEAK



Summary of Concerns:

This book contains sexual activities including inexplicit sexual assault and battery; and profanity.

Young Adult

By Laurie Halse Anderson

ISBN: 9781429997041

1429997044



3 / 5

Minor Restricted
BookLooks Review Rating



Page	Content
29	How else could they sleep with the football team on Saturday night and be reincarnated as virginal goddesses on Monday?
30	They are the Pride of the Trojans. Oops—I mean Pride of the Blue Devils. ...In Universe #2, they throw parties wild enough to attract college students. They worship the stink of Eau de Jocke. They rent beach houses in Cancun during Spring Break and get group-rate abortions before the prom.
135	<p>He tilted my face up to his. He kissed me, man kiss, hard sweet and deep. Nearly knocked me off my feet, that kiss.</p> <p>...He kissed me again. His teeth ground hard against my lips. It was hard to breathe.</p> <p>..."Do you want to?" he asked.</p> <p>What did he say? I didn't answer. I didn't know. I didn't speak.</p> <p>We were on the ground. When did that happen? "No." No I did not like this. I was on the ground and he was on top of me. My lips mumble something about leaving, about a friend who needs me, about my parents worrying. I can hear myself—I'm mumbling like a deranged drunk. His lips lock on mine and I can't say anything. I twist my head away. He is so heavy. There is a boulder on me. I open my mouth to breathe, to scream and his hand covers it. In my head, my voice is as clear as a bell: "NO DON'T WANT TO!" But I can't spit it out. I'm trying to remember how we got on the ground and where the moon went and wham! shirt up, shorts down, and the ground smells wet and dark and NO!—I'm not really here, I'm definitely back at Rachel's, crimping my hair and gluing on fake nails, and he smells like beer and mean and he hurts me hurts me hurts me and gets up and zips his jeans and smiles.</p>
164	<p>If my life were a TV show, what would it be? If it were an After-School Special, I would speak in front of an auditorium of my peers on How Not to Lose Your Virginity. Or, Why Seniors Should Be Locked Up. Or, My Summer Vacation: A Drunken Party, Lies, and Rape.</p> <p>Was I raped?</p> <p>Oprah: "Let's explore that. You said no. He covered your mouth. with his hand. You were thirteen years old. It doesn't matter that you were drunk. Honey, you were raped. What a horrible, horrible thing for you to live though. Didn't you ever think of telling anyone? You can't keep this inside forever. Can someone get her a tissue?"</p> <p>Sally Jessy: "I want this boy held responsible. He is to blame for this attack. You do know it was an attack, don't you? It was not your fault. I want you to listen to me, listen to me, listen to me. It was not your fault. This boy was an animal. "</p>
165	Did he rape my head, too?
174	"According to this, she has pissed off a whole bunch of people. One person wrote in huge letters that she's a whore, and all these others added on little details. She slept with this guy, she slept with that guy, she slept with those guys all at the same time. For a tenth-grader, she sure gets around. "
183	I didn't call the cops to break up the party, I write. I called—I put the pencil down. I pick it up again—they because some guy raped me. Under the trees. I didn't

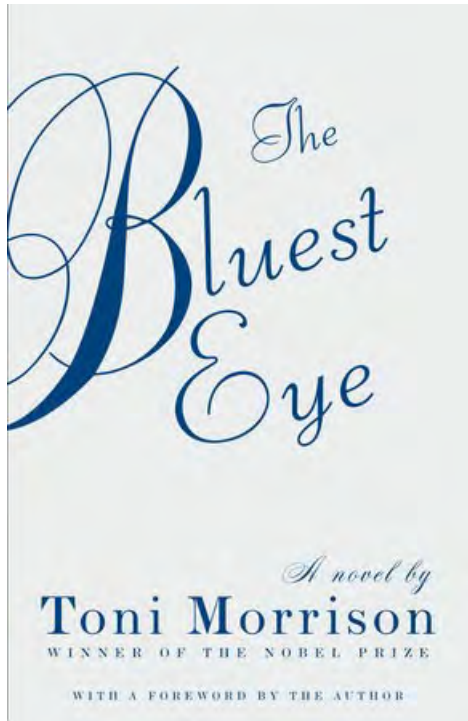


Page	Content
	<p>know what to do. She watches as I carve out the words. She leans closer to me. I write more. I was stupid and drunk and I didn't know what was happening and then he hurt—I scribble that out—raped me. When the police came, everyone was screaming, and I was just too scared, so I cut through some back yards and walked home.</p>
186	<p>What's the name of that drug they give perverts so they can't get it up? Diprosomething.</p> <p>He should get it every morning in his orange juice. I went out with him to the movies—he tried to get his hands down my pants during the PREVIEWS!!</p>
193	<p>Somebody slams into my chest and knocks me back into the closet. The light flicks on and the door closes.</p> <p>I am trapped with Andy Evans.</p> <p>He stares at me without talking. He is not as tall as my memories, but is still loathsome. The lightbulb throws shadows under his eyes. He is made out of slabs of stone and dives off a smell that makes me afraid I'll wet my pants. He cracks his knuckles. His hands are enormous.</p> <p>Andy Beast: "You have a big mouth, you know it? Rachel blew me off at the prom, giving me some bullshit story about how I raped you. You know that's a lie. I never raped anybody. I don't have to. You wanted it just as bad as I did. But your feelings got hurt, so you started spreading lies, and now every girl in school is talking about me like I'm some kind of pervert. You've been spreading that bullshit story weeks. What's wrong, ugly', you jealous? Can't get a date</p> <p>The words fall like nails on the floor, hard, pointed. I try to walk around him. He blocks my way. "Oh, no. You're not going anywhere. You really screwed things up for me." He reaches behind and locks the door. Click.</p> <p>"You are one strange bitch, know that? A freak. I can't believe anyone listened to you." He grabs my wrists. I try to pull them back and he squeezes so tight it feels like my bones are splintering. He pins me against the closed door. Maya Angelou looks at me. She tells me to make some noise. I open my mouth and take a deep breath.</p> <p>Beast: "You're not going to scream. You didn't scream before. You liked it. You're jealous that I took out your friend and not you. I think I know what you want."</p> <p>His mouth is on my face. I twist my head. His lips are wet, his teeth knock against my cheekbone. I pull my arms again and he slams his body against mine. I have no legs. My heart wobbles. His teeth are on my neck. The only sound I can make is a whimper. He fumbles to hold both my wrists in one hand. He wants a free hand. I remember I remember. Metal hands, hot knife hands.</p> <p>No.</p> <p>"A sound explodes from me.</p> <p>I follow the sound, pushing off the wall, pushing Andy Evans off-balance, stumbling into the broken sink. He curses and turns, his' fist coming, coming. An explosion in my head and blood in my mouth. He hit me. I scream, scream.</p> <p>...bowl—I throw it at him, it bounces to the floor. My books. He swears again. The door is locked the door is locked. He grabs me, pulls me away from the door, one hand over my mouth, one hand around my throat. He leans me against the sink. My fists mean nothing to him, little rabbit paws thumping harmlessly. His body</p>



Page	Content
	<p>crushes me.</p> <p>My fingers wave overhead, looking for a branch, a limb, something to hang on to. A block of wood—the base of my turkey-bone sculpture. I slam it against Maya's poster. I hear a crunch. IT doesn't hear. IT breathes like a dragon. ITS hand leaves my throat, attacks my body. I hit the wood against the poster, and the mirror under it, again.</p> <p>Shards of glass slip down the wall and into the sink. IT pulls away from me, puzzled. I reach in and wrap my fingers around a triangle of glass. I hold it to Andy Evans's neck. He freezes. I push just hard enough to raise one drop of blood. He raises his arms over his head. My hand quivers. I want to insert the glass all the way through his throat, I want to hear him scream. I look up. I see the stubble on his chin, a fleck of white in the corner of his mouth. His lips are paralyzed. He cannot speak. That's good enough.</p> <p>Me: "I said no."</p> <p>He nods. Someone is pounding on the door. I unlock it, and the door swings open. Nicole is there, along with the lacrosse team—sweaty, angry, their sticks held high. Someone peels off and runs for help.</p>

THE BLUEST EYE



[Add a caption for your photo here.]

Summary of Concerns:

This book contains profanity and derogatory terms; sexual activities including sexual assault and molestation; alcohol use; inflammatory racial and religious commentary and references.

By Toni Morrison

ISBN: 9780307386588



4 / 5

Not For Minors
BookLooks Review Rating



Page	Content
18	When she comes out of the car we will beat her up, make red marks on her white skin, and she will cry and ask us do we want to pull her pants down.
29	I destroyed white baby dolls. But the dismembering of dolls was not the true horror. The truly horrifying thing was the transference of the same impulses to little white girls.
32	"You want to go up to Mr. Henry's room and look at girlie magazines?" Frieda made an ugly face. She didn't like to look at dirty pictures.
36	"Mrs. MacTeer! Mrs. MacTeer!" Rosemary hollered. "Frieda and Claudia are out here playing nasty! Mrs. MacTeer!" Mama opened the window and looked down at us. "What?" "They're playing nasty, Mrs. MacTeer. Look. And Claudia hit me 'cause I seen them!" Mama slammed the window shut and came running out the back door. "What you all doing? Oh. Uh-huh. Uh-huh. Playing nasty, huh?"
41	Pleading eyes and tightened testicles.
44	Even from where Pecola lay, she could smell Cholly's whiskey. ...Cholly had come home drunk.
48	She ran into the bedroom with a dishpan full of cold water and threw it in Cholly's face. He sat up, choking and spitting. Naked and ashen, he leaped from the bed, and with a flying tackle, grabbed his wife around the waist, and they hit the floor. Cholly picked her up and knocked her down with the back of his hand. She fell in a sitting position, her back supported by Sammy's bed frame. She had not let go of the dishpan, and began to hit at Cholly's thighs and groin with it. He put his foot in her chest, and she dropped the pan. Dropping to his knee, he struck her several times in the face, and she might have succumbed early had he not hit his hand against the metal bed frame when his wife ducked. ...Sammy, who had watched in silence their struggling at his bedside, suddenly began to hit his father about the head with both fists, shouting "You naked fuck!" over and over and over. Mrs. Breedlove, having snatched up the round, flat stove lid, ran tippy-toe to Cholly as he was pulling himself up from his knees, and struck him two blows, knocking him right back into the senselessness out of which she had provoked him. Panting, she threw a quilt over him and let him lie.
59	Neither were they the sloppy, inadequate whores who, unable to make a living at it alone, turn to drug consumption and traffic or pimps to help complete their scheme of self-destruction, avoiding suicide only to punish the memory of some absent father or to sustain the misery of some silent mother. ...On one occasion the town well knew, they lured a Jew up the stairs, pounced on him, all three, held him up by the heels, shook everything out of his pants pockets, and threw him out of the window.
60	Into her eyes came the picture of Cholly and Mrs. Breedlove in bed. He making sounds as though he were in pain, as though something had him by the throat and wouldn't let go.
77	Instead we saw Mr. Henry and two women. In a playful manner, the way grandmothers do with babies, he was sucking the fingers of the women, whose



Page	Content
	<p>laughter filled a tiny place over his head.</p> <p>...The sight of him licking her fingers brought to mind the girlie magazines in his room.</p>
82	They do not drink, smoke , or swear, and they still call sex "nookey."
83	<p>He must rest his weight on his elbows when they make love, ostensibly to avoid hurting her breasts but actually to keep her from having to touch or feel too much of him.</p> <p>While he moves inside her, she will wonder why they didn't put the necessary but private parts of the body in some more convenient place- like the armpit, for example, or the palm of the hand. Someplace one could get to easily, and quickly, without undressing. She stiffens when she feels one of her paper curlers coming undone from the activity of love; imprints in her mind which one it is that is coming loose so she can quickly secure it once he is through. She hopes he will not sweat the damp may get into her hair; and that she will remain dry between her legs—she hates the glucking sound they make when she is moist. When she senses some spasm about to grip him, she will make rapid movements with her hips, press her fingernails into his back, suck in her breath, and pretend she is having an orgasm. She might wonder again, for the six hundredth time, what it would be like to have that feeling while her husband's penis is inside her. The closest thing to it was the time she was walking down the street and her napkin slipped free of her sanitary belt. It moved gently between her legs as she walked. Gently, ever so gently. And then a slight and distinctly delicious sensation collected in her crotch. As the delight grew, she had to stop in the street, hold her thighs together to contain it. That must be what it is like, she thinks, but it never happens while he is inside her. When he withdraws, she pulls her nightgown down, slips out of the bed and into the bathroom with relief.</p>
85	White kids; his mother did not like him to play with niggers. She had to explain to him the difference between colored people and niggers. They were easily identifiable. Colored people were neat and quiet; niggers were dirty and loud.
89	<p>"Gimme my cat!" His voice broke. With a movement both awkward and sure he snatched the cat by one of its hind legs and began to swing it around his head in a circle.</p> <p>"Stop that!" Pecola was screaming. The cat's free paws were stiffened, ready to grab anything to restore balance, its mouth wide, its eyes blue streaks of horror. Junior tried to push her away, but she grabbed the arm which was swinging the cat. They both fell, and in falling, Junior let go the cat, which, having been released in mid-motion, was thrown full force against the window. It slithered down and fell on the radiator behind the sofa. Except for a few shudders, it was still. There was only the slightest smell of singed fur.</p> <p>Geraldine opened the door.</p> <p>"What is this?" Her voice was mild, as though asking a perfectly reasonable question. "Who is this girl?"</p> <p>"She killed our cat," said Junior. "Look." He pointed to the radiator, where the cat lay, its blue eyes closed, leaving only an empty, black, and helpless face.</p>
93	<p>"Mr. Henry."</p> <p>"What'd he do?"</p>



Page	Content
	<p>"Daddy beat him up." ... "He...picked at me." "Picked at you? You mean like Soaphead Church?" "Sort of." "He showed his privates at you?" "Noooo. He touched me." "Where?" "Here and there." She pointed to the tiny breasts that, like two fallen acorns, scattered a few faded rose leaves on her dress. "Really? How did it feel?" ... "It didn't feel like anything." "But it wasn't supposed to? Feel good, I mean?" Frieda sucked her teeth. "What'd he do? Just walk up and pinch them?" She sighed. "First he said how pretty is was. Then he grabbed my arm and touched me."</p>
96	<p>"You could drink whiskey." "Where would I get whiskey?" ... "Pecola," I said. "Her father's always drunk. She can get us some." "You think so?" "Sure. Cholly's always drunk..."</p>
100	Black people were not allowed in the park, and so it filled our dreams.
111	No better than whites for meanness.
113	Nasty white folks is about the nastiest things they is.
117	I hurt just like them white women. Just 'cause I wasn't hooping and hollering before didn't mean I wasn't feeling pain. What'd they think? That just 'cause I knowed how to have a baby with no fuss that my behind wasn't pulling and aching like theirs?
120	<p>Then he lift his head, turn over, and put his hand on my waist. If I don't move, he'll move his hand over to pull and knead my stomach. Soft and slow-like. I still don't move, because I don't want him to stop. I want to pretend sleep and have him keep on rubbing my stomach. Then he will lean his head down and bite my tit. Then I don't want him to rub my stomach anymore. I want him to put his hand between my legs. I pretend to wake up, and turn to him, but not opening my legs. I want him to open them for me. He does, and I be soft and wet where his fingers are strong and hard. I be softer than I ever been before. All my strength in his hand. My brain curls up like wilted leaves. A funny, empty feeling is in my hands. I want to grab holt of something, so I hold his head. His mouth is under my chin. Then I don't want his hand between my legs no more, because I think I am softening away. I stretch my legs open, and he is on top of me. Too heavy to hold, and too light not to. He puts his thing in me. In me. In me. I wrap my feet around his back so he can't get away. His face is next to mine. The bed springs sounds like them crickets used to back home. He puts his fingers in mine, and we stretches our arms outwise like Jesus on the cross. I hold on tight. My fingers and my feet hold on tight, because everything else is going, going. I know he wants me to come first. But I can't. Not until he does. Not until I feel him loving me. Just me. Sinking into me. Not until I know that my flesh is all that be on his mind. That</p>



Page	Content
	<p>he couldn't stop if he had to. That he would die rather than take his thing out of me. Of me. Not until he has let go of all he has, and give it to me. To me. To me. When he does, I feel a power I be strong, I be pretty, I be young. And then I wait. He shivers and tosses his head. Now I be strong enough, pretty enough, and young enough to let him make me come. I take my fingers out of his and put my hands on his behind. My legs drop back onto the bed. I don't make no noise, because the chil 'ren might hear. I begin to feel those little bits of color floating up into me—deep in me. That streak of green from the june-bug light, the purple from the berries trickling along my thighs, Mama Is lemonade yellow runs sweet in me. Then I feel like I'm laughing between my legs, and the laughing gets all mixed up with the colors, and I'm afraid I'll come, and afraid I won't. But I know I will. And I do. And it be rainbow all inside. And it lasts and lasts and lasts. I want to thank him, but don't know how, so I pat him like you do a baby.</p> <p>..."But it ain't like that anymore. Most times he's thrashing away inside me before I'm woke, and through when I am..."</p>
123	When Cholly was four days old, his mother wrapped him in two blankets and one newspaper and placed him on a junk heap by the railroad.
127	To Aunt Jimmy she said, "You done caught cold in your womb. Drink pot liquor and nothing else."
129	He was aware, in his sleep, of being curled up in a chair, his hands tucked between his thighs. In a dream his penis changed into a long hickory stick, and the hands caressing it were the hands of M'Dear.
135	Cholly could see her bloomers and the muscles of her young thighs.
136	<p>He rose to his knees facing her and tried to tie her ribbon. Darlene put her hands under his open shirt and rubbed the damp tight skin. When he looked at her in surprise, she stopped and laughed. He smiled and continued knotting the bow. She put her hands back under his shirt.</p> <p>...She tickled his ribs with her fingertips. He giggled and grabbed his rib cage. They were on top of each other in a moment. She corkscrewing her hands into his clothes. He returning the play, digging into the neck of her dress, and then under her dress. When he got his hand in her bloomers, she suddenly stopped laughing and looked serious. Cholly, frightened, was about to take his hand away, but she held his wrist so he couldn't move it. He examined her then with his fingers, and she kissed his face and mouth. Cholly found her muscadine-lipped mouth distracting. Darlene released his head, shifted her body, and pulled down her pants. After some trouble with the buttons, Cholly dropped his pants down to his knees. Their bodies began to make sense to him, and it was not as difficult as he had thought it would be. She moaned a little, but the excitement collecting inside him made him close his eyes and regard her moans as no more than pine sighs over his head. Just as he felt an explosion threaten, Darlene froze and cried out. He thought he had hurt her, but when he looked at her face, she was staring wildly at something over his shoulder. He jerked around.</p> <p>There stood two white men. One with a spirit lamp, the other with a flashlight. There was no mistake about their being white; he could smell it. Cholly jumped, trying to kneel, stand, and get his pants up all in one motion. The men had long guns.</p>



Page	Content
	<p>..."I said, get on wid it. An' make it good, nigger, make it good."</p> <p>...The flashlight man lifted his gun down from his shoulder, and Cholly heard the clop of metal. He dropped back to his knees. Darlene had her head averted, her eyes staring out of the lamplight into the surrounding darkness and looking almost unconcerned, as though they had no part in the drama taking place around them. With a violence born of total helplessness, he pulled her dress up, lowered his trousers and underwear.</p> <p>"Hee hee hee hee heeeeee."</p> <p>Darlene put her hands over her face as Cholly began to simulate what had gone on before. He could do no more than make-believe. The flashlight made a moon on his behind.</p> <p>"Hee hee hee hee heeee."</p> <p>"Come on, coon. Faster. You ain't doing nothing for her."</p> <p>"Hee hee hee hee heeee."</p> <p>Cholly, moving faster, looked at Darlene. He hated her. He almost wished he could do it—hard, long, and painfully, he hated her so much. The flashlight wormed its way into his guts and turned the sweet taste of muscadine into rotten fetid bile. He stared at Darlene's hands covering her face in the moon and lamplight. They looked like baby claws.</p> <p>"Hee hee hee hee heeee."</p> <p>..."Wait," said the spirit lamp, "the coon ain't comed yet."</p> <p>"Well, he have to come on his own time. Good luck, coon baby."</p> <p>...Cholly raised himself and in silence buttoned his trousers. Darlene did not move. Cholly wanted to strangle her, but instead he touched her leg with his foot. "We got to get, girl. Come on!"</p> <p>She reached for her underwear with her eyes closed, and could not find them. The two of them patted about in the moonlight for the panties. When she found them, she put them on with the movements of an old woman.</p>
140	It had occurred to him that Darlene might be pregnant.
149	<p>Pecola lost her balance and was about to careen to the floor. Cholly raised his other hand to her hips to save her from falling. He put his head down and nibbled at the back of her leg. His mouth trembled at the firm sweetness of the flesh. He closed his eyes, letting his fingers dig into her waist. The rigidness of her shocked body, the silence of her stunned throat, was better than Pauline's easy laughter had been. The confused mixture of his memories of Pauline and the doing of a wild and forbidden thing excited him, and a bolt of desire ran down his genitals, giving it length, and softening the lips of his anus. Surrounding all of this lust was a border of politeness. He wanted to fuck her tenderly. But the tenderness would not hold. The tightness of her vagina was more than he could bear. His soul seemed to slip down to his guts and fly out into her, and the gigantic thrust he made into her then provoked the only sound she made—a hollow suck of air in the back of her throat. Like the rapid loss of air from a circus balloon.</p> <p>Following the disintegration—the falling away—of sexual desire, he was conscious of her wet, soapy hands on his wrists, the fingers clenching, but whether her grip was from a hopeless but stubborn struggle to be free, or from some other emotion, he could not tell.</p>



Page	Content
	<p>Removing himself from her was so painful to him he cut it short and snatched his genitals out of the dry harbor of her vagina. She appeared to have fainted. Cholly stood up and could see only her grayish panties, so sad and limp around her ankles. Again the hatred mixed with tenderness. The hatred would not let him pick her up, the tenderness forced him to cover her.</p> <p>So when the child regained consciousness, she was lying on the kitchen floor under a heavy quilt, trying to connect the pain between her legs with the face of her mother looming over her.</p>
152	<p>The careful design was marred occasionally by rare but keen sexual cravings. He could have been an active homosexual but lacked the courage. Bestiality did not occur to him, and sodomy was quite out of the question, for he did not experience sustained erections and could not endure the thought of somebody else's. And besides, the one thing that disgusted him more than entering and caressing a woman was caressing and being caressed by a man. In any case, his cravings, although intense, never relished physical contact. He abhorred flesh on flesh.</p> <p>...all the natural excretions and protections the body was capable of- disquieted him. His attentions therefore gradually settled on those humans whose bodies were least offensive- children. And since he was too diffident to confront homosexuality, and since little boys were insulting, scary, and stubborn, he further limited his interests to little girls. They were usually manageable and frequently seductive. His sexuality was anything but lewd; his patronage of little girls smacked of innocence and was associated in his mind with cleanliness.</p>
154	<p>They were industrious, orderly, and energetic, hoping to prove beyond a doubt De Gobineau's hypothesis that "all civilizations derived from the white race, that none can exist without its help, and that a society is great and brilliant only so far as it preserves the blood of the noble group that created it."</p>
165	<p>The little girls are the only things I'll miss. Do you know that when I touched their sturdy little tits and bit them—just a little—I felt I was being friendly? I didn't want to kiss their mouths or sleep in the bed with them or take a child bride for my own. Playful, I felt, and friendly.</p> <p>...Two of them, Doreen and Sugar Babe, they'd come together. I gave them mints, money, and they'd eat ice cream with their legs open while I played with them. It was like a party. And there wasn't nastiness, and there wasn't any filth, and there wasn't any odor, and there wasn't any groaning—just the light white laughter of little girls and me. And there wasn't any look—any long funny look—any long funny Velma look afterward. No look that makes you feel dirty afterward. That makes you want to die. With little girls it is all clean and good and friendly.</p> <p>...I did what You did not, could not, would not do: I looked at that ugly little black girl, and I loved her. I played You. And it was a very good show!</p>
168	<p>A slim young girl in a pink crepe dress. One hand is on her hip; the other lolls about her thigh- waiting.</p>
169	<p>"Did you hear about that girl?"</p> <p>"What? Pregnant?"</p> <p>"Yas. But guess who?"</p> <p>"Who? I don't know all these little old boys."</p>



Page	Content
	"That's just it. Ain't no little old boy. They say it's Cholly." "Cholly? Her daddy?" "Uh-huh." "Lord. Have mercy. That dirty nigger." ..."Oh, come on. She ain't but twelve or so."
178	Oh. She's all right. For a half-white girl, that is.
180	All he did was get drunk and beat her up. ...Anyway, if she didn't love him, she sure let him do it to her a lot. ...I saw them all the time. She didn't like it. Then why'd she let him do it to her? Because he made her.
182	You said he tried to do it to you when you were sleeping on the couch. See there! You don't even know what you're talking about. It was when I was washing dishes.

Profanity	Count
Ass	1
Bitch	1
Coon	2
Fuck	3
Nigger	8

THE HATE U GIVE



Summary of Concerns:

This book contains inflammatory racial commentary; excessive/frequent profanity; and inexplicit sexual activities.

Young Adult

By Angie Thomas

ISBN: 978-0-06-287135-0



Minor Restricted
BookLooks Review Rating



Page	Content
31	Daddy believes in Black Jesus but follows the Black Panthers' Ten-Point Program more than the Ten Commandments. He agrees with the Nation of Islam on some stuff, but he can't get over the fact that they may have killed Malcolm X. "Pig in my house," Daddy grumbles and sits next to me.
51	"You mean y'all wanna justify what that pig did," Daddy says. "Investigate my ass." ... "A sixteen-year-old black boy is dead because a white cop killed him. What else could it be?"
81	fooling around isn't new for us, and when Chris slipped his hand into my shorts, I didn't think anything of it. Then he got me going, and I really wasn't thinking. At all. For real, my thought process went out the door. And right as I was at that moment, he stopped, reached into his pocket, and pulled out a condom. He raised his eyebrows at me, silently asking for an invitation to go all the way. All I could think about was those girls I see walking around Garden Heights, babies propped on their hips. Condom or no condom, shit happens. ...I left his house pissed and horny, the absolute worst way to leave.
88	Last time he played with some neighborhood kids, they called him "white boy" 'cause he goes to Williamson.
110	Let my clarify- my butt against his crotch, my back against his chest. I'm bumping up against him, trying to figure out how to get the ball back in the hole. It sounds way dirtier than it actually is, especially in this position.
131	"...Coming in the Lord's house, looking like he prostitute you are!"
131	"I still can't believe you slept with that nasty ho."
3	A haze lingers over the room, smelling like weed, and music rattles the floor.
5	Plus, if I pull it over my nose, I can't smell the weed.
7	"...You're so lucky you go to that white-people school and don't have to deal with hoes like that."
9	"Point made. And before you say it, li'l lame white-kid suburb parties don't count." ..."I bet they be doing Molly and shit, don't they?" Chance asks me. "White kids love popping pills."
10	"Damn. For real?" Chance asks. "Shiiiiit. Bitch, next time invite me. I'll party with them white kids."
186	She pats my hair and says, "White people do stupid shit sometimes."
220	"It's really something that you're alive," I say. Snitches get stitches doesn't apply to King Lords. More like snitches get graves. Momma tilts Mr. Lewis's head to look at the cut on his cheek. "She's right. You're real lucky, Mr. Lewis. Don't even need stitches." ..."He ain't come in till them other ones got me down. Ol' punk ass, looking like a black Michelin Man."
224	"A cop though? If the homies find out, the gon' think I'm snitching." "They're not your homies if you gotta hide from them," I say. "Plus Uncle Carlos wouldn't ask you to snitch."



Page	Content
230	DeVante sizes Chris up. "Boyfriend," he says with a slight laugh, and looks at me. "I should've know you'd have a white boy." ..."Get over it, Maverick. He's white!" Momma shouts on the patio. "White, white, white!" ..."That's why DeVante was looking at you that way. You're white." "Okay?" he asks more than says. "Is this one of those black things I don't understand?" "Okay, babe, real talk? If you were somebody else I'd side-eye the shit out of you for calling it that." "Calling it what? A black thing?" ..."I wouldn't call it a problem," Chris says, "but we did talk about it." "So it's not just a black thing then, huh?" "Point made."
231	"I think they feel guilty about yesterday. Especially Hailey. White guilt." He winks. I crack up. My white boyfriend talking about white guilt.
234	She raises her eyebrows at me. "Are you taking your birth control pills?" "Mommy!" "Answer my question. Are you?" "Yeeees," I groan, putting my face on the countertop.
235	"A wigga at that." "Excuse you?" I say with a mouth full o f peanut butter. "He is not a wigga."
258	Momma, Sekani, and I spent the night at Uncle Carlos's house, and I know it was more because Momma's mad at Daddy than it was about the riots. In fact, the news said last night was the first semipeaceful night in the Garden. Just protests, no riots. Cops were still throwing tear gas though.
292	..."Fuck the Police" type shit.
320	"We want freedom," I say. "We want the power to determine the destiny of our black and oppressed communities." "Say it again." "We want freedom. We want the power to determine the destiny of our black and oppressed communities." "Point seven." "We want an immediate end to police brutality," I say, "and the murder of black people, other people of color, and oppressed people." "Again." "We want an immediate end to police brutality and the murder of black people, other people of color, and oppressed people." "And what did Brother Malcolm say is our objective?" Seven and I recite Malcom X quotes by the time we were thirteen. Sekani hasn't gotten there yet. "Complete freedom, justice, and equality," I say, "by any means necessary." "Again." "Complete freedom, justice, and equality, by any means necessary." "So why you gon' be quiet?" Daddy asks.



Page	Content
338	He's been more protective lately, ever since we got word that King's still pissed I dry snitched.
340	"Whatever. So because I didn't want to see that disgusting shit, I'm racist?"
357	I have to watch what I say and how I say it, but I can't sound "white."
376	"Who gives a fuck?" ..."Not Hailey. But you know. Blond. Rich. White."
377	I slip my hand in his pants, heading for the bulge.
383	"I bet he yours, ain't he? That's what happens when you go to them white folks' schools." ..."I would've paid to see Maverick's face the day you brought this one home. Shit, I'm surprised Seven got a black girl."
384	"That goes for dry snitches too." ..."Y'all better get DeVante's sorry ass out of my bedroom. Bleeding on my carpet and shit. And got the nerve to use one of my damn towels? Matter of fact, get him and that snitch out my house."
389	"This some bullshit." "Fuck!" Seven croaks. He covers his eyes and rocks back and forth. "Fuck, fuck, fuck!" ..."Fuck this. Starr, whatever you wanna do, I'm down. You wanna burn some shit up, we'll burn some shit up. Give the word." "Dude, are you crazy?" Chris says. "You don't get it, so shut up. Starr, what do you wanna do?" Anything. Everything. Scream. Cry. Puke. Hit somebody. Burn something. Throw something. They gave me this hate, and now I wanna fuck everybody, even if I'm not sure how. "I wanna do something," I say. "Protest, riot, I don't care-" "Riot?" Chris echoes. "Hell yeal!" DeVante gives me dap. "That's what I'm talking 'bout!" "Starr, think about this," Chris says. "That won't solve anything." "And neither did talking!" I snap. "I did everything right and it didn't make a fucking difference. I've gotten death threats, cops harassed my family, somebody shot into my house, all kinds of shit. And for what? Justice Khalil won't get? They don't give a fuck about us, so fine. I no longer give a fuck."
392	"You crazy-ass white boy if you that's gon' happen."
393	The crowds are too thick. We climb on top of a bus stop bench to get a better view of everything going on. King Lords in gray bandanas and Garden Disciples in green bandanas stand on a police care in the middle of the street, chanting, "Justice for Khalil!" People gathered around the car record the scene with their phones and throw rocks at the windows. "Fuck that cop, bruh," a guy says, gripping a baseball bat. "Killed him over nothing!" He slams the bat into the driver's side window, shattering the glass. It's on. The King Lords and GDs stomp out the front window. Then somebody yells, "Flip

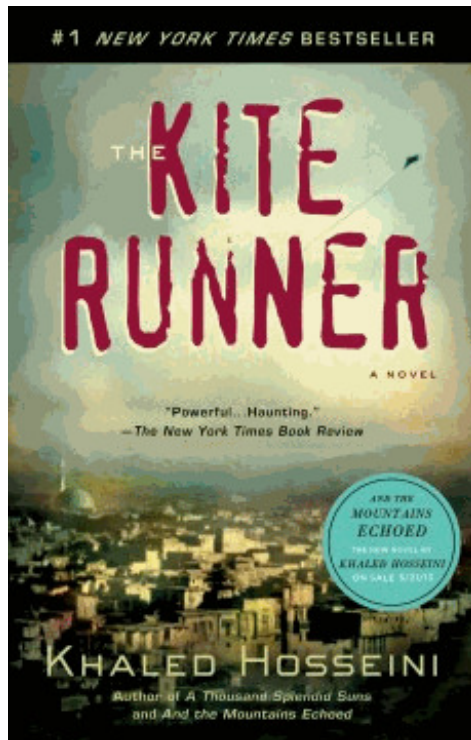


Page	Content
	<p>that mothafucka!”</p> <p>The gangbangers jump off. People line up on one side of the car. I stare at the lights on top, remembering the ones that flashed behind me and Khalil, and watch them disappear as they flip the care onto its back.</p> <p>Someone shouts, “Watch out!”</p> <p>A molotov cocktail sails toward the car. Then-whoompf! It bursts into flames. The crowd cheers.</p> <p>People say misery loves company, but I think it’s like that with anger too. I’m not the only one pissed- everyone around me is. They didn’t have to be sitting in the passenger’s seat when it happened. My anger is theirs, and theirs is mine.</p> <p>A car stereo loudly plays a record-scratching sound, then Ice Cube says, “Fuck the police, coming straight form the underground. A young nigga got it bad ‘cause I’m brown.”</p> <p>You’d think it was a concert the way people react, rapping along and jumping in the beat. DeVante and Seven yell out the lyrics. Chris nods along and mumbles the words. He goes silent every time Cube says “nigga.” As he should.</p> <p>When that hook hits, a collective “Fuck the police” thunders off Magnolia Avenue, probably loud enough to reach the heavens.</p> <p>...Fuck them.</p> <p>Glass shatters. I stop rapping.</p> <p>A block away, people throw rocks and garbage cans at the windows of the McDonald’s and the drugstore next to it.</p> <p>“Holy shit,” Chris says.</p> <p>...“Hell yeah!” says DeVante. “Burn that bitch down!”</p> <p>...I’m just as pissed as anybody, but this...this isn’t it. Not for me.</p> <p>...The original battle cry starts up again: “Fuck the police! Fuck the police!”</p> <p>People hurl rocks and glass bottles at the cops.</p> <p>“Yo,” Seven says.</p> <p>“Stop throwing objects at law enforcement,” the officer says.</p> <p>...“Fuck the police! Fuck the police!” DeVante continues to shout.</p> <p>“Vante, man, c’mon!” Says Seven.</p> <p>“I ain’t scared of them! Fuck the police!”</p> <p>There’s a loud pop. An object sails into the air, lands in the middle of the street, and explodes in a ball of fire.</p> <p>“Oh shit!” DeVante says.</p> <p>...It’s a damn near stampede...</p>
397	<p>“Niggas tired of taking shit,” DeVante says, between heavy breaths. “Like Starr said, they don’t give a fuck about us, so we don’t give a fuck. Burn this bitch down.”</p> <p>“But they don’t live here!” Seven says. “They don’t give a damn what happens to this neighborhood.”</p> <p>“What we supposed to do then?” DeVante snaps. “All that Kumbaya peaceful shit clearly don’t work. They don’t listen till we tear something up.”</p> <p>“Those businesses though,” I say.</p> <p>“...Nah, I don’t give a fuck about neither one of them bitches.”</p>

Page	Content
398	<p>"People are pissed, DeVante. They're not thinking shit out. They're doing shit."</p> <p>"...He was mad as hell that Chris is white. But ay? You spit that NWA shit like you did back there, maybe he'll think you're a'ight."</p> <p>"What? Surprised a white boy knows NWA?" Chris teases.</p> <p>"Man, you ain't white. You light-skinned."</p>
400	"I swear, I don't understand white people..."
401	"...If my pops were here, he'd say you've fallen into the trap of the white standard."
408	<p>Ahead of the crowd a lady twists stands on top of a police car, holding a bullhorn. She turns toward us, her fist raised for black power. Khalil smiles on the front of her T-shirt.</p> <p>...She eyes beat-up DeVante. "Oh my God, did you get caught in the riots?"</p> <p>DeVante touches his face. "Damn, I look that bad?"</p> <p>..."You can destroy wood and brick, but you can't destroy a movement..."</p>
410	<p>"You want to fight the system tonight?"</p> <p>..."Good. As of now I'm not your attorney. So if your parents find out about this, I didn't do it as your attorney but as an activist. You saw that bus near the intersection?"</p> <p>..."If the police react, run straight to it. Got it?"</p> <p>...She takes me to the patrol car and motions at her colleague. The lady climbs off and hands Ms. Ofrah the bullhorn. Ms. Offrah passes it over to me.</p> <p>"Use your weapon," she says.</p> <p>Another one of her coworkers lifts me and sets me on top of the cop car.</p> <p>...Shit, I have no idea what to say.</p> <p>...You know what? Fuck it.</p> <p>"My name is Starr. I'm the one who saw what happened to Khalil, " I say into the bullhorn. "And it wasn't right."</p> <p>..."We weren't doing anything wrong. Not only did Officer Cruise assume we were up to no good, he assumed we were criminals. Well, Officer Cruise is the criminal."</p> <p>The crowd cheers and claps. Ms. Ofrah says, "Speak!"</p> <p>That amps me up.</p> <p>I turn to the cops. "I'm sick of this! Just like y'all think all of us are bad because of some people, we think the same about y'all. Until you give us a reason to think otherwise, we'll keep protesting."</p>
430	DeVante shrugs. "I already need the stitches. Might as well snitch."

Profanity	Count
Ass	101
Bitch	14
Fuck	97
Goddamn/Goddammit	15
Nigga	9
Piss	24
Shit	228

THE KITE RUNNER



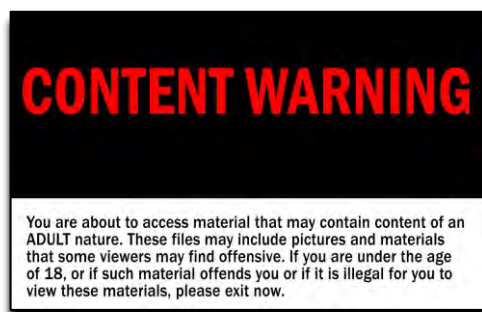
Summary of Concerns:

This book contains sexual assault of a minor; prostitution involving minors and adults; and mild/infrequent profanity.

Adult

By Khaled Hosseini

ISBN: 9781101217238



4/5

Not For Minors
BookLooks Review Rating

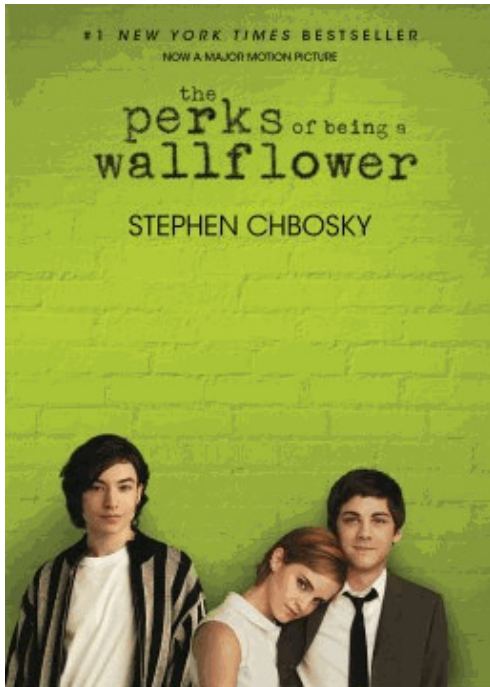
Page	Content
6	<p>He handed his cigarette to the guy next to him, made a circle with the thumb and index finger of one hand. Poked the middle finger of his other hand through the circle. Poked it in and out. In and out. "I knew your mother, did you know that? I knew her real good. I took her from behind by that creek over there."</p> <p>..."What a tight little sugary cunt she had!" the soldier was saying, shaking hands with the others, grinning.</p>
66	<p>Hassan lay with his chest pinned to the ground. Kamal and Wali each gripped an arm, twisted and bent at the elbow so that Hassan's hands were pressed to his back. Assef was standing over them, the heel of his snow boots crushing the back of Hassan's neck.</p> <p>..."Fine," Assef snapped. "All I want you weaklings to do is hold him down. Can you manage that?"</p> <p>Wali and Kamal nodded. They looked relieved.</p> <p>Assef knelt behind Hassan, put his hands on Hassan's hips and lifted his bare buttocks. He kept one hand on Hassan's back and undid his own belt buckle with his free hand. He unzipped his jeans. Dropped his underwear. He positioned himself behind Hassan. Hassan didn't struggle. Didn't even whimper. He moved his head slightly and I caught a glimpse of his face. Saw the resignation in it. It was a look I had seen before. It was the look of the lamb.</p> <p>...I STOPPED WATCHING, turned away from the alley. Something warm was running down my wrist. I blinked, saw I was still biting down on my fist, hard enough to draw blood from the knuckles. I realized something else. I was weeping. From just around the corner, I could hear Assef's quick, rhythmic grunts.</p>
69	<p>And that was as close as Hassan and I ever came to discussing what had happened in the alley. I thought he might burst into tears, but, to my relief, he didn't, and I pretended I hadn't heard the crack in his voice. Just like I pretended I hadn't seen the dark stain in the seat of his pants. Or those tiny drops that fell from between his legs and stained the snow black.</p>
100	<p>Karim cleared his throat, dropped his head. Said the soldier wanted a half hour with the lady in the back of the truck.</p> <p>The young woman pulled the shawl down over her face. Burst into tears. The toddler sitting in her husband's lap started crying too.</p> <p>..."It's his price for letting us pass," Karim said.</p> <p>..."But we've paid a fair price already. He's getting paid good money," the husband said.</p> <p>Karim and the Russian soldier spoke. "He says... he says every price has a tax."</p>
101	<p>My mind flashed to that winter day six years ago. Me, peering around the corner in the alley. Kamal and Wali holding Hassan down. Assef's buttock muscles clenching and unclenching, his hips thrusting back and forth.</p>
161	<p>The general, ever the Pashtun, never made any queries—doing so meant alluding to a sexual act between his daughter and a man, even if the man in question had been married to her for over four years.</p>
162	<p>After months of sitting in waiting rooms reading magazines like Good Housekeeping and Reader's Digest, after endless paper gowns and cold, sterile exam rooms lit by fluorescent lights, the repeated humiliation of discussing every</p>

Page	Content
	detail of our sex life with a total stranger, the injections and probes and specimen collections, we went back to Dr. Rosen and his trains.
224	<p>“There is a Talib official,” he muttered. “He visits once every month or two. He brings cash with him, not a lot, but better than nothing at all.” His shifty eyes fell on me, rolled away. “Usually he’ll take a girl. But not always.”</p> <p>“And you allow this?” Farid said behind me. He was going around the table, closing in on Zaman.</p> <p>“What choice do I have?” Zaman shot back. He pushed himself away from the desk.</p> <p>“You’re the director here,” Farid said. “Your job is watch over these children.”</p> <p>“There’s nothing I can do to stop it.”</p> <p>“You’re selling children!” Farid barked.</p>
233	<p>A scrawny boy in a tweed jacket grabbed my elbow and spoke into my ear. Asked me if I wanted to buy some “sexy pictures.”</p> <p>“Very sexy, Agha,” he said, his alert eyes darting side to side—reminding me of a girl who, a few years earlier, had tried to sell me crack in the Tenderloin district in San Francisco. The kid peeled one side of his jacket open and gave me a fleeting glance of his sexy pictures: postcards of Hindi movies showing doe-eyed sultry actresses, fully dressed, in the arms of their leading men. “So sexy,” he repeated.</p>
245	The Talib spun the boy around so he faced me. He locked his arms around Sohrab’s belly, rested his chin on the boy’s shoulder. Sohrab looked down at his feet, but kept stealing shy, furtive glances at me. The man’s hand slid up and down the boy’s belly. Up and down, slowly, gently.
288	“He was sexually abused,” I said, thinking of the bells around Sohrab’s ankles, the mascara on his eyes.
303	When I wake up, maybe I will discover that everything I saw in the hotel bathroom was part of a dream: the water drops dripping from the faucet and landing with a plink into the bloody bathwater; the left arm dangling over the side of the tub, the blood-soaked razor sitting on the toilet tank—the same razor I had shaved with the day before—and his eyes, still half open but lightless. That more than anything. I want to forget the eyes.
306	Sohrab’s bed was next to the window, the lower half lit by the late-morning sunlight streaming through the rectangular panes. A uniformed security guard was standing at the window, munching on cooked watermelon seeds—Sohrab was under twenty-four-hours-a-day suicide watch.



Profanity	Count
Ass	1
Cunt	1
Fag	1
Fuck	4
Goddamn	12
Piss	6
Prick	1
Shit	3

THE PERKS OF BEING A WALLFLOWER



Summary of Concerns:

This book contains sexual activities including assault and battery; sexual nudity; profanity; violence; alcohol and drug use.

Young Adult

By Stephen Chbosky

ISBN: 978-1-4516-9620-2

978-1-4391-2243-3



4 / 5

Not For Minors
BookLooks Review Rating



Page	Content
2	I just need to know that someone out there listens and understands and doesn't try to sleep with people even if they could have. I need to know that these people exist.
4	That's maybe why he felt all alone and killed himself.
6	But over the summer she had her braces taken off, and she got a little taller and prettier and grew new breasts.
12	And I opened the door to the basement, and my sister and this boy were naked. He was on top of her, and her legs were draped over either side of the couch. And she screamed at me in a whisper. "Get out. You pervert."
21	I had a weird dream. I was with Sam. And we were both naked. And her legs were spread over the sides of the couch. And I woke up. And I had never felt that good in my life. But I also felt bad because I saw her naked without her permission. ...Do you know what "masturbation" is? I think you probably do because you are older than me. But just in case, I will tell you. Masturbation is when you rub your genitals until you have an orgasm. Wow! I thought that in those movies and television shows when they talk about having a coffee break that they should have a masturbation break. ...I told Sam that I dreamt that she and I were naked on the sofa, and I started crying because I felt bad, and do you what she did? She laughed.
30	This one couple, whom I was told later were very popular and in love, stumbled into my room and asked if I minded them using it. I told them that my brother and sister said I had to stay here, and they asked if they could use the room anyway with me still in it. I said I didn't see why not, so they closed the door and started kissing. Kissing very hard. After a few minutes, the boy's hand went up the girl's shirt, and she started protesting. "C'mon, Dave." "What?" "The kid's in here." "It's okay." And the boy kept working up the girl's shirt, and as much as she said no, he kept working it. After a few minutes, she stopped protesting, and he pulled her shirt off, and she had a white bra on with lace. I honestly didn't know what to do by this point. Pretty soon, he took off her bra and started to kiss her breasts. And then he put his hand down her pants, and she started moaning. I think they were both very drunk. He reached to take off her pants, but she started crying really hard, so he reached for his own. He pulled his pants and underwear down to his knees. "Please. Dave. No." But the boy just talked soft to her about how good she looked and things like that, and she grabbed his penis with her hands and started moving it. I wish I could describe this a little more nicely without using words like penis, but that was the way it was. After a few minutes, the boy pushed the girl's head down, and she started to kiss his penis. She was still crying. Finally, she stopped crying because he put his penis



Page	Content
	<p>in her mouth, and I don't think you can cry in that position. I had to stop watching at that point because I started to feel sick, but it kept going on, and they kept doing other things, and she kept saying "no." Even when I covered my ears, I could still hear her say that.</p> <p>..."Did they know you were in there?"</p> <p>"Yes. They asked if they could use the room."</p> <p>"Why didn't you stop them?"</p> <p>"I didn't know what they were doing."</p> <p>"You pervert,"...</p>
33	Sam told me as we were hanging up our coats that Bob was "baked like a fucking cake."
44	<p>When most people left, Brad and Patrick went into Patrick's room.</p> <p>They had sex for the first time that night.</p> <p>I don't want to go into detail about it because it's pretty private stuff, but I will say that Brad assumed the role of the girl in terms of where you put things. I think that's pretty important to tell you. When they were finished, Brad started to cry really hard. He had been drinking a lot. And getting really really stoned.</p>
45	He was also crying pretty bad, and he decided if anyone asked him, he would say his eyes were red from smoking pot.
49	According to my sister, Sam used to be a "blow queen." I hope you know what that means because I really can't think about Sam and describe it to you.
56	They usually start when my mom's dad (my grandfather) finishes his third drink. It is around this time that he starts to talk a lot. My grandfather usually just complains about black people moving into the old neighborhood, and then my sister gets upset at him, and then my grandfather tells her that she doesn't know what she's talking about because she lives in the suburbs.
66	<p>And I wasn't shy because we were trying to act like grown-ups, and we drank brandy. And I was warm. I'm still a little warm, but I have to tell you this.</p> <p>...That's when Patrick put on the second side of the tape I made for him and poured everyone another glass of brandy. I guess we all looked a little silly drinking it, but we didn't feel silly.</p>
70	She told me about the first time she was kissed. She told me that it was with one of her dad's friends. She was seven.
72	<p>And he caught his sister making out on the back porch</p> <p>...That made him cough when he kissed her but he kissed her anyway because that was the thing to do</p> <p>And he called it "Absolutely Nothing" because that's what it was really all about</p> <p>And he gave himself an A</p> <p>and a slash on each damned wrist</p> <p>And he hung it on the bathroom door because this time he didn't think he could reach the kitchen.</p>
81	<p>I agreed, but then my brother started saying how my sister was just a "bitchy dyke."</p> <p>...I am probably the only one in the family with a friend who is gay.</p>
94	Everyone else is either asleep or having sex.



Page	Content
95	That's what Bob said before he went to his bedroom with Jill, a girl that I don't know.
96	But the thing is that I can hear Sam and Craig having sex, and for the first time in my life, I understand the end of that poem. And I never wanted to.
100	Regardless, I decided to never take LSD again.
101	The book said that sometimes people take LSD, and they don't really get out of it.
110	Patrick kept making jokes that I would get an "erection." I really hoped this wouldn't happen. Once, I got an erection in class and had to go to the blackboard.
113	Sam did say that sex things were tricky with Mary Elizabeth since she's had boyfriends before and is a lot more experienced than I am. She said that the best thing to do when you don't know what to do during anything sexual is pay attention to how that person is kissing you and kiss them back the same way.
116	That's when she told me she was pregnant.
119	"Charlie, are you smoking?!" ..."I can't believe you're smoking!"
123	So, I told him a little about Mary Elizabeth, leaving out the part about the tattoo and belly button ring. ...He lit a cigarette and started telling me about sex.
124	..."wear protection,"... ...Things like sex don't embarrass him. ...I think he was especially happy because I used to kiss this boy in the neighborhood a lot when I was very little, and even though the psychiatrist said it was very natural for little boys and girls to explore things like that, I think my father was afraid anyway.
126	And then she leaned down and started kissing my neck and ears. Then my cheeks. Then my lips. And everything kind of melted away. She took my hand and slid it up her sweater, and I couldn't believe what was happening to me. Or what breasts felt like. Or later, what they looked like. Or how difficult bras are. After we had done everything you can do from the stomach up, I lay on the floor, and Mary Elizabeth put her head on my chest.
130	Sex things are so weird, too. It's like after that first night, we have this pattern where we basically do what we did that first time, but there is no fire or Billie Holiday record because we are in a car, and everything is rushed. Maybe this is the way things are supposed to be, but it doesn't feel right. ...So, I asked her about Mary Elizabeth (leaving out the sex part) because I knew she could be neutral about it, especially since she "stayed clear" of dinner.
144	They were all laughing and making sex jokes, and Susan was doing her best to laugh along with them.
158	"So, they've been going out for a long time, and I think they've even had sex before, but this was going to be a special night..." ..."They start to make out. The stereo's playing, and they're just about to 'do it' when Parker realizes he forgot the condoms. They're both naked on this putting green. They both want each other. There's no condom. So, what do you think



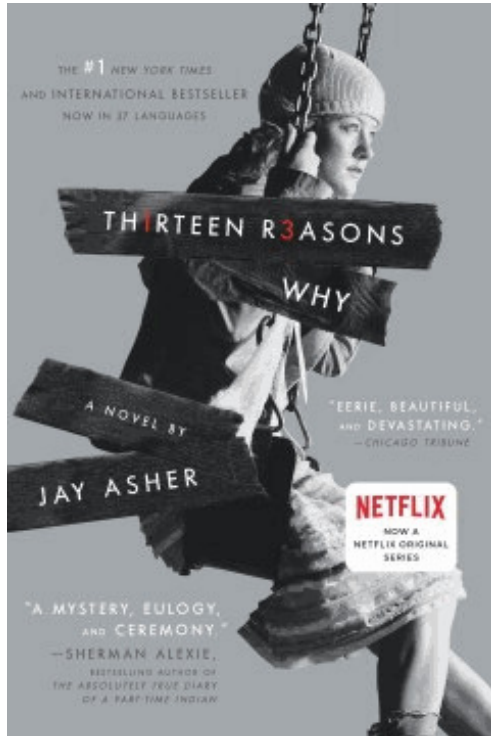
Page	Content
	<p>happened?"</p> <p>"I don't know."</p> <p>"They did it doggie-style with one of the sandwich bags!"</p>
160	<p>We hugged good night, and when I was just about to let go, he held me a little tighter. And he moved his face to mine. And he kissed me. A real kiss. Then, he pulled away real slow.</p> <p>...So, he said "thanks" and hugged me again. And moved in to kiss me again. And I just let him.</p> <p>...We didn't do anything other than kiss.</p>
161	<p>We drink a lot. Actually, it's more like Patrick drinks, and I sip.</p> <p>...He said that eye contact is how you agree to fool around anonymously.</p>
171	<p>It was fun watching my sister dance the Time Warp on stage, but I don't think I could have handled her pretending to have sex with a large stuffed Gumby.</p>
178	<p>"Don't blame me that you fucked around on her since the beginning!..."</p>
186	<p>"This is good champagne."</p> <p>I don't think he knew the difference because he's a beer drinker. Sometimes, whiskey.</p> <p>...I went with all my Ohio cousins, who promptly pulled out a "joint" and passed it around.</p>
187	<p>"Jesus. Look at these bleachers. How many colored people-"</p>
188	<p>Then, Mr. Small and the vice principal, whom Patrick swears is gay...</p>
190	<p>On the way home for the party, my Ohio cousins lit up another joint.</p>
192	<p>After about half an hour looking around the dance club, I finally saw Mary Elizabeth with Peter. They were both drinking scotch and sodas, which Peter bought since he is older and had his hand stamped.</p> <p>...She told me that Alice was getting high in the ladies' room and Sam and Patrick were on the floor dancing.</p> <p>...Then, he took Mary Elizabeth's drink out of her hand and drank it. "Hey, asshole" was her response. I think he was drunk, even though he hasn't been drinking lately, but Patrick does stuff sober, so it's hard to tell.</p>
193	<p>Her whisper smelled like cranberry juice and vodka.</p>
196	<p>After I ate my Ho-Ho, I lit up a cigarette,...</p>
197	<p>She was scared, and it wasn't until she had a sip of whatever we were drinking or a hit off of whatever we were smoking that she would calm down and be the same Sam.</p>
202	<p>So, I kissed her. And she kissed me back. And we lay down on the floor and kept kissing. And it was soft. And we made quiet noises. And kept silent. And still. We went over to the bed and lay down on all the things that weren't put in suitcases. And we touched each other from the waist up over our clothes. And then under out clothes. And then without clothes. And it was so beautiful. She was so beautiful. She took my hand and slid it under her pants. And I touched her. And I just couldn't believe it.</p> <p>...Until she moved her hand under my pants, and she touched me.</p>



Page	Content
205	I just keep seeing him, and he keeps hitting my sister, and he won't stop, and I want him to stop because he doesn't mean it, but he just doesn't listen, and I don't know what to do.

Profanity	Count
Faggot	2
Fuck	6
Prick	2
Pussy	2
Shit	2

THIRTEEN REASONS WHY



Summary of Concerns:

This book contains suicidal ideations; profanity; sexual nudity; and sexual activities.

Young Adult

By Jay Asher

ISBN: 978-59514-171-2





Page	Content
10	Hannah Baker's suicide tapes are getting passed around.
25	Hannah took off her shirt and let Justin put his hands up her bra.
27	She came over to my table at lunch, whispered the proposition in my ear, and I had a hard-on for the rest of the day.
37	Sure, I am pressuring you with that second set of tapes, but who cares if people around town know what you think of my ass, right?
47	A cupped hand smacked my ass. And then, he said it. "Best Ass in the Freshman Class, Wally. Standing right there in your store!"
52	Alex, am I saying your list gave him permission to grab my ass? I'm saying it gave him an excuse. And an excuse was all this needed. ... I'm just going to tell you why it pissed me off. I've had my butt grabbed before- no big deal- but this time it was grabbed because someone else wrote my name on a list.
88	"He's cramming his dick in his pants."
101	Don't worry; Mrs. Crimsen, I thought. No boys in here. No alcohol. No drugs. No fun.
121	Which is funny, because whoever designed the list forgot to mention drinking and sex- which would've been the most accurate response for most of our student body.
172	Because we're juveniles, she said, as long as the suicide didn't occur in a public place with witnesses, they probably wouldn't report in the news.
174	A girl who, for some reason, blames me for her suicide.
182	They wrote about death. About the evilness of men. ...Seriously, that's how they described it. They went on to call Earth a knocked-up gaseous alien needing an abortion.
247	Fun drunks make a nice addition to any party. Not looking to fight. Not looking to score. Just looking to get drunk and laugh.
254	Okay, I'll say it. I thought about suicide. ...I thought about suicideI wish I would die. ...What about hanging? Well, what would I use? Where would I do it? And even if I knew what and where, I could never get beyond the visual of someone finding me- swinging- inches from the floor. ...You took pills. That, we all know. Some say you passed out and drowned in a bathtub full of water. It came down to two lines of thinking. If I wanted people to think it was an accident, I'd drive my car off the road. Someplace where there's no chance of survival. And there are so many places to do that on the outskirts of town. I've probably driven by each of them a dozen times in the past couple of weeks. Others say you drew the bathwater, but fell asleep on your bed while it was filling. Your mom and dad came home, found the bathroom flooded, and called your name. But there was no answer. Then there are these tapes. ...So I've decided on the least painful way possible.



Page	Content
	<p>Pills. My stomach pulls in, wanting to rid my body of everything. Food. Thoughts. Emotions. But what kinds of pills? And how many? I'm not sure. And I don't have much time to figure it out because tomorrow...I'm going to do it. Wow. ...I won't be around anymore...tomorrow.</p>
264	<p>Your fingers made their way under my bra. But you didn't grab me. Testing the boundaries, I guess. Sliding your thumb along the underside of my breasts. "Weren't you on that list?" you said. "Best ass in the freshman class." Bryce, you had to see my jaw clench. You had to see my tears. Does that kind of shit turn you on? Bryce? Yes. It does. "It's true," you said.</p>
265	<p>As if letting him finger me was going to cure all my problems. But in the end, I never told you to get away...and you didn't. You stopped rubbing circles on my stomach. Instead, you rubbed back and forth, gently, along my waist. Your pinky made its way under the top of my panties and rolled back and forth, from hip to hip. Then another finger slipped below, pushing your pinky further down, brushing it through my hair. And that's all you needed, Bryce. You started kissing my shoulder, my neck, sliding your fingers in and out. And then you kept going. You didn't stop there. I'm sorry. Is this getting too graphic for some of you? Too bad.</p>

1-59514-188-X
978-1-59514-188-0
978-1-42876611-2
1-59514-171-5
1-42876611-1
0-329-66402-6
978-0-7393-6123-8
0-7393-6123-6
978-1-10153992-7
978-0-451-47826-9

Profanity	Count
Ass	7
Dick	1
Piss	1
Shit	1



Parent Opportunity to Review Library Materials

As shared at the Board meeting on Monday August 12 and yesterday in my communication, 18 books have been identified through our review process that were part of our library collection that warrant further feedback from our parents in the district. Those books include:

<u>Title</u>	<u>Author</u>	<u>Location</u>	<u>Copyright</u>
The Hate U Give	Angie Thomas	EMS & EHS	2017
Thirteen Reasons Why	Jay Asher	EMS & EHS	2007
#Pride: Championing LGBTQ Rights	Rebecca Felix	EMS	2020
You Should See Me in a Crown	Leah Johnson	EMS	2020
It's Your World--If You Don't Like It ...	Mikki Halpin	EMS	2004
The Kite Runner	Khaled Hosseini	EHS	2003
Beloved	Toni Morrison	EHS	1987
The Bluest Eye	Toni Morrison	EHS	1970
The Perks of Being a Wallflower	Stephen Chbosky	EHS	1999
Looking for Alaska	John Green	EHS	2005
Nineteen Minutes	Jodi Picoult	EHS	2007
Identical	Ellen Hopkins	EHS	2008
Fall Out	Ellen Hopkins	EHS	2010
Glass	Ellen Hopkins	EHS	2007
Burned	Ellen Hopkins	EHS	2006
Crank	Ellen Hopkins	EHS	2004
Smoke	Ellen Hopkins	EHS	2013
George	Alex Gino	RCE	2015

(** The book ***Speak***, originally on this list, was checked out and never returned last year)

As books were being reviewed for the ***Sensitive Topics List*** to be flagged in our system by members of our Curriculum Review Committee, these particular books seemed to contain excessive violence, sexual content, ideations of self harm, or racism. Because of the content, we would like to offer parents the opportunity to review these books and provide our Board of Education with feedback on how best to handle these particular titles.

These books are on display in the Superintendent's Office at 634 S. Elbert Street and will be there until September 6, 2024 between the hours of 7:30 and 4:00 pm, Monday through Friday. They will also be available for review on the following evenings:

- Wednesday, August 21, 2024 from 4:00-7:00 pm
- Monday, August 26, 2024 from 4:00-8:00 pm

- Wednesday, September 4, 2024 from 4:00-7:00 pm

A form is provided for your feedback at that location for you to share your feedback. The pages where specific content of concern is flagged in most books to assist in your review. The board will consider all feedback provided at their board meeting on Monday, September 9, 2024 at which time a decision on how to manage these particular books moving forward. That decision could include returning materials to the library and flagging them as sensitive content, relocating them to a different level (i.e. middle to high school), or removing them from our collection.

If additional materials are identified as the review continues of our collection, the same process will be used to provide for community feedback and input moving forward. We appreciate the hard work of our librarians and recognize that some of these materials have been in our collection for many years. Many were purchased in large blocks of books and not specifically selected individually. Our goal is to implement a system where parents are empowered to make important decisions on the content their children will be able to access and be alerted when sensitive content is checked out by their children.

Thank you again for your time and effort. We hope you will assist us by providing your input on these materials over the next few weeks.

Sincerely,



Dan Snowberger
Superintendent

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCE; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

Defendant's Answer to Complaint

Defendant Elizabeth School District submits this Answer to Plaintiffs' Complaint, and alleges:

ANSWER

Response to "Introduction"

1. In Summer of 2024, the Elizabeth School District ("ESD" or the "District"), by and through its Board of Education ("the Board"), began a quest to limit students' access to any books that contravene the Board members' partisan, political values.

RESPONSE: Admit that in approximately September 2023, the Elizabeth School District Board of Education ("School Board") became aware of a disconnect between its curricular goals and the content of the District's library collections. Further admit that shortly thereafter the School Board tasked the Board Curriculum Review Committee ("Curriculum Committee") with reviewing the District's library collections and proposing a protocol to both guide that review and address student access to potentially controversial library content. Deny all remaining allegations.

2. The Board appointed a committee to review all of the books in ESD libraries and create a list of books containing “sensitive topics,” such as “racism/discrimination,” “religious viewpoints,” “sexual content,” “profanity/obscenity,” “graphic violence,” and “ideations of self-harm or mental illness.” Per Board policy, a book’s inclusion on this “Sensitive List” means that, any time a student checks it out, their parents receive an email that their child checked out the book. Parents can also choose to prohibit their children from checking out all books on the Sensitive List.

RESPONSE: Admit that the School Board tasked the Curriculum Committee with reviewing the District’s library collections and proposing a protocol to both guide that review and address student access to potentially controversial library content. Further admit that the Curriculum Committee proposed the Library Services Guiding Protocols (“Library Protocols”), which the School Board approved on August 12, 2024. To the extent paragraph 2 purports to characterize or summarize the contents of the Library Protocols, the document speaks for itself. Deny all remaining allegations.

3. Of the dozens of books on the Sensitive List, the committee identified 19 books that they believed were more sensitive than the rest. These books were primarily by or about people of color and/or LGBTQ+ people. They include *The Hate U Give* by Angie Thomas; *Beloved* by Toni Morrison; *The Bluest Eye* by Toni Morrison; *The Kite Runner* by Khaled Hosseini; *You Should See Me in a Crown* by Leah Johnson; *#Pride: Championing LGBTQ Rights* by Rebecca Felix; *Melissa/George* by Alex Gino; *It’s Your World—If You Don’t Like It, Change It* by Mikki Halpin; *The Perks of Being a Wallflower* by Stephen Chbosky; *Thirteen Reasons Why* by Jay Asher; *Looking for Alaska* by John Green, *Nineteen Minutes* by Jodi Picoult; and *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke*, all by Ellen Hopkins.

RESPONSE: Admit that the Curriculum Committee identified 19 titles that contained highly sensitive content, listed those titles on a Temporarily Suspended Books List, and recommended that the School Board temporarily suspend those titles from circulation pending further review. Further admit that some of those 19 titles also were inadvertently included on the Sensitive Topics List before being removed from that list. To the extent this paragraph attempts to characterize or summarize the contents of the Temporarily Suspended Books List, the document speaks for itself. To the extent this paragraph attempts to characterize or summarize the authors, or topics addressed by titles on that list, the books speak for themselves. Deny all remaining allegations.

4. Defendant District, through its Board, decided that all of those books should be “temporarily suspended” from ESD libraries and put on display at the Board’s office so that parents could review passages in the books flagged as objectionable and weigh in on whether the books should be returned to ESD libraries.

RESPONSE: Admit that at its August 12, 2024 meeting, the School Board approved the Curriculum Committee’s proposed Library Protocols and accepted the Committee’s recommendation to temporarily suspend the 19 titles it identified as containing highly sensitive content. Admit that in preparation for its August 12 meeting, the School Board requested that the 19 titles be removed from the relevant library locations so the School Board members could review the physical books in advance of the meeting. Admit that School Board member Mary Powell then flagged passages within the physical books to facilitate review of the suspended titles. Further admit that after the August 12 meeting, the District made 18 of the 19 suspended titles available for public review and feedback at the District’s office for a period of 25 days. Deny all remaining allegations.

5. On September 9, 2024, the Board announced its decision to permanently banish all “temporarily suspended” books from ESD libraries instead of returning them.

RESPONSE: Admit that at its September 9, 2024 meeting, the School Board voted 4-0 to permanently remove 18 of the 19 titles on the Temporarily Suspended Books List from the district library locations indicated on the list. Deny all remaining allegations, including Plaintiffs’ misuse of the term “banish.” Students remain free to access removed titles through other means (public libraries, private purchase, etc.) and to bring those books on campus. Additionally, copies of the removed books have been made available to the two Student-Plaintiffs and to any student in the District who is either a member of the NAACP — Colorado—Montana—Wyoming State Area Conference (“Plaintiff NAACP”) or who has a parent or guardian who is a member of Plaintiff NAACP, as described in the District’s opposition to Plaintiffs’ motion for preliminary injunction.

6. The Board decided not to return the books to ESD libraries because the books contained same-sex relationships, included LGBTQ+ characters, discussed racism, involved police violence, or otherwise struck Board members as “disgusting.”

RESPONSE: Deny.

7. The Board has also quietly removed at least one other book from ESD libraries in response to a parent's complaint. The Board removed K.A. Holt's *Redwood and Ponytail* from Running Creek Elementary's library because it is about two girls who develop feelings for each other.

RESPONSE: Admit that in September 2024, a parent expressed concern about *Redwood and Ponytail* by K.A. Holt, a book that his child had checked out from the Running Creek Elementary School library, and suggested that the book be added to the Sensitive Topics List and reviewed by the Curriculum Committee because the book's content was inappropriate for elementary-school students. Admit that in response, the School Board's president had the physical book held for further review once it was returned to the library. Further admit that the book has been returned to the shelves of Running Creek Elementary School library and will remain there pending the School Board's review of that book. Deny all remaining allegations.

8. The Board's removal of these books from ESD libraries is only one component of its broader effort to prescribe its own political orthodoxy in ESD schools. But it is an effort that runs afoul of the federal and state constitutions. It denies students access to books in their school libraries because of the ideas contained in those books and denies authors the right to share their books with ESD students free from viewpoint-based censorship.

RESPONSE: Deny.

9. While the District has discretion over certain curricular matters, the District cannot block students' access to information in their school libraries based on the Board's political preferences, nor can it remove authors' books from school libraries because of viewpoints the authors express.

RESPONSE: Admit that the District, which is directed by the School Board, has discretion to determine matters of curriculum. Admit that the selection of content for the District's libraries falls within its discretion to determine curriculum. Deny all remaining allegations.

Response to “Jurisdiction and Venue”

10. This Court has jurisdiction over Plaintiffs’ federal claims pursuant to 28 U.S.C. §§ 1331 and 1343, because they arise under the First Amendment to the United States Constitution and 42 U.S.C. § 1983. This Court has supplemental jurisdiction over Plaintiff’s pendent claims under the Colorado Constitution pursuant to 28 U.S.C. § 1367.

RESPONSE: This paragraph contains legal conclusions to which no response is required.

11. This Court has jurisdiction to grant declaratory relief under 28 U.S.C. § 2201, 28 U.S.C. § 2202, and C.R.S. § 13–51–101.

RESPONSE: This paragraph contains legal conclusions to which no response is required.

12. Venue is proper under 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the District of Colorado, and all of the parties reside or conduct business within the District of Colorado.

RESPONSE: The first sentence of this paragraph contains legal conclusions to which no response is required. With respect to the second sentence, admit that all events alleged in the Complaint occurred in the District of Colorado. Further admit that the District conducts business in the District of Colorado. The District is without knowledge or information sufficient to form a belief as to the truth of the allegation that all Plaintiffs reside or conduct business within the District of Colorado, and on that basis denies the same.

Response to “Parties”

13. Plaintiff C.C. is a junior at Elizabeth High School. She is an avid reader and enjoys learning about different perspectives by reading books by diverse authors about diverse characters.

RESPONSE: Admit that Plaintiff C.C. is a junior at Elizabeth High School. The District is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

14. Plaintiff C.C.'s mother wants her daughter to have access to a diverse array of books in the school library so that C.C. can learn about a diverse array of topics and viewpoints.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

15. Plaintiff E.C. is in preschool at Running Creek Elementary in the Elizabeth School District. He will continue his education at Running Creek Elementary through fifth grade and then attend Elizabeth Middle School and then Elizabeth High School. E.C. uses the school library and will continue to use it as he gets older.

RESPONSE: Paragraph 15 appears to contain a typographical error. As corrected, the District admits that Plaintiff E.S. is in preschool at Running Creek Elementary School, which is one of two elementary schools in the district. The District is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

16. Plaintiff E.C.'s mother wants her son to have access to a diverse array of reading materials so that they grow up to understand the value in many different ideas and viewpoints.

RESPONSE: Paragraph 16 appears to contain a typographical error. As corrected to Plaintiff E.S., the District is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

17. Plaintiff National Association for the Advancement of Colored People – Colorado – Montana – Wyoming State Conference ("NAACP") seeks to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination. NAACP seeks to protect students' right to access inclusive storytelling and viewpoints so that they can develop a deeper understanding of the inequities that exist in society and be exposed to marginalized voices. The interests NAACP seeks to protect through this lawsuit are germane to its purpose.

RESPONSE: Admit that the NAACP – Colorado – Montana – Wyoming State Conference is a plaintiff in this case. The District is without knowledge or

information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

18. The majority of NAACP's members identify as Black or African American, but NAACP also has members of other races. NAACP has members of all different gender identities and sexualities, including LGBTQ+ people.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

19. Members of the NAACP include students who attend ESD schools who would have standing to sue in their own right and parents of those students.

RESPONSE: This paragraph contains legal conclusions to which no response is required. To the extent this paragraph contains factual allegations, the District is without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies the same.

20. Members of the NAACP also include students who were attending ESD schools, but who left ESD schools in whole or in part because of the Board's restrictions on students' access to books. For example:

- a. Member 1 has a Black fifth grader who was enrolled in Running Creek Elementary until November 8. The fifth grader is an avid reader who enjoys exploring different perspectives and cultures through books. As one of very few Black students in her class, it is important to her that she and her peers have access to stories by Black authors about Black characters.
- b. Member 2 has a biracial preschooler who was enrolled in Running Creek Elementary until the end of August 2024. Member 2 pulled the preschooler out of ESD schools because she did not want her child to be subject to the Board's partisan whims. She wants her child to have access to a wide variety of books, and she does not want her child to think there is anything wrong with reading about LGBTQ+ people or people of color.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph (including all subparagraphs) and therefore denies the same.

21. Neither the claims asserted nor the relief requested require the participation of individual NAACP members in this lawsuit, because individual proof is not required to demonstrate that the District violated—and continues to violate—the constitutional rights of NAACP members, or to obtain the requested relief.

RESPONSE: This paragraph contains legal conclusions to which no response is required. To the extent this paragraph could be interpreted as including imbedded factual assertions, deny.

22. Plaintiff The Authors Guild (the “Guild”) is a national nonprofit association of more than 14,000 professional, published writers of all genres. The Guild works to promote the rights and professional interests of its member authors. Many Guild members earn their livelihoods through their writing. Their ability to write on topics of their choosing and to explore viewpoints that some readers may disagree with is vital to their ability to make a living in their chosen profession. Members of the Guild who would have standing to sue in their own right include:

- a. Angie Thomas. Angie Thomas is a Black American author who wrote *The Hate U Give*, which the District removed from Elizabeth High School and Elizabeth Middle School. *The Hate U Give* was the number one *New York Times* bestseller the week it was released in 2017. Ms. Thomas is also the author of another young adult novel, *On the Come Up*.
- b. Alex Gino. Alex Gino is the author of several books that foster understanding and acceptance of LGBTQ+ identities especially for young readers. They are the author of *Melissa/George*, which the District removed from Running Creek Elementary. They have won several awards for their work, including the American Library Association’s Stonewall Book Award for exceptional LGBTQIAP+ children’s literature and a Lambda Literary Award.
- c. John Green. John Green has authored seven *New York Times* bestsellers, including *Looking for Alaska*, which the District removed from Elizabeth High School. Mr. Green’s other novels include *The Fault in Our Stars*; *An*

Abundance of Katherines; Paper Towns; Will Grayson, Will Grayson; Turtles All the Way Down; and The Anthropocene Reviewed.

- d. Jodi Picoult. Jodi Picoult has written 28 novels, including *Nineteen Minutes*, which the District removed from Elizabeth High School. Ms. Picoult's other novels include *My Sister's Keeper*, *The Pact*, *Plain Truth*, and *The Storyteller*. Her novels have been translated into 34 languages in 35 countries.
- e. Ellen Hopkins. Ellen Hopkins has written several *New York Times* bestselling novels. The District removed six books that she authored from ESD libraries: *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke*.

RESPONSE: This paragraph contains legal conclusions to which no response is required. To the extent this paragraph includes factual assertions about what books were removed from the District's libraries, the District admits that it permanently removed from the specified library locations all but one the titles (*Speak*) on the Temporarily Suspended Books List. That list speaks for itself. The District is without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations in this paragraph (including all subparagraphs), and on that basis denies the same.

23. The Guild seeks by this suit to protect its members' right to share their books and viewpoints without undue government censorship, and to promote the circulation of its members' books. Protecting these interests is germane to the Guild's purpose.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

24. Neither the claims asserted nor the relief requested require the participation of individual Guild members in this lawsuit, because individual proof is not required to demonstrate that the Board violated—and continues to violate—the constitutional rights of Guild members or to obtain the requested relief.

RESPONSE: This paragraph contains legal conclusions to which no response is required. To the extent this paragraph could be interpreted as including imbedded factual assertions, deny.

25. Defendant Elizabeth School District is responsible for public education in Elizabeth.

RESPONSE: Admit.

Response to “Factual Background”

26. Elizabeth is a small but growing town in Elbert County, Colorado, located to the east of Colorado Springs. The majority of Elbert County’s residents are politically conservative.

RESPONSE: Admit that Elizabeth is a town in Elbert County, Colorado, and that it is located 45 miles northeast of Colorado Springs and 42 miles southwest of Denver. Further admit that Elbert County residents are politically diverse. Deny all remaining allegations.

27. Elizabeth School District serves roughly 2,600 students and is governed by a five-member Board of Education (“the Board”). Board members include President Rhonda Olsen, Vice President Heather Booth, Secretary Mary Powell, Treasurer Mike Calahan, and Assistant Secretary/Treasurer Jonathan Waller.

RESPONSE: Admit that the District currently serves just over 2,600 students and that the School Board is the body responsible for guiding the District. Further admit that the School Board is typically comprised of five members and that the current members of the board include President Rhonda Olsen, Secretary Mary Powell, Treasurer Mike Calahan, and Assistant Secretary/Treasurer Jonathan Waller. Deny all remaining allegations.

28. Elizabeth School District contains two elementary/preschools, Running Creek Elementary and Singing Hills Elementary, both of which serve students in preschool through fifth grade. The District contains one middle school, Elizabeth Middle School, which serves students in grades six through eight. The District contains one high school, Elizabeth High School, which serves students in grades nine through twelve.

The District contains one charter school, Legacy Academy, which serves students in kindergarten through eighth grade. The Board recently approved another charter school.

RESPONSE: Admit.

Response to “Factual Background – Politicization of Elizabeth School District’s Board of Education”

29. Until the 2021 Board election, the Board’s meetings were relatively calm and cordial. But the dynamics changed when two new Board members—Heather Booth and Rhonda Olsen—were elected on a mission to keep politically liberal ideologies out of Elizabeth schools. Tensions mounted over the next two years.

RESPONSE: Deny.

30. Board meetings became increasingly contentious as baseless accusations about the teaching of “Critical Race Theory” and “LGBTQ agendas” in Elizabeth schools were bandied about.

RESPONSE: Deny.

31. “Critical Race Theory” or “CRT” is a body of scholarship most commonly used in law schools and graduate schools that involves: (1) the pursuit of understanding how racial subordination originated and has been maintained in the United States, especially in relation to the legal system; and (2) a desire to change the legal system so that it no longer supports racial subordination. It is seldom taught in elementary or secondary education, and was not taught in Elizabeth schools.

RESPONSE: Deny that there is a single, accepted definition of “Critical Race Theory” or that all people who use that phrase understand it to mean the same thing. Admit that the District has worked hard to create a clear and defined curriculum. The District is without knowledge or information sufficient to form a belief as to the truth of the allegations suggesting that Critical Race Theory is “seldom taught in elementary or secondary education,” and on that basis denies the same. Deny any remaining allegations.

32. “LGBTQ+” refers to Lesbian, Gay, Bi, Transgender, or Queer or Questioning people or community.

RESPONSE: Admit that the acronym “LGBTQ+” is commonly understood to refer to people or groups who identify as lesbian, gay, bisexual, transgender, queer, or questioning. Deny any remaining allegations.

33. At a February 13, 2023 Board Meeting, the principal of Elizabeth High School implored Board members Booth and Olsen to “stop chasing ghosts,” because false claims about “CRT” and “LGBTQ agendas” were hampering the school’s work. The principal pled for help from the Board instead of “political grandstanding.” President Olsen responded by saying that her concerns have not been about what’s actually going on in schools, but on “keeping what is on the outside out of our schools.”

RESPONSE: Admit that there was a School Board meeting on February 13, 2023, and that it was recorded. To the extent the remaining allegations in this paragraph purport to quote, characterize, or summarize portions of that meeting, the recording speaks for itself. Deny all remaining allegations.

34. In March of 2023, more than half of the Board resigned, citing other Board members’ personal agendas and disregard for Board policy and ethics. The only two members who remained on the Board were Ms. Booth and Ms. Olsen.

RESPONSE: Admit that in March 2023 three School Board members resigned and that Heather Booth and Rhonda Olsen continued serving as School Board members. To the extent the remaining allegations in this paragraph purport to characterize or summarize written or recorded statements made by the resigning board members, those statements speak for themselves. Deny all remaining allegations.

35. Mary Powell was appointed to the Board to ensure there was a quorum to conduct district business. She was then elected, along with Mike Calahan and Jonathan Waller, to join the Board. Ms. Olsen was also reelected in the 2023 election, and Ms. Booth remained on the Board.

RESPONSE: Admit that Mary Powell was appointed to the School Board in March 2023, to serve until the next election and to ensure that there was a quorum to conduct district business. Admit that Mike Calahan and Jonathan Waller were then appointed to the School Board in April 2023, to serve until the next election. Admit that Ms. Powell, Mr. Calahan, Mr. Waller, and Rhonda Olsen were

up for election to the School Board in November 2023 and won by an overwhelming majority. Further admit that Heather Booth remained on the School Board and was not up for election in November 2023. Deny any remaining allegations.

36. In campaigning for the 2023 school board election, candidates Olsen, Powell, Calahan, and Waller made their political agenda clear. They pitched themselves as “conservatives for Elizabeth School Board.”



[Description: Campaign sign listing Mike Calahan, Rhonda Olsen, Mary Powell, and Jonathan Waller with the caption “conservatives for Elizabeth School Board”]

RESPONSE: Admit that Rhonda Olsen, Mary Powell, Mike Calahan, and Jonathan Waller ran in the November 2023 School Board election and were elected by an overwhelming majority. To the extent this paragraph partially quotes a campaign sign for these individuals, the sign speaks for itself. Deny all remaining allegations.

Response to “Factual Background – The Board Aims to Impose a Partisan, Political Orthodox in ESD Schools”

37. Board members have been open about their commitment to their political values—which they describe as conservative—and expressed pride in the purportedly conservative stands they have taken as Board members.

RESPONSE: Admit that the current School Board members and past School Board member Heather Booth have openly expressed their commitment to conservative values and worked hard to make decisions that embody the District's unofficial motto that "students are at the heart of everything we do." To the extent this paragraph purports to characterize or summarize written or recorded statements made by individual School Board members, those statements speak for themselves. Deny all remaining allegations.

38. Board Members were very vocal about "getting a superintendent and legal representation with conservative values." They succeeded with Attorney Brad Miller and Superintendent Dan Snowberger.

RESPONSE: Admit that the School Board hired Dan Snowberger as superintendent on March 13, 2023. Further admit that the School Board retained Brad Miller, of Miller Farmer Carlson Law, as its permanent counsel in May 2023. To the extent this paragraph purports to quote portions of written or recorded statements made by individual School Board members, those statements speak for themselves. Deny all remaining allegations.

39. Superintendent Snowberger recognizes that Elizabeth is "a very conservative community" and believes the "board's charge is to respond to the community that elected them and holds them accountable."

RESPONSE: Admit that Mr. Snowberger has publicly stated that the School Board is charged with responding to the community and taking seriously the community's wishes for the public education of its children. To the extent this paragraph purports to quote a written or recorded statement, that statement speaks for itself. Deny any remaining allegations.

40. The Board has directed Superintendent Snowberger not to talk about keeping politics out of schools, because, as Vice President Booth put it, "conservative values are exactly what we are and plan to continue to bring into the district." President Olsen added that it would be "confusing" to say the Board aims to keep politics out of schools given the Board's prior communications and decisions.

RESPONSE: To the extent this paragraph purports to quote, characterize, or summarize a written or recorded communication, that communication speaks for itself. Deny all remaining allegations

41. In Spring of 2024, the Board changed book fair providers. While the Board had historically relied on Scholastic, they put out a Request for Proposal to find a book fair partner that would ensure book fairs were devoid of any controversial materials that were contrary to the values of Elizabeth families. The Board ultimately switched from Scholastic to SkyTree Books, which promised a book fair without any LGBTQ+ content, Critical Race Theory, foul language, explicit content, and dark magic.

RESPONSE: Admit that on February 19, 2024, the District issued a Request for Proposal to identify a partner to operate book fairs within the District's schools during the 2024–25 school year. Admit that the District had previously used Scholastic Book Fairs. Further admit that the District received two responses (one from SkyTree Books and one from Scholastic) and ultimately selected SkyTree Books. To the extent this paragraph purports to characterize or summarize the district's Request for Proposal or the responses it received, those documents speak for themselves. Deny all remaining allegations.

42. The Board seeks to impose a political orthodoxy in ESD schools and ensure that content—including reading material—that is available to children in Elizabeth schools aligns with Board members' personal political preferences, which they describe as conservative.

RESPONSE: Deny.

43. The Board seeks to prohibit students from accessing information—including reading material—that contravenes its Board members' partisan, political values in Elizabeth schools.

RESPONSE: Deny.

44. The Board has sought to limit ESD students' exposure to LGBTQ+ identities and same-sex relationships.

RESPONSE: Deny.

45. Absent action from this Court, the Board will continue to restrict and remove access to information about LGBTQ+ identities and same-sex relationships in Elizabeth schools.

RESPONSE: Deny.

46. The Board has sought to limit ESD students' exposure to viewpoints on race and racism that contradict Board members' own views on the topic.

RESPONSE: Deny.

47. Absent action from this Court, the Board will continue to restrict and remove access to information about race and racism in Elizabeth schools.

RESPONSE: Deny.

48. Those who disagree with the Board's partisan, political agenda or question the Board's actions have been subject to public humiliation and retaliation. For example, parents who have submitted public records requests to the District or sued the District have been accused by the Board of "bullying" or "stealing from" the District and wasting the District's time and resources. Board members sometimes call such parents out by name at public meetings or in communications with other parents.

RESPONSE: Admit that there are some individuals who disagree with the School Board's decisions related to the District's library collections. The District is without knowledge or information sufficient to form a belief as to the truth of the allegation that unidentified parents have been accused by unidentified board members of wasting district resources. To the extent that this paragraph purports to quote or summarize statements made at unidentified board meetings that were recorded, those recordings speak for themselves. Deny all remaining allegations.

49. Many parents who have children in ESD schools are afraid to publicly express views that do not align with the Board's, because they fear being publicly shamed by Board members, being accused of bullying or harassing the District, or exposing their children to retaliation.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis denies the same.

50. Superintendent Snowberger has confirmed that parents who are perceived as attacking the Board are shut down because it is exhausting to deal with them.

RESPONSE: Deny.

Response to “Factual Background – Implementation of Sensitivity Protocol”

51. In 2024, the Board was determined to cleanse ESD of books that contravene its partisan, political values.

RESPONSE: Deny.

52. The Board directed a committee of parents, teachers, administrators, and community members (the “Board Curriculum Review Committee” or “BCRC”) to create a list of books containing “sensitive” topics in ESD libraries.

RESPONSE: Admit that in the fall of 2023, the School Board tasked the Curriculum Committee with reviewing the District’s library collections and proposing a protocol to both guide that review and address student access to potentially controversial library content. Further admit that the Library Protocols ultimately proposed by the Curriculum Committee included guidelines for identifying titles with sensitive topics, and that the Curriculum Committee applied those guidelines in identifying titles that it recommended for placement on a Sensitive Topics List. Deny all remaining allegations.

53. “Sensitive” topics, according to the Board and the BCRC, include “racism/discrimination,” “drug or excessive alcohol use,” “religious viewpoints,” “ideations of self-harm or mental illness,” “profanity/obscenity,” “graphic violence,” and “sexual content.”

RESPONSE: Admit that the Library Protocols were created by the Curriculum Committee and approved by the School Board at its August 12, 2024 meeting. Further admit that the Library Protocols (among other things) lay out a process for evaluating the existing library collections for potential age-level sensitive content. Under the Library Protocols, *any* concern about sensitive content should be considered for age-level appropriateness, but the following seven topics require special attention: (1) graphic violence, (2) profanity/obscenity, (3) ideations of self-harm or mental illness, (4) religious viewpoints, (5) sexual content, (6) racism/discrimination, (7) drug or excessive alcohol use. Deny any remaining allegations.

54. To identify “sensitive” books, the BCRC began by looking at online lists of books that had been banned or challenged elsewhere. The BCRC then looked to see if those banned or challenged books were in ESD libraries.

RESPONSE: Admit that three individuals on the Curriculum Committee volunteered to start the process of reviewing the District’s library collections to identify titles that should be considered for inclusion on the Sensitive Topics List or for potential removal from one or more district library. Further admit that these reviewers used a triage approach, where each reviewer was assigned a subset of titles that had appeared on lists of frequently challenged books, which they would (i) check against the District’s library catalog, and (ii) if a title appeared in one of the District’s libraries, conduct a second-layer review of the work to evaluate it for potential age-level sensitive content. Deny any remaining allegations.

55. In determining whether to add a book to ESD’s Sensitive List, each member of the BCRC had a different level of discernment. Books deemed “sensitive” by one member may not have been deemed “sensitive” by another member.

RESPONSE: Deny.

56. Those reviewing the books often did not read the entire book, but instead read short segments that Internet sources had labeled controversial. Books were often added to the Sensitive List solely because a member of the BCRC took issue with an isolated passage in the book.

RESPONSE: Admit that the three reviewers from the Curriculum Committee did not have time to read the entirety of each title they considered for potential inclusion on the Sensitive Topics List or for potential removal from a district library. Further admit that the district’s library collections span tens of thousands of titles, making it impossible for reviewers to attempt to read the entirety of every title under consideration. Reviewers therefore relied on one or more of the third-party resources identified in the Library Protocols and their independent research, in addition to sometimes reading significant portions of the work itself, to assist their review. Deny all remaining allegations.

57. Parents can prohibit their children from checking out any books on the Sensitive List by notifying the District. Even if a parent allows their child to check out books on

the Sensitive List, however, they will still receive a notification any time their child does so. The notification tells the parent which “sensitive” book their child checked out.

RESPONSE: Admit that parents can opt out their child from checking out titles on the Sensitive Topics List from the school library. Further admit that parents who do not opt out their child receive an automated email notification if the child checks out a title on the Sensitive Topics List from the school library. Deny that the automated email notification identifies which title on the Sensitive Topics List was checked out. Deny any remaining allegations.

58. There is no way for a parent to opt out of receiving notifications about their children checking out sensitive books. Some parents feel burdened by these types of notifications, as they indicate that the Board believes parents should restrict their children’s access to those books.

RESPONSE: Admit that the District currently does not have a way for parents to opt out of receiving an automatic email notification when their child checks out a title on the Sensitive Topics List. Admit that the District is aware of two parents out of thousands who have complained about these automatic notifications. The District is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and on that basis denies the same.

59. Many parents have noticed that the books on the Sensitive List disproportionately target authors and characters of color and/or LGBTQ+ authors and characters. They do not want to receive notifications about their children checking out these books because it indicates that there is something wrong or questionable about those books.

RESPONSE: Deny that titles were placed on the Sensitive Topics List to “target” certain authors or certain kinds of characters. The District is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and on that basis denies the same.

60. Many parents would prefer not to receive an email simply because Board members believe the book their child picked is “sensitive.”

RESPONSE: Admit that the District is aware of two parents out of thousands who have complained about receiving automatic notifications when their child

checked out a book on the Sensitive Topics List. The District is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and on that basis denies the same.

61. Some of the books on the Sensitive List—for example, books about the Holocaust—have been used by Elizabeth teachers as part of their courses.

RESPONSE: Admit that some books used by teachers as part of the classroom curriculum also appear on the Sensitive Topics List. Parents receive advanced notice of all books that will be read as part of the classroom curriculum and can opt out their children from reading specific books, just like parents can opt out their children from checking out titles on the Sensitive Topics List from the school library. The District is without knowledge or information sufficient to form a more specific belief as to the truth of any the remaining allegations to the extent they involve unidentified courses where unidentified titles are supposedly taught by unidentified teachers, and on that basis denies the same.

62. The Board has the final say as to which books are on the Sensitive List.

RESPONSE: Admit that the School Board is legally responsible for the selection of instructional materials, including instructional materials for school classrooms and school libraries. Further admit that the School Board has authority to add or remove titles from the Sensitive Topics List. Deny any remaining allegations.

63. Books have been added to and taken off of the Sensitive List based on the whims of Board members. For example, *Anne Frank: Diary of a Young Girl, 1984*, and *Brave New World* were all initially on the Sensitive List. But the Board decided to take those books off the Sensitive List because they are “classics.” Additionally, a picture book series about a Siamese cat who thinks he is a chihuahua, *Skippyjon Jones*, was initially included on the Sensitive List, but it was removed after Elizabeth’s Chief Academic Officer told Secretary Powell that the series is one of her grandchildren’s favorites, and Secretary Powell said at a Board meeting that it’s a “very cute little story and there’s nothing wrong with that.”

RESPONSE: Admit that School Board members carefully considered the titles that the Curriculum Committee proposed for inclusion on the Sensitive Topics List and decided that some of the proposed titles should be removed from that list. The Sensitive Topics List that the School Board approved at its September 9,

2024 meeting reflects some of those decisions (in green). That document speaks for itself. To the extent this paragraph purports to quote or characterize written or recorded statements made by individual School Board members, those statements speak for themselves. Deny all remaining allegations.

64. Books that remain on the Sensitive List include *The Color Purple*, *I Know Why the Caged Bird Sings*, *To Kill a Mockingbird*, *Kaffir Boy*, *Muslim Festivals Throughout the Year*, *Catcher in the Rye*, *Slaughterhouse Five*, *The Hunger Games*, *Gay Power! The Stonewall Riots and the Gay Rights Movement 1969*, *Beyond Magenta – Transgender Teens Speak Out*, *Being Transgender in America*, and *Growing up LGBTQ*. Dozens of other books remain on the Sensitive List.

RESPONSE: Admit that the board approved changes to Sensitive Topics List at its September 9, 2024 meeting, which is the most current version of the list. To the extent this paragraph purports to recite a portion of the titles on that list, the document speaks for itself. Deny any remaining allegations.

65. Superintendent Snowberger clarified in an August 19 email that books on the Sensitive List “could also be removed based on further discussion between members of the community and the Board of Education.”

RESPONSE: Admit that the School Board retains the ability to refine or add to the Sensitive Topics List that it approved at its September 9, 2024 meeting. To the extent this paragraph purports to quote or characterize an email, that document speaks for itself. Deny any remaining allegations.

Response to “Factual Background – Initial Removal of Books from Library”

66. While most “sensitive” books were added to the Sensitive List but left in ESD libraries, there were some books that some reviewers believed were too sensitive or controversial to be kept in ESD libraries at all. The Board decided to remove these books from ESD libraries while they determined what to do about them.

RESPONSE: Admit that the Curriculum Committee identified 19 titles that contained highly sensitive content, listed those titles on a Temporarily Suspended Books List, and recommended that the School Board temporarily suspend those titles from circulation pending further review. Admit that the physical books were

removed (if available) from the relevant district libraries end of July or early August 2024, so the School Board could read and refer to the physical copies of those titles. Admit that the School Board approved the Curriculum Committee's recommendation to suspend the 19 titles during its August 12, 2024 meeting. Further admit that some of the 19 titles recommended for temporary suspension were inadvertently also included on the Sensitive Topics List before being removed from that list. Deny all remaining allegations.

67. On July 25, the Board Clerk informed the Elizabeth High School librarian that she had removed 14 books from the Elizabeth High School Library for further review. By August 9, three books had also been removed from the Elizabeth Middle School library, and one book was removed from the Running Creek Elementary library. In total, eighteen books (the "Removed Books") were taken out of ESD libraries.

RESPONSE: Admit that 18 titles, which equated to approximately 24 physical books (including duplicate copies), were removed from one or more district library before the School Board's August 12, 2024 meeting. The Sensitive Topics List includes the library locations from which each of the 18 titles was removed. That document speaks for itself. One copy of each of these 18 titles was made available for public review at the District's office for a period of 25 days. To the extent this paragraph purports to characterize or summarize emails, those documents speak for themselves. Deny any remaining allegations.

68. The Removed Books were not taken out of ESD libraries because they contain factual inaccuracies or are pervasively vulgar. They were taken out of ESD libraries because Board members sought to prescribe a partisan, political orthodoxy in ESD and disagreed with the ideas in the Removed Books.

RESPONSE: Deny.

69. The Board announced that the Removed Books would be "temporarily suspended" from ESD libraries and displayed in the Board's office for public review. Isolated passages were marked in many of the Removed Books so that parents could quickly turn to the parts of the books that the Board members found offensive. Based on the community's feedback on the Removed Books, the Board would decide the "final disposition" of the Removed Books.

RESPONSE: Admit that School Board accepted the Curriculum Committee's recommendation to suspend the 19 titles on the Temporarily Suspended Books List, that 18 of those titles were placed on display in the district office for public review, that School Board member Mary Powell flagged areas of concern within those 18 titles to facilitate public review and feedback, and that the School Board considered the community's feedback in making its final decision on the suspended titles. To the extent this paragraph purports to quote or summarize a written or recorded statement, that statement speaks for itself. Deny any remaining allegations.

70. Board members did not read each book in full before deciding to remove them from ESD libraries.

RESPONSE: Admit that four School Board members voted at the September 9, 2024 meeting to permanently remove the 18 titles that had been available for public review. Admit that each of those members did not read each of the 18 titles in full before voting on September 9, although some members read significant parts of some of the 18 titles. School board members who read parts of books varied in which books they read and how much of each book they read. Deny any remaining allegations.

71. The Board announced that, based on public feedback, the eighteen Removed Books would either be returned to the libraries and added to the Sensitive List, or they would be kept out of the ESD's collections altogether.

RESPONSE: Admit that the School Board intended to (and did) consider community feedback related to the 18 titles in determining whether to permanently remove those titles from the District's library collections or add them to the Sensitive Topics List and return them to pertinent library locations. Deny any remaining allegations.

72. For roughly 25 days, parents could review the books and fill out the form below indicating whether each book should be permanently kept out of ESD libraries, or returned to the library but included in the Sensitive List—meaning parents would automatically be notified if their child checked the book out. The form provided no option for returning the books to the library and allowing children to check them out without automatic parental notifications.

Elizabeth
ELEMENTARY SCHOOL
BOOK REVIEW FORM

Name: _____
Where do your children attend school: _____
Phone: _____ Email: _____
Book Title: _____
Recommended Disposition of Book: I think this book should be ...
☐ Returned to the library and listed on the sensitive topic list
☐ Removed from the library collection
Reasons for the recommendation above:

[Description: Book Review Form allowing parents to indicate that a book should be “Returned to the library and listed on the sensitive topic list” or “Removed from the library collection”]

RESPONSE: Admit that the School Board made available to the public copies of 18 titles from the Temporarily Suspended Books List and that those titles were available at the District’s office for a period of 25 days. *Speak* was the only book on the Temporarily Suspended Books List that was not available for public review because it had been checked out and not returned. Admit that the School Board provided a “Book Review Form” for the community to use in providing feedback. That document speaks for itself. Deny all remaining allegations.

73. Some parents who opposed the Board’s decision to remove books from ESD libraries wrote in a third option on the form: return the books to the library without including them on the Sensitive List.

RESPONSE: Admit that some individuals who provided feedback on the district-provided forms opposed removal of one or more titles from the District’s libraries. The feedback provided on their Book Review Forms speaks for itself. Deny any remaining allegations.

74. Student Plaintiffs were unable to check out any of the eighteen Removed Books from the school library while they were made available in the Board's office.

RESPONSE: Admit that students cannot access the District's libraries or check out books during the summer. As such, until school started in mid-August, the Student-Plaintiffs could not check out the 18 titles that were made available for public review at the District's office, just as they could not check out any other titles from the District's libraries. Admit that in the time between school starting in mid-August and the School Board voting to permanently remove the titles on September 9, 2024, the Student-Plaintiffs could not check out any of the 18 titles that had been removed from their respective school libraries. Deny any remaining allegations.

75. The eighteen Removed Books were *The Hate U Give* by Angie Thomas; *Be-loved* by Toni Morrison; *The Bluest Eye* by Toni Morrison; *The Kite Runner* by Khaled Hosseini; *You Should See Me in a Crown* by Leah Johnson; *#Pride: Championing LGBTQ Rights* by Rebecca Felix; *George/Melissa* by Alex Gino; *It's Your World—If You Don't Like It, Change It* by Mikki Halpin; *The Perks of Being a Wallflower* by Stephen Chbosky; *Thirteen Reasons Why* by Jay Asher; *Looking for Alaska* by John Green; *Nineteen Minutes* by Jodi Picoult; and *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke*, all by Ellen Hopkins.

RESPONSE: Admit that 18 titles were made available for public review in the District's office. The Temporarily Suspended Book List includes the author, title, and school-library locations for each of these titles. *Speak* is the only title on that list that was not made available for public review. To the extent this paragraph quotes or summarizes the Temporarily Suspended Book List, that document speaks for itself. Deny any remaining allegations.

76. *Speak* by Laurie Anderson was initially on the list of books to be "temporarily suspended" from Elizabeth High School's library, but the Board stated it had been checked out the previous school year and never returned. *Speak* is about a freshman in high school who calls the police because she is raped at an end-of-summer party. She is then ostracized by her peers who don't know why she called 9-1-1. By the end of the novel, she finds her voice and becomes a hero. On information and belief, if *Speak* were returned, the Board would remove it.

RESPONSE: Admit that *Speak* had been checked out from the Elizabeth High School library and not returned. As a result, it was not one of the books available in the District's office for public review. To the extent this paragraph characterizes or summarizes *Speak*, the book speaks for itself. Admit that *Speak* was recently returned to the library. Because the book is at-issue in active litigation, counsel for the District has possession of the book. Deny any remaining allegations.

77. Many of the Removed Books have been in school libraries in ESD—and across the country—for years. They are educationally valuable and nondisruptive.

RESPONSE: Admit that the 18 titles that the School Board voted to permanently remove had been in the district's libraries for anywhere from three to over 20 years. Eight had never been checked out, and eight had been checked out fewer than five times. The District is without knowledge or information sufficient to form a belief as to the truth of the allegations about the availability of these books "across the country," and on that basis denies the same. Deny all remaining allegations.

78. Plaintiff C.C. intended to browse and/or check out *The Hate U Give*, *Beloved*, *The Bluest Eye*, *The Kite Runner*, *The Perks of Being a Wallflower*, *Thirteen Reasons Why*, *Looking for Alaska*, *Nineteen Minutes*, *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke* from the Elizabeth High School library. But she has not been able to access the books there since the District removed them.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of the allegations about Plaintiff C.C.'s intent or her supposed inability to access these books from other sources, and on that basis denies the same. The District states that all of the titles listed in this paragraph are available at the Pines and Plains public library, which serves the Elizabeth community. Deny that Plaintiff C.C. does not have access to these titles at the Elizabeth High School. Copies of the removed books have been made available to the two Student-Plaintiffs and to any student in the District who is either a member of Plaintiff NAACP or who has a parent or guardian who is a member of Plaintiff NAACP, as described in the District's opposition to Plaintiffs' motion for preliminary injunction.

79. Plaintiff NAACP has members in Elizabeth Middle School and Running Creek Elementary intended to be able to browse and/or check out *The Hate U Give*, *Thirteen Reasons Why*, *#Pride: Championing LGBTQ Rights*, *You Should See Me in a Crown*, *It's Your World—If You Don't Like It, Change It*, and *Melissa/George* in their school libraries but have not been able to access the books there since the District removed them.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of the allegations about Plaintiff NAACP's members or their supposed inability to access these books from other sources, and on that basis denies the same. Deny that Plaintiff NAACP's members do not have access to these titles at district libraries. Additionally, copies of the removed books have been made available to the two Student-Plaintiffs and to any student in the District who is either a member of Plaintiff NAACP or who has a parent or guardian who is a member of Plaintiff NAACP, as described in the District's opposition to Plaintiffs' motion for preliminary injunction.

80. Plaintiff NAACP has members who are parents of ESD students and intended for their children to be able to browse and/or check out *The Hate U Give*, *Thirteen Reasons Why*, *#Pride: Championing LGBTQ Rights*, *You Should See Me in a Crown*, *It's Your World—If You Don't Like It, Change It*, and *Melissa/George* in their school libraries.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of the allegations about Plaintiff NAACP's members who are parents or their supposed intention to have their children browse or check out the listed titles, and on that basis denies the same. Deny that Plaintiff NAACP's members who are parents have children who lack access to these titles at district libraries. Additionally, copies of the removed books have been made available to the two Student-Plaintiffs and to any student in the District who is either a member of Plaintiff NAACP or who has a parent or guardian who is a member of Plaintiff NAACP, as described in the District's opposition to Plaintiffs' motion for preliminary injunction.

81. *The Hate U Give* by Guild member Angie Thomas is about a Black sixteen-year-old girl who lives in a poor neighborhood and attends a suburban prep school. She witnesses her best friend get shot by police and at first declines to speak publicly about it, but over the course of the novel, she decides to speak out and honor his memory. Before *The Hate U Give* was "temporarily suspended," it was available for students to

peruse or check out in the Elizabeth Middle School library and the Elizabeth High School library.

RESPONSE: Admit that before it was removed from circulation, this title was available to students in the Elizabeth Middle School library and the Elizabeth High School library. Assuming it was not already checked out, this title would have been available to browse or check out. To the extent this paragraph attempts to characterize or summarize the contents of the title, the book speaks for itself. Admit that this title was written by Angie Thomas. The District is without knowledge or information sufficient to form a belief as to the truth of the allegations as to Angie Thomas's Guild membership, and on that basis denies the same. Deny any remaining allegations.

82. *The Hate U Give* expresses Angie Thomas's views on racism, police misconduct, and the value of teenagers using their voices to advocate for people and causes they care about. Ms. Thomas intends to share those views with teenagers who might feel alone or hesitant to speak up about their values and experiences. When *The Hate U Give* is removed from school libraries, Angie Thomas is unable to reach her target audience—teenagers who may be processing trauma, confronting racism, or feeling split between two worlds.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of the allegations about the author's views or intentions, and on that basis denies the same. Deny all remaining allegations.

83. Parents who filled out the Board's forms about *The Hate U Give* disagreed as to whether it should be permanently banned or returned to ESD libraries. Multiple parents filled out forms advocating against returning *The Hate U Give* to ESD libraries because of "anti-police" viewpoints expressed in it. Parent forms indicated the book is "[b]iased towards police—name calling them Pigs," contains "[h]ate for cops," includes "police viewed in a bad light," or "pushes the wrong and dangerous narrative of racist cops killing young Black men." On the other hand, some parents believed the book should be returned to the library because "[w]hether we like it or not kids are going to be exposed to situations represented in this book."

RESPONSE: This paragraph purports to partially quote or summarize the Book Review Forms that were submitted to the district for this title. Those forms speak for themselves. Deny any remaining allegations.

84. *Beloved* is a novel by Toni Morrison, a critically acclaimed Black American author. The story takes place after the Civil War and was inspired by the life of Margaret Garner, who escaped slavery in Kentucky and fled to Ohio in 1856. The novel won the Pulitzer Prize for Fiction in 1988. Before *Beloved* was “temporarily suspended,” it was available for students to peruse or check out in the Elizabeth High School library.

RESPONSE: Admit that before it was removed from circulation, this title was available to students in the Elizabeth High School library. This title was never checked out. To the extent this paragraph attempts to characterize or summarize the contents of the title, the book speaks for itself. Admit that this title is written by Toni Morrison. Deny any remaining allegations.

85. Parents who filled out the Board’s forms about *Beloved* disagreed as to whether it should be permanently banned or returned to ESD libraries. One form characterized the novel as “sexual deviancy porn” that should not be in ESD libraries. Another indicates that “Toni Morrison is an internationally acclaimed and beloved chronicler of African American history. Nasty things happened. Suppressing an idea does not get rid of it and people who want to explore this should be free to do so.”

RESPONSE: This paragraph purports to partially quote or summarize the Book Review Forms that were submitted to the district for this title. Those forms speak for themselves. Deny any remaining allegations.

86. *The Bluest Eye* is Toni Morrison’s first novel. *The Bluest Eye* is about Pecola Breedlove, a young Black girl who wishes she had lighter features—in particular, blue eyes. Many Advanced Placement courses across the country teach *The Bluest Eye*. Before *The Bluest Eye* was “temporarily suspended,” it was available for students to peruse or check out in the Elizabeth High School library.

RESPONSE: Admit that before it was removed from circulation, this title was available to students in the Elizabeth High School library. This title was never checked out. To the extent this paragraph attempts to characterize or summarize the contents of the title, the book speaks for itself. Admit that this title is written by Toni Morrison. Deny any remaining allegations

87. Parents who filled out the Board's forms about *The Bluest Eye* disagreed as to whether it should be permanently banned or returned to ESD libraries. While some Elizabeth parents advocated for the book to be banned from school libraries because of its discussion of incest, rape, and abuse, others believed the book should be returned to the library because it does not contain information they are concerned about their children accessing in an educational institution.

RESPONSE: This paragraph purports to partially characterize or summarize the Book Review Forms that were submitted to the district for this title. Those forms speak for themselves. Deny any remaining allegations.

88. *The Kite Runner* by Khaled Hosseini is a historical fiction novel about friendship between a wealthy boy and his father's servant's son in Kabul. The main character flees from Afghanistan to the United States after the 1979 Soviet invasion, and later travels back to Afghanistan when it is under Taliban rule. *The Kite Runner* has been the #1 *New York Times* bestselling novel. The Princeton Review recommends *The Kite Runner* for students preparing for Advanced Placement exams. Khaled Hosseini himself receives mail from high school readers of the *Kite Runner* who say that the book has called them to "stand up to bullies," "defy intolerance," and "muster the courage to do the right and just thing, no matter how difficult." For many, *The Kite Runner* is "their first window into Afghan culture," and the book helps them "gain a more nuanced and compassionate perspective on the country and its people." Before *The Kite Runner* was "temporarily suspended," it was available for students to peruse or check out in the Elizabeth High School library.

RESPONSE: Admit that before it was removed from circulation, this title was available to students in the Elizabeth High School library. Assuming it was not checked out, this title would have been available for students to browse or check out. To the extent this paragraph attempts to characterize or summarize the contents of the title, the book speaks for itself. Admit that this title is written by Khaled Hosseini. The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding communications the author has supposedly received or regarding individual reader's perceptions of the book, and on that basis denies the same. Deny any remaining allegations.

89. Parents who filled out the Board's forms about *The Kite Runner* disagreed as to whether it should be permanently banned or returned to ESD libraries. One Elizabeth

parent of a high school student wrote that she “do[es] not want [her] teens reading a book that criticizes Christianity,” though it is unclear which part of *The Kite Runner* could plausibly be interpreted as a criticism of Christianity. Another form indicates that “violence + depravity of Islam is on display in this book. Even adults shouldn’t read it.” On the other hand, one ESD parent wrote that “*Kite Runner* changed my views. Reading that book made me a reader.” Another wrote that topics like suicide and sexual assault “have merit in an educational institution because our children will be confronted with these topics – hopefully not due to personal experience, but through our shared human experience.”

RESPONSE: This paragraph purports to partially quote or summarize the Book Review Forms that were submitted to the district for this title. Those forms speak for themselves. Deny any remaining allegations.

90. *You Should See Me in a Crown* by Leah Johnson is about a Black, queer teenager who runs for prom queen in order to get a college scholarship. She also develops feelings for another prom queen contender and learns that honesty is necessary to make a relationship work. Before *You Should See Me in a Crown* was “temporarily suspended,” it was available for students to peruse or check out in the Elizabeth Middle School library.

RESPONSE: Admit that before it was removed from circulation, this title was available to students in the Elizabeth Middle School library. This title was never checked out. To the extent this paragraph attempts to characterize or summarize the contents of the title, the book speaks for itself. Admit that this title is written by Leah Johnson. Deny any remaining allegations.

91. Parents who filled out the Board’s forms about *You Should See Me in a Crown* disagreed as to whether it should be permanently banned or returned to ESD libraries. While some in the community believed the book should be removed for its alleged “CRT undertones and homosexual storyline,” “queer factor,” or “same sex dating mentioned,” others advocated for it to be returned to the library, noting that Goodreads referred to it as “a self-love anthem for queer black girls everywhere.”

RESPONSE: This paragraph purports to partially quote or summarize the Book Review Forms that were submitted to the district for this title. Those forms speak for themselves. Deny any remaining allegations.

92. *#Pride: Championing LGBTQ Rights* by Rebecca Felix is a history of the Pride movement from the Stonewall riots to the modern LGBTQ rights movement. Before *#Pride: Championing LGBTQ Rights* was “temporarily suspended,” it was available for students to peruse or check out in the Elizabeth Middle School library.

RESPONSE: Admit that before it was removed from circulation, this title was available to students in the Elizabeth Middle School library. This title was never checked out. To the extent this paragraph attempts to characterize or summarize the contents of the title, the book speaks for itself. Admit that this title is written by Rebecca Felix. Deny any remaining allegations.

93. Parents who filled out the Board’s forms about *#Pride: Championing LGBTQ Rights* disagreed as to whether it should be permanently banned or returned to ESD libraries. Some parents wrote on their forms that “LGBTQ themes do not belong in our public schools,” and the book should be removed “because of its support of the Pride movement and villainization of Christians on Pg 6.” Meanwhile, other parents believed the book could give LGBTQ+ kids “a way to realize they aren’t alone + its ok to ‘be different than the norm’ (straight or identifying as the gender you’re born with).”

RESPONSE: This paragraph purports to partially quote or summarize the Book Review Forms that were submitted to the district for this title. Those forms speak for themselves. Deny any remaining allegations.

94. *Melissa/George* by Guild member Alex Gino is about a fourth grader who most people think is a boy, but she knows she is a girl. The main character was given the name George at birth, but the character does not want to use that name for herself—she uses Melissa. In 2022, Alex Gino republished the book with the name *Melissa* and encouraged people to print out a new cover for copies of the books that were published as *George* or use sharpies to correct the name on the book itself. Board members have primarily referred to the book as *George*. The novel has won the Lambda Literary Award, the Stonewall Award, among others. Before the book was “temporarily suspended,” it was available for students to peruse or check out in the Running Creek Elementary library. *Melissa/George* was also previously available in the Singing Hills Elementary library, but it is no longer available there.

RESPONSE: Admit that before it was removed from circulation, this title was available to students in the Running Creek Elementary School library. This title

was available for students to browse or check out. Admit that this title was also once available in the Singing Hills Elementary School library, but it was weeded out of that library before the Temporarily Suspended Book List was compiled. Admit that the School Board members have primarily referred to this title as *George*. To the extent this paragraph attempts to characterize or summarize the contents of the title, the book speaks for itself. Admit that this title is written by Alex Gino. The District is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding Alex Gino's Guild membership or the motives or circumstances surrounding the decision to republish the book in 2022, and on that basis denies the same. Deny any remaining allegations.

95. *Melissa/George* expresses Alex Gino's viewpoint that LGBTQ+ people should be accepted and allowed to fully be themselves. The book also expresses the author's viewpoints on courage, self-discovery, and friendship. *Melissa/George* is a vital resource for students who seek to better understand gender diversity, and transgender students who seek books with relatable characters. When *Melissa/George* is removed from school libraries, the author is unable to reach their target audience and those who need access to the book the most.

RESPONSE: To the extent this paragraph attempts to characterize or summarize the contents of the title, the book speaks for itself. The District is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the author's viewpoints and regarding this title as a "vital resource" for the specified types of students, and on that basis denies the same. Deny all remaining allegations.

96. Parents who filled out the Board's forms about *Melissa/George*, disagreed as to whether it should be permanently banned or returned to ESD libraries. One parent of a high school student wrote that the book should be removed because it "is evil trans ideology." A couple with children at Running Creek Elementary wrote that "there are only TWO genders and they are not interchangeable." They voted to remove the novel because the "subject matter" has "no place in school." One Running Creek Elementary parent, however, wrote that LGBTQ+ topics do have merit in an educational setting because "these are important social issues my children will need to understand."

RESPONSE: This paragraph purports to quote or summarize the Book Review Forms that were submitted to the district for this title. Those forms speak for themselves. Deny any remaining allegations.

97. *It's Your World—If You Don't Like It, Change It* by Mikki Halpin discusses how to act on a person's beliefs and make a difference. Before *It's Your World—If You Don't Like It, Change It* was "temporarily suspended," it was available for students to peruse or check out in the Elizabeth Middle School library.

RESPONSE: Admit that before it was removed from circulation, this title was available to students in the Elizabeth Middle School library. The title was never checked out from the middle-school library. Further, the title was and is still available in the Elizabeth High School library. To the extent this paragraph attempts to characterize or summarize the contents of the title, the book speaks for itself. Admit that this title is written by Mikki Halpin. Deny any remaining allegations.

98. Parents who filled out the Board's forms about *It's Your World—If You Don't Like It, Change It* disagreed as to whether it should be permanently banned or returned to ESD libraries. One parent wrote that the book should be kept out of ESD libraries because it allegedly "supports abortion," "talks heavily of sex education," and "encourages the reader to oppose parental notification laws which is exactly what our ESD board is trying to put in place." Others voted to remove the book because they believed that it is a "very biased, leftist book," or is "overly political with an outright Marxist slant" and is "offensive morally to Christians, Muslims and orthodox jews." Meanwhile, one parent voted to return the book to the library because she saw no problem "with the topic of standing up for what you believe in + trying to change things."

RESPONSE: This paragraph purports to quote or summarize the Book Review Forms that were submitted to the district for this title. Those forms speak for themselves. Deny any remaining allegations.

99. *The Perks of Being a Wallflower* is a semi-autobiographical young-adult novel by Stephen Chbosky about a freshman in high school. It addresses common teen struggles, such as drugs, sexuality, and mental illness, and chronicles the characters' personal growth. The book has been on the *New York Times* Bestseller list, and it was adapted into a PG-13 film starring Emma Watson in 2012. Before *The Perks of Being a Wallflower* was "temporarily suspended," it was available for students to peruse or check out in the Elizabeth High School library.

RESPONSE: Admit that before it was removed from circulation, this title was available to students in the Elizabeth High School library. Assuming it was not checked out, this title would have been available for students to browse or check out. To the extent this paragraph attempts to characterize or summarize the contents of the title, the book speaks for itself. Admit that this title is written by Stephen Chbosky. Deny any remaining allegations.

100. Parents who filled out the Board's forms about *The Perks of Being a Wallflower* disagreed as to whether it should be permanently banned or returned to ESD libraries. Some Elizabeth parents objected to the book's inclusion in the high school library, saying it contains abuse, drugs, abortion, and gay sexual relationships. Others asserted that the book contains no information of concern in the context of an educational institution, and, as with the rest of the Removed Books, that it "ha[s] meaningful messages to be considered beyond a few pages."

RESPONSE: This paragraph purports to quote or summarize the Book Review Forms that were submitted to the district for this title. Those forms speak for themselves. Deny any remaining allegations.

101. *Thirteen Reasons Why* by Jay Asher follows a high school student, Clay Jensen, whose classmate, Hannah Baker, died by suicide. Throughout the novel, Clay learns more about Hannah and himself as he listens to tapes Hannah left explaining why she took her own life. At an August 26 Board meeting, President Olsen explained that the reason *Thirteen Reasons Why* was "temporarily suspended" is that "it's putting ideas into kids' heads." Before *Thirteen Reasons Why* was "temporarily suspended," it was available for students to peruse or check out in the Elizabeth Middle School library and the Elizabeth High School library.

RESPONSE: Admit that before it was removed from circulation, this title was available to students in the Elizabeth Middle School library and the Elizabeth High School library. Assuming it was not checked out, this title would have been available for students to browse or check out. To the extent this paragraph attempts to characterize or summarize the contents of the title, the book speaks for itself. To the extent this paragraph attempts to partially quote or summarize written or recorded statements made by individual School Board members, those statements speak for themselves. Admit that this title is written by Jay Asher. Deny any remaining allegations.

102. Parents who filled out the Board's forms about *Thirteen Reasons Why* disagreed as to whether it should be permanently banned or returned to ESD libraries. One high school parent wrote that *13 Reasons Why* is "just porn" that "[e]ven adults shouldn't read." He indicated that reading the book "would be soul murder to a child." Another parent wrote that the book has "morally offensive content for most religious people." Another wrote "Childhood is hard enough, shouldn't give kids ideas surrounding suicide." On the other hand, some parents wished to return it to the library because it "is a prime example of a book that could be a conversation starter + open lines of communication between parents + their children."

RESPONSE: This paragraph purports to quote or summarize the Book Review Forms that were submitted to the district for this title. Those forms speak for themselves. Deny any remaining allegations.

103. *Looking for Alaska* is Guild member John Green's first novel. It is a fictionalized account of the author's time at boarding school. The book is about Miles Halter, a teenage boy who goes to boarding school in his junior year and whose first love dies. The book explores how Miles and his friends process their grief during high school. *Looking for Alaska* was awarded the American Library Association's Michael L. Printz award and was the *Los Angeles Times* Book Prize finalist. It has also been selected for lists including NPR's "Top Ten Best-Ever Teen Novels" and *TIME* magazine's "100 Best Young Adult Novels of All Time." Before *Looking for Alaska* was "temporarily suspended," it was available for students to peruse or check out in the Elizabeth High School library.

RESPONSE: Admit that before it was removed from circulation, this title was available to students in the Elizabeth High School library. Assuming it was not checked out, this title would have been available for students to browse or check out. To the extent this paragraph attempts to characterize or summarize the contents of the title, the book speaks for itself. Admit that this title is written by John Green. The District is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding John Green's Guild membership, and on that basis denies the same. Deny any remaining allegations.

104. *Looking for Alaska* expresses Mr. Green's viewpoints on loss, grief, and intimacy. When *Looking for Alaska* is removed from school libraries, Mr. Green is unable to reach his target audience—adolescents who may be experiencing death and grief for

the first time and need easy access to books like *Looking for Alaska* to help them process their feelings.

RESPONSE: To the extent this paragraph attempts to characterize or summarize the contents of the title, the book speaks for itself. The District is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the author's viewpoints or his beliefs about how his book may help certain kinds of readers, and on that basis denies the same. Deny all remaining allegations.

105. Parents who filled out the Board's forms about *Looking for Alaska* disagreed as to whether it should be permanently banned or returned to ESD libraries. One parent of an elementary and high school student wrote that the book should be removed from school libraries because it is "Talking about school pranks gone wrong resulting in death" and discusses "teen drugs, alcohol, sex, etc." Another form says "People (teens) in pain can read this story and find a place for themselves, because of the unhappy ending they will maybe find a way to reach out for help."

RESPONSE: This paragraph purports to quote or summarize the Book Review Forms that were submitted to the district for this title. Those forms speak for themselves. Deny any remaining allegations.

106. *Nineteen Minutes* by Guild member Jodi Picoult was a 2007 bestseller about a school shooting. One of the characters is bullied with words like "homo" and "fag," leading him to question his sexual orientation. The author has heard from hundreds of teenagers who say *Nineteen Minutes* made them realize that not intervening to stop bullying can be as bad as bullying itself. She has even heard from teenagers who say that *Nineteen Minutes* is what motivated them to stay alive, because it made them realize they were not alone. Before *Nineteen Minutes* was "temporarily suspended," it was available for students to peruse or check out in the Elizabeth High School library.

RESPONSE: Admit that before it was removed from circulation, this title was available to students in the Elizabeth High School library. This title was never checked out. To the extent this paragraph attempts to characterize or summarize the contents of the title, the book speaks for itself. Admit that this title is written by Jodi Picoult. The District is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding Jodi Picoult's Guild membership

or the communications she has supposedly received from teenagers, and on that basis denies the same. Deny any remaining allegations.

107. *Nineteen Minutes* reflects Jodi Picoult's viewpoint on bullying, marginalization, and the drastic consequences of children feeling "othered" by their school community. Ms. Picoult writes in order to make young adults feel seen. School libraries are critical to her ability to share her work with the teenagers she writes for. When *Nineteen Minutes* is removed from school libraries, Ms. Picoult is unable to reach her target audience—teenagers whose friends or family may have lived through school shootings, and who can make their schools safer by standing up to bullies.

RESPONSE: To the extent this paragraph attempts to characterize or summarize the contents of the title, the book speaks for itself. The District is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the author's viewpoints, why the author writes, and her beliefs about how this title may help certain kinds of readers, and on that basis denies the same. Deny all remaining allegations.

108. Parents who filled out the Board's forms about *Nineteen Minutes* disagreed as to whether it should be permanently banned or returned to ESD libraries. One form on *Nineteen Minutes* indicates that "[e]very bad suggestion is in this book – LGBTQ, killing, bestiality, etc." Other forms indicated no concern with students' access to the book.

RESPONSE: This paragraph purports to quote or summarize the Book Review Forms that were submitted to the district for this title. Those forms speak for themselves. Deny any remaining allegations.

109. *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke* by Guild member Ellen Hopkins are young-adult novels written in verse. They address teenage struggles including the perils of addiction, sexual desires, and abuse and express the author's viewpoints on these topics. Before these books were "temporarily suspended," they were available for students to peruse or check out in the Elizabeth High School library.

RESPONSE: Admit that before they were removed from circulation, these titles were available to students in the Elizabeth High School library. Two of these titles were never checked out. To the extent this paragraph attempts to characterize or summarize the contents of the titles, the books speak for themselves. Admit that these titles are written by Ellen Hopkins. The District is without knowledge or

information sufficient to form a belief as to the truth of the allegations regarding Ellen Hopkins's Guild membership, and on that basis denies the same. Deny any remaining allegations

110. When Ellen Hopkins' books are removed from school libraries, she is unable to reach her target audience—teenagers who are on the brink of making dangerous choices and need an easy-to-read cautionary tale.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the author's target audience and her beliefs about how her works help certain kinds of readers, and on that basis denies the same. Deny all remaining allegations.

111. Parents who filled out the Board's forms about Ellen Hopkins' books disagreed as to whether they should be permanently banned or returned to ESD libraries. One parent wrote Ellen Hopkins' books should be banned because "This author loves sex + drugs." Another wrote that "Ellen Hopkins is disgusting" and called her a pervert. But another parent wrote, referencing Crank, that "[b]ecause this book is written in free verse it is a great pick for reluctant readers," and the book can serve as a "cautionary tale." Ellen Hopkins herself continuously receives communications about how her books have helped teenagers navigate difficult situations and avoid going down dangerous paths.

RESPONSE: This paragraph purports to quote or summarize the Book Review Forms that were submitted to the District for this title. Those forms speak for themselves. The District is without knowledge or information sufficient to form a belief as to the truth of the allegations about what communications Ellen Hopkins receives, and on that basis denies the same. Deny any remaining allegations.

112. Authors who are members of Plaintiff Guild fear that other districts will copy ESD and remove their books from their school library shelves because of their disagreement with the ideas they contain.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis denies the same.

113. The Board has stigmatized each of the Removed Books, the ideas contained therein, and their authors.

RESPONSE: Deny. The District states that the 18 titles the School Board voted to permanently remove represented works written by 13 different authors. Of those authors, seven still have one or more titles in the District's library collections. The District further states that its library collections contain numerous works that explicitly portray LGBTQ characters, provide LGBTQ personal narratives/testimonials, include content related to LGBTQ history and identifies, address issues related to racism, provide historical accounts of racism, and provide diverse views on the African American perspective in America.

114. Plaintiff E.S.'s parent does not want her son to be deprived of access to books just because the school board disagrees with the ideas in the books. By banning these books, the District is sending the message that it is not okay to learn about LGBTQ+ identities and same-sex relationships or race and racism. This creates an unwelcome and unsafe environment in Plaintiff E.S.'s school.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding Plaintiff E.S.'s parent and what she wants and thinks, and on that basis denies the same. Deny all remaining allegations.

115. Some parents noticed that the list of Removed Books appears targeted at books involving LGBTQ+ and/or Black characters and authors. One form notes, "This book list . . . is not welcoming to anyone who is not white, straight and politically conservative." Another notes that banning *You Should See Me in a Crown*, *It's Your World—If You Don't Like It, Change It*, *#Pride: Championing LGBTQ Rights*, Toni Morrison's *Beloved* and *The Bluest Eye*, and *Melissa/George* "is a clear and transparent assertion that people of color, women and homosexuals are less welcome in our public school and this is unacceptable." Many parents who reviewed the Removed Books recognized that it does a disservice to children to deny them access to books in the school library that could broaden their perspective and help them develop empathy.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of the allegations about what some parents supposedly noticed or recognized about the books on the Temporarily Suspended List, and on

that basis denies the same. To the extent this paragraph partially quotes or summarizes Book Review Forms, those forms speak for themselves. Deny all remaining allegations.

116. When a parent criticized the Board for removing books from school libraries, Vice President Booth responded, “[a]s an elected official committed to conservative values for our children, I feel a strong obligation to honor the promises made during my campaign.” Other Board members have similarly expressed that the books must be removed from school libraries because they believe their constituents would not like the ideas in the books.

RESPONSE: To the extent this paragraph partially quotes a written or recorded statement by former School Board member Heather Booth, that statement speaks for itself. Admit that the School Board considered feedback from the community, among other things, in deciding to permanently remove the 18 titles that had been made available for public review. Deny any remaining allegations.

117. Indeed, many Elizabeth parents believe that removing books from school libraries is a good way to prevent perceived liberal ideology from seeping into Elizabeth schools. Some of these parents have spoken out at public meetings, saying that people are “criminals” for letting kids read certain books.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of the allegations about what unidentified Elizabeth parents believe, and on that basis denies the same. To the extent this paragraph purports to partially quote or summarize statements made by parents at School Board meetings, those statements speak for themselves. Deny any remaining allegations.

118. Many parents who opposed the Board’s removal of books from their children’s school libraries did not fill out forms for the Board because they believed the Board would ignore any feedback with which they disagreed and/or feared retaliation for expressing disagreement with the Board’s disdain for the Removed Books.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis denies the same.

119. None of the removed books were required reading for any student in the District. Students and parents can opt out of reading any of the books available in ESD libraries.

RESPONSE: Admit that none of the 18 titles that the School Board voted to permanently remove from the District's library collections were required reading for any classroom or student in the District for the 2024–25 school year. Admit that parents can opt out their children from checking out books from the school library that are listed on the Sensitive Topics List, from checking out specific books in a classroom library, and from reading books that are required as part of the classroom curriculum. Further admit that students can effectively opt out of reading books in their school library by not browsing or checking out those books. Deny any remaining allegations.

Response to “Factual Background – Permanent Removal of Books from Library”

120. In deciding whether to permanently ban or return the Removed Books to ESD libraries, Board members considered community members' reaction to the Removed Books, as well as the books' inclusion of same-sex relationships, discussion of LGBTQ+ identities, attitudes towards racism, and views on issues like racism, police violence, and parents' rights.

RESPONSE: Admit that four School Board members voted to permanently remove the 18 titles that had been made available for public display. Further admit that these School Board members had a variety of reasons for voting in favor of removal, including lack of educational value, lack of age appropriateness, vulgar or profane content, excessive violence or sexual content, and parental support for removal. Deny all remaining allegations.

121. Board remembers did not read each book in full before deciding whether or not to return it to ESD libraries.

RESPONSE: Admit that four School Board members voted to permanently remove the 18 titles that had been made available for public display and that each of those four members did not read the entirety of each of the 18 titles. Deny any remaining allegations.

122. Board members waffled on their decisions about whether some of the books should be returned to the libraries or kept out permanently. For example, Secretary Powell initially advocated to return *#Pride - Championing LGBTQ Rights* to the library “because this book is largely a history of LGBTQ, and doesn’t totally try to indoctrinate.” She explained to the other Board members that she “also thought it would be a good thing to show some openness to other viewpoints, as long as it isn’t indoctrinating.” But Vice President Booth responded that “LGBTQ is only regarding sexual preference which doesn’t belong in any school,” and “[o]ur constituents will not be happy about us returning any of these books.” Secretary Powell was also convinced by President Olsen’s point that the book has “gender identity ideology in [it], and do we really want that out there at all?” In order to banish discussion of LGBTQ+ identities from Elizabeth school libraries, all Board members ultimately decided that *#Pride - Championing LGBTQ Rights* should be permanently removed from ESD libraries.

RESPONSE: Admit that four School Board members voted to permanently remove the 18 titles that had been made available for public display. Admit that those members carefully considered each of the 18 titles before voting to permanently review them, including by debating specific titles. To this extent this paragraph purports to partially quote or summarize written or recorded statements by individual School Board members, those statements speak for themselves. Additionally, the District rejects Plaintiffs’ misuse of the term “banish.” Students remain free to access removed titles through other means (public libraries, private purchase, etc.) and to bring those books on campus. Deny all remaining allegations.

123. Secretary Powell also initially voted to return *You Should See Me in a Crown* to the library because, “while it has some racist overtones, they are just the main character handling them.” Powell stated that, while “halfway through you find out she is a lesbian[,] . . . there isn’t anything graphic other than discussing a kiss that I saw, and it is not the central theme of the book at all.” Board members Waller and Calahan initially agreed with Powell. But again, after Vice President Booth expressed her view that LGBTQ+ content should not be available to any student in school, all Board members decided that they should permanently remove *You Should See Me in a Crown* from ESD libraries.

RESPONSE: Admit that four School Board members voted to permanently remove the 18 titles that had been made available for public display. Admit that those members carefully considered each of the 18 titles before voting to permanently review them, including by debating specific titles. To this extent this

paragraph purports to partially quote or summarize written or recorded statements by individual School Board members, those statements speak for themselves. Deny all remaining allegations.

124. Board members have also referred to multiple Removed Books as “disgusting.” President Olsen expressed that she “wouldn’t care” if reading *The Bluest Eye* made children better readers, because it was a disgusting book.

RESPONSE: This paragraph purports to partially quote or summarize certain out-of-context written or recorded statements by individual School Board members. The School Board members’ entire statements speak for themselves. Deny all remaining allegations.

125. Secretary Powell stated that students “don’t need to see an ugly story just for the sake of being an ugly story.”

RESPONSE: This paragraph purports to partially quote or summarize certain out-of-context written or recorded statements by individual School Board members. The School Board members’ entire statements speak for themselves. Deny all remaining allegations.

126. Ultimately, all Board members voted to permanently banish all Removed Books from ESD libraries because of the ideas they contain.

RESPONSE: Deny. Additionally, the District rejects Plaintiffs’ misuse of the term “banish.” Students remain free to access removed titles through other means (public libraries, private purchase, etc.) and to bring those books on campus.

127. The Board announced its decision to permanently ban all Removed Books from ESD libraries at the September 9 Board meeting.

RESPONSE: Admit that four School Board members voted 4-0 at the September 9, 2024 School Board meeting to permanently remove from the District’s library collections the 18 titles that had been made available for public display. Deny all remaining allegations

128. The Board’s decision to prohibit students from accessing any of the Removed Books in ESD libraries prevented Plaintiff C.C., E.S, and NAACP members’

children from exploring and learning about topics and ideas that they otherwise would have—all because Board members disagree with those ideas.

RESPONSE: Deny.

129. The Board's decision to prohibit students from accessing any of the Removed Books in ESD libraries prevented members of the Guild from sharing their viewpoints with ESD students because the Board disagreed with them.

RESPONSE: Deny.

130. Plaintiffs believe it is important to have books available in school libraries that reflect a diversity of views and experiences so that all students can find books in the library that they relate to, and they can learn about different perspectives.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis denies the same.

131. The Board's decision to prohibit students from accessing any of the Removed Books in ESD libraries created a stigma around each of the Removed Books and the ideas in them.

RESPONSE: Deny.

132. NAACP members' children and C.C. know that if they discuss any of the Removed Books or the ideas in them, they will be perceived as amoral and as outsiders in Elizabeth.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding what Plaintiff C.C. and the NAACP members' children supposedly know, and on that basis denies the same. Deny that students are in any way prevented by the District from discussing the 18 titles that were permanently removed from the District's library collections. Deny any remaining allegations.

133. The Board's decision to prohibit students from accessing any of the Removed Books in ESD libraries signaled to C.C., E.S., and NAACP members' children that certain identities—particularly LGBTQ+ identities and racial minorities—are not welcome in Elizabeth.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding how the School Board's decision to permanently remove 18 titles from the District's library collections was perceived by Plaintiff C.C., Plaintiff E.S., or the unidentified NAACP members' children, and on that basis denies the same. Deny that the School Board somehow speaks for the entire Elizabeth community. Deny all remaining allegations.

134. NAACP members' children are harmed by the stigma that the Board has placed on books by Black authors about Black characters.

RESPONSE: Deny.

135. By removing two books by Toni Morrison—one of the most famous and celebrated Black authors—and other books centering Black perspectives and experiences from the Elizabeth High School library, the Board indicated to Black students and other minority students that their own perspectives and experiences might be shameful or devalued.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding how the School Board's decision to permanently remove 18 titles from the District's library collections was perceived by unidentified Black students and other unidentified minority students, and on that basis denies the same. Deny all remaining allegations.

136. Students, including children of NAACP members, who want to gain empathy and understanding of others' experiences and perspectives are harmed by the Board's removal of books from their school libraries, because they are limited to reading materials that promote the Board's preferred views.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding the desires of unidentified students,

including unidentified students of NAACP members, and on that basis denies the same. Deny all remaining allegations.

137. Students, including children of NAACP members, who read as a means of understanding themselves and their identities, are harmed by the Board's removal of books from their school libraries, because they are inhibited from reading about experiences or identities that the Board deems objectionable.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding the reasons that unidentified students, including unidentified students of NAACP members, read, and on that basis denies the same. Deny all remaining allegations.

138. As a sixteen-year-old girl navigating adolescence and preparing to leave Elizabeth for college, Plaintiff C.C. is harmed by the Board's enforcement of an orthodoxy that banishes books about LGBTQ+ history and identity.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding Plaintiff C.C.'s future plans, and on that basis denies the same. Additionally, the District rejects Plaintiffs' misuse of the term "banish." Students remain free to access removed titles through other means (public libraries, private purchase, etc.) and to bring those books on campus. Further, the District states that its library collections, including the high-school library that Plaintiff C.C. has access to, contain many titles that address LGBTQ+ history and identity. Deny all remaining allegations.

139. Plaintiff C.C. participates in a school-sponsored book club that meets in the school library. When Plaintiff C.C. is waiting for the book club to start, she browses through the Elizabeth High School library collection. Plaintiff C.C.'s ability to discover different views and diverse authors while she is browsing is inhibited by the Board's removal of viewpoints and authors that they dislike.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding Plaintiff C.C.'s library-browsing practices, and on that basis denies the same. Deny all remaining allegations.

140. Plaintiff C.C.'s mother wants C.C. to be able to read the Removed Books without incurring the stigma that the Board has placed on the books.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding Plaintiff C.C.'s mother's desires, and on that basis denies the same. Deny all remaining allegations.

141. Plaintiff C.C.'s mother believes it is important for C.C. to be exposed to a wide variety of perspectives and viewpoints in her school library so that she will be prepared to participate in modern society.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding Plaintiff C.C.'s mother's beliefs, and on that basis denies the same. Deny any remaining allegations.

142. Because of the Board's decisions, Plaintiff C.C.'s mother fears being publicly shamed or accused of bad parenting if she allows C.C. to read the Removed Books.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding Plaintiff C.C.'s mother's fears, and on that basis denies the same. Deny all remaining allegations.

143. Plaintiff E.S. uses the Running Creek Elementary school library, and he will continue to use the Running Creek Elementary school library as he gets older.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding Plaintiff E.S.'s current use of the Running Creek Elementary School library or his supposed future plans to use that library as he gets older, and on that basis denies the same. Deny that pre-school students can browse or check out materials from the district's elementary-school libraries. Deny any remaining allegations.

144. It is important to E.S. and his family that the children have access to a diverse array of reading materials so that they grow up to understand the value in many different ideas and viewpoints. E.S.'s mother does not want E.S. to be deprived of access to books just because his school board—or other parents in our district—disagree with the ideas in those books.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding what is important to Plaintiff E.S. and his family, and what Plaintiff E.S.'s mother wants for E.S., and on that basis denies the same. Deny all remaining allegations.

145. E.S.'s mother does not want E.S. to be educated in an environment where LGBTQ+ people and people of color are stigmatized. She wants him to learn about all different identities, experiences, and lifestyles and to feel free to discuss differing viewpoints and explore challenging ideas.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding what Plaintiff E.S.'s mother wants for E.S., and on that basis denies the same. Deny all remaining allegations.

146. Parent members of the NAACP want their children to be able to read the Removed Books without incurring the stigma that the Board has placed on the books.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding what unidentified parent members of the NAACP want for their children, and on that basis denies the same. Deny all remaining allegations.

147. Parent members of NAACP believe it is important for their children to be exposed to a wide variety of perspectives and viewpoints in their school libraries so that they will be prepared to participate in modern society.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding what unidentified parent members of the NAACP believe, and on that basis denies the same. Deny all remaining allegations.

148. Because of the Board's decisions, parent members of the NAACP fear being publicly shamed or accused of bad parenting if they allow their children to read the Removed Books.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding what unidentified parent members of

the NAACP fear, and on that basis denies the same. Deny all remaining allegations.

149. The Board's process of reviewing and removing books is ongoing.

RESPONSE: The District admits that the Library Protocols remain in place. The District intends to comply with the processes outlined in the Library Protocols in reviewing library books in the future. Deny all remaining allegations.

150. In addition to the removal of books as described above, on at least one occasion, the Board removed a library book upon receiving a parent complaint.

RESPONSE: Admit that in September 2024, a parent expressed concern about *Redwood and Ponytail* by K.A. Holt, a book that his child had checked out from the Running Creek Elementary School library, and suggested that the book be added to the Sensitive Topics List and reviewed by the Curriculum Committee because the book's content was inappropriate for elementary-school students. Admit that in response, the School Board's president had the physical book held for further review once it was returned to the library. Further admit the book has been returned to the shelves of the Running Creek Elementary School library and will remain there pending the School Board's review of that book. Deny all remaining allegations.

151. On September 5, 2024, President Olsen received an email complaining about a book from the library at Running Creek Elementary, *Redwood and Ponytail* by K.A. Holt. The email included the following excerpt from the inside cover: "K.A. Holt delivers an emotional wallop in this novel in verse about two girls discovering their feelings for each other... Sometimes you know who you're meant to be with before you know who you're meant to be." The email also included the following excerpts from the end of the book:

Hours go by. We talk about moms, and Jill, and Levi. About plans and lack thereof and impulse control. We talk about holding hands and what that means and maybe it means nothing or maybe it means everything. We talk about that forbidden word, the tiny word, that fills both our heads, and how we'll figure out our words one day all on our own. We need our own word, you know? A phrase just for us.

Because you're not my best friend, or my best girl, or my girl-friend, or my whole world, you're something even bigger, Kate. Bigger than just one word."

"She's my winning point. She's my summer day. She's my sneaky wink. She's my light. She's my heart. She's my Kate. I'm her Tam. Together we're everything."

"She's my cheering crowd. She's my laugh out loud. She's my secret smile. She's my light. She's my heart. She's my Tam. I'm her Kate. Together we're everything."

RESPONSE: Admit that in September 2024, a parent expressed concern about *Redwood and Ponytail* by K.A. Holt, a book that his child had checked out from the Running Creek Elementary School library, and suggested that the book be added to the Sensitive Topics List and reviewed by the Curriculum Committee because the book's content was inappropriate for elementary-school students. To the extent this paragraph purports to partially quote or summarize the email sent by the concerned parent, that document speaks for itself. Deny any remaining allegations.

152. The email complaining about *Redwood and Ponytail* also included an excerpt from a review site, [KirkusReviews.com](https://www.kirkusreviews.com):

Tam is a volleyball player sometimes mistaken for a boy. Kate is a popular cheerleader. When they notice each other at seventh grade registration, Tam sees a walking cliché with a perfect ponytail, while Kate sees a girl as "tall as a palm tree." When they meet face to face, they strike an immediate rapport. Soon the two are having lunch together every day and linking pinkies in the halls. As they grow closer, each finds herself questioning who she thought she was. Tam doesn't know how she fits into Kate's seemingly perfect world. Kate, who has spent her life trying to live up to her shallow, perfectionist mother's expectations, wants to go her own way, a process that includes deciding whether or not to admit her feelings for Tam. Tam and Kate share the first-person narration, which keenly conveys each girl's joys and

inner turmoil. The dual narratives play off of each other, sometimes in a call-and-response manner that clearly communicates the shyness, awkwardness, and confusion of first love. A trio of unseen watchers, identified as Alex, Alyx, and Alexx, collectively represent the observant school-hallway bystanders, providing commentary and speculation in the manner of a Greek chorus. Their verses can be read vertically or horizontally, resulting in multiple meanings. Characters are racially ambiguous. A glowing, heartfelt addition to the middle-grade LGBTQ genre. (Fiction. 8-14)

RESPONSE: This paragraph purports to partially quote or summarize the email sent by the concerned parent. That document speaks for itself. Deny any remaining allegations.

153. Less than an hour after receiving the email complaining about *Redwood and Ponytail*, President Olsen responded to the parent saying she would have the book removed.

RESPONSE: Admit that in response to the parent's concern about *Redwood and Ponytail*, the School Board's president had the physical book held for further review once it was returned to the library. To the extent this paragraph purports to characterize or summarize an email, that document speaks for itself. Deny any remaining allegations.

154. The Board thereafter removed *Redwood and Ponytail* from the Running Creek Elementary library.

RESPONSE: Admit that in response to the parent's concern about *Redwood and Ponytail*, the School Board's president had the physical book held for further review once it was returned to the library. Further admit the book has been returned to the shelves of Running Creek Elementary Library and will remain there pending the School Board's review of that book. Deny any remaining allegations.

155. NAACP members' children are harmed by the removal of *Redwood and Ponytail* from the Running Creek Elementary library, because they can no longer access the ideas explored in the book.

RESPONSE: Deny.

156. Parent members of the NAACP want their students to be able to access Redwood and Ponytail from their school library.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis denies the same.

157. The Board has directed ESD librarians not to order any new books for school libraries.

RESPONSE: Admit that the School Board has adopted the Library Protocols, which outline the process by which new titles for the District's library collections should be purchased. The Library Protocols speak for themselves. Deny all remaining allegations.

158. The Board's decision to remove books from ESD libraries caused some Elizabeth families to send their kids to schools outside of ESD.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis denies the same.

Response to "Factual Background – Restrictions on Classroom Libraries"

159. The Board's purge of books by and about people of color and LGBTQ+ people is not limited to school libraries.

RESPONSE: Deny.

160. On August 12, 2024, the Board voted to adopt Policy 9.9, which directs that "no classroom libraries of books are maintain[ed] within the Elizabeth School District."

RESPONSE: Admit that on August 12, 2024, the School Board approved the Classroom Library Direction, which directed that no classroom libraries of books be maintained within district classrooms. To the extent this paragraph purports to

partially quote a document, the document speaks for itself. Deny all remaining allegations.

161. Classroom libraries are collections of books in individual classrooms that students access during free time or designated reading times. For example, a student who finishes a test early is often allowed to choose a book from the classroom library to read while the other students finish their tests.

RESPONSE: Admit that classroom libraries are collections of books in individual classrooms at the elementary-school and middle-school levels. High-school classrooms do not have designated libraries for student use. Admit that in the past, classroom libraries were not systematically cataloged or reviewed for age-group appropriateness. Admit that teachers with classroom libraries may allow students to access books in their libraries at designated times. Deny any remaining allegations.

162. Most classroom libraries are created by teachers themselves. Many teachers spend their own money to buy books for their classrooms or get donations from other teachers.

RESPONSE: Admit that some classroom libraries are curated by teachers providing their own books and some are curated by teachers checking out books from a school library. Further admit that some teachers may purchase books for their classroom libraries with their own money or receive book donations. Deny any remaining allegations.

163. The Directive to remove classroom libraries was intended to cover only books that are not used in classroom instruction.

RESPONSE: Admit.

164. Per the Board's direction to remove classroom libraries, some ESD teachers covered their classroom libraries with brown paper; others brought their classroom library books home.

RESPONSE: Admit that after the School Board approved the Classroom Library Direction some elementary-school and middle-school teachers temporarily removed some or all of the books in their classroom libraries, and some posted

signs that the books in their classroom libraries were off limits. Deny all remaining allegations.

165. Shortly after voting to ban classroom libraries, after much community criticism, the Board admitted their decision was made too quickly and paused the ban.

RESPONSE: Admit that the School Board paused the Classroom Library Directive after learning that, contrary to its understanding, elementary-school and middle-school teachers had not been notified of the directive in advance of the School Board's August 12, 2024 meeting. Admit that the School Board was concerned by this gap in communication, and by the response from teachers, so it paused the directive and solicited teacher feedback on how to best move forward. Deny all remaining allegations.

166. While the classroom library ban was paused, Superintendent Snowberger and the Board asked ESD staff for feedback on how to ensure classroom libraries did not contain "sensitive" books. After receiving staff feedback, Superintendent Snowberger chastised some staff members for providing "harsh feedback to the Board on their decision." Some of the feedback resulted in disciplinary action.

RESPONSE: Admit that the School Board paused the Classroom Library Directive and solicited teacher feedback. To the extent this paragraph purports to partially quote or characterize district communications soliciting such feedback, those documents speak for themselves. Admit that some staff provided feedback that was not solutions-focused and that was communicated in an unprofessional manner. To the extent this paragraph purports to quote Mr. Snowberger's characterization of staff feedback, that document speaks for itself. To the extent this paragraph contains allegations that may reveal the identity of particular staff members who are not parties to this action, the District declines to comment on such allegations or related personnel matters. Deny all remaining allegations.

167. On August 20, Superintendent Snowberger informed Elizabeth staff that they could open their classroom libraries back up while the Board deliberated on how to proceed. By that point, many teachers had already taken all of their books home in response to the ban.

RESPONSE: Admit that on or about August 20, 2024, Mr. Snowberger informed elementary-school and middle-school teachers that they could make their classroom libraries available to students while the School Board determined next steps. Admit that some teachers had removed some or all of their classroom-library books by that time. Deny any remaining allegations.

168. On August 26, the Board determined that teachers should create inventories of all the books in their classroom libraries so that the BCRC could review them and the District could determine which ones were in keeping with the Board's partisan, political preferences, and which one needed to be removed.

RESPONSE: Admit that at its August 26, 2024 meeting, the School Board determined that elementary-school and middle-school teachers should create inventories of their classroom libraries. Deny all remaining allegations.

169. Superintendent Snowberger assured parents that classroom libraries would be purged of any books containing racism/discrimination, drug or alcohol use, graphic violence, sexual content, ideations of self harm, or religious content." [sic]

RESPONSE: Admit that the review of classroom libraries included consideration of the same sensitive topics outlined in the Library Protocols. To the extent this paragraph attempts to partially quote or characterize a communication from Mr. Snowberger to parents, that document speaks for itself. Deny any remaining allegations.

170. In the process of reviewing their classroom libraries, teachers were expected to remove questionable books. Some teachers removed books out of fear or anticipation that the Board would direct their removal.

RESPONSE: Admit that teachers were expected to independently evaluate the titles in their classroom library collections during the inventory process. The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding what unidentified teachers supposedly feared, and on that basis denies the same. Deny all remaining allegations.

171. The Board also directed teachers not to purchase any more books for their classroom libraries.

RESPONSE: Admit that the School Board has adopted the Library Protocols, which outline the process by which the District will purchase new titles, including new titles that teachers wish to purchase for their classroom libraries. The Library Protocols speak for themselves. Further admit that the District wants to shift away from teachers having to spend their own money on books. Deny any remaining allegations.

172. Teachers' inventory lists were passed on to principals, who passed them on to the Board for review. The Board then directed principals to ensure that certain books were removed from classroom libraries.

RESPONSE: Admit that teachers' inventories were collected by principals and that principals facilitated removal of the handful of titles that were identified as containing material that related to sensitive topics or that was not age appropriate for the specific grade level where they were located. Deny all remaining allegations.

173. The Board directed that several books be removed from classroom libraries. One Running Creek teacher was initially told he was required to remove *The Slave Dancer* by Paula Fox; *To Be a Slave* by Julius Lester; *The Cay* by Theodore Taylor; *The Giver* by Lois Lowry; and *Lawn Boy* by Gary Paulson from his classroom library.

RESPONSE: Admit that a handful of titles were identified for removal from a few elementary-school and middle-school classroom libraries because they contained material that related to sensitive topics or that was not age appropriate for the specific grade level where they were located. To the extent this paragraph contains allegations that may reveal the identity of a particular teacher who is not a party to this action, the District declines to comment on such allegations or related personnel matters. Deny all remaining allegations.

174. *The Slave Dancer* by Paula Fox is about a teenager who is thrown aboard a slave ship and witnesses how enslaved people were being treated. Its removal is further evidence of the District's intent to restrict access to information and ideas with which it disagrees.

RESPONSE: Admit that Paula Fox is the author of the listed title. To the extent that this paragraph purports to characterize or summarize the contents of the title, the book speaks for itself. Deny all remaining allegations.

175. *To Be a Slave* by Julius Lester is a nonfiction children's book that includes personal accounts of former slaves. It has won several awards, including the John Newbery Medal and School Library Journal's Best Book of the Year. Its removal is further evidence of the District's intent to restrict access to information and ideas with which it disagrees.

RESPONSE: Admit that Julius Lester is the author of the listed title. To the extent that this paragraph purports to characterize or summarize the contents of the title, the book speaks for itself. Deny all remaining allegations.

176. *The Cay* by Theodore Taylor is about a young white boy, Phillip, and his new companion, Timothy, a Black man who rescues Phillip from the ocean. Phillip initially views Timothy as inferior, but over the course of the story, they develop a friendship. Its removal is further evidence of the District's intent to restrict access to information and ideas with which it disagrees.

RESPONSE: Admit that Theodore Taylor is the author of the listed title. To the extent that this paragraph purports to characterize or summarize the contents of the title, the book speaks for itself. Deny all remaining allegations.

177. *The Giver* by Lois Lowry is a young adult novel about an eleven-year-old boy who lives in a society where everyone is equal, but there is no individualism, emotion, or color. The Giver has won the Newbery Medal and the William Allen White Children's Book Award, among several others. Its removal is further evidence of the District's intent to restrict access to information and ideas with which it disagrees.

RESPONSE: Admit that Lois Lowry is the author of the listed title. To the extent that this paragraph purports to characterize or summarize the contents of the title, the book speaks for itself. Deny all remaining allegations.

178. *Lawn Boy* by Gary Paulson is about a boy who mows lawns after his grandmother gives him a lawnmower for his birthday. It includes chapters like "The Growth of Capitalism," "Dramatic Economic Expansion: Its Causes and Effects," and "Conflict Resolution and Its Effects on Economic Policy." It shares its name with *Lawn Boy* by Jonathan Evison, a different book that has been frequently challenged and banned across the country. The teacher was ultimately allowed to keep this book in his classroom library, but not the others.

RESPONSE: Admit that Gary Paulson is the author of the listed title, and that a different author has a work with the exact same title. To the extent that this paragraph purports to characterize or summarize the contents of the title by each of the authors, those books speak for themselves. Admit that *Lawn Boy* by Gary Paulson was initially flagged for removal from classroom libraries by mistake. Deny any remaining allegations.

179. The Running Creek teacher refused to remove any books from his classroom library, because he believed they were educationally valuable for his students. He was threatened with dismissal on insubordination grounds and quit his job because he was not willing to remove the books.

RESPONSE: To the extent this paragraph contains allegations that may reveal the identity of a particular teacher who is not a party to this action, the District declines to comment on such allegations or related personnel matters. Further, the District is without knowledge or information sufficient to form a belief as to the truth of the allegations about this teacher's supposed beliefs or reasons for taking the actions alleged in this paragraph, and on that basis denies the same. Deny all remaining allegations.

Response to “Factual Background – Ban on Sharing Books”

180. Policy 9.9, which the Board adopted on August 12, provides: “Books will not be shared between students.”

RESPONSE: Admit that the School Board approved the Classroom Library Directive at its August 12, 2024 meeting. This paragraph purports to partially quote that document, which speaks for itself.

181. Current policy in the District dictates that students are not permitted to share books with each other.

RESPONSE: Admit that students in the District are not permitted to physically share books with each other while at school. Deny all remaining allegations.

182. Superintendent Snowberger informed parents that the ban on sharing books in the classroom was enacted “to respect parental rights in ensuring that they control what literature students have access to.”

RESPONSE: Admit that Mr. Snowberger has communicated with parents regarding the District's rule against students physically sharing books with each other. To the extent this paragraph purports to partially quote a written or recorded communication, that communication speaks for itself. Deny all remaining allegations.

183. NAACP members' children commonly share books with other students. They recommend and provide books to other students as a way of expressing their interest in particular books or topics. Students can then share the experience of reading the book and discussing it together.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding the book-sharing practices of unidentified NAACP members' children and their supposed reasons for engaging in such practices, and on that basis denies the same. Deny that students in the District are prevented by the District from sharing the experience of reading the same titles and discussing them. Deny any remaining allegations.

184. NAACP members' children receive books from other students as a means of accessing information and ideas that their friends or classmates suggest to them.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding the book-sharing practices of unidentified NAACP members' children and their supposed reasons for engaging in such practices, and on that basis denies the same. Deny that students in the District are prevented by the District from sharing books outside of school. Deny any remaining allegations

185. Plaintiff C.C. commonly shares books with other students. As an avid reader, she has opinions on many different authors and stories, and she enjoys being able to discuss them with her classmates. Plaintiff C.C. learns more about her classmates and herself when they share books with each other and discuss what stood out to them, which parts they liked, etc.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis denies the same. Further, to the extent this paragraph suggests Plaintiff C.C. is prevented by the

District from discussing the 18 titles that were permanently removed from the District's library collections, the District denies that students are prevented from discussing those titles at school or from bringing their own copies of those titles on campus. Deny any remaining allegations.

186. As the Board makes fewer and fewer books available in school libraries, Plaintiff C.C. and NAACP members' children perceive a heightened need to share books with each other.

RESPONSE: The District is without knowledge or information sufficient to form a belief as to the truth of allegations regarding Plaintiff C.C.'s and the unidentified NAACP members' children's perceptions, and on that basis denies the same. Deny that the 18 titles that the School Board voted to permanently remove from the specific District library locations had a material impact on students' access to library content. Deny any remaining allegations.

Response to "Causes of Action – First Claim for Relief

42 U.S.C. § 1983 – First Amendment

Right to Receive Information

Plaintiffs NAACP, C.C. by and through Kristen Crookshanks, and E.S. by and through Mindy Smith Against Defendant"

187. The allegations of the foregoing paragraphs are incorporated by reference as though fully set forth herein.

RESPONSE: All responses to the foregoing paragraphs are incorporated by reference as though fully set forth herein.

188. The First Amendment binds the State of Colorado pursuant to the incorporation doctrine of the Fourteenth Amendment. In all of the following paragraphs, references to the First Amendment include the First Amendment as applied to the states through the Fourteenth Amendment.

RESPONSE: This paragraph contains legal conclusions or characterizations to which no response is required.

189. The First Amendment protects the right to access information and ideas. School boards are not permitted to remove books from school libraries in a narrowly partisan or political manner, or because of board members' disagreement with the ideas contained in the books.

RESPONSE: This paragraph contains legal conclusions or characterizations to which no response is required.

190. The Elizabeth School District, acting through its Board, removed at least nineteen books from ESD libraries in a narrowly partisan or political manner because the Board disagrees with the ideas or views contained in those books.

RESPONSE: Deny.

191. The Board continues to determine whether additional books should be removed from ESD libraries in order to deny students access to ideas that Board members dislike.

RESPONSE: Deny.

192. The Board's decision to remove books from ESD libraries was—and continues to be—motivated by their desire to suppress ideas that were not in keeping with Defendant's political values and ideas, and to prescribe their partisan, political orthodoxy in Elizabeth schools.

RESPONSE: Deny.

193. The Board has no substantial or legitimate interest in banning the Removed Books from ESD libraries.

RESPONSE: Deny.

194. None of the Removed Books are obscene.

RESPONSE: Deny.

195. The Removed Books were not interfering with order and discipline in ESD schools.

RESPONSE: Deny.

196. The Removed Books contain educational value and are educationally suitable for students in ESD schools.

RESPONSE: Deny.

197. Defendants' removal of books from ESD libraries interferes with the ability of Plaintiffs C.C., E.S., and NAACP members' children's ability to learn about a diversity of information and viewpoints.

RESPONSE: Deny.

198. Plaintiffs are entitled to monetary, declaratory, and injunctive relief for the Board's violation of their First Amendment rights.

RESPONSE: Deny.

**Response to Causes of Action – “Second Claim for Relief
Colo. Const. Art. II, Section 10
Freedom of Speech**

*Plaintiffs NAACP, C.C. by and through Kristen Crookshanks, and E.S. by and through
Mindy Smith Against Defendant”*

199. The allegations of the foregoing paragraphs are incorporated by reference as though fully set forth here.

RESPONSE: All responses to the foregoing paragraphs are incorporated by reference as though fully set forth herein.

200. The Free Speech Clause of the Colorado Constitution protects the right to access information and ideas.

RESPONSE: This paragraph contains legal conclusions or characterizations to which no response is required.

201. The free speech rights protected by Colo. Const. Art. II, Section 10 are more expansive than those protected by the First Amendment to the United States Constitution.

RESPONSE: This paragraph contains legal conclusions or characterizations to which no response is required.

202. By removing books from ESD libraries because of disagreement with the ideas contained in those books, the Board violated—and will continue to violate—the Colorado Constitution.

RESPONSE: Deny.

203. Plaintiffs are entitled to monetary, declaratory, and injunctive relief for the Board's violation of their rights under Article II, section 10 of the Colorado Constitution.

RESPONSE: Deny.

Response to Causes of Action – “Third Claim for Relief
42 U.S.C. § 1983 – First Amendment
Freedom of Expression
Plaintiff Authors Guild Against Defendant”

204. The allegations of the foregoing paragraphs are incorporated by reference as though fully set forth herein.

RESPONSE: All responses to the foregoing paragraphs are incorporated by reference as though fully set forth herein.

205. The First Amendment protects authors' ability to communicate their ideas to students without undue government interference.

RESPONSE: This paragraph contains legal conclusions or characterizations to which no response is required.

206. The Board removed Guild members' books because of its distaste for the viewpoints and topics expressed therein.

RESPONSE: Deny.

207. The Board's removal of Guild members' books from ESD libraries violates the First Amendment because it interferes with members' ability to share their constitutionally protected books free from viewpoint-based discrimination.

RESPONSE: Deny.

**Response to Causes of Action – “Fourth Claim for Relief
Colo. Const. Art. II, Section 10
Freedom of Expression
Plaintiff Authors Guild Against Defendant”**

208. The allegations of the foregoing paragraphs are incorporated by reference as though fully set forth herein.

RESPONSE: All responses to the foregoing paragraphs are incorporated by reference as though fully set forth herein.

209. Article II, section 10 of the Colorado Constitution protects authors' ability to communicate their ideas to students without undue government interference.

RESPONSE: This paragraph contains legal conclusions or characterizations to which no response is required.

210. The Board removed Guild members' books because of its distaste for the viewpoints and topics expressed therein.

RESPONSE: Deny.

211. The Board's removal of Guild members' books from ESD libraries violates Article II, section 10 because it interferes with members' ability to share their constitutionally protected books free from viewpoint-based discrimination.

RESPONSE: Deny.

Response to Causes of Action – “Fifth Claim for Relief

42 U.S.C. § 198 – First Amendment

Freedom Of Expression

Plaintiffs NAACP, C.C. by and through Kristen Crookshanks, and E.S. by and through Mindy Smith Against Defendant”

212. The allegations of the foregoing paragraphs are incorporated by reference as though fully set forth herein.

RESPONSE: All responses to the foregoing paragraphs are incorporated by reference as though fully set forth herein.

213. Students have a First Amendment-protected interest in sharing books with each other.

RESPONSE: This paragraph contains legal conclusions or characterizations to which no response is required.

214. Sharing books is a non-disruptive form of expression.

RESPONSE: Deny.

215. The Board has no interest that justifies a blanket prohibition on sharing books with each other in school.

RESPONSE: Deny.

Response to Causes of Action – “Sixth Claim for Relief

Colo. Const. Art. II, Section 10

Freedom of Expression

Plaintiffs NAACP, C.C. by and through Kristen Crookshanks, and E.S. by and through Mindy Smith Against Defendant”

216. The allegations of the foregoing paragraphs are incorporated by reference as though fully set forth herein.

RESPONSE: All responses to the foregoing paragraphs are incorporated by reference as though fully set forth herein.

217. Article II, Section 10 of the Colorado Constitution protects students' interest in sharing books with each other.

RESPONSE: This paragraph contains legal conclusions or characterizations to which no response is required.

218. Sharing books is a non-disruptive form of expression.

RESPONSE: Deny.

219. The Board has no interest that justifies a blanket prohibition on sharing books with each other in school.

RESPONSE: Deny.

Response to Prayer for Relief

The paragraph beginning with "WHEREFORE" contains Plaintiffs' request for relief, to which no response is required. To the extent a response is required, the District denies that Plaintiffs are entitled to any of the requested relief.

General Denial

The District denies each allegation, averment, statement, and conclusion of law contained in the Complaint which is not specifically admitted in its Answer.

Separate and Affirmative Defenses

1. This Court lacks subject-matter jurisdiction to adjudicate Plaintiffs' claims;
2. Plaintiffs lack standing to bring their claims;
3. Plaintiffs fail to state a claim upon which relief can be granted;
4. Plaintiffs' claims are barred by the equitable doctrine of laches;
5. Plaintiffs' claims are barred by the equitable doctrine of unclean hands;
6. Plaintiffs' claims are waived;
7. The District is absolutely immune for the conduct at issue; and
8. The District is qualifiedly immune for the conduct at issue.

Prayer for Relief

The District respectfully prays for the following relief:

- A. each of Plaintiffs' claims against the District be dismissed, with prejudice;
- B. judgment enter in the District's favor and against Plaintiffs on all claims set forth in the Complaint;
- C. the District be awarded its costs (including expert witness fees) and attorney fees incurred in this action as provided by law; and
- D. any other relief as this Court deems appropriate.

Request for Trial by Jury

The District demands a jury trial on all issues so triable.

Dated: February 3, 2025

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Respectfully submitted,

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*Attorneys for Defendant Elizabeth
School District*

CERTIFICATE OF SERVICE

I certify that on February 3, 2025, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following email addresses:

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s/ Laura J. Ellis
FIRST & FOURTEENTH PLLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**Defendant's Motion to Exclude Statements,
Documents, and Other Proffered Evidence Offered
in Support of Plaintiffs' Motion for Preliminary Injunction**

Defendant Elizabeth School District (the District) files this motion to exclude statements, documents, and other proffered evidence offered in support of Plaintiffs' motion for preliminary injunction. The District objects to the admissibility of certain statements, documents, and other proffered evidence under the stated evidentiary rules for purposes of the preliminary-injunction proceedings. The statements, documents, and other proffered evidence are identified below along with the District's specific objections.

CONFERRAL STATEMENT

Undersigned counsel conferred with lead counsel for Plaintiffs, Craig May, between January 31, 2025 and February 3, 2025. The conferral included multiple emails and a 51-minute phone call discussing the parties' respective positions and legal authorities. In substance, the District's position is that (1) most of the supporting material Plaintiffs attached in support of their motion for preliminary injunction is inadmissible for various evidentiary reasons, as outlined below, but (2) those objections could be resolved through

an evidentiary hearing applying the Federal Rules of Evidence. While courts, at times, relax the application of rules of evidence in expedited preliminary-injunction proceedings (e.g., when the proceedings are “conducted under pressured time constraints, on limited evidence[,] and expedited briefing schedules,” *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003) (citing separately *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981))), Plaintiffs have not requested expedited relief. Thus, the District’s position is that the Court should apply the Federal Rules of Evidence in deciding the motion for preliminary injunction. If the Court sets a hearing on the motion, both sides will have a full opportunity to present live witnesses during the hearing under the same evidentiary rules that would apply to any other evidentiary hearing.

The District therefore asks the Court to exclude the statements, documents, and other proffered evidence identified in the sections and charts below for purposes of deciding Plaintiffs’ motion for preliminary injunction. Plaintiffs oppose the District’s motion.

ARGUMENT

I. Objections to Statements in the Declaration of CC

CC’s entire declaration is hearsay and is categorically inadmissible under Fed. R. Evid. 802. The following statements in CC’s declaration are additionally inadmissible on each of the following grounds:

Statement	Objection
¶ 4: “Books help me understand that other people have gone through whatever I’m going through, and knowing that helps with my mental health and anxiety.”	Impermissible opinion testimony. FRE 701.

¶ 8: “I was so devastated by the book removals ... because it was so clear that they were targeting LGBTQ people.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 8: “I loved <i>You Should See Me in a Crown</i> when I read it in middle school, and now Elizabeth Middle School students can’t check it out of their library, probably because the main character is queer and/or Black.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 9: “Instead, the District is restricting access to [books about LGBTQ people who are accepted and proud of who they are] and stigmatizing them.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 15: “Now that the District is removing books that the school board doesn’t like from my school library, browsing the shelves is different.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 15: “I feel like I’m only allowed to look at books that have been pre-approved by people with their own political agenda.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 15: “Now, when I browse, I’ll only be able to find books that fit the school board members’ worldview, and based on the books they’ve removed and labeled as ‘sensitive,’ I don’t think people like me fit into their own worldview.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 16: “The District’s removal of books from my school library prevents me from accessing information about a wide variety of topics and views there.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.

¶ 17: “When I saw books like <i>The Hate U Give</i> , <i>Beloved</i> , and <i>The Bluest Eye</i> on the list of removed books, it looked to me like the District was trying to silence the voices of minorities.”	Impermissible opinion testimony. FRE 701.
¶ 20: “I also worry that I and others who discuss or learn about the ideas in the removed books will be stigmatized because the District has made clear that there is something wrong with those ideas and viewpoints.”	Lack of personal knowledge and speculative. FRE 602. Impermissible opinion testimony. FRE 701.
¶ 21: “Books are one of the main ways students like me can learn about the world, and by removing books from school libraries, the District is preventing students from becoming as knowledgeable and well-rounded as we could be.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.

II. Objections to Statements in the Declaration of Kristen Crookshanks

Ms. Crookshank’s entire declaration is hearsay and is categorically inadmissible under Fed. R. Evid. 802. The following statements in Ms. Crookshank’s declaration are additionally inadmissible on each of the following grounds:

Statement	Objection
¶ 4: “If I tell C.C. what to think or prevent her from learning about certain topics or views, that will inhibit her personal growth.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 5: “I want C.C. to learn that there are lots of people in the world who don't look, live, or love like she does. Reading helps her understand that.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.

¶ 7: “I learned that the District had changed its book fair vendor from Scholastic to SkyTree Books, which promised a book fair without any LGBTQ content, critical race theory, foul language, explicit content, or dark magic.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Double hearsay. FRE 802.
¶ 9: “C.C. ... was devastated when she learned that the District was removing books from school libraries.”	Double hearsay. FRE 802.
¶ 11: “When I read the list of books that the District removed from school libraries, it was clear to me that the District was targeting books about LGBTQ people and people of color.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 12: “By removing books like <i>#Pride: Championing LGBTQ Rights</i> , <i>The Perks of Being a Wallflower</i> , <i>You Should See Me in a Crown</i> , <i>It’s Your World—If You Don’t Like It Change It</i> , <i>Melissa/George</i> , the District has stigmatized LGBTQ identities and book about those identities, which is particularly harmful to my family, because my daughter identifies as queer.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 14: “I believe in equal rights for people of all races.”	Not relevant. FRE 401. Impermissible opinion testimony. FRE 701.
¶ 15: “C.C. should be able to access books by Toni Morrison, Angie Thomas, and Khaled Hosseini in her school library.”	Impermissible opinion testimony. FRE 701.
¶ 15: “By removing their books, the District has stigmatized them and their ideas.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.

¶ 16: “The stigma is compounded by the books that the District has placed on the Sensitive Topic Book List, many of which also contain characters of color and/or LGBTQ characters.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 22: “Because the District has stigmatized certain books and ideas, I fear I will be labeled as an irresponsible or inadequate parent for allowing C.C. to read books that school board members don’t like.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 15: “C.C. is white, as are most of her classmates.”	Not relevant. FRE 401. Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.
¶ 19: “We learn more about each other and the topic of the book by talking about our disagreements and sharing our perspectives.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 20: “C.C. is a mature 16-year-old.”	Impermissible opinion testimony. FRE 701.
¶ 21: “These books address difficult topics, but they also teach valuable lessons.”	Impermissible opinion testimony. FRE 701.
¶ 22: “Because the District has stigmatized certain books and ideas, I fear I will be labeled as an irresponsible or inadequate parent for allowing C.C. to read books that school board members don’t like.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.

III. Objections to Statements in the Declaration of Mindy Smith

Ms. Smith’s entire declaration is hearsay and is categorically inadmissible under Fed. R. Evid. 802. The following statements in Ms. Smith’s declaration are additionally inadmissible on each of the following grounds:

Statement	Objection
¶ 4: “E.S. ... will continue to use the Running Creek Elementary school library as he gets older.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.
¶ 5: “I have a younger daughter who is not yet in preschool. I intend for her to attend Running Creek Elementary when she is old enough for preschool, and then Elizabeth Middle School, and then Elizabeth High School.”	Not relevant. FRE 401.
¶ 8: “My husband, who was equally as upset about the removal of books from our child's school library as I was, also filled out the school board's feedback forms. He wrote that he would prefer that our child explore difficult subjects in an educational institution than learn about them from hearsay, whispers, gossip, and their peers, without the hope of open discussion and psychological safety.”	Double hearsay. FRE 802.
¶ 9 : “I do not want E.S. to be deprived of access to books just because his school board—or other parents in our district—disagree with the ideas in those books.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.
¶ 10: By banning books like <i>Melissa</i> (formerly published as <i>George</i>) from my son's school library, the District is sending the message that it is not okay to be transgender—or even to learn about transgender people and experiences.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 10: “That creates an unwelcoming and unsafe environment in my son’s school.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.

¶ 11: “When I look at the other books that the District has removed from our public school libraries, it is clear that the District is trying to prohibit students from learning about LGBTQ+ identities and critically acclaimed literature by and about people of color.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 11: “In removing these books from our District’s school libraries, the school board has stigmatized LGBTQ+ identity and discussions about race and racism.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 12: “The school board has made the stigma even worse with its Sensitive Topic Book List.”	Lack of personal knowledge and speculative. FRE 602. Impermissible opinion testimony. FRE 701.
¶ 12: “But I don’t want to receive those notifications <i>just for books that the school board dislikes</i> .”	Not relevant. FRE 401. Plaintiffs are not requesting a preliminary injunction with respect to the District’s notification system. Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.
¶ 12: “My child should have unrestricted access to all of the books that were in his school library before the school board started removing the books they didn’t like.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 12: “I don’t want him to think that some books or ideas are bad or wrong just because his school board disagrees with them.”	Assumes facts not in evidence. FRE 201.
¶ 14: “I believe that people of all races should be treated with respect and dignity.”	Not relevant. FRE 401. Impermissible opinion testimony. FRE 701.

¶ 15: "I want my son to learn about race and racism in America. One way to do that is to be exposed to books by and about people of color."	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 16: "I want E.S. to have access to books about all kinds of people so that he can develop empathy and learn to understand other people's experiences."	Impermissible opinion testimony. FRE 701.
¶ 17: "Having access to all kinds of interesting ideas and information is helpful in encouraging E.S. to develop his reading skills."	Impermissible opinion testimony. FRE 701.
¶ 17: "I want him to realize that, the more he reads, the more he will be exposed to interesting ideas and viewpoints that might be different from his own."	Impermissible opinion testimony. FRE 701.
¶ 17: "If the available reading materials are restricted to those that his school board agrees with, then E.S. will only be able to learn about a narrow selection of ideas. In other words, he will be less motivated to read if he can only read books his school board likes."	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 18: "He should be able to check out the book if he finds it interesting or informative, or if he wants to bring it home so that we can read it together."	Impermissible opinion testimony. FRE 701.
¶ 19: "He should be able to check out the book if he finds it interesting or informative, or if he wants to bring it home so that we can read it together."	Impermissible opinion testimony. FRE 701.
¶ 22: "E.S. often looks at books with other students in his class."	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.
¶ 22: "Sharing books is important both to his education and his socialization."	Impermissible opinion testimony. FRE 701.

¶ 23: “I understand that the school board members, and some parents in our community, will disagree with my decision to allow E.S. to read certain books—they might even view me as an irresponsible parent for declining to censor my child’s reading material.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.
¶ 23: “I believe that growing up with books that express a diversity of views, ideas, and opinions is crucial to developing critical thinking skills, understanding our complex world, and challenging injustice where we see it.”	Impermissible opinion testimony. FRE 701.

IV. Objections to Statements in the Declaration of Portia Prescott

Ms. Prescott’s entire declaration is hearsay and is categorically inadmissible under Fed. R. Evid. 802. The following statements in Ms. Prescott’s declaration are additionally inadmissible on each of the following grounds:

Statement	Objection
¶ 7: “[Parents] have shared that the Elizabeth School District’s removal of books from school libraries has interfered with their children’s ability to access books by and about people of color.”	Double hearsay. FRE 802. Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.
¶ 7: “[Parents] have also shared that, by removing Toni Morrison’s <i>The Bluest Eye</i> and <i>Beloved</i> , Angie Thomas’s <i>The Hate U Give</i> , Khaled Hosseini’s <i>The Kite Runner</i> , and Leah Johnson’s <i>You Should See Me in a Crown</i> from school libraries, the District has cast a stigma over celebrated authors of color and their stories.”	Double hearsay. FRE 802. Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 7: “Our members have also shared that many of the books that the District removed from school libraries were about LGBTQ rights or LGBTQ characters.”	Double hearsay. FRE 802. Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.

<p>¶ 7: “By removing those books, the District is sending the message that there is something wrong with LGBTQ people—including students in Elizabeth schools.”</p>	<p>Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.</p> <p>Impermissible opinion testimony. FRE 701.</p>
<p>¶ 8: “One NAACP member who has a child at Running Creek Elementary shared her belief that the District’s removal of these books from school libraries stigmatizes the ideas they contain, and that this stigma interferes with her child’s ability to learn and grow.”</p>	<p>Double hearsay. FRE 802.</p> <p>Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.</p> <p>Impermissible opinion testimony. FRE 701.</p>
<p>¶ 8: “Another member who has a child at Elizabeth High School shared that her daughter was devastated when the District removed books from her school library because she read the list of removed books to mean that gay students are not welcome in Elizabeth schools.”</p>	<p>Double hearsay. FRE 802.</p> <p>Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.</p>
<p>¶ 8: “Her daughter wants to check out the books that were removed from her school library, but now she cannot, because of the school board’s political agenda.”</p>	<p>Double hearsay. FRE 802.</p> <p>Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.</p> <p>Impermissible opinion testimony. FRE 701.</p>
<p>¶ 9: “Some NAACP members removed their children from Elizabeth schools because of the District’s decision to remove books from their school libraries.”</p>	<p>Double hearsay. FRE 802.</p> <p>Assumes facts not in evidence. FRE 201.</p>
<p>¶ 9: “For example, one member who had a Fifth Grader enrolled in Running Creek Elementary saw the removal of books as yet another manifestation of racism in the District.”</p>	<p>Double hearsay. FRE 802.</p> <p>Assumes facts not in evidence. FRE 201.</p>

¶ 9: “She unenrolled her child in Elizabeth public schools because she wanted her daughter to be educated in a school that values her and doesn’t deprive her of access to books about Black people she can relate to.”	Double hearsay. FRE 802. Assumes facts not in evidence. FRE 201. Impermissible opinion testimony. FRE 701.
¶ 9: “Another member who had a preschooler enrolled in Running Creek Elementary unenrolled her child because she did not want her daughter subject to the Board’s partisan whims.”	Double hearsay. FRE 802. Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 9: “She wants her child to have access a wide variety of books, and she does not want her child to think there is anything wrong with reading about LGBTQ+ people or people of color.”	Double hearsay. FRE 802. Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 10: “Elizabeth’s removal of books from Elizabeth’s school libraries harms many of our members because it signals that there is something wrong with books that discuss racism, discrimination, and LGBTQ+ people.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 10: “I was appalled to hear Elizabeth School Board members publicly refer to Beloved as ‘disgusting,’ as were many NAACP members.”	Double hearsay. FRE 802. Assumes facts not in evidence. FRE 201.
¶ 10: “As the District continues to deprive students access to books that they personally find ‘disgusting’ and to determine which other books are so ‘disgusting’ that students should not be able to access them, our members and our members’ children will continue to suffer the consequences.”	Double hearsay. FRE 802. Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.

¶ 10: “Students in Elizabeth public schools can no longer go to their school library to explore Toni Morrison’s or Angie Thomas’s perspectives on Black experiences in this country.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.
¶ 10: “They can no longer educate themselves about LGBTQ+ rights or history in their school libraries using books by Leah Johnson, Rebecca Felix, Alex Gino, or Mikki Halpin.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.
¶ 10: “This impacts their education, their personal development, and their well-being.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 11: “While we advocate to educate children about racism and discrimination, the District has targeted these topics for removal from school libraries.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 11: “While we advocate to make schools more equitable and welcoming to people of all races, genders, and sexualities, the District has indicated that stories by and about people of color and LGBTQ people are disgusting and deserve to be removed.”	Double hearsay. FRE 802. Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 11: “While we fight to empower young students to explore challenging ideas and develop their critical thinking schools, the District is excising materials that could help them do just that from their school libraries.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.

V. Objections to Statements in the Declaration of Ellen Hopkins

Ms. Hopkins’s entire declaration is hearsay and is categorically inadmissible under Fed. R. Evid. 802. The following statements in Ms. Hopkins’s declaration are additionally inadmissible on each of the following grounds:

Statement	Objection
¶ 8: “Teachers have told me that <i>Crank</i> , and many of my other books, inspire critical conversations in classrooms.”	Double hearsay. FRE 802. Impermissible opinion testimony. FRE 701.
¶ 9: “I have heard from thousands of readers who say <i>Crank</i> helped them turn away from drugs or offered insight into a loved one’s addiction.”	Double hearsay. FRE 802.
¶ 9: “One reader wrote to me: ‘I’m honored to get this opportunity to tell you that <i>Crank</i> saved my life, opened my eyes to the world I was exposing myself to and rapidly getting drowned in. And then, two years later it did the very same for my little brother who found it in my moving boxes and read it thinking it was a teen book about kids doing drugs. He was doing meth the night he read it, with his at the time girlfriend. They quit the very next day. Thank you Ellen, you’ve touched our lives forever and I’ll always be more thankful than you’ll ever know for your books.’”	Double hearsay. FRE 802.
¶ 10: “Publisher’s Weekly’s starred review of the book states: ‘Brief, gutsy confessions reveal a history of sexual abuse and emotional neglect, and it’s not clear that both girls will survive it. Hopkins’s verse is not only lean and sinuous, it also demonstrates a mastery of technique.’”	Double hearsay. FRE 802.
¶ 10: “Kirkus, an industry trusted source for book reviews, also gave it a star, which I understand is only awarded to a small percentage of the thousands of books reviewed each year.”	Double hearsay. FRE 802. Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.
¶ 10: “Kirkus wrote ‘Hopkins’s gift with free verse reaches new heights in this portrait of splintered identical twins ... Kaeleigh and Raeanne maintain distinct voices throughout as they wrestle with psychic damage and an astonishing, devastating realization. Sharp and stunning, with a brilliant final page.’”	Double hearsay. FRE 802.

¶ 11: “With <i>Identical</i> , childhood sexual abuse is a pervasive problem.”	Impermissible opinion testimony. FRE 701.
¶ 11: “Unfortunately, the perpetrator is sometimes a parent, and in those cases the victims are often unaware that it is wrong. And for those who do, many are afraid no one will believe them if they ask for help.”	Impermissible opinion testimony. FRE 701. Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.
¶ 11: “A reader once wrote to thank me for ‘not closing the door. Because when you do, people don’t believe something’s happening behind it.’”	Double hearsay. FRE 802.
¶ 12: “Voya’s starred review had this to say: ‘The book is rife with real issues and demanding attention, leaving the reader to realize that when the smoke clears, redemption is always possible ... the character’s decisions transcend the page and leave much to be discussed and contemplated among readers.’”	Double hearsay. FRE 802.
¶ 13: “All of my books, including these, offer resources in the back matter for people experiencing the issues I’m writing about.”	Impermissible opinion testimony. FRE 701.
¶ 15: “Many of my books have provided young adults with the resources they need to navigate the challenges of their teen years.”	Double hearsay. FRE 802. Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.
¶ 15: “I have heard from thousands of teens over the years who have said that my books helped them navigate difficult situations and avoid going down dangerous paths.”	Double hearsay. FRE 802.
¶ 15: “My books have resonated with countless readers, offering a mirror for their struggles and a roadmap to understanding the complexities of young adulthood.”	Double hearsay. FRE 802. Impermissible opinion testimony. FRE 701. Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.

¶ 16: “I have heard from many teenagers who didn’t think of themselves as ‘readers’ or struggled to finish entire novels until they discovered my books in verse.”	Double hearsay. FRE 802.
¶ 15: “My books help them develop their reading skills and foster an appreciation for language and literature.”	Double hearsay. FRE 802. Impermissible opinion testimony. FRE 701. Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.
¶ 18: “Elizabeth School District’s book ban silences important dialogues by preventing students from encountering my books in the first instance.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 18: “Labeling my books as ‘sensitive’ or inappropriate for students-let alone removing them from school libraries-stigmatizes me, the ideas and viewpoints contained in my work, and the students who read my books.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 19: “Elizabeth’s removal of my books from their high school library limits my ability to reach my intended audience and diminishes the opportunities for open dialogue about difficult subjects.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 19: “Such censorship denies readers—especially young people—the chance to immerse themselves in stories that validate their experiences, broaden their perspectives, and foster empathy.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.

¶ 19: “I fear that other school districts will copy Elizabeth School District and similarly remove my books from their school library shelves because they disagree with the ideas and viewpoints I express in those books.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
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VI. Objections to Statements in the Declaration of Alex Gino

Mr. Gino’s entire declaration is hearsay and is categorically inadmissible under Fed. R. Evid. 802. The following statements in Mr. Gino’s declaration are additionally inadmissible on each of the following grounds:

Statement	Objection
¶ 3: “I believe LGBTQIAP+ people deserve the same rights, respect, and resources as all other people.”	Relevance. FRE 401. Impermissible opinion testimony. FRE 701.
¶ 4: “ <i>Melissa</i> offers an authentic portrayal of a child navigating gender identity while addressing themes of courage, self-discovery, acceptance, and friendship.”	Impermissible opinion testimony. FRE 701.
¶ 7: “Removing books like mine from school libraries silences vital narratives and reinforces stigmas and misunderstandings about the LGBTQIA+ community.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 7: “By removing <i>Melissa</i> from its bookshelves, ESD denies young readers the opportunity to see themselves reflected in the literature and sends the message that there is something bad or wrong with stories about people like them.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.

¶ 7: “Removing <i>Melissa</i> from school libraries denies students access to a story that fosters empathy and inclusivity.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 8: “ <i>Melissa</i> is a vital resource for children, educators, and parents seeking to better understand gender diversity.”	Impermissible opinion testimony. FRE 701.
¶ 8: “I have received hundreds of emails and other correspondence from readers who have been impacted positively by <i>Melissa</i> .”	Double hearsay. FRE 802. Impermissible opinion testimony. FRE 701.
¶ 8: “Adults tell me about how <i>Melissa</i> has helped the children in their lives—as well as themselves—learn and grow.”	Double hearsay. FRE 802. Impermissible opinion testimony. FRE 701.
¶ 8: “Many adult LGBTQIAP+ people tell me that my story helps to heal deep, old emotional wounds, and that they wish they had had access to a book like <i>Melissa</i> when they were <i>Melissa</i> ’s age (fourth grade).”	Double hearsay. FRE 802. Impermissible opinion testimony. FRE 701.
¶ 8: “I have spoken with adults who have been guided towards compassion for their children and grandchildren through <i>Melissa</i> ’s story, and children who have been bolstered by <i>Melissa</i> to tell people who they are.”	Double hearsay. FRE 802.
¶ 8: “I regularly hear that thoughtful conversations about empathy and kindness extend into the weeks after my visit.”	Double hearsay. FRE 802. Impermissible opinion testimony. FRE 701.
¶ 8: “Stories like <i>Melissa</i> help LGBTQIAP+ youth by providing connection and fostering empathy in those who might otherwise cause them physical and/or emotional harm.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.

¶ 9: “Many lack the resources or ability to access my books outside of the school library.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.
¶ 9: “Removing my books from school libraries makes it functionally impossible to reach my audience.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.
¶ 9: “By removing my book from its libraries, ESD is preventing me from communicating my viewpoint with young Americans who attend schools in ESD.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201.
¶ 10: “This drop reflects the harmful impact of book bans across the country.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 10: “These are tangible outcomes caused by the recent surge in book bans, including the ban in place in ESD.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.
¶ 10: “The surge in book bans has created a chilling effect, leading schools and school districts to omit my books from their collections due to perceived controversy over the viewpoints and ideas expressed in them.”	Lack of personal knowledge, speculative, and assumes facts not in evidence. FRE 602; FRE 201. Impermissible opinion testimony. FRE 701.

VII. Objection to Exhibit 9

Statement	Objection
Email from D. Snowberger to M. Powell, dated August 5, 2024, and remainder of email thread.	Inadmissible hearsay. FRE 802.

VIII. Objection to Exhibit 10

Statement	Objection
Email from H. Booth to [redacted], dated August 19, 2024, and remainder of email thread.	Inadmissible hearsay. FRE 802.

IX. Objection to Exhibit 11

Statement	Objection
Email from H. Booth to [redacted], dated August 19, 2024, and remainder of email thread.	Inadmissible hearsay. FRE 802.

X. Objection to Exhibit 12

Statement	Objection
Email from M. Powell to H. Booth, dated September 8, 2024, and remainder of email thread.	Inadmissible hearsay. FRE 802.

XI. Objections to Exhibit 13

Statement	Objection
Book Review Form for Laura [redacted] (<i>#Pride</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for Ken [redacted] (<i>#Pride: Championing LGBTQ Rights</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for Lyra [redacted] (<i>Burned</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for David [redacted] (<i>George</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for Matt [redacted] (<i>George</i>).	Inadmissible hearsay. FRE 802.

Book Review Form for Maryrose [redacted] (<i>It's Your World</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for David [redacted] (<i>The Bluest Eye</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for Mayrose [redacted] (<i>The Hate U Give</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for Ken [redacted] (<i>The Hate You Give</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for Maryrose [redacted] (<i>You Should See Me in a Crown</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for Shelly [redacted] (<i>You Should See Me in a Crown</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for Tracy [redacted] (<i>You Should See Me in a Crown</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for Laura [redacted] (<i>The Kite Runner</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for Mindy [redacted] (<i>Thirteen Reasons Why</i> , <i>The Kite Runner</i> , and <i>Speak</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for Wendy [redacted]	Inadmissible hearsay. FRE 802.
Book Review Form for Kathy [redacted] (<i>Be-loved</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for Kathy [redacted] (<i>Looking for Alaska</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for Kathy [redacted] (<i>Crank</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for Maryrose [redacted] (<i>The Hate You Give</i>).	Inadmissible hearsay. FRE 802.
Book Review Form for Mindy [redacted] (<i>You Should See Me in a Crown</i>).	Inadmissible hearsay. FRE 802.

Book Review Form for Kathy [redacted].	Inadmissible hearsay. FRE 802.
Book Review Form for Christine [redacted].	Inadmissible hearsay. FRE 802.
Book Review Form for Janey [redacted].	Inadmissible hearsay. FRE 802.
Book Review Form for Mindy [redacted] (<i>Identical, Fallout, Glass, Burned, Crank, Smoke</i>).	Inadmissible hearsay. FRE 802.

XII. Objection to Exhibit 14

Statement	Objection
Email from M. Powell to [redacted], dated September 8, 2024.	Inadmissible hearsay. FRE 802.

XIII. Objection to Exhibit 15

Statement	Objection
Email from D. Snowberger to J. Maher, dated August 19, 2024.	Inadmissible hearsay. FRE 802.

XIV. Objection to Exhibit 16

Statement	Objection
Email from R. Olsen to D. Snowberger and M. Seefried, dated September 5, 2024, and remainder of email thread.	Inadmissible hearsay. FRE 802.

XV. Objection to Exhibit 17

Statement	Objection
Email from M. Seefried to K. Moore, dated September 11, 2024.	Inadmissible hearsay. FRE 802.

XVI. Objection to Exhibit 18

Statement	Objection
Email from K. Moore to P. Slade, dated September 10, 2024.	Inadmissible hearsay. FRE 802.

CONCLUSION

The District asks the Court to exclude the statements, documents, and other proffered evidence identified above, and attached to Plaintiffs' motion for preliminary injunction, as inadmissible under the Federal Rules of Evidence. The Court should disregard this proffered evidence in ruling on Plaintiffs' motion for preliminary injunction.

Dated: February 7, 2025

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CERTIFICATE OF SERVICE

I certify that on February 7, 2025, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following email addresses:

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s/ Kelly Callender
FIRST & FOURTEENTH PLLC

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Elizabeth School Board members campaigned on a platform of bringing “conservative values” to the District, and as a Board, they have repeatedly cited their political values as the basis for their decisions.¹ In their effort to impose their brand of “conservative” orthodoxy in Elizabeth schools, they looked up “most challenged book lists” to help them create a list of books to remove from Elizabeth’s school libraries. 8/12 Bd Mtg at 48:16. After identifying 19 books to remove (the “Removed Books”), the Board drew attention to isolated passages in the books that it found offensive and encouraged parents to vote on whether to permanently banish the books from school libraries, or return them but send parents a notification if their child checked them out.

At every stage in the process, Board members made clear that the Removed Books were targeted because they contained “gender identity ideology,” “LGBTQ” content, or “racism/discrimination.” Ex. 12, ECF No. 9-12 at 3; Ex. 14, ECF No. 9-14 at 2; Ex. 7, ECF No. 9-7 at 4. It did not matter to the Board that these books might improve students’ reading skills, that some were critically acclaimed and read by students across the country, or that they could help Elizabeth students process racism, homophobia, or othering. While Defendant now attempts to distance itself from its own communications and public statements regarding the Removed Books—claiming that its decisions were actually based on inappropriate content, vulgarity, or the District’s amorphous educational mission—its

¹ While Defendant complains that Plaintiffs have made “vague” or “undefined” references to the Board members’ self-proclaimed “conservative values,” Opp. 25, 27, it was the Board members themselves who repeatedly claimed that they were bringing “conservative values” to the District—whatever that means to them.

litigation-inspired pretextual justifications are belied by Board members' own statements. *Id.*

Defendant's legal arguments are similarly unavailing. Defendant wrongly claims its removal of library books constitutes "government speech," a doctrine that the Supreme Court has recognized "is susceptible to dangerous misuse," as it can be weaponized to "silence or muffle the expression of disfavored viewpoints." *Matal v. Tam*, 582 U.S. 218, 235 (2017). And, after using its revisionist version of the facts to argue Plaintiffs' claims fail under the Supreme Court's First Amendment precedents, Defendant also asserts that Plaintiffs are not injured because Defendant recently decided they can access the removed books *if they disclose their constitutionally protected membership in the NAACP or status as a Plaintiff*. Far from resolving Plaintiffs' constitutional injuries, this "decision" only compounds them. Defendant's arguments are dangerous. They would allow any school board to restrict students' access to any books that contravene their own preferred political orthodoxy. That result is not permitted by the First Amendment or by Article II, section 10 of the Colorado Constitution. Preliminary relief is necessary to protect students' right to receive information and authors' freedom from viewpoint-based discrimination.

I. Plaintiffs Have Standing to Seek the Return of All Books Removed from Elizabeth Middle School ("EMS")

Defendant argues Plaintiffs lack standing to challenge the removal of books from EMS. But Defendant does not contest that NAACP has standing to sue on behalf of its members. NAACP's members intend for their children to have access to the books removed from EMS. Thus, NAACP has standing. And, contrary to Defendant's assertion, NAACP members who have removed their children from Elizabeth schools have a stake in this case because "the 'opportunity' to return [a student] to her home district, in addition to

alleviating [] ongoing feelings of marginalization, is surely a ‘tangible benefit’ sufficient to confer standing.” *Deal v. Mercer Cty Bd. of Educ.*, 911 F.3d 183, 190 (4th Cir. 2018).

II. Plaintiffs’ State Constitutional Claims Are Likely to Succeed

Defendant does not address Plaintiffs’ claims under the Colorado Constitution—which “provides broader free speech protections than the Federal Constitution,” *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1054 (Colo. 1997)—much less dispute that they are likely to succeed. That alone is reason enough to grant a preliminary injunction.

III. Plaintiffs’ Federal Constitutional Claims Are Likely to Succeed

Plaintiffs’ First Amendment claims are likely to succeed because (A) a school board’s removal of library books is not government speech; (B) Defendant cannot satisfy any level of First Amendment scrutiny; and (C) Defendant’s “decision” to provide limited access to the Removed Books fails to redress the ongoing constitutional injuries.

A. The Board’s Book Removals Are Not Government Speech

Defendant argues “a school library’s curation decisions are government speech immune from First Amendment scrutiny.” Opp. 13. No court has agreed. See *GLBT Youth in Iowa Sch. Task Force v. Reynolds*, No. 24-1075, 2024 WL 3736785, at *2–3 (8th Cir. Aug. 9, 2024) (“[T]he placement and removal of books in public school libraries” is not government speech.); *PEN Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd.*, 711 F. Supp. 3d 1325, 1331 (N.D. Fla. 2024) (school library not viewed “as the government’s endorsement of the views expressed in the books.”); *Viriden v. Crawford County*, No. 2:23-CV-2071, 2024 WL 4360495, at *5 (W.D. Ark. Sept. 30, 2024) (“[T]he Supreme Court has not extended [government-speech] doctrine to the placement and removal of books in libraries.”).

Defendant relies on *Moody v. NetChoice*, Opp. 13–15, but that case had nothing to do with government speech; it concerned states’ power to regulate private social media platforms’ editorial choices. 603 U.S. 707 (2024). The Court recognized that “a State may not interfere with private actors’ speech to advance its own vision of ideological balance.” *Id.* at 741. But school libraries are not *private actors*; they are a “forum for silent speech.” *Minarcini v. Strongsville City Sch. Dist.*, 541 F.2d 577, 582–83 (6th Cir. 1976). The First Amendment serves to ensure the public “has access to a wide range of views . . . by preventing *the government* from ‘tilt[ing] public debate in a preferred direction.’” *Moody*, 603 U.S. at 741 (quoting *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 578–579 (2011)). Here, *the government* has restricted students’ access to ideas it disfavors in public school libraries.

Contrary to Defendant’s suggestion, *United States v. American Library Association, Inc.* did not treat curation decisions as government speech. Opp. 14. The plurality explained that a library’s role is to “decid[e] what private speech to make available to the public.” 539 U.S. 194, 204 (2003). While libraries “enjoy broad discretion” in making collection decisions, *id.* at 205, nothing suggests that discretion is boundless. There is simply no authority suggesting the Board’s decisions are immune from First Amendment scrutiny.

B. Defendant Cannot Satisfy Any Level of First Amendment Scrutiny

1. Defendant’s Book Removals Violate the First Amendment Under *Pico* and Other School Library Precedents

Pico “is the only Supreme Court decision dealing specifically with removal of books from a public school library” and “must be used as a starting point.” *Case v. Unified Sch. Dist. No. 233*, 895 F. Supp. 1463, 1469 (D. Kan. 1995). Defendant asserts that Justice

White’s concurrence controls and is “agnostic on whether the First Amendment imposes *any* constraints on book-removal decisions made by public-school libraries.” Opp. 16. But Justice White did “not reject the plurality’s assessment of the constitutional limitations on school officials’ discretion to remove books from a school library.” *Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184, 189 (5th Cir. 1995). He agreed the case should be remanded for further fact-finding about the board’s reasons for removing library books—an exercise that would be pointless if no facts could establish a First Amendment violation. *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 883–84 (1982).

The *Pico* plurality held that school boards “may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to ‘prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion,’” 457 U.S. at 872 (quoting *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)). Plaintiffs will likely succeed in proving Defendant’s unconstitutional motives for removing the books. See Ex. 12, ECF No. 9-12 at 2 (deciding to remove books because “LGBTQ is only regarding sexual preference which doesn’t belong in any school”); Ex. 14, ECF No. 9-14 at 2 (deciding to remove books because they “have gender ideology in them”); Ex. 9, ECF No. 9-9 at 2–3 (advocating for “conservative values” in Elizabeth schools); Ex. 10, ECF No. 9-10 at 2 (“As an elected official committed to conservative values for our children, I feel a strong obligation to honor the promises made during my campaign.”). Defendant’s argument that its motives were permissible because books were reviewed for “‘racism/discrimination,’ ‘religious viewpoints,’ ‘sexual content,’” and other categories, misses the mark. Opp. 25. Each category contains “ideas to which students

have a right to choose to be exposed.” *Counts v. Cedarville School District*, 295 F. Supp. 2d 996, 1004 (W.D. Ark. 2003). If Defendant had truly removed all books containing these topics, few would be left. Instead, under the cover of “sexual content,” the Board removed books because they contained LGBTQ+ characters and relationships. And under the cover of “racism,” the Board removed books that focus on Black perspectives and experiences.

Defendant claims Plaintiffs “concede” that the Board’s decisions “were guided by multiple factors.” Opp. 26. But Plaintiffs have consistently claimed the Board was “guided” by its desire to impose its preferred political orthodoxy. And it does not help Defendant that others shared its desire to excise the Removed Books. See Opp. 26. In *Pico*, too, the removed books were on a politically conservative organization’s list of “objectionable” books. 457 U.S. at 856. But regardless of how many people share a board’s partisan ideals, “[o]ur constitution does not permit the official suppression of *ideas*.” *Id.* at 871.

Plaintiffs have also shown that Defendant’s decisions were made to prescribe its preferred orthodoxy. Defendant did not, as its brief claims, remove books because they contain “sexually explicit and vulgar content.” Opp. 27. Secretary Powell explained to the rest of the Board that in *You Should See Me in a Crown*, “[t]here isn’t anything graphic other than discussing a kiss that I saw.” Ex. 12, ECF No. 9-12 at 3. And *#Pride: Championing LGBTQ Rights* “is largely a history of LGBTQ.” *Id.* Board members voted to remove these books not to eliminate sexually explicit or vulgar content, but to fulfill their campaign promise of bringing “conservative values” to the District by signaling that “LGBTQ is only regarding sexual preference which doesn’t belong in any school,” *id.*, and “gender

identity ideology” should not be “out there at all.” Ex. 14, ECF No. 9-14 at 2.²

Defendant suggests that the Board’s removal decisions were constitutional because there are still some books by or about LGBTQ people in Elizabeth’s libraries. Opp. 27. But the removal process is ongoing. Ex 15, ECF No. 9-15 at 2. Plaintiffs need not wait for the Board to eradicate every instance of LGBTQ identity in their libraries before filing suit.

While Plaintiffs’ claims are likely to succeed under *Pico*, “[e]ven if the [C]ourt concluded that *Pico* is not persuasive precedent, the majority of courts faced with a school book banning case have held that the removal of a book was unconstitutional.” *Case*, 895 F. Supp. at 1469; *see also Virden*, 2024 WL 4360495, at *4; *Minarcini*, 541 F.2d at 582; *Sheck v. Baileyville Sch. Comm.*, 530 F. Supp. 679, 693 (D. Me. 1982); *Right To Read Def. Comm. of Chelsea v. Sch. Comm. of City of Chelsea*, 454 F. Supp. 703, 715 (D. Mass. 1978); *Salvail v. Nashua Bd. of Educ.*, 469 F. Supp. 1269, 1272, 1275 (D.N.H. 1979); *Counts*, 295 F. Supp. 2d at 1005; *Roberts v. Madigan*, 702 F. Supp. 1505, 1513 (D. Colo. 1989), *aff’d*, 921 F.2d 1047 (10th Cir. 1990). This Court should do the same.

2.The Books Were Not Removed to Prevent Substantial Disruption

If *Pico* did not apply, then the proper standard would come from *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969). *See Hardwick ex rel. Hardwick v. Heyward*, 711 F.3d 426, 435 n.11 (4th Cir. 2013) (“[W]e must continue to adhere to the *Tinker* test in cases that do not fall within any exceptions that the Supreme Court has created.”). Under *Tinker*, students’ First Amendment rights cannot be abridged except when

² Contrary to Defendant’s claims that Booth “did not vote,” Opp. 26 n.9, her votes are reflected in email exchanges and spreadsheets. See Exhibit 18 – Temporarily

“necessary to avoid material and substantial interference with schoolwork or discipline.” *Tinker*, 393 U.S. at 511. “[S]peculative apprehensions of possible disturbance are not sufficient to justify the extreme sanction of restricting the free exercise of First Amendment rights in a public school library.” *Counts*, 295 F. Supp. 2d at 1004. Defendant has not—because it cannot—point to any substantial disruption caused by the Removed Books.

3. Defendant’s Removal Decisions Were Not Curricular Speech, and Were Not Reasonably Related to Legitimate Pedagogical Purposes

Defendant argues *Hazelwood* bars Plaintiffs’ claims. Opp. 21. But *Hazelwood* applies only to restrictions on *curricular* speech—not to the removal of books from school libraries—and Defendant could not satisfy *Hazelwood*’s test even if it did apply.

In *Hazelwood*, a principal directed that two “inappropriate” articles be withheld from a school newspaper produced as part of a journalism class. 484 U.S. 260, 262–64 (1988). Considering the constitutionality of that decision, the Court distinguished between speech that a school “tolerate[s]” and “speech that may fairly be characterized as part of the school curriculum,” which “the public might reasonably perceive to bear the imprimatur of the school.” *Id.* at 271. The Court held that restrictions on curricular speech—like the newspaper—must be “reasonably related to legitimate pedagogical concerns.” *Id.* at 273.

Unlike the *Hazelwood* newspaper, school libraries are places to “discover areas of interest and thought not covered by the prescribed curriculum.” *Right To Read Def. Comm. of Chelsea*, 454 F. Supp. at 715. Students “are not required to read the books contained in the libraries; neither are the students’ selections of library materials supervised by faculty

Suspended Book List.

members.” *Campbell*, 64 F.3d at 189; see also Answer, ECF No. 26 ¶ 119 (admitting “none of the 18 titles that the School Board voted to permanently remove . . . were required reading for any classroom or student” this year). And the District’s own definition of “curriculum” would exclude libraries, as they are not “an organized plan of instruction comprised of a sequence of instructional units that engages students in mastering the standards.” See [Co. Dep’t of Education Curriculum](#). The Board’s decision to remove books from school libraries thus “concerns a non-curricular matter” and “must withstand greater scrutiny within the context of the First Amendment than would a decision involving a curricular matter.” *Id.*; see also *Case*, 895 F. Supp. at 1469 (declining to apply *Hazelwood* where book was removed from school library because *Hazelwood* “was a curriculum case”).³

Fleming v. Jefferson County School Dist. R-1, 298 F.3d 918 (10th Cir. 2002), does not require a different result. There, following a school shooting, the school invited students to paint tiles to install on the school’s walls. *Id.* at 920. Plaintiffs sued when their tiles with religious messages were not added to the walls. *Id.* at 921. Because the school had organized the painting sessions, held them at the school, provided faculty supervision, content guidelines, and instructions about subject matter, removed inappropriate tiles, and organized volunteers to affix the tiles, the tiles bore the school’s imprimatur. *Id.* at 930. A school library is an entirely different matter. Far from promoting a school board’s own

³ Defendant attempts to use *Bd. of Educ. of Westside Cmty. Sch. v. Mergens ex rel. Mergens*, 496 U.S. 226, 246 (1990), to argue that school libraries are “curricular.” Opp. 21. But *Mergens* says nothing about school libraries; the Court merely referenced a particular

messages, a school library is intended to provide students with access to “a range of knowledge, from the world's great novels and plays to books on hobbies and how-to-do-it projects.” *Roberts*, 702 F. Supp. at 1512. This “range” must include books on “diverse topics”—including those their school board dislikes. *Campbell*, 64 F.3d at 190.

Finally, even if the *Hazelwood* standard applied here, Defendant would not meet it, because its restrictions on Plaintiffs’ access to information are not “reasonably related to legitimate pedagogical concerns.” *Hazelwood*, 484 U.S. at 273. Defendant gestures to its “broad effort to standardize the District’s curriculum to enhance educational value,” and its directive “to reevaluate the books in the District’s school libraries to align them with the District’s curricular and educational goals.” Opp. 23. But Defendant fails to explain what its curricular goals *are* and how the Removed Books—which Board members had not read, Answer, ECF No. 26 ¶ 70—interfered with them. Defendant summarily states that its goals “meant removing select books with sexually explicit content, including base vulgarity, that were not age appropriate for the respective school library, or that promoted discourse or indoctrination on sensitive and controversial topics best left to parents as the primary educators of their children.” Opp. 23. But none of Defendant’s citations indicate that books were removed for these reasons or specify any curricular goals served by removing library books. Snowberger Decl. ECF No 25-1 ¶¶ 7, 20, 43 (not mentioning library books); *id.* ¶ 13 (expressing intent to align library collection with curriculum but mentioning no curricular goals served by removing library books). The District’s “decision” to allow Plaintiffs and school’s statements about band, drama, and choir in its curriculum in determining whether the school’s obligations under the Equal Access Act were triggered. *Id.* at 246.

NAACP members access to the Removed Books also undermines any notion that there was a legitimate reason to remove them. What kind of “pedagogical concern” applies only to students who are not NAACP members? There is simply no reason to believe that the books were removed because of vulgarity or age-inappropriateness, and every reason to believe they were removed to impose the Board’s political orthodoxy.

In applying *Hazelwood*’s standard, the Court “would be abdicating [its] judicial duty if [it] failed to investigate whether the educational goal or pedagogical concern was *pretextual*.” *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1292–93 (10th Cir. 2004). Where a defendant articulates a pedagogical concern that is “a sham pretext for an impermissible ulterior motive,” *Hazelwood* does not save them. *Id.* at 1293. In *Axson-Flynn*, where a Mormon student refused to utter “fuck” or “God” in an acting class, the Court concluded that “the program’s insistence that Axson-Flynn speak with other ‘good Mormon girls’ and that she could ‘still be a good Mormon’ and say these words certainly raises concern that hostility to her faith rather than a pedagogical interest in her growth as an actress was at stake in Defendants’ behavior in this case.” *Id.* Here, the Board has expressed that certain ideas don’t belong in schools, and the Board’s President admitted that she would not care if one of the Removed Books—a critically acclaimed Toni Morrison novel—would improve students’ reading abilities. Any attempt at *post hoc* justifications is plainly pretextual.

4. Defendant’s Removal of Books Was Neither Reasonable Nor Viewpoint-Neutral

Defendant asserts its removal of books “is garden-variety regulation of access to a non-public forum,” Opp. 27, but fails to recognize that libraries’ “status as a nonpublic forum” would not give the Board “unfettered power to exclude any [speech] it wished.” *Ark.*

Educ. Television Comm'n v. Forbes, 523 U.S. 666, 682 (1998). “[T]he exclusion of a speaker from a nonpublic forum” cannot be viewpoint-based and must be “reasonable in light of the purpose of the property.” *Id.* The Board’s exclusions were viewpoint-based. *Supra* Section III.B.1. And removing disfavored books is unreasonable given that “[t]he school library is a mirror of the human race, a repository of the works of scientists, leaders, and philosophers.” *Roberts*, 702 F. Supp. at 1512.

Defendant cites *Ginsberg v. New York*, 390 U.S. 629 (1968), and *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978), suggesting its removals “protect minors.” Opp. 28. But neither case involved forum analysis. And while the “state may regulate children’s access to materials not deemed obscene for adults . . . such regulation is permissible only where the restricted materials meet the stringent test for obscenity as to children, or ‘harmful to minors.’” *Sund v. City of Wichita Falls*, 121 F. Supp. 2d 530, 552 (N.D. Tex. 2000). Defendant has not tried to meet this test.

Defendant further argues the Guild’s claim fails because the authors’ books remain available to Plaintiffs. Opp. 18. But access to their books is restricted and stigmatized. *Infra* Section C. Moreover, the Guild’s claim does not turn on Plaintiffs’ access, but on the right to share their books free from viewpoint-based discrimination. Mot., ECF No. 9 at 21–25. The Guild has shown a likelihood of success on the merits of its First Amendment claim.

C. Defendant’s Unenforceable “Decision” to Permit Limited Access to the Removed Books Fails to Remedy Constitutional Harms

Defendant apparently decided on the day its Opposition was due to put the removed books back in the libraries and make them available only to Plaintiffs, NAACP members, and NAACP members’ children. Opp. 10. This “decision” does not, as Defendant contends,

provide Plaintiffs with the same access that they had before the books were removed, Opp. 17, because it requires anyone who intends to access the Removed Books to first disclose that they are a plaintiff in this litigation or that they (or their parent) are a member of the NAACP. Snowberger Decl. ECF No. 25-1 at 20. Courts have long recognized that “compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association” as other restrictions on expression. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958); *Tattered Cover*, 44 P.3d at 1054.

“To overcome the deterrent effect on associational rights resulting from compelled disclosure of membership lists, the government must demonstrate a *compelling* interest . . . and a substantial relationship between the material sought and legitimate governmental goals.” *In re First Nat. Bank, Englewood, Colo.*, 701 F.2d 115, 117 (10th Cir. 1983) (quoting *NAACP*, 357 U.S. at 463–64). Any interest the Board has in requiring that students give up their privacy in association to receive books, far from “compelling,” is unconstitutional.

Additionally, Defendant argues—without support—that no First Amendment violation can occur when the targeted books “remain available to [patrons] in a library but are not placed on library shelves.” Opp. 17. Courts disagree. *Virden*, 2024 WL 4360495, at *4 (relocating library books infringed upon First Amendment rights); *Sund*, 121 F. Supp. 2d at 549 (same); *Fayetteville Pub. Libr. v. Crawford Cnty., Arkansas*, No. 5:23-CV-5086, 2024 WL 5202774, at *9 (W.D. Ark. Dec. 23, 2024) (“Creating segregated ‘18 or older’ spaces in libraries and bookstores will powerfully stigmatize the materials placed therein” and chill access to those materials); *Counts*, 295 F. Supp. 2d at 1002.

In *Counts*, all *Harry Potter* books were moved to an area of the school library that

was inaccessible unless students were checking them out—and they needed parental permission to do so. 295 F. Supp. 2d at 1001. The court held that the restrictions infringed upon students’ First Amendment rights because “the stigmatizing effect of having to have parental permission to check out a book constitutes a restriction on access.” *Id.* at 1002. Additionally, to access the book, the student “must locate the librarian, perhaps waiting her turn . . . then ask to check the book out and wait while the librarian verifies that she has parental permission to do so, before she can even open the covers of the book.” *Id.* at 999. “[T]he fact that [plaintiff] cannot simply go in the library, take the books off the shelf and thumb through them . . . without going through the permission and check-out process is a restriction on her access.” *Id.* at 1002. Likewise, here, students must consult with a librarian (in addition to disclosing sensitive information) to access the Removed Books.

This burden is not, as Defendant suggests, analogous to that in *American Library Association*. Opp. 18. There, while content-blocking software limited access to online materials, patrons could ask a librarian to unblock specific websites or wholly disable the filter. 539 U.S. at 209. Any constitutional concerns with over-blocking were “dispelled by the ease with which patrons may have the filtering software disabled.” *Id.* But an adult patron asking a public librarian to disable an overbroad filter is not burdened in the same way as a child asking a school librarian to provide access to a stigmatized book—especially when the child must reveal their participation in this litigation or the NAACP. See Ex. 3390; EX 3394; Ex 3393.

Even if Defendant implemented its decision—which is in no way guaranteed or enforceable—it does not diminish Plaintiffs’ need for preliminary injunctive relief.

D. The Remaining Equitable Factors Favor a Preliminary Injunction

The District admits it plans to continue removing books from school libraries. Answer, ECF No. 26 ¶ 149; Ex. 15, ECF No. 9-15 at 2. Without preliminary relief, Plaintiffs' injuries will worsen. Defendant faults Plaintiffs for its "delay" in seeking an injunction. Opp. 29. But parents and students had to weigh their constitutional rights against the consequences of disagreeing with the Board, which include public shaming and humiliation. Compl. ECF No. 1 ¶¶ 48–50; Crookshanks Decl, ECF No. 9-2 ¶ 22; Smith Decl, ECF No. 9-3 ¶ 23; 10/28 Bd Mtg at 7:30. Any delay is due to the risks of retaliation—not lack of injury.

Defendant now claims that, if Plaintiffs' request for preliminary injunction is granted, "[t]he District would be forced to purchase, catalog, and re-shelve the removed titles." Opp. 30. But Defendant's "decision" to provide limited access to the Removed Books indicates that no hardship will result from returning them. And contrary to Defendant's contention, preliminary relief would prevent the District only from making *unconstitutional* decisions.

Defendant threatens that, if the Court grants a preliminary injunction, school boards will make their decisions "out of the public eye and suppress community debate on the purpose of a school district's library collection." Opp. 30. Defendant forgets that school boards are government entities subject to the Colorado Open Records Act, which exists, in part, to ensure that government entities are held accountable when they abuse their power. Enjoining Defendant from unconstitutional conduct should not reduce transparency.

CONCLUSION

Plaintiffs' request for a preliminary injunction should be granted.

Dated: February 10, 2024.

Respectfully submitted,

s/ Celyn D. Whitt

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CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on February 10, 2025, I electronically filed the foregoing **PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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Exhibit 18

CONFIDENTIAL BOOK FEEDBACK DATA

BOOK NAME/AUTHOR	School	REMOVE FROM SHELF	RETURN TO LIBRARY and MOVE TO SENSITIVE LIST	MOVE TO DIFFERENT LEVEL	PUT BACK ON SHELF - NO SENSITIVE DESIGNATION	General Comments	MP VOTE	RO VOTE	HB VOTE	JW VOTE	MC VOTE
The Hate U Give, Angie Thomas	EMS and EHS	Lo (#1 choice), Hoffman, Hayes, de Los Santos, Manning, Bossio, Boom, Madsen, Fletcher, L Fletcher, Howell, Harris (Bolling) (12)	Smith, Phillips (8th and up), Beach, Mayne, Huber (5)		Reed, Stephenson*, Voss (for EHS) (3)	LO said ALL books 1st choice is total removal, with #2 choice, adding to sensitive list. BOSSIO #1 - States "Any and all books tabbed" should be removed from library collection. She does not want her tax dollars used to negatively influence impressions HOWELL HATE YOU GIVE sheet - "...heightened perception of hate toward law enforcement and a defined us against them urgency to rail against police and the 'white communities' very heavily graphic sexual content.;	Remove	Remove	Remove	Remove	Remove
Thirteen Reasons Why, Jay Asher	EMS and EHS	Papulias, Nichols, Lo (#1 choice), Hoffman, Hinds, Hayes, de Los Santos, Manning, Bossio, Boom, Madsen, Fletcher, L Fletcher, Howell, Harris (Bolling) (15)	Smith, Phillips (8th and up), Beach, Mayne, Huber (5)		Stephenson*, Voss (2)	LO said ALL books 1st choice is total removal, with #2 choice, adding to sensitive list. BOSSIO #1 - States "Any and all books tabbed" should be removed from library collection. She does not want her tax dollars used to negatively influence impressionable kids...Attention-seeking behavior should not be in schools. Parents can address these issues in the privacy of their home. BOOM #2 - This book glorifies suicidal thoughts. It does NOT represent lessons to prevent teen suicide. VOSS #2 - #Price, 13 Reasons Why and Nineteen minutes - Kids see this kind of info...all the time...it's fine - no need to even flag it. (#Pride and 13 Reasons Why - both OK for middle school without flagging, Nineteen Minutes, find for high school without flagging)	Remove	Remove	Remove	Remove	Remove
#Pride: Championing LGBTQ Rights, Rebecca Felix	EMS	Lo (#1 choice), Hoffman, Hayes, de Los Santos, Bossio, Boom, Atkins, Madsen, Fletcher, L Fletcher, Howell, Harris (Bolling) (12)	Smith, Phillips, Papulias, King, Beach, Mayne, Huber (7)		Stephenson*, Voss (2)	HOFFMAN #4 review notes that this book villainizes Christians on page 6. She notes this is not just a written history of Pride, it is aimed at gaining support for the movement HAYES #3 review notes that this is offensive to Christians, Muslims and Jews. ATKINS #2 - "All Americans have the same rights. What rights do LGBTQ individuals not have?.. LGBTQ themes...is a conversation for parents to have with their children at home."	Remove	Remove	Remove	Remove	Remove
You Should See Me in a Crown, Leah Johnson	EMS	Lo (#1 choice), Hoffman, Hayes, de Los Santos, Steube, Manning, Bossio, Fletcher, L Fletcher, Howell, Harris (Bolling) (11)	Smith, King, Beach, Mayne, Huber (5)	SEE note last column re SEVENTEEN Magazine comment; SEE Steube and Manning note last column	Stephenson* (1)	HOFFMAN #3 review notes state that the very first page says that SEVENTEEN magazine says this book is for recent graduates or college students - NOT 11 - 14 year olds. This books is in EMS. STEUBE ## - (Note her student is in Legacy Academy) - contains stereotypical wording throughout. Bullying, confusing for impressionable children. Marked "Remove" but statement, "this book is not appropriate for elementary nor middle school kids." MANNING #2 - Not appropriate for Middle School. Racially charged, same sex dating mentioned, etc.	Remove	Remove	Remove	Remove	Remove

CONFIDENTIAL BOOK FEEDBACK DATA

BOOK NAME/AUTHOR	School	REMOVE FROM SHELF	RETURN TO LIBRARY and MOVE TO SENSITIVE LIST	MOVE TO DIFFERENT LEVEL	PUT BACK ON SHELF - NO SENSITIVE DESIGNATION	General Comments	MP VOTE	RO VOTE	HB VOTE	JW VOTE	MC VOTE
It's Your World - If you Don't Like it, Change It, Mikki Halpin	EMS	Lo (#1 choice), Hoffman, Hayes, Steube, Manning, Boom, Atkins, Madsen, Fletcher, L Fletcher, Howell, Harris (Bolling) (12)	Smith, Phillips, King, Beach. Voss, Mayne, Huber (7)	KING - move to high school (1)	Stephenson* (1)	HOFFMAN #5 review notes Women's rights chapter supports abortion and equates it with healthcare; also talks heavily of sex education, not appropriate for EMS aged students. Example letter on p 217 encourages reader to oppose parental notification laws. HAYES #2 review notes state this is overly political with an outright Marxist slant. Pushes taking points to go home and "change your parents' minds".. Offensive morally to Christians, Muslims and Orthodox Jews. He notes that education should take place prior to any person deciding what should be destroyed in society.	Remove	Remove	Remove	Remove	Remove
It's Your World... Additional comments #1						STEUBE #2 - review notes state "this book seems like it would be good and empowering, but is not age appropriate. Poorly written, offers no positive learning. It encourages kids to go against their parents and promotes disrespect towards parents and adults" MANNING #2 - Suggested ways to be an Activist even against your parents. To me it has a very angry tone to it Boom #4 - This book SEEMS empowering, but not appropriate for teens. It encourages against p arental gu idance. Gives resources for certain issues, it is poorly written, very choppy					
It's Your World... Additional comments #2						ATKINS #1 - "While it is very important to teach kids to stand up and change the world, this is a very biased, leftist book and does not belong in a school livrry. Many of the subjects and themes in this book are inaccurate and false."					
The Kite Runner, Khaled Hosseini	EHS	Lo (#1 choice), Hayes, de Los Santos, Bossio, Atkins, Fletcher, L Fletcher, Howell, Harris (Bolling) (9)	Smith, King, Hinds, Beach, Mayne, Huber (6)		Stephenson*, Voss (2)	HAYES #9 review notes this might be a book an adult would choose. Plot centers around the rape of a child and is offensive and inappropriate content for a school library. He read it himself as an adult, and did not find it to be a great book. POWELL Has received a couple of comments that this book has been used in some classes. ATKINS #3 - Very adult sexual content, not appropriate for teens. ... This book is for adults, not teens and should not be available in a school library. Harris (Bolling) #13 - originally thought sensitive, but changed to REMOVE due to detailed rape and sodomizing of a young boy.	Remove	Remove	Remove	Remove	Remove

CONFIDENTIAL BOOK FEEDBACK DATA

BOOK NAME/AUTHOR	School	REMOVE FROM SHELF	RETURN TO LIBRARY and MOVE TO SENSITIVE LIST	MOVE TO DIFFERENT LEVEL	PUT BACK ON SHELF - NO SENSITIVE DESIGNATION	General Comments	MP VOTE	RO VOTE	HB VOTE	JW VOTE	MC VOTE
Beloved, Toni Morrison	EHS	Lo (#1 choice), Hoffman, Hayes, Peterson, de Los Santos, Manning, Bossio, Fletcher, Howell, L. Fletcher, Harris (Bolling)* (11)	Smith, Beach, Mayne, Huber (4)		Reed, Stephenson*, Voss (2)	VOSS states all books at high school level should be returned to shelf without sensitive flag. "Although there is definitely sensitive subject matter, they will encounter all of the ideas/verbiage/violence at some time, doesn't mean they will suddenly become any of these above things. Trust your kids, have confidence in how you raise them. Give them some credit, they can handle it at high school level." HOWELL#2 - Both Tony Morrison books follow a path of horror stories, with one Beloved review stating "It is one of the most uncomfortable, gripping & creepy horror stories of all time." Beloved has not been checked out since 2011 FLETCHER # 17 - "Sexual deviancy porn. I can't believe this won a nobel prize - it is horrible. I can't believe p. 16					
The Bluest Eye, Toni Morrison	EHS	Lo (#1 choice), Hoffman, Hinds, Hayes, de Los Santos, Bossio, Boom, Fletcher, Howell, L. Fletcher, Harris (Bolling) (11)	Smith, Beach, Mayne, Huber (4)		Stephenson*, Voss (2)	STEPHENSON on one page suggests putting all books back on shelf, and allow them for age appropriate needs/maturity based on TEACHERS (emphasis, mine) evaluation of each individual. BOOM #5 - "This book is not appropriate for high school - sexual content that is WAY too graphic"	Remove	Remove	Remove	Remove	Remove
The Perks of Being a Wallflower, Stephen Chbosky	EHS	Lo (#1 choice), Hoffman, Hayes, Peterson, de Los Santos, Wallen, Steube, Bossio, Boom, Fletcher, Howell, L. Fletcher, Harris (Bolling) (13)	Smith, Beach, Mayne, Huber (4)		Stephenson*, Voss (2)	MAYNE #1 - "I do not believe any of these books should be removed from the library. While some of these books cover heavy and controversial topics, we cannot pretend that they don't exist. If we remove them from libraries in the school, students can still access them... If parents are concerned about their children reading certain books that should be handled within the family instead of trying to make an overarching decision for all families..."	Remove	Remove	Remove	Remove	Remove
Looking for Alaska, John Green	EHS	Lo (#1 choice), Hoffman, Hayes, Peterson, de Los Santos, Bossio, Boom, Fletcher, L. Fletcher, Howell, Harris (Bolling) (11)	Smith, Beach, Mayne, Huber (4)		Reed, Stephenson*, Voss (2)	HUBER #1 - "We live in a diverse world with many different perspectives and painful realities. We do our children a dis-service if we sugar-coat and cherry-pick library materials that could broaden their minds to others' experiences, leading to a more compassionate state of being"	Remove	Remove	Remove	Remove	Remove
Nineteen Minutes, Jodi Picoult	EHS	Lo (#1 choice), Hinds, Hayes, Peterson, de Los Santos, Wallen, Bossio, Boom, Atkins, Fletcher, L. Fletcher, Howell, Harris (Bolling) (13)	Smith, Beach, Mayne, Huber (4)		Stephenson*, Voss, (2)	BOOM #7 - "I read this book myself 3 years ago and it still disturbs me" ATKINS 4 - While these subjects very much need to be addressed in our youth, this book is not the way to do it unless an adult safely directs discussion to help impressionable teens process the info properly. This book should not be randomly available to our teens as it can influence our children in the wrong direction and to make wrong choices."	Remove	Remove	Remove	Remove	Remove
Identical, Ellen Hopkins	EHS	Lo (#1 choice), King, Hoffman, Hinds, Hayes, Peterson, de Los Santos, Bossio, Boom, Fletcher, Howell, L. Fletcher (12)	Smith, Phillips, Beach, Mayne, Huber (5)		Stephenson*, Voss (2)	FLETCHER #10 - This author (Ellen Hopkins) is just a degenerate and shouldn't be read by anyone.	Remove	Remove	Remove	Remove	Remove

CONFIDENTIAL BOOK FEEDBACK DATA

BOOK NAME/AUTHOR	School	REMOVE FROM SHELF	RETURN TO LIBRARY and MOVE TO SENSITIVE LIST	MOVE TO DIFFERENT LEVEL	PUT BACK ON SHELF - NO SENSITIVE DESIGNATION	General Comments	MP VOTE	RO VOTE	HB VOTE	JW VOTE	MC VOTE
Fallout, Ellen Hopkins	EHS	Lo (#1 choice), Hoffman, Hayes, de Los Santos, Bossio, Boom, Fletcher, Howell, L Fletcher (9)	Smith, Phillips, Beach, Mayne, Huber (5)		Stephenson*, Voss (2)	HOWELL #3 - All Ellen Hopkins books should be removed. "This is a constant, in your face experience of how drugs, alcohol, suicide will make you feel better and can hide your emotions from yourself...Most of these books have not been checked out since 2017"	Remove	Remove	Remove	Remove	Remove
Glass, Ellen Hopkins	EHS	Lo (#1 choice), Hoffman, Hinds, Hayes, de Los Santos, Bossio, Boom, Fletcher, Howell, L Fletcher (10)	Smith, Phillips, Beach, Mayne, Huber (5)		Stephenson*, Voss (2)		Remove	Remove	Remove	Remove	Remove
Burned, Ellen Hopkins	EHS	Lo (#1 choice), Hoffman, Hinds, Hayes, de Los Santos, Bossio, Boom, Fletcher, Howell, L Fletcher (10)	Smith, Phillips, Beach, Mayne, Huber (5)		Stephenson*, Voss (2)		Remove	Remove	Remove	Remove	Remove
Crank, Ellen Hopkins	EHS	Lo (#1 choice), Hoffman, Hayes, de Los Santos, Bossio, Boom, Fletcher, Howell, L Fletcher (9)	Smith, Phillips, Beach, Mayne, Huber (5)		Reed, Stephenson*, Voss (for EHS) (3)		Remove	Remove	Remove	Remove	Remove
Smoke, Ellen Hopkins	EHS	Lo (#1 choice), Hoffman, Hayes, Peterson, de Los Santos, Bossio, Boom, Fletcher, Howell, L Fletcher (10)	Smith, Phillips, Beach, Mayne, Huber (5)		Stephenson*, Voss (2)		Remove	Remove	Remove	Remove	Remove
George, Alex Gino	RCE	Papulias, Lo (#1 choice), King, Hoffman, Hayes, de Los Santos, Wallen, Sleube, Bossio, Boom, Madsen, Fletcher, Weiss, L Fletcher, Harris (Bolling) (15)	Smith, Voss, Mayne, Huber (4)		Stephenson* (1)	HAYES #1 Review Notes - general comment - "There is no shortage of clearly wholesome and amazing literature out there. I am 52 and have 3 degrees and am an avid reader. I have not even touched all the great works out there. There is zero reason this should be in a school library." WALLEN #1 - "This book 'George', alternatively named 'Melissa', has been the most removed book from the public school systems (across the nation) from 2018-2020. And for valid reasoning"	Remove	Remove	Remove	Remove	Remove

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a
minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on
behalf of E.S.;
NAACP-COLORADO-MONTANA-WYOMING STATE AREA
CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE
STATEMENTS, DOCUMENTS, AND OTHER PROFFERED EVIDENCE OFFERED IN
SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Defendant's Motion to Exclude Statements, Documents, and Other Proffered Evidence Offered in Support of Plaintiffs' Motion for Preliminary Injunction filed February 7, 2025 (ECF No. 27), should be denied because it is contrary to the law governing preliminary injunctions.¹ It is well-settled that the Federal Rules of Evidence do not apply at the preliminary injunction stage, which is just that—preliminary. *See, e.g., Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003). It is *not* a trial on

¹ Defendant's motion is also procedurally improper. The motion is eight pages longer than the Court's fifteen-page limit for motions, and it should be stricken on that basis alone. *See* Uniform Civil Practice Standard 10.1(c)(1).

the merits. The parties are not in discovery, have had minimal time to develop the facts of the case, and are proceeding on a limited record. Challenges to the admissibility of evidence at this stage are thus inappropriate, and any concerns as to the reliability of evidence go only to its weight. Defendant does not cite to a single authority holding that the Federal Rules of Evidence apply at this stage, because Defendant's position is not the law. The Motion should be denied.

ARGUMENT

I. THE FEDERAL RULES OF EVIDENCE DO NOT APPLY AT THE PRELIMINARY INJUNCTION STAGE.

"[A] preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Given the procedural posture of such hearings, which take place before the parties are able to develop a fulsome factual record, the Tenth Circuit has explicitly stated: "The Federal Rules of Evidence do not apply to preliminary injunction hearings." *Heideman*, 348 F.3d at 1188.

This rule means that "challenges to the admissibility of [evidence] are inappropriate at this stage in the proceedings." *Heartland Animal Clinic, P.A. v. Heartland SPCA Animal Med. Ctr., LLC*, 503 F. App'x. 616, 620 (10th Cir. Nov. 28, 2012). Evidentiary issues pertaining to Plaintiffs' supporting declarations or the District's own emails and records go only to the weight of the evidence at the preliminary injunction stage, not to its admissibility before the court. *See, e.g., DigitalGlobe, Inc. v. Paladino*, 269 F. Supp. 3d 1112, 1119 (D. Colo. 2017) ("The fact that evidence might be excludable [under the Federal Rules of Evidence] goes to the weight of that evidence,

not necessarily its admissibility.”); Wright & Miller, 11A Fed. Prac. & Proc. Civ. § 2949 (3d ed.) (“Once received, the question of how much weight an affidavit will be given is left to the trial court’s discretion and the quality of the affidavit will have a significant effect on this determination.”).

Defendant cites hearsay as the basis for the majority of its objections, but courts in the Tenth Circuit have found that sworn declarations and potential hearsay may be considered in deciding a motion for preliminary injunction. See, e.g., *EIS Ultimate Holding, LP v. Huset*, No. 23-CV-02323, 2024 WL 4472008, at *9 (D. Colo. Sept. 19, 2024) (applying *Heideman* and finding hearsay statements summarized in a declaration are “fair game” at the preliminary injunction stage); *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trustees*, 680 F. Supp. 3d 1250, 1268 (D. Wyo. 2023) (finding “a court may consider affidavits based on hearsay when evaluating requests of preliminary injunctions”). Notably, Defendant does not contest the basic facts in Plaintiffs’ declarations and has submitted its own competing declarations to try to explain away the language used in its own documents and in public meetings.

Defendant cites no authority in support of its position that the Court should refuse to consider sworn declarations and indisputably authentic documents from Defendant’s own files in deciding Plaintiffs’ motion for preliminary injunction. Instead, it argues (again without authority) that the rule governing preliminary injunction proceedings should not apply here because Plaintiffs did not move expeditiously enough in bringing their motion. (ECF No. 27 at 2.) That is factually incorrect and legally irrelevant. The rules and procedures for addressing a motion for preliminary injunction do not change based

on how quickly a motion is brought. And a request for a preliminary injunction is just that—a request for expedited relief.

In sum, the Court should deny Defendant’s Motion to exclude Plaintiffs’ evidence because it is contrary to the law in the Tenth Circuit, is wholly unsupported by legal authority, and is inappropriate at this early stage in the proceedings.

II. EVEN IF THE RULES OF EVIDENCE APPLIED, MANY OF DEFENDANT’S OBJECTIONS FAIL.

Even if the law were different and the Court was obligated to strictly apply the Federal Rules of Evidence as if this were a jury trial after full discovery, rather than a request for a preliminary injunction before any formal discovery, many of Defendant’s evidentiary objections are wrong. This includes objections to (i) emails written by Elizabeth School District Board members and employees, and (ii) book review forms written by members of the community.

Defendant objects to its own emails as hearsay. This is incorrect. The District’s own emails are party admissions under Rule 801(d)(2)(D) and thus not hearsay in any event. (See Exhibits 9-12 and 14-18, ECF Nos. 9-9–9-12, 9-14–9-18.) Many also are not offered to establish the truth of the matter asserted, and are not hearsay for that reason as well. Notably, Defendant does not dispute the authenticity of the emails.

Defendant also erroneously objects on hearsay grounds to book review forms solicited and maintained by the District. Defendant does not dispute the authenticity of the book review forms or the fact that the book review forms are records it maintained as part of its process for banning the at-issue books. Hearsay does not bar these forms for at least two reasons. First, the forms are not being offered for the truth of the matter

asserted. Second, even if they were being offered for the truth asserted in them, the book review forms are business records under Rule 802(6).

CONCLUSION

Defendant's effort to exclude virtually all of Plaintiffs' evidence offered in support of their motion for a preliminary injunction is inconsistent with the evidentiary rules, the nature of motions for preliminary injunction, and Tenth Circuit authority. The Federal Rules of Evidence do not apply to preliminary injunction proceedings. The Court should deny Defendant's Motion to Exclude (ECF No. 27).

Dated: February 21, 2025.

Respectfully submitted,

s/ Celyn D. Whitt

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on February 21, 2025, I electronically filed the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE STATEMENTS, DOCUMENTS, AND OTHER PROFFERED EVIDENCE OFFERED IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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s/ Celyn D. Whitt

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**Defendant’s Reply in Support of Motion to Exclude Statements,
Documents, and Other Proffered Evidence Offered
in Support of Plaintiffs’ Motion for Preliminary Injunction**

Plaintiffs ask for “extraordinary relief” in their motion for preliminary injunction. They ask the Court to recognize a constitutional right never approved by the U.S. Supreme Court, the Tenth Circuit, or even by any judge in the District of Colorado. They ask the Court to grant preliminary relief for an injury to this unrecognized constitutional right under a three-justice plurality opinion that’s doctrinally stale and factually infirm. They ask the Court to apply a standard that is entirely fact based—whether the School Board had unconstitutional “intent”—in their favor based on written statements, not of the School Board members, but of parents of two students, the head of the local NAACP chapter, and select members of another trade group. Finally, they ask the Court to compel the District to spend district resources and to direct district staff in a manner contrary to the prerogative of the District’s governing body: the elected School Board. Despite this, Plaintiffs contend it’s the District arguing against well-settled law. Not so. The District’s position here is simple: based on the standard Plaintiffs have advanced, the Court should—at a minimum—

hold a hearing and take evidence before it considers granting any preliminary relief in this case. And, in doing so, it should apply the Federal Rules of Evidence.

REPLY IN SUPPORT

I. The District and Plaintiffs Dispute the Underlying Facts, Requiring a Hearing and Application of the Federal Rules of Evidence

“[M]ost courts hold that when the written evidence reveals a factual dispute, an evidentiary hearing must be provided[.]” Wright & Miller, *Federal Practice & Procedure*, § 2949 Procedure on Application for Preliminary Injunction (3d ed.); see also *Cobell v. Norton*, 391 F.3d 251, 261 (D.C. Cir. 2004) (“[I]f there are genuine issues of material fact raised in opposition to a motion for a preliminary injunction, an evidentiary hearing is required.” (citing *Ty, Inc. v. GMA Accessories, Inc.*, 132 F.3d 1167, 1171 (7th Cir. 1997))); *Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr, S.A.*, 320 F.3d 1205, 1211 (11th Cir. 2003) (“While an evidentiary hearing is not always required before the issuance of a preliminary injunction, ‘where facts are bitterly contested and credibility determinations must be made to decide whether injunctive relief should issue, an evidentiary hearing must be held.’”). Indeed, “[p]articularly when a court must make credibility determinations to resolve key factual disputes in favor of the moving party, it is an abuse of discretion for the court to settle the question on the basis of documents alone, without an evidentiary hearing.” *Cobell*, 391 F.3d at 261 (collecting circuit cases). Otherwise, the court is left to “resolve a factual dispute on affidavits” and “is merely showing a preference for ‘one piece of paper to another.’” *Forts v. Ward*, 566 F.2d 849, 851–52 (2d Cir. 1977) (quoting *Sims v. Greene*, 161 F.2d 87, 88 (3d Cir. 1947)). For this reason, when the underlying facts are in dispute, courts may *deny* a motion for preliminary injunction without a hearing, but they cannot grant a preliminary injunction without a hearing.

Here, the paper evidence is in sharp dispute on the School Board's motivations for removing the subject books. While the District maintains that the subjective motivation of the School Board is legally irrelevant (see Def.'s Opp'n to Mot. for Prelim. Injunc. 12–24, ECF No. 25), the standard Plaintiffs promote (the *Pico* plurality) is inherently fact-based and requires the Court to sit in judgment of the School Board's "constitutional motives" (see Pls.' Mot. for Prelim. Injunc. 17, ECF No. 9 (citing *Pico* and stating "the plurality gleaned the rule that school boards cannot constitutionally exercise their discretion to determine the content of school libraries 'in a narrowly partisan or political manner'")). These disputed facts alone could warrant denying preliminary relief. See *Denver Homeless Out Loud v. Denver*, 514 F. Supp. 3d 1278, 1300 (D. Colo. 2021) ("[C]ourts have consistently held that preliminary injunctions are not appropriate in cases permeated with factual disputes[.]"). But, at a minimum, the Court cannot resolve the factual dispute against the District without a hearing on the Plaintiffs' motion.

If the Court is going to hear evidence on Plaintiffs' motion at a hearing, there is no good reason to avoid the Federal Rules of Evidence. Indeed, Plaintiffs should welcome such procedural and evidentiary consistency, considering the Court must comply with Federal Rule of Civil Procedure 52(a)(2) in ruling on Plaintiffs' motion. "In granting or refusing an interlocutory injunction," the Court must state in writing "the findings and conclusions that support its action." Fed. R. Civ. P. 52(a)(2). And, "without oral evidence on disputed points[,] the trial court [is] unable to make the findings and conclusions required by Rule 52(a)(2)." Wright & Miller, *Federal Practice & Procedure*, § 2949 Procedure on Application for Preliminary Injunction (3d ed.).

It is unclear why Plaintiffs resist applying the Federal Rules of Evidence in any evidentiary hearing on their motion. Plaintiffs offer no reason, which suggests they perceive some sort of advantage to avoiding the rules of evidence in prosecuting the

extraordinary injunctive relief they seek early in this case. In the absence of any prejudice—again, Plaintiffs offer none—the Court should apply the Federal Rules of Evidence in any hearing on Plaintiffs’ motion for preliminary injunction.

II. The Need to Apply the Federal Rules of Evidence is Heightened Here

As the District explained in its motion, while there is no textual basis in the rules, some courts relax application of “rules of evidence in expedited preliminary-injunction proceedings (e.g., when the proceedings are ‘conducted under pressured time constraints, on limited evidence[,] and expedited briefing schedules’[.]”).” (Mot. 2 (quoting *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003)).) But Plaintiffs have not requested expedited relief. Nor do they disclaim the need for a hearing on their motion, or articulate prejudice from applying the Federal Rules of Evidence in a hearing.

Further, unlike the cases Plaintiffs cite, here Plaintiffs seek a mandatory injunction requiring the District to spend its limited financial resources to purchase the subject books and to use its limited human resources to re-catalogue the books, place them on the shelves of the District’s libraries, and address parental concerns about student access to these books. The limited purpose of a preliminary injunction “is merely to preserve the relative positions of the parties until a trial on the merits can be held.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Courts have identified certain preliminary injunctions that are disfavored, including mandatory preliminary injunctions—those injunctions that require the nonmoving party to take affirmative action (i.e., the purchase and reshelving of books) before a trial on the merits occurs. See *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258–59 (10th Cir. 2005). Because these injunctions are disfavored, not only must a plaintiff make a heightened showing under the preliminary-injunction requirements, but these types of injunctions “must be more closely scrutinized to assure that the exigencies of the case support the granting of a remedy that is extraordinary even in the normal

course.” *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 975 (10th Cir. 2004). This is another reason to apply the rules of evidence. If the relief requested is going to fundamentally alter the status quo and compel the District to act contrary to its prerogative *before* a trial on the merits, the Court should at least require the same evidentiary minimums that apply to any other evidentiary hearing.

III. The District Intends to Preserve the Issue for Appellate Review

Lastly, the District intends to press this issue on appellate review. The Federal Rules of Evidence broadly apply in federal court, and the prudential court-made exception for preliminary-injunction motions cited by Plaintiffs has no support in the text of the rules or in any decision of the U.S. Supreme Court. To the extent the caselaw of the Tenth Circuit suggests otherwise, those cases are incorrect, and the District intends to preserve its objections for review by the full Tenth Circuit and the U.S. Supreme Court.

CONCLUSION

The District asks the Court to exclude the statements, documents, and other proffered evidence identified in its motion and attached to Plaintiffs’ motion for preliminary injunction as inadmissible under the Federal Rules of Evidence. The Court should disregard this proffered evidence in ruling on Plaintiffs’ motion for preliminary injunction, and, unless it is prepared to deny the motion, set an evidentiary hearing on the motion.

Dated: February 25, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 25, 2025, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following email addresses:

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

JOINT MOTION FOR STATUS CONFERENCE

COME NOW Kristin Crookshanks, Mindy Smith, NAACP–Colorado–Montana–Wyoming State Area Conferences, and The Authors Guild (“Plaintiffs”), and Elizabeth School District (“Defendant”) (jointly, the “Parties”), who hereby request a status conference before the Court.

Plaintiffs filed their Complaint (ECF 001) on December 19, 2024 and a Motion for Preliminary Injunction (the “Motion”) (ECF 009) on December 20, 2024. Defendant responded to the Motion (ECF 025) on January 27, 2025, and Plaintiffs filed their reply in support (ECF 028) on February 10, 2025. In addition, Defendant filed a Motion to Exclude Evidence on February 7, 2025 (“Motion to Exclude”) (ECF 027). Plaintiffs responded to the Motion to Exclude (ECF 030) on February 21, 2025, and Defendant filed its reply in support (ECF 031) on February 25, 2025. The Motion and Motion to Exclude are fully briefed and ripe for review.

Now that the Motions are fully briefed, the Parties jointly request a status conference with the Court to discuss the anticipated Preliminary Injunction hearing. The Parties appreciate the Court is in trial through March 21, 2025, and accordingly request a status conference during the week of March 31, 2025 or at the Court's earliest convenience.

Dated: March 14, 2025.

Respectfully submitted,

s/ Julian R. Ellis, Jr.

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*In cooperation with the American Civil
Liberties Union Foundation of Colorado*

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on March 14, 2025, I electronically filed the foregoing **JOINT MOTION FOR STATUS CONFERENCE** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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s/ Thomas C. Dec

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Charlotte N. Sweeney

Civil Action No. 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

ORDER

This is a book-removal case stemming from the Elizabeth School District (the District) in Elizabeth, Colorado. The District voted to permanently remove 19 books from its school libraries, including titles such as *The Kite Runner* and *The Bluest Eye*—books that had been in District libraries for years. Students of the District, parents of students, the local NAACP chapter, and authors of the removed books have challenged their removal on First Amendment grounds.

Before the Court is Plaintiffs' motion for preliminary injunction. ECF No. 9. Defendant responded, ECF No. 25, and Plaintiffs replied, ECF No. 28. Also pending is Defendant's motion to exclude Plaintiffs' proffered evidence supporting their preliminary injunction motion. ECF No. 27. Plaintiffs responded, ECF No. 30, and Defendant replied,

ECF No. 31. For the reasons explained below, the Court DENIES Defendant's motion to exclude, and it GRANTS Plaintiffs' motion for preliminary injunction. The District is ordered to immediately return the books to the library shelves, and it is enjoined from any conduct that violates this order.

I. BACKGROUND

A. Removed Books

In August 2024, the Board of Education (the Board) for the District identified 19 books that it stated were too sensitive to be in the District's libraries.¹ ECF No. 25 at 7–9. The Board removed these books from the District's libraries and displayed them in the Board's office so that community members could weigh in on whether they thought the books should be returned to the District's libraries and added to the Sensitive List² or permanently removed from District libraries. *Id.* The Removed Books are:

- (1) *The Hate U Give* by Angie Thomas;
- (2) *Beloved* by Toni Morrison;
- (3) *The Bluest Eye* by Toni Morrison;
- (4) *The Kite Runner* by Khaled Hosseini;
- (5) *You Should See Me in a Crown* by Leah Johnson;
- (6) *#Pride: Championing LGBTQ Rights* by Rebecca Felix;
- (7) *George* (now published and referred to as *Melissa*) by Alex Gino;
- (8) *It's Your World—If You Don't Like It, Change It* by Mikki Halpin;
- (9) *The Perks of Being a Wallflower* by Stephen Chbosky;

¹ In referring to the Removed Books, the parties sometimes refer to 18 Removed Books, and in other places, they refer to 19 Removed Books. *Compare* ECF No. 1, ¶ 67 ("In total, eighteen books (the 'Removed Books') were taken out of ESD libraries."), *with* ¶ 190 ("The Elizabeth School District, acting through its Board, removed at least nineteen books from ESD libraries in a narrowly partisan or political manner because the Board disagrees with the ideas or views contained in those books."). It appears the District removed the nineteenth book—*Redwood and Ponytail*—a month after removing the first 18. ECF No. 9 at 10. For consistency, the Court will refer to the 19 books collectively as the Removed Books.

² A book's inclusion on the Sensitive List means that, if a student tries to check it out, their parents will automatically be notified. Parents can also prohibit their children from checking out all books on the Sensitive List. ECF No. 9 at 4.

- (10) *Thirteen Reasons Why* by Jay Asher;
- (11) *Looking for Alaska* by John Green,
- (12) *Nineteen Minutes* by Jodi Picoult;
- (13) *Crank* by Ellen Hopkins;
- (14) *Glass* by Ellen Hopkins;
- (15) *Fallout* by Ellen Hopkins;
- (16) *Identical* by Ellen Hopkins;
- (17) *Burned* by Ellen Hopkins;
- (18) *Smoke* by Ellen Hopkins; and
- (19) *Redwood and Ponytail* by K.A. Holt.

ECF No. 9 at 4. For 25 days, the Removed Books were displayed in the Board's office, with passages pre-marked in each book that the Board found troubling. *Id.* The Board provided forms that parents could fill out following review of a particular Removed Book. *Id.* The form provided two options: (1) "this book should be Returned to the library and listed on the sensitive topic list," or (2) "this book should be Removed from the library collection." *Id.* (citing ECF No. 9-8 (Elizabeth School District's Book Review Form)). There was no option on the form to return the books to school libraries and leave them off the Sensitive List. *Id.*

B. Plaintiffs

Plaintiffs include current District students who intended to browse and check out the Removed Books from their school libraries but have not been able to do so since the Board removed them. ECF No. 9 at 10.

Plaintiff C.C. is a junior at Elizabeth High School who spends much of her free time reading and browsing books in the school library. *Id.* (citing C.C. Decl.). She states that she wants to check out the Removed Books from her school library but is unable to do so. *Id.* at 11.

Plaintiff E.S. is in preschool at Running Creek Elementary and uses the school's library to borrow books. *Id.* (citing Smith Decl.). His mother brings this action on his behalf, stating that she intends for E.S. and his younger sister to attend elementary, middle, and high school in the District and is concerned that her children are unable to read the Removed Books. *Id.*

Plaintiff NAACP - Colorado–Montana–Wyoming State Area Conference (NAACP) has members who are parents of students in the District who use their school library to discover new information and explore a wide array of ideas and viewpoints. *Id.* at 11–12 (citing Prescott Decl.). Like C.C., the parents state that their children intended to use the school library to access information about race, racism, LGBTQ history, gender identity, and other topics that are important to them. *Id.* at 12.

Finally, Plaintiff the Authors Guild includes authors whose books were removed from District libraries because, according to Plaintiffs, of the viewpoints expressed in the books. *Id.* Authors Guild member Ellen Hopkins wrote *Crank*, *Glass*, *Fallout*, *Identical*, *Burned*, and *Smoke* to help teenagers navigate difficult situations and express her views on the perils and realities of addiction, abuse, and promiscuity. *Id.* (citing Hopkins Decl.). Authors Guild member Angie Thomas wrote *The Hate U Give* to express her views on racism, police misconduct, and the value of teenagers using their voices to advocate for people and causes they care about. ECF No. 1, ¶¶ 81–82. Authors Guild member Alex Gino wrote *George* (now published and referred to as *Melissa*) which offers an authentic portrayal of a child navigating gender identity while addressing themes of courage, self-discovery, acceptance, and friendship. *Id.* (citing Gino Decl.). Authors Guild member John

Green wrote *Looking for Alaska* to express his views on loss, grief, and intimacy, and to share his views with teenagers who may be experiencing death and grief for the first time. ECF No. 1, ¶¶ 103–04. Authors Guild member Jodi Picoult wrote *Nineteen Minutes* to help young adults feel seen and express her views on the consequences of teasing and failing to stand up against bullying. *Id.*, ¶¶ 106–08. According to Plaintiffs, because the Board disagrees with these authors’ viewpoints and worldviews, the authors believe that they can no longer share their views with District students. *Id.* at 13 (citing Hopkins Decl. and Gino Decl.).

C. Defendant Elizabeth School District

The District educates approximately 2,600 students across four traditional public schools. ECF No. 25 at 1. The District’s schools includes Running Creek and Singing Hills Elementary Schools, Elizabeth Middle School, and Elizabeth High School. *Id.* Each of the District’s four traditional public schools has its own library. *Id.* at 3.

The District is governed by a five-director Board of Education (the Board). The Board directors at the relevant time were Rhonda Olsen (President), Heather Booth (Vice President), Mary Powell (Secretary), Mike Calahan (Treasurer), and Jonathan Waller (Assistant Secretary/Treasurer). *Id.* Dan Snowberger is the District’s superintendent and was unanimously appointed to the position by the Board on March 13, 2023. *Id.* at 2. Finally, Kim Moore is the District’s Chief Academic Officer. *Id.* at 4 n.2.

II. PENDING MOTIONS

Plaintiffs seek a preliminary injunction requiring the Removed Books to be returned to District libraries and enjoining the Board from continuing to remove books because of

their disagreement with the ideas and viewpoints contained in the books. ECF No. 9 at 2.

In support of their motion, Plaintiffs provide the following:

- Declarations from C.C. Ms. Crookshanks, Ms. Smith, Ms. Prescott, Ms. Hopkins, and Alex Gino;
- District memorandum dated August 12, 2024, concerning “9.7 Library Sensitive Topic Protocol and Book Lists,” which lists the 19 “Temporarily Suspended Books,” and the various books on the “Sensitive Topic Draft Book List”;
- The District’s Book Review Form (blank and completed forms);
- Various emails between Superintendent Snowberger, Board directors, and other District employees; and
- Various emails between Board directors and interested citizens (e.g., graduates of the District, grandparents of District students, etc.).

The District objects to each of these exhibits and moves to exclude them. ECF No. 27. In the alternative, the District asks the Court to hold an evidentiary hearing—applying the Federal Rules of Evidence at this early stage—in resolving these objections.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 65 authorizes courts to enter preliminary injunctions and issue temporary restraining orders. Fed. R. Civ. P. 65(a)–(b). “District courts have discretion over whether to grant preliminary injunctions.” *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 796 (10th Cir. 2019). “A district court’s decision crosses the abuse-of-discretion line if it rests on an erroneous legal conclusion or lacks a rational basis in the record.” *Id.*

A party seeking preliminary injunctive relief must show (1) a likelihood of success on the merits; (2) a likelihood that the movant will suffer irreparable harm in the absence

of preliminary relief; (3) that the balance of equities tips in the movant's favor; and (4) that the injunction is in the public interest. *Petrella v. Brownback*, 787 F.3d 1242, 1257 (10th Cir. 2015). The movant must demonstrate that "all four of the equitable factors weigh in its favor," *Sierra Club, Inc. v. Bostick*, 539 F. App'x 885, 888 (10th Cir. 2013), and the movant's "failure to prove any one of the four preliminary injunction factors renders its request for injunctive relief unwarranted." *Vill. of Logan v. U.S. Dep't of Interior*, 577 F. App'x 760, 766 (10th Cir. 2014). "Preliminary injunctions are extraordinary remedies requiring that the movant's right to relief be clear and unequivocal." *Planned Parenthood of Kan. v. Andersen*, 882 F.3d 1205, 1223 (10th Cir. 2018).

The Tenth Circuit specifically disfavors injunctions that will (1) alter the status quo, (2) mandate an affirmative act by the defendant, or (3) afford all the relief that the movant could expect to win at trial. *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1259 (10th Cir. 2004). A request for disfavored injunctive relief "must be more closely scrutinized to assure that the exigencies of the case support the granting of a remedy that is extraordinary even in the normal course." *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 975 (10th Cir. 2004).

IV. ANALYSIS

The Court first addresses the District's motion to exclude before turning to Plaintiffs' motion for preliminary injunction.

A. The District’s Motion to Exclude Evidence (ECF No. 27)

1. The District’s Evidentiary Objections

The District contends that Plaintiffs’ proffered evidence is inadmissible for a variety of reasons, but it primarily objects on hearsay grounds. The Court is not persuaded.

Even if the Federal Rules of Evidence applied at this stage (as explained below, they do not), many of the District’s objections are plainly baseless. For example, the District objects to its own employees’ and Board directors’ emails as hearsay:

Email from Superintendent Snowberger to Director Powell, dated August 5, 2024, and remainder of email thread.	Inadmissible hearsay. FRE 802.
Email from Director Booth to [redacted], dated August 19, 2024, and remainder of email thread (Same objection for Exhibit 11 & 12).	Inadmissible hearsay. FRE 802.
Email from Director Powell to Director Booth, dated September 8, 2024, and remainder of email thread.	Inadmissible hearsay. FRE 802.
Email from Director Powell to [redacted], dated September 8, 2024.	Inadmissible hearsay. FRE 802.
Email from Superintendent Snowberger to J. Maher, dated August 19, 2024.	Inadmissible hearsay. FRE 802.
Email from President-Director Olsen to Superintendent Snowberger and M. Seefried, dated September 5, 2024, and remainder of email thread.	Inadmissible hearsay. FRE 802.
Email from M. Seefried to Chief Academic Officer Moore, dated September 11, 2024.	Inadmissible hearsay. FRE 802.
Email from Chief Academic Officer Moore to P. Slade, dated September 10, 2024.	Inadmissible hearsay. FRE 802.

ECF No. 27 at 19–23 (objections taken verbatim from the District’s motion). Statements by Superintendent Snowberger, Board directors, Chief Academic Officer Moore, and

other District employees are not hearsay; under Federal Rule of Evidence 801(d)(2)(D), these are opposing party statements that are excluded from the definition of hearsay.³

Moreover, Plaintiffs point out that many of their exhibits are not offered to establish the truth of the matter asserted. ECF No. 30 at 4. And they argue that the book review forms (even if they were being offered for the truth asserted in them) are business records under Rule 802(6). *Id.* at 4–5. The District ignores these arguments as well.

At its core, many of the District’s objections lack any legal basis, and the Court does not anticipate the District raising similarly meritless objections in the future. However, a very small number of objections have merit. It is true that some of the exhibits not written by a District employee or Board director contain hearsay or otherwise may be speculative. Courts in this District, however, have held that “hearsay statements . . . are fair game” at the preliminary injunction stage. *EIS Ultimate Holding, LP v. Huset*, No. 23-CV-02324-GPG-MDB, 2024 WL 4472008, at *9 (D. Colo. Sept. 19, 2024) (citing *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trustees*, 680 F. Supp. 3d 1250, 1268 (D. Wyo. 2023) (observing that “a court may consider affidavits based on hearsay when evaluating requests of preliminary injunctions”), and *Shea v. Ditech Fin. LLC*, 208 F. Supp. 3d 380, 382 (D. Mass. 2016) (“The Court may also rely on otherwise inadmissible evidence, including hearsay, in deciding a motion for preliminary injunction.”)).

In sum, the Court overrules the District’s evidentiary objections at this stage.

³ That these are opposing party statements should have been obvious to the District’s counsel. But even so, Plaintiffs raise this argument in their response, ECF No. 30 at 4, and Defendant abandons the argument by completely ignoring it in its reply.

2. *The District's Request for an Evidentiary Hearing*

The District, in the alternative, asks the Court to hold an evidentiary hearing on Plaintiffs' proffered evidence applying the Federal Rules of Evidence. The Court declines to do so for at least four reasons.

First, Tenth Circuit caselaw is clear on this issue: "The Federal Rules of Evidence do not apply to preliminary injunction hearings." *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003) ("We must be mindful, therefore, as the Supreme Court has cautioned, that 'a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.'" (quoting *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981))). If the Court granted the District's request, it would need to delay a ruling on Plaintiffs' preliminary injunction motion while the parties prepared their various witnesses and then hold a multiday hearing. In addition to the delay, such a hearing would amount to a trial on the merits—something the Tenth Circuit has counseled against. See *id.* ("[I]t bears remembering the obvious: that when a district court holds a hearing on a motion for preliminary injunction it is not conducting a trial on the merits."). Applying these elementary principles leads to one conclusion: the District's request to hold an evidentiary hearing and apply the Federal Rules of Evidence at this stage would be improper.

Second, as will be seen below in granting Plaintiff's preliminary injunction motion, the Court largely relies on the District's own statements in determining that Plaintiffs are likely to succeed on the merits. The Court has already explained why the District's

hearsay objections to these statements are baseless, and thus an evidentiary hearing on these statements would be a waste of time.⁴

Third, in its reply, the District goes far beyond the bounds of what it argued in its motion to exclude (and what Plaintiffs addressed in their response brief). Take, for example, the District's contention that Plaintiffs are seeking a mandatory injunction, and thus arguing that the application of the Federal Rules of Evidence is heightened here. ECF No. 31 at 4. This is the first time the District raises this issue, which is curious because Plaintiffs make clear in their preliminary injunction motion that they "seek a preliminary injunction in order to preserve the status quo—when all of the Removed Books were available in ESD libraries." ECF No. 9 at 14. It is Plaintiffs' position that, because their motion merely seeks to return the Removed Books to District libraries, "the preliminary injunction in this case does not require defendant[] to do something that they were not doing during the last uncontested period." *Id.* (quoting *Evans v. Fogarty*, 44 F. App'x. 924, 928 (10th Cir. 2002)). Defendant does not address this issue at all in its response, ECF No. 25, nor in its motion to exclude, ECF No. 27. Thus, arguing a new issue in a reply separate and apart from the preliminary injunction briefing is improper.

Fourth, the District makes factually incorrect statements in its reply brief. For example, the District mischaracterizes the evidence Plaintiffs rely on as simply the statements by "parents of two students, the head of the local NAACP chapter, and select members of another trade group," and "not of the School Board members." ECF No. 31

⁴ The Court may have reached a different conclusion had the District objected on foundation or authenticity grounds, but it did not—it only objected on hearsay grounds.

at 1. Not so. Plaintiffs cite countless statements from Board directors throughout their preliminary injunction motion. See ECF No. 9 (extensively citing statements from the Board President, Vice President, Secretary, Treasurer, and Assistant Secretary/Treasurer).

To be sure, the District’s argument for an evidentiary hearing has some support: “most courts hold that when the written evidence reveals a factual dispute, an evidentiary hearing must be provided[.]” Wright & Miller, *Federal Practice & Procedure*, § 2949 Procedure on Application for Preliminary Injunction (3d ed.) (citing cases from the Eleventh Circuit and others but not the Tenth Circuit). However, whether “the facts are bitterly contested,” *Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr, S.A.*, 320 F.3d 1205, 1211 (11th Cir. 2003), is not so obvious here. On one hand, the District is not disputing that the books were removed from the library shelves. On the other, the District’s motivation for removing the books is in dispute. The latter appears to go to the merits of the dispute and not the underlying facts. Or said a bit differently, the key underlying facts here are not bitterly contested.

Further, in the more recent cases, the factual dispute was more germane to the injunctive relief. In *Moon v. Med. Tech. Assocs., Inc.*, 577 F. App’x 934 (11th Cir. 2014), for example, the issue was whether former employees were violating restrictive covenants in an employment agreement.

To reach its conclusion in [granting the preliminary injunction], the district court made extensive factual findings. In fact, the district court’s order—which [the defendant] drafted—includes almost five pages of factual findings. However, many of these facts are disputed by the parties’ conflicting affidavits. For example, *the Plaintiffs dispute whether they competed in the*

restricted area, whether they solicited [the defendant's] customers, and whether [the defendant's] customer relationships were substantial.

Id. at 939 (emphasis added and internal citations omitted). In the Court's view, the factual disputes highlighted by the Eleventh Circuit in *Moon* are plainly distinguishable from the facts of this case.

Similarly, in *Four Seasons Hotels And Resorts, B.V. v. Consorcio Barr, S.A.*, Four Seasons accused the defendant of gaining unauthorized access to the Four Seasons computer network and thus proprietary and confidential materials located on the network. 320 F.3d 1205, 1208 (11th Cir. 2003). The Four Seasons filed an emergency motion for an ex parte temporary restraining order, seeking to prevent the defendant from accessing its computer network. *Id.* The district court granted the preliminary injunction. *Id.* The Eleventh Circuit faulted the district court for not holding an evidentiary hearing when the "facts surrounding the alleged unauthorized computer use [were] in dispute." *Id.* As with *Moon*, the Court finds the factual dispute in *Four Seasons* distinguishable from the instant case because here, there is no dispute that the District has removed the books from the libraries.

* * *

Because the Federal Rules of Evidence do not apply at this stage, the District's motion to exclude is denied.

B. Plaintiffs' Motion for Preliminary Injunction (ECF No. 9)

The Court has reviewed Plaintiffs' motion and reply, the District's response, and the various exhibits and affidavits attached to the parties' briefings. ECF Nos. 9, 25, 28. The Court considers the four requirements governing a preliminary injunction below and concludes that Plaintiffs have satisfied their burden of showing that a preliminary injunction is warranted.

1. Likelihood of Success on the Merits

Before a court may issue a preliminary injunction, the movant must establish a substantial likelihood of prevailing on the merits of its claims. *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1246 (10th Cir. 2001). However, "the determination of a motion for a preliminary injunction and a decision on the merits are different." *Valdez v. Applegate*, 616 F.2d 570, 572 (10th Cir. 1980).

a. Status Quo

As an initial matter, Plaintiffs argue that they "seek a preliminary injunction in order to preserve the status quo—when all of the Removed Books were available in ESD libraries." ECF No. 9 at 13. Thus, according to Plaintiffs, this is not a disfavored injunction that requires them to satisfy a higher burden. *Id.* The District does not respond to this argument. See *generally* ECF No. 25.

"To determine whether an injunction is mandatory or prohibitory, [courts] look at the substance of the injunction and compare it to the status quo ante—i.e., the 'last uncontested period preceding the injunction.'" *Evans*, 44 F. App'x at 928–29 (quoting *Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 269 F.3d 1149, 1155 (10th Cir.

2001)). In *Dominion Video*, the Tenth Circuit held that a preliminary injunction requiring the defendant to take affirmative action to activate satellite television subscribers was not mandatory. 269 F.3d at 1155 (“EchoStar asserts that the injunction forces it to take affirmative action to activate new Dominion subscribers. The injunction, however, prohibits EchoStar from refusing to activate new Dominion customers on the same terms and conditions previously applicable.”). The court explained that the requested injunction did “not compel [the defendant] to do something it was not already doing during the last uncontested period preceding the injunction.” *Id.*

The Court finds that Plaintiffs’ requested relief is not a disfavored injunction. First, the District offers no response to this argument and thus waived its opposition. Second, as in *Dominion Video*, Plaintiffs’ requested injunction does not require the District to do something that it was not already doing during the last uncontested period—return the Removed Books to the District libraries’ shelves so that students can peruse them and borrow them if desired. Third, a preliminary injunction during the pendency of these proceedings will not provide substantially all the relief to which Plaintiffs may be entitled. See ECF No. 1 at 45–47 (seeking permanent injunction, past and future pecuniary and non-pecuniary losses, declaratory relief, and attorney fees).

For these three reasons, the heightened burden for mandatory injunctions does not apply.

b. First Amendment Rights at Stake

Plaintiffs argue that the students’ interest in accessing books in their respective school libraries is constitutionally protected. ECF No. 9 at 14–21. The District disagrees,

arguing that the District library curation decisions are government speech immune from First Amendment scrutiny. ECF No. 25 at 12. Caselaw does not support the District’s position, and therefore, the Court agrees with Plaintiffs.

The First Amendment of the U.S. Constitution and Article II, Section 10 of the Colorado Constitution protect the right to receive information and ideas.⁵ *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (“It is now well established that the Constitution protects the right to receive information and ideas. This freedom (of speech and press) . . . necessarily protects the right to receive This right to receive information and ideas, regardless of their social worth, is fundamental to our free society.” (internal citations and quotations omitted)); *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1051, 1054 (Colo.), *as modified on denial of reh’g* (Apr. 29, 2002) (the “First Amendment to the United States Constitution protects . . . the right to receive information and ideas,” and that right is extended under the Colorado Constitution, which “provides broader free speech protections than the Federal Constitution”). This protection is heightened in public schools. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512 (1969) (“The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960))).

The District’s argument—that its decisions as to the library contents are government speech immune from First Amendment scrutiny—finds little support in the

⁵ Section 10 of the Colorado Constitution is titled *Freedom of Speech and Press* and provides that “[n]o law shall be passed impairing the freedom of speech; every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and in all suits and prosecutions for libel the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the fact.”

caselaw. Courts generally hold that the placement and removal of books in public school libraries is not government speech. *GLBT Youth in Iowa Sch. Task Force v. Reynolds*, 114 F.4th 660, 667 (8th Cir. 2024) (“Contrary to Defendants’ contention, the Supreme Court has not extended the government speech doctrine to the placement and removal of books in public school libraries.”); *id.* at 668 (“[I]t is doubtful that the public would view the placement and removal of books in public school libraries as the government speaking.”). This makes sense.

Take, for example, a high school library that includes Hitler’s manifesto *Mein Kampf*. No one would seriously argue that placing this book in a school library constitutes government speech. *See id.*; *see also PEN Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd.*, 711 F. Supp. 3d 1325, 1331 (N.D. Fla. 2024) (“[T]he fact that the traditional purpose of a library is to provide information on a broad range of subjects and viewpoints, the Court simply fails to see how any reasonable person would view the contents of the school library (or any library for that matter) as the government’s endorsement of the views expressed in the books on the library’s shelves.”); *id.* (distinguishing cases cited by the school “because the speech embodied in a library collection is materially different from the speech embodied in government-sponsored parades, prayers, art exhibits, and monuments on public property”); *Virden v. Crawford Cnty., Arkansas*, No. 2:23-CV-2071, 2024 WL 4360495, at *5 (W.D. Ark. Sept. 30, 2024) (“[T]he Supreme Court has not extended [the government speech] doctrine to the placement and removal of books in libraries.”).

The District also relies on *Moody v. NetChoice, LLC* for the proposition that “expressive activity includes presenting a curated compilation of speech originally created by others.” 603 U.S. 707, 728 (2024). To be sure, *NetChoice* held that the “First Amendment offers protection when an entity engaging in expressive activity, *including compiling and curating others’ speech*, is directed to accommodate messages it would prefer to exclude.” *Id.* at 731 (emphasis added). Or stated in another way, an “entity ‘exercis[ing] editorial discretion in the selection and presentation’ of content is ‘engage[d] in speech activity.’” *Id.* (quoting *Arkansas Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 674 (1998)). Although compelling, the Court is not persuaded that *NetChoice* requires a different outcome. *NetChoice* had nothing to do with government speech—it concerned states’ power to control whether and how third-party social-media posts are presented to other users. *Id.* at 717.

The Court rejects the District’s invitation to extend government-speech precedents by applying *NetChoice* or its other cited authority to the facts at hand—something the Supreme Court has expressly discouraged. *Matal v. Tam*, 582 U.S. 218, 235 (2017) (“[W]hile the government-speech doctrine is important—indeed, essential—it is a doctrine that is susceptible to dangerous misuse. If private speech could be passed off as government speech by simply affixing a government seal of approval, government could silence or muffle the expression of disfavored viewpoints. For this reason, *we must exercise great caution before extending our government-speech precedents.*” (emphasis added)).

The Court holds that it is Plaintiffs' First Amendment rights at stake—not the District's.

c. Plaintiff-Authors' First Amendment Rights

Plaintiffs argue that the District violated the Authors Guild Plaintiffs' constitutional right to share their books free from undue viewpoint-based censorship. ECF No. 9 at 21–25. The District offers no response to this narrow argument. Regardless, the Court agrees with Plaintiffs.

Authors have a right to share their books and ideas, and this right is protected under the First Amendment. *Martin v. City of Struthers, Ohio*, 319 U.S. 141, 143 (1943) (“The right of freedom of speech and press has broad scope. The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance. *This freedom embraces the right to distribute literature, and necessarily protects the right to receive it.*” (internal citation omitted and emphasis added)); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 64 n.6 (1963) (“The constitutional guarantee of freedom of the press embraces the circulation of books as well as their publication, and the direct and obviously intended result of the Commission’s activities was to curtail the circulation in Rhode Island of books published by appellants.” (internal citation omitted)).

d. Whether the District’s Book Removal Violated the Students’ First Amendment Rights

The District first argues that Plaintiffs have not made a clear showing of likely success on the merits because a school library’s curation decisions are government

speech immune from First Amendment scrutiny. ECF No. 25 at 12. The Court has already rejected that argument. But the District goes on, arguing that, even if the District's curation decisions are not government speech, the three-justice plurality opinion in *Pico* on which Plaintiffs rely is nonprecedential and doctrinally stale. *Id.* at 13. Instead, the District argues that the Court must proceed under the rubric for curricular-related speech established in *Hazelwood*. *Id.* The Court addresses the *Pico* and *Hazelwood* decisions in turn and then analyzes whether Plaintiffs are likely to succeed on the merits under both frameworks.

i. Supreme Court's Pico Decision

Plaintiffs rely on the plurality opinion of Justice Brennan in *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982). The case involved a school district's decision to remove nine books from the school library. *Id.* at 856. *Pico*, however, produced seven opinions, none of which garnered a majority.

Justice Brennan announced the judgment of the court in a plurality joined by Justices Marshall and Stevens. *Pico*, 457 U.S. at 855. The plurality held that school boards "may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to 'prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion,'" *Id.* at 872 (quoting *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)).

Justice Blackmun joined in the plurality with the exception of one part and wrote separately to clarify his First Amendment analysis. *Id.* at 875. Justice Blackmun disagreed with the plurality's assertion that school children have a "right to receive information." *Id.* at 87–79. He instead focused on the state's denial of access to ideas. *Id.* at 879 n.2 ("In

effect, my view presents the obverse of the plurality's analysis: while the plurality focuses on the failure to provide information, *I find crucial the State's decision to single out an idea for disapproval and then deny access to it.*" (emphasis added)). In Justice Blackmun's view, the Court should hold that "school officials may not remove books for the *purpose* of restricting access to the political ideas or social perspectives discussed in them, when that action is motivated simply by the officials' disapproval of the ideas involved." *Id.* at 879–80 ("It does not seem radical to suggest that state action calculated to suppress novel ideas or concepts is fundamentally antithetical to the values of the First Amendment. At a minimum, allowing a school board to engage in such conduct hardly teaches children to respect the diversity of ideas that is fundamental to the American system."). The school board must "be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." *Id.* at 880 (quoting *Tinker*, 393 U.S. at 509).

Justice White concurred in the judgment but favored delaying the announcement of a legal rule until the trial court established the reasons behind the school officials' decision to remove the books. *Id.* at 883. He did not reveal what standard he would use in judging the constitutionality of a school board's decision to remove certain books from school libraries.

It is well-established that a plurality opinion is not binding on this Court. *United States v. Friedman*, 528 F.2d 784, 788 (10th Cir. 1976) ("A mere plurality pronouncement of this type does not have the binding effect that [the defendant] argues for. A trial court does not necessarily err when it does not follow a rule promulgated by only three Justices

of the Supreme Court.”), *vacated on other grounds*, 430 U.S. 925 (1977). Because *Pico* failed to announce a legal rule blessed by five justices, the precedential value of *Pico* has perplexed courts for years, including in the recent years. *PEN Am. Ctr.*, 711 F. Supp. 3d at 1331 (“The applicable legal standard for evaluating alleged First Amendment violations in the school library context is not entirely clear . . .”).

Thirty years ago, a district court in this Circuit observed that,

[w]hat clearly emerges from the Pico decision is that the trial court must determine the motivation of the school officials in removing the book. Five of the justices in Pico agreed that some motivations would be unconstitutional. The plurality found the motivations unconstitutional if school officials “intended by their removal decision to deny respondents access to ideas with which [the officials] disagreed, and if this intent was the decisive factor in [the removal] decision.” Pico, 457 U.S. at 871. Removal may be permissible if based on vulgarity or “educational suitability.” Id.

Case v. Unified Sch. Dist. No. 233, Johnson Cnty., Kan., 895 F. Supp. 1463, 1468–69 (D. Kan. 1995) (emphasis added). Thus, according to *Case*, *Pico* “must be used as a starting point,” as this is the “only Supreme Court decision dealing specifically with removal of books from a public school library.” *Id.* at 1469; see also *Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184, 189 (5th Cir. 1995) (“Even though the constitutional analysis in the *Pico* plurality opinion does not constitute binding precedent, it may properly serve as guidance in determining whether the School Board’s removal decision was based on unconstitutional motives. . . . [The Fifth Circuit has never suggested] that the *Pico* plurality does not provide useful guidance in determining the constitutional implications of removing books from a public school library.”); *PEN Am. Ctr.*, 711 F. Supp. 3d at 1331 (stating that the “common theme” in all of the potentially relevant First Amendment school-

library cases “(e.g., *Pico* plurality, *Hazelwood*, nonpublic forum) is that school officials cannot remove books solely because they disagree with the views expressed in the books but that they can make content-based removal decisions based on legitimate pedagogical concerns . . .”).

The District asks the Court to ignore the *Pico* plurality because, under *Marks v. United States*, 430 U.S. 188, 193 (1977),⁶ the controlling opinion belongs to Justice White, who concurred in the judgment but did not join any portion of Justice Brennan’s plurality opinion. ECF No. 25 at 15 (citing *Campbell*, 64 F.3d at 189) (“Justice White’s concurrence in *Pico* represents the narrowest grounds for the result in that case.”)). That may be true, but the District ignores that *Campbell* and other courts have decided that *Pico* still provides useful guidance in book-removal cases. *Campbell*, 64 F.3d at 189 (*Pico* “may properly serve as guidance in determining whether the School Board’s removal decision was based on unconstitutional motives”).

The District goes on to copy the bulk of Justice White’s concurrence, ECF No. 25 at 16, but it omits a key portion of the short concurrence: Justice White preferred to return the case to the district court to determine why the school board removed the books. *Pico*, 457 U.S. at 883 (“When findings of fact and conclusions of law are made by the District Court, that may end the case. If, for example, the District Court concludes after a trial that the books were removed for their vulgarity, there may be no appeal.”). If Justice White was “entirely agnostic on whether the First Amendment imposes *any* constraints on book-

⁶ *Marks* instructed that, when “a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, ‘the holding of the Court may be viewed as that position taken by those Members who concurred in the judgment[] on the narrowest grounds.’” 430 U.S. at 193 (quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976) (opinion of Stewart, Powell, and Stevens, JJ.)).

removal decisions made by public-school libraries” as the District argues, ECF No. 25 at 16, his preference to remand the case for further factfinding on the school board’s motivations would be pointless.

Like the cases outlined above, the Court finds that *Pico* remains a useful starting point in determining the constitutionality of the District’s book-removal decision.

ii. Supreme Court’s Hazelwood Decision

The District argues that the Court should defer to the Board’s book-removal decision under *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988). ECF No. 25 (arguing that *Hazelwood* bars Plaintiffs’ claims because school boards have “maximum deference over curricular and school-sponsored speech”). There, the Supreme Court held that school districts are entitled to exercise broad discretion in the management of curricular affairs “so long as their actions are reasonably related to legitimate pedagogical concerns.” *Id.* at 273. *Hazelwood* concerned a school official’s “editorial control over the contents of a high school newspaper produced as part of the school’s journalism curriculum.” *Id.* at 262. The Court held that school officials may exercise greater control over student expression that is a part of the school curriculum. *Id.* at 270–72.

The Tenth Circuit has cautioned courts not to read *Hazelwood* too narrowly by applying it only to activities conducted as part of the traditional school curriculum. *Fleming v. Jefferson Cnty. Sch. Dist. R-1*, 298 F.3d 918, 924 (10th Cir. 2002). The *Fleming* court read the definition of “school-sponsored” speech to mean “activities that might reasonably

be perceived to bear the imprimatur of the school and that involve pedagogical concerns.”

Id.

If the speech at issue bears the imprimatur of the school and involves pedagogical interests, then it is school-sponsored speech, and the school may impose restrictions on it so long as those restrictions are reasonably related to legitimate pedagogical concerns. The imprimatur concept covers speech that is so closely connected to the school that it appears the school is somehow sponsoring the speech.

Id. at 924–25. *Fleming* further counsels that the “level of involvement of school officials in organizing and supervising an event affects whether that activity bears the school’s imprimatur.” *Id.* at 925.

iii. Plaintiffs are Likely to Succeed Under Either Standard

Regardless of the standard the Court applies, the Court finds that Plaintiffs are likely to succeed on the merits of their claims.

Under the *Pico* framework, the Court looks to the District’s stated motivations behind removing the 19 books. Plaintiffs argue that the District’s motives were clear: the District removed the books based on the authors’ and books’ viewpoints and political ideologies. Plaintiffs point to emails and public statements from Board directors and other District employees. The Court highlights some of those below—concluding that the District’s decisive factor in voting to permanently banish the Removed Books was because the District disagreed with the views expressed in the books and to further their preferred political orthodoxy.

First, in emails between the Board directors and Superintendent Snowberger, Director Heather Booth commented, “[w]e need to be cautious about the way we frame

our stance on politics in our schools. While I completely agree that we must keep politics out of the classroom and shield our students from partisan influences, *it's equally important to remember that our commitment to conservative values was a key aspect of our campaign.*" ECF No. 9-9 at 3 (emphasis added). She went on to write,

It's crucial that as we navigate these discussions, we remain mindful of the promises we made and the values we pledged to support. By doing so, we can maintain our integrity and ensure that our actions align with the expectations of those who elected us. As I like to say "we need to keep politics out of the classroom and away from the kids". *However conservative values are exactly what we are and plan to continue to bring into the district.*

Id. (emphasis added). In response, Superintendent Snowberger stated, "I'm not opposed to the change, Heather. This has been what we've spoken about since I've been hired so it's just important that I know how the board wants to frame this. I certainly will take the boards direction." *Id.* at 2. President-Director Rhonda Olsen then responded to the group stating, "Our vision for the district could be considered by some to be conservative based. We were very vocal about getting a superintendent and legal representation with conservative values" *Id.*

Second, in an email between Director Booth and a graduate of the District, Director Booth justified the book removal, stating that, "[a]s an elected official committed to conservative values for our children, I feel a strong obligation to honor the promises made during my campaign." ECF No. 9-10 at 2 (copying the entire Board).

Third, in a back-and-forth between Director Mary Powell and Director Booth, Director Powell explains why she waffled on whether *#Pride - Championing LGBTQ*

Rights and You Should See me in a Crown should be removed or just marked sensitive.

ECF No. 9-12 at 3–4.

I voted “Move to Sensitive List and move up to EHS” on #Pride because this book is largely a history of LGBTQ, and doesn’t totally try to indoctrinate. But, just the overall topic is going to tend to that regardless. *I also thought it would be a good thing to show some openness to other viewpoints*, as long as it isn’t indoctrinating.

I voted same on “Crown” because while it has some racist overtones, they are just the main character handling them. About halfway through you find out she is a lesbian. There is another prom contestant who is also, and they form a relationship. There isn’t anything graphic other than discussing a kiss that I saw, and it is not the central theme of the book at all. I thought the story was overall a good one of empowerment for black students - this is a very successful girl. There is also some good general friend support, etc. in the story.

So, that is my reasoning, and Jon and Mike joined me in that vote. HOWEVER, if you and Rhonda strongly feel they should be REMOVED, I will change my vote on these two to REMOVE.

Id. (emphasis added). Director Booth responded, “[p]ersonally, LGBTQ is only regarding sexual preference which doesn’t belong in any school. . . . Our constituents will not be happy about us returning any of these books. That is who we are beholden to.” *Id.* Director Powell then responded, with Superintendent Snowberger and others copied, stating that she and President-Director Olsen “talked, and I have changed my vote on these two to REMOVE. I talked to both Jon and Mike and they also agree on REMOVE. *Therefore, all board votes for the 18 books are to REMOVE.*” *Id.* at 2 (emphasis added).⁷

⁷ The District attempts to distance itself from Director Booth, stating that she resigned from the Board on January 13, 2025, and did not vote to permanently remove books from the library. ECF No. 25 at 1 n.1, 8

Fourth, Director Powell emailed an unknown recipient stating that she supported removing “the LGBTQ book and [] You should see me in a Crown.” ECF No. 14 at 2. Convinced by Directors Booth and Olsen, Director Powell justified these removals because “they both have gender identity ideology in them, and do we really want that out there at all?” *Id.*

Fifth, a parent of a District student emailed President-Director Olsen complaining about *Redwood and Ponytail* by K.A. Holt. ECF No. 9-16 at 2–3. The parent’s chief complaint was about the book’s LGBTQ content. *Id.* Copying Superintendent Snowberger, Ms. Olsen responded, “[t]hank you so much for bringing this to our attention. The review of the library books to ensure age appropriate content is a new process for the district and we really appreciate it when parents bring to our attention any items that may have been missed. I will request that the book be removed from the library for further review.” *Id.* at 2.

These five examples strongly suggest that the District’s motivations behind removing the 19 books is blatantly unconstitutional under *Pico* and other precedents.⁸ See *Pico*, 457 U.S. at 872 (school boards “may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their

n.7, 26 n.12. But the Board voted on September 9, 2024, to “permanently remove” the books. *Id.* at 8. Thus, even if Director Booth missed the September 9, 2024 meeting, she was still on the Board, and, even assuming that she did not vote (her correspondence suggests otherwise), her emails makes clear which way she intended to vote, and President-Director Olsen appeared to acknowledge Director Booth’s “remove” vote.

⁸ Plaintiffs also cite several statements from publicly held board meetings attacking the content and views expressed in the Removed Books that easily could be characterized as political and partisan in nature. See, e.g., ECF No. 9 at 3 nn.3, 8 n.4–6, 19 nn.7–10, 23 n.12 (Vice President Booth stated that the Board was instituting its new book protocols because the current Board members were elected “on these values to keep your (the majority) values in mind of this community, and that is what we are going to do”).

removal to ‘prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion’” (quoting *Barnette*, 319 U.S. at 642)) (Brennen, J. plurality opinion); *Campbell*, 64 F.3d at 189 (Fifth Circuit finding that *Pico* “may properly serve as guidance in determining whether the School Board’s removal decision was based on unconstitutional motives”); *PEN Am. Ctr.*, 711 F. Supp. 3d at 1331 (Supreme Court precedent in *Pico* and *Hazelwood* is that “school officials cannot remove books solely because they disagree with the views expressed in the books”).

The District’s conclusory argument that it “easily satisfies” the *Pico* plurality standard “because it is not withholding access to the titles at issue for narrowly partisan or political reasons,” ECF No. 25 at 13, is belied by the District’s stated reasons in these five examples and during live Board meetings. Moreover, the District argues that schools need flexibility to fulfill their educational mission. *Id.* at 20. But the Board has made clear that they are acting to fulfill the pledge to carry out their conservative agenda—not an educational mission.

The District next argues that it removed some of the books not to prescribe partisan orthodoxy but because they contain “sexually explicit and vulgar content.” ECF No. 25 at 27. But again, the contemporaneous statements expressly state otherwise. For example, Secretary Powell explained to the Board directors that in *You Should See Me in a Crown*, “[t]here isn’t anything graphic other than discussing a kiss that I saw.” ECF No. 9-12 at 3. And she explained that *#Pride: Championing LGBTQ Rights* “is largely a history of LGBTQ, and doesn’t totally try to indoctrinate. . . . I also thought it would be a good thing to show some *openness to other viewpoints*, as long as it isn’t indoctrinating.” *Id.*

(emphasis added). Still, the Board—including Secretary Powell—voted to remove these books because of the viewpoints expressed in the books. At this stage, the Court puts much more weight on the contemporaneous statements made by the Board than it does on the after-the-fact declarations prepared with counsel’s advice.⁹

For example, President-Director Olsen states that “I did not vote to remove any of the 19 disputed titles from the school district’s libraries because of the ‘ideas,’ ‘viewpoints,’ or ‘worldviews’ contained or expressed in any of those books.” ECF No. 25-3, ¶ 14. In light of the various emails and statements before the Court, the Court finds that her and the other directors’ *post hoc* justifications plainly are pretextual. *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1292–93 (10th Cir. 2004) (“Although we do not second-guess the pedagogical wisdom or efficacy of an educator’s goal, we would be abdicating our judicial duty if we failed to investigate whether the educational goal or pedagogical concern was pretextual. . . . [W]e may override an educator’s judgment where the proffered goal or methodology was a sham pretext for an impermissible ulterior motive.”).

The District also suggests that Plaintiffs cannot prevail because it allowed parents to weigh in on Removed Books. ECF No. 25 at 26. This argument does not help the District. First, the Board pre-selected and highlighted alleged inappropriate content in the books. True, many parents completed forms indicating that they wanted the books to be removed because the views expressed in the books did not align with their partisan,

⁹ See *Fairbanks Cap. Corp. v. Kenney*, 303 F. Supp. 2d 583, 588 (D. Md. 2003) (a district court “must weigh and evaluate the evidence” when ruling on a preliminary injunction); *Devan Designs, Inc. v. Palliser Furniture Corp.*, No. 2:91CV00512, 1993 WL 283256, at *2 (M.D.N.C. Apr. 21, 1993) (“In the context of preliminary injunction, the court necessarily must weigh the evidence in order to determine the likelihood of success on the merits. In the context of summary judgment, such weighing of evidence is, of course, impermissible.”).

political viewpoints.¹⁰ For example, one parent of a high school student wrote that *#Pride* should be removed because “LGBTQ themes do not belong in our public schools.” ECF No. 9-13 at 1. And a middle school parent wrote that “middle school students are too young to be exposed to the pride movement, same sex marriage, stonewall riots and pride parades.” *Id.* at 3. Others commented that *You Should See Me in a Crown* should be removed “because of it[]s CRT [critical race theory] undertones and homosexual storyline.” *Id.* at 10.

That parents want to remove books for partisan reasons does not permit government officials to do the same. *See, e.g., Pico*, 457 U.S. at 872. Even assuming, as the District suggests, that the majority of parents wish to remove certain books based on their conservative beliefs, the First Amendment “offers sweeping protection” for those authors and readers who may adhere to the minority view. “In fact, it is the minority view, including expressive behavior that is deemed distasteful and highly offensive to the vast majority of people, that most often needs protection under the First Amendment.” *Bible Believers v. Wayne Cnty., Mich.*, 805 F.3d 228, 243 (6th Cir. 2015) (collecting Supreme Court cases including *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (recognizing the First Amendment rights of Ku Klux Klan members to advocate for white supremacy-based political reform achieved through violent means) and *Texas v. Johnson*, 491 U.S. 397, 405–06 (1989) (recognizing flag burning as a form of political expression protected by the First Amendment)). “Any other rule ‘would effectively empower a majority to silence

¹⁰ Of course, parents also argued the opposite: that books should be returned to the book shelves. *See, e.g.,* ECF No. 9-13 at 22 (arguing that the book removal is “not welcoming to anyone who is not white, straight, and politically conservative”).

dissidents simply as a matter of personal predilections,’ and the government might be inclined to ‘regulate’ offensive speech as ‘a convenient guise for banning the expression of unpopular views.’” *Id.* (quoting *Cohen v. California*, 403 U.S. 15, 21, 26 (1971)).

The District’s arguments under the *Hazelwood* standard fall short as well. *Hazelwood* asks whether the activity at issue “might reasonably be perceived to bear the imprimatur of the school and that involve pedagogical concerns.” *Fleming*, 298 F.3d at 924. If it does, then the speech is “school-sponsored speech” that may be immune from First Amendment scrutiny. *Id.*; see generally *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 553 (2005). The District cannot make this showing.

To start, the District has provided no persuasive authority that merely maintaining a book on a school library shelf constitutes school-sponsored speech. “The imprimatur concept covers speech that is so closely connected to the school that it appears the school is somehow sponsoring the speech.” *Id.* at 925. Given the District’s stated position concerning the Removed Books, there is no chance that anyone will connect the views expressed in the Removed Books to the District. Stated a tad bit differently, no reasonable person would assume that the District is sponsoring the speech or views contained in the Removed Books.

Further, the District’s book-removal decision is not “reasonably related to legitimate pedagogical concerns.” *Hazelwood*, 484 U.S. at 273. Again, the District’s conclusory argument that the Board’s removal decisions here “easily clear the reasonable relation to a legitimate pedagogical concern” bar, and that “no Board director voted to remove any of the 18 books based on the viewpoint expressed therein,” ECF No. 25 at 9, 20, is plainly

contradicted by the District’s own statements. Other than pretextual declarations, at this stage, there simply is no reason to believe that the books were removed because of vulgarity, age-inappropriateness, or for legitimate pedagogical concerns; the Board’s own emails strongly suggest that the book removal was motivated by the directors’ “commitment to conservative values.” The Court questions what could be more partisan or political than removing books to further the Board’s self-described conservative values. The District cites no authority suggesting that a school board may remove books to further their political orthodoxy—something the *Pico* plurality expressly said not to do. *Pico*, 457 U.S. at 870 (school boards “rightly possess significant discretion to determine the content of their school libraries . . . [b]ut that discretion may not be exercised in a narrowly partisan or political manner”).

The facts of *Hazelwood* and *Fleming* also are plainly distinguishable. *Hazelwood* involved the regulation of speech in a high school newspaper that was published by students *in a journalism class*. *Hazelwood*, 484 U.S. at 264. No reasonable person would dispute that a school newspaper published in a journalism class and supervised by a journalism teacher is part of a school curriculum—making it fundamentally different than a book in a school library. *Id.* at 271 (indicating that school curriculum activities extent to “school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school . . . whether or not they occur in a traditional classroom setting”).

And *Fleming* involved a teacher-initiated and school-sponsored project where, following the Columbine school shooting, the high school invited students to paint tiles to

install in the halls of the school. *Fleming*, 298 F.3d at 920. The Tenth Circuit found that the tiles bore the school's imprimatur given the school's involvement in the project. *Id.* at 931. A library book, however, bears no such imprimatur. Unlike in *Fleming*, there is little to no "level of involvement of school officials." The District even suggests that it was unaware that some of these books had resided in their libraries for years, ECF No. 25 at 3, strongly indicating that maintaining books in a school library is not part of the District's curriculum.

* * *

In sum, Plaintiffs have shown that the District removed the 19 books based on the authors' and books' content and viewpoints on issues such as race, sexual orientation, gender identity, LGBTQ content, and to promote the Board's self-proclaimed "conservative values." This finding is especially true with respect to Plaintiffs' allegations under the Colorado Constitution. The District focuses entirely on the federal Constitution but completely ignores Plaintiffs' argument that they are likely to succeed under both the First Amendment of the United States Constitution and Article II, Section 10 of the Colorado Constitution. As previously noted, the Colorado Supreme Court has consistently afforded broader First Amendment protections under the Colorado Constitution. *Tattered Cover*, 44 P.3d at 1054 ("[O]ur state constitution provides more expansive protection of speech rights than provided by the First Amendment.").

At this stage, the Court must conclude that the District's "decisive factor" in removing the books was "because it found them objectionable in content and because it felt that it had the power, unfettered by the First Amendment, to censor the school library

for subject matter which the Board members found distasteful.” *Minarcini v. Strongsville City Sch. Dist.*, 541 F.2d 577, 582 (6th Cir. 1976) (further pointing out that neither the state nor the school board “was under any federal constitutional compulsion to provide a library for the [s]chool or to choose any particular books,” but once “having created such a privilege for the benefit of its students, however, neither body could place conditions on the use of the library which were related solely to the social or political tastes of school board members”). It is unconstitutional—under both the federal and Colorado Constitutions—to remove books from a school library merely because the District “disagree[s] with the views expressed in the books.”¹¹ *PEN Am. Ctr.*, 711 F. Supp. 3d at 1331. Such ideological justifications for removal fail under all the potentially relevant First Amendment standards. It remains to be seen whether Plaintiffs will be able to prove their allegations with respect to each of the challenged books at trial, but at the preliminary injunction stage, Plaintiffs have satisfied their burden of showing that they are likely to succeed on the merits of their claims.¹²

¹¹ The Court’s ruling does not prohibit the District from removing books based on legitimate pedagogical concerns. See *PEN Am. Ctr.*, 711 F. Supp. 3d at 1331. As the District rightly argues, a school board could remove a collection of *Playboy* magazines in a school library (although it is hard to imagine *Playboys* ever reaching a public school library) and likely could remove a collection of books “promoting frauds—like Holocaust denial, that life in North Korea compares favorably to life in the United States, or that the Apollo 11 moon landing was faked—or overt racism.” ECF No. 25 at 22. These issues are fundamentally different from the instant issue before the Court. But the Court rejects the District’s argument that *Hazelwood* allows school boards to remove books to promote self-proclaimed conservative values. See *id.*

¹² Plaintiffs argue that, if *Pico* does not provide the proper framework, *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), would apply. ECF No. 9 at 22–23; ECF No. 28 at 7–8; see *Hardwick ex rel. Hardwick v. Heyward*, 711 F.3d 426, 435 n.11 (4th Cir. 2013) (in a free-speech clothing case brought by a student, the Fourth Circuit observed that, “we must continue to adhere to the *Tinker* test in cases that do not fall within any exceptions that the Supreme Court has created until the Court directs otherwise”). The District does not respond to this argument. The Court is not convinced that *Tinker* provides the correct framework, but the Court would find that Plaintiffs would prevail under this standard. *Tinker* provides that school “officials may not restrict speech based on ‘undifferentiated fear or apprehension of disturbance’ or a ‘mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.’” *Taylor v. Roswell Indep. Sch. Dist.*, 713 F.3d 25, 37 (10th Cir. 2013) (quoting *Tinker*,

*e. Whether the District's Book Removal Violated the
Author Guild Plaintiffs' First Amendment Rights*

The District argues that the authors' viewpoint discrimination claims fail because the District's libraries are not a public forum for the authors' expression. ECF No. 25 at 27. Even if the Court treats the library as a nonpublic forum, the District's actions still violate the authors' First Amendment rights. "To be consistent with the First Amendment, the exclusion of a speaker from a nonpublic forum *must not be based on the speaker's viewpoint* and must otherwise be reasonable in light of the purpose of the property." *Arkansas Educ. Television Comm'n*, 523 U.S. at 682 (emphasis added). As discussed above, the Board's emails strongly suggest—if not expressly admit—that the exclusions were viewpoint-based. The authors have shown a likelihood of success on the merits of their First Amendment claim.

*f. Standing to Challenge the Removal of You Should
See Me in a Crown, #Pride, and It's Your World—If
You Don't Like It, Change It*

The District argues that none of the Plaintiffs have standing to challenge the removals of *You Should See Me in a Crown*, *#Pride: Championing LGBTQ Rights*, or *It's Your World—If You Don't Like It, Change It* because these three works were only found in the middle school library, and none of the Plaintiffs attend Elizabeth Middle School.

393 U.S. at 508–09). Students' First Amendment rights cannot be abridged "unless the school reasonably forecasts it 'would materially and substantially interfere with the requirements of appropriate discipline in operation of the school,' or 'impinge upon the rights of other students.'" *Id.* (quoting *Tinker*, 393 U.S. at 505–06). Not only does the District point to no substantial disruption caused by the Removed Books, but it also removed the books based on the District's perceived "unpopular viewpoints" contained in the books.

ECF No. 25 at 11–12.¹³ Plaintiffs argue that the NAACP has standing to sue on behalf of its members because the organization’s members intend for their children to have access to the Removed Books. ECF No. 28 at 2–3. They also argue that, even if some NAACP members have moved their children to new schools following the policy changes, “the ‘opportunity’ to return [a student] to her home district, in addition to alleviating [] ongoing feelings of marginalization, is surely a ‘tangible benefit’ sufficient to confer standing.” *Deal v. Mercer Cnty. Bd. of Educ.*, 911 F.3d 183, 190 (4th Cir. 2018).

The Court finds that Plaintiffs have standing to challenge the removal of *You Should See Me in a Crown*, *#Pride: Championing LGBTQ Rights*, or *It’s Your World—If You Don’t Like It, Change It*. Although none of the Plaintiffs attend Elizabeth Middle School, the mother of Plaintiff E.S. intends for E.S. and his younger sister to attend Elizabeth Middle School, which is the only middle school in the District. ECF No. 9-3 (Smith Decl.), ¶¶ 3–5. And Portia Prescott, the local NAACP president, states that “[s]ome NAACP members removed their children from Elizabeth schools because of the District’s decision to remove books from their school libraries.” ECF No. 9-4, ¶ 9. She provided an example of one member, who had a fifth grader enrolled in Running Creek Elementary, who saw the removal of books as a manifestation of racism in the District, prompting her to unenroll her child from the elementary school. *Id.* If that fifth grader returns to the District, presumably it will be at the start of the next school year, at which point the student would be enrolled at Elizabeth Middle School as a sixth grader. Consistent with the Fourth

¹³ The Court observes that, beyond disputing Plaintiff NAACP’s standing to challenge these three Removed Books, the District does little to address the NAACP’s claims in its response. Critically, it does not contest that the NAACP has standing to sue on behalf of its members.

Circuit's reasoning in *Deal*, the opportunity for students to return to their home district is a tangible benefit sufficient to confer standing.

* * *

It is clear and unequivocal to the Court that Plaintiffs have established a substantial likelihood of prevailing on their substantive claims at trial, and therefore, this factor weighs in favor injunctive relief.

2. *Irreparable Harm*

"Irreparable harm" means that the claimed injury "must be both certain and great"; it is not enough to be "merely serious or substantial." *Prairie Band of Potawatomi Indians*, 253 F.3d at 1250 (citation omitted). Generally, a harm is not irreparable when the losses may be compensated by monetary damages. See *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003). The movant must show that the "injury complained of is of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm." *Id.* (citation omitted) (emphasis in original); *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1258 (10th Cir. 2003) (showing irreparable harm is "not an easy burden to fulfill").

The "Supreme Court has instructed that '[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Verlo v. Martinez*, 820 F.3d 1113, 1127 (10th Cir. 2016) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Stated differently, where "First Amendment rights are violated, irreparable injury is presumed." *Biogonic Safety Brands, Inc. v. Ament*, 174 F. Supp. 2d 1168, 1182–83 (D. Colo. 2001) (citing *Utah Licensed Bev. Ass'n v. Leavitt*, 256 F.3d 1061, 1076 (10th

Cir. 2001)); *see also* *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012) (“[W]hen an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” (citation and quotations omitted)).

Plaintiffs argue that the presumption of irreparable harm applies because their First Amendment rights are implicated. ECF No. 9 at 25. The District argues that Plaintiffs are not harmed “as each of the previously removed books is now available for them to read, browse, or check out in the library from which it was taken.” ECF No. 25 at 28. The District also argues that Plaintiffs’ delay in seeking a preliminary injunction implies a lack of irreparable harm. *Id.* at 29.

The Court finds that there is a presumption of sufficient irreparable injury to warrant preliminary injunctive relief, and it rejects the District’s delay argument.

First, Plaintiffs’ (the students’, parents’, NAACP members’, and authors’) First Amendment rights clearly are implicated, so the presumption applies. Second, the District’s proposed remedy—to put the removed books back in the libraries and make them available *only* to Plaintiffs, NAACP members, and NAACP members’ children—is no remedy at all. ECF No. 25 at 10 (on the same day the District filed its opposition brief, the District states that it “decided to place copies of each of the 19 titles that the School Board voted to remove in the library from which they were taken[, and t]hese titles are available only to C.C., E.S., or any student who is either a member of the NAACP [] or who has a parent or guardian who is a member of the NAACP”). As Plaintiffs point out, such compelled disclosure would be an improper restraint on Plaintiffs’ freedom of association and could chill potential litigants. *See NAACP v. State of Ala. ex rel.*

Patterson, 357 U.S. 449, 462 (1958) (“It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association”). The Supreme Court “has recognized the vital relationship between freedom to associate and privacy in one’s associations.” *Id.* “To overcome the deterrent effect on associational rights resulting from compelled disclosure of membership lists, the government must demonstrate a *compelling* interest, and a substantial relationship between the material sought and legitimate governmental goals.” *In re First Nat. Bank, Englewood, Colo.*, 701 F.2d 115, 117 (10th Cir. 1983) (citing *Patterson*, 357 U.S. at 461–64). The District has not attempted to make this showing.

There are other problems with the District’s proposed remedy. To start, the District has made clear that the removal process is ongoing. ECF No. 9-14 at 2 (Superintendent Snowberger expressly stating that additional books may be “removed based on further discussion between members of the community and the Board of Education” anytime books are “brought to the attention of the district throughout the year by staff or parents”); ECF No. 26 (answer), ¶ 149 (admitting that book-removal process is ongoing). The District ignores this argument in its response.

More fundamentally, courts have held that a “[r]estraint on protected speech generally cannot be justified by the fact that there may be other times, places or circumstances for such expression.” *Pratt v. Ind. Sch. Dist. No. 831, Forest Lake, Minn.*, 670 F.2d 771, 779 (8th Cir. 1982). Thus, it “makes no difference for purposes of the First Amendment” that the “books in question have not been removed from the Library, but rather have simply been relocated” *Virden*, 2024 WL 4360495, at *4.

Counts v. Cedarville School District is instructive. 295 F. Supp. 2d 996 (W.D. Ark. 2003). There, all *Harry Potter* books were moved to an area of the school library that was inaccessible unless students had parental permission to check them out. *Id.* at 1001. In rejecting the school's justifications for relocating the books, the district court found it important that the plaintiff could not "simply go in the library, take the books off the shelf and thumb through them—perhaps to refresh her mind about a favorite passage—without going through the permission and check-out process is a restriction on her access. Thus, . . . such restrictions . . . amount to impermissible infringements of First Amendment rights." *Id.* at 1002. The District's proposed remedy fares no better.

The same analysis applies with greater force under the Colorado Constitution. See *Tattered Cover*, 44 P.3d at 1053–54. The Colorado Supreme Court has said that, "because our state constitution provides more expansive protection of speech rights than provided by the First Amendment, *it follows that the right to purchase books anonymously* is afforded even greater respect under our Colorado Constitution than under the United States Constitution." *Id.* at 1054 (emphasis added). The Court sees no reason why this protection would not apply to students' ability to check out books at a school library without disclosing their association with this lawsuit or the NAACP.

Finally, the District argues that Plaintiffs delayed longer than they should have in seeking this injunction. This argument has some merit, but given the considerations involved—parents and students had to weigh their constitutional rights against the consequences of suing the District, which could include public shaming and humiliation—the Court does not find the delay unreasonable. ECF No. 28 at 15 (citing various Plaintiff

declarations). This is not a run-of-the-mill business dispute; a brief glance at the District's internal correspondence shows that this is a politically charged issue. See, e.g., ECF No. 9-9 (Board President discussing commitment to conservative values); ECF No. 9-12 (Board Director stating that LGBTQ literature "doesn't belong in any school" and the District's "constituents will not be happy about us returning any of these books"); ECF No. 9-13 (various book review forms from parents using strong language in opposition to ideas contained in certain Removed Books). Thus, such a delay in this situation does not signify a lack of injury.

* * *

Consistent with the above analysis, this factor, like the last, weighs in favor of injunctive relief.

3. *Balance of Hardships*

"To be entitled to a preliminary injunction, the movant has the burden of showing that 'the threatened injury to the movant outweighs the injury to the other party under the preliminary injunction.'" *Barrington v. United Airlines, Inc.*, 566 F. Supp. 3d 1102, 1113 (D. Colo. 2021) (quoting *Heideman*, 348 F.3d at 1190). As discussed above, when a government actor denies an individual a constitutional right or protection, the resulting injury is inherently serious. See *Elrod*, 427 U.S. at 373; *Verlo*, 820 F.3d 1127; 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2948.2 (3d ed.) ("[W]hen plaintiff is claiming the loss of a constitutional right, courts commonly rule that even a temporary loss outweighs any harm to defendant and that a preliminary injunction should issue.").

Quite the opposite, any injury to the District is minimal. The District contends that the District “would be forced to purchase, catalog, and re-shelve the removed titles,” and that a preliminary injunction “would leave the District unable to make decisions regarding the curation of its school libraries until the end of this litigation.” ECF No. 25 at 30. This argument fails.

The District has stated that “each of the previously removed books is now available for [Plaintiffs] to read, browse, or check out in the library from which it was taken.” ECF No. 25 at 28. It is thus not clear that the District would be forced to purchase any books. And the alleged harm of having to catalog and re-shelves books is, quite frankly, absurd: librarians do this regularly each time a patron returns a book. Finally, it would be less burdensome *to the District* to return to Removed Books to the book shelves for students to peruse on their own time without any involvement from school librarians. Under the District’s plan, a librarian must take several steps to ensure that a student is permitted to check out a Removed Book, such as verifying a student’s affiliation to this lawsuit or verifying a student’s parent’s membership in the NAACP (which can change at any time).

Restoring the Removed Books to school library shelves will cause no injury to the District. See *Sheck v. Baileyville Sch. Comm.*, 530 F. Supp. 679, 684 (D. Me. 1982) (Defendants failed to show that restoring *365 Days* to the school library pending decision on merits of Plaintiffs’ First Amendment claims would cause them comparable injury to Plaintiffs). Even if it did, the Court finds that the District’s concerns are outweighed by Plaintiffs’ constitutional protections.

Plaintiffs have shown that the balance of harms favors granting their requested injunctive relief. Factor three weighs in Plaintiffs' favor.

4. *Public Interest*

Finally, in considering whether Plaintiffs' requested injunctive relief is in the public interest, courts often find that "it is always in the public interest to prevent the violation of a party's constitutional rights." *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 237 F. Supp. 3d 1126, 1134–35 (D. Colo. 2017), *aff'd*, 916 F.3d 792 (10th Cir. 2019) (quoting *Connection Distrib., Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998)); *Loc. Org. Comm., Denver Chapter, Million Man Mar. v. Cook*, 922 F. Supp. 1494, 1501 (D. Colo. 1996) ("[A]s far as the public interest is concerned, it is axiomatic that the preservation of First Amendment rights serves everyone's best interest."). So too here.

Accordingly, the Court finds that the fourth factor weighs in favor of Plaintiffs' injunctive relief.

V. CONCLUSION

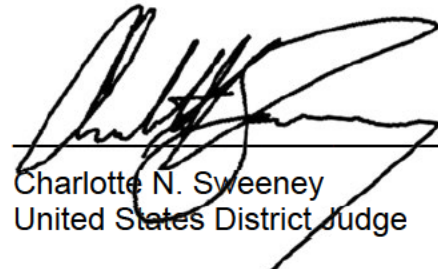
For the reasons explained below, the Court DENIES Defendant's motion to exclude. ECF No. 27. And finding that Plaintiffs have satisfied the four prerequisites for a preliminary injunction, the Court GRANTS Plaintiffs' motion. ECF No. 9.¹⁴ Pending a final

¹⁴ This order does not call into question a school's "legitimate power to protect children from harm." *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 794 (2011). But as Justice Scalia explained, that power "does not include a free-floating power to restrict the ideas to which children may be exposed." *Id.* Nor does this order address the scope of a school district's discretion over certain curricular matters. *See Hazelwood*, 484 U.S. at 273; *but see Fleming*, 298 F.3d at 920 ("We conclude by noting that the *Hazelwood* analysis does not give schools unbridled discretion over school-sponsored speech. A number of constitutional restraints continue to operate on public schools' actions, such as the Establishment Clause, the Free Exercise Clause, the Equal Protection Clause, and substantive due process."). The Court merely finds that school library books are not part of the mandatory curriculum—even when applying a broad definition of school curriculum. *Fleming*, 298 F.3d at 920 (warning against defining "school curriculum" activities too narrowly). As Plaintiffs rightly point out, no student is required to read every book in the library, ECF No. 9 at 15. and

trial on Plaintiffs' request for a permanent injunction or other resolution, the Court orders the District to return the Removed Books to their respective libraries no later than March 25, 2025, and the District is enjoined from removing additional books because the District disagrees with the views expressed therein or merely to further their preferred political or religious orthodoxy.¹⁵

DATED this 19th day of March 2025.

BY THE COURT:



Charlotte N. Sweeney
United States District Judge

as the District acknowledges, eight of the 19 Removed Books have never been checked out, ECF No. 25 at 10, which plainly shows that those books are not part of any curriculum.

¹⁵ Federal Rule of Civil Procedure 65(c) provides that a "court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Plaintiffs argue that a security is not necessary here because the District will not suffer any undue harm if the Court grants Plaintiffs' motion. ECF No. 9 at 29. The District offers no response and therefore concedes that security is unwarranted in this instance. Accordingly, the Court will not require Plaintiffs to post security.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**Defendant's Motion for Administrative
Stay and Stay Pending Appeal**

Defendant Elizabeth School District (the District) moves to stay the Court's order granting a preliminary injunction (ECF No. 35), pending appeal. The District also moves for an administrative stay of the preliminary injunction pending disposition of this motion, extending to at least 48 hours after the Court decides the motion.

* * *

I froze as he pushed inside. There it is. Oh, God. There it goes. It went, all right, with an audible tear. Pain mushroomed into agony and all I could do was go stiff.

Crank, Ellen Hopkins

Confused at his tears, and at the sticky stuff icing her hands, still Kaeleigh pleaded, "Don't cry, Daddy. What's the matter? Didn't I love you good enough?"

Identical, Ellen Hopkins

Removing himself from her was so painful to him he cut it short and snatched his genitals out of the dry harbor of her vagina.

The Bluest Eye, Toni Morrison

The District's School Board decided that books with material like that quoted above lack educational value and should not be in the District's libraries. If parents disagree, they may access the content for their children through myriad other sources, including public libraries, online libraries, Amazon, or adult bookstores. But, to the Board, books with this type of vulgar and age-inappropriate content should not be in school libraries.

The Court has held—without an evidentiary hearing—that the only explanation for the District's decision to remove this material from its school libraries is partisan motivation to further the "conservative values" of the elected School Board. And, on this basis, the Court has determined that the First Amendment requires extraordinary relief, compelling the District to repurchase the books, including those containing the passages quoted above, and to place them on school library shelves. This, even though the Plaintiffs already have access to the 18 titles at issue and waited over three months after

the Board's removal decision to bring suit. Even more, the Court, through its preliminary injunction, has made itself the last word on the constitutional bona fides of any *future* decision by the District to remove material like that quoted above from its school libraries.

The School Board exercised its discretion to remove the at-issue titles after a thorough and transparent discussion with the community, parents, the superintendent, and the chief academic officer. The decision was unanimous and enjoys broad support. Considering the extraordinary relief the Court has granted, and the first-impression legal issues in this case, the District asks the Court to stay its preliminary injunction pending appeal to the Tenth Circuit. A stay pending appeal is appropriate given that harm to Plaintiffs from staying the Court's order is nonexistent: they have had access to the at-issue titles since January 2025, and will retain that access throughout this litigation.

CONFERRAL STATEMENT

Plaintiffs oppose the relief requested in this motion.

BACKGROUND

On September 9, 2024, the District removed 18 titles¹ from its library collection after the School Board voted that they were inappropriate for students. (Snowberger Decl., ¶¶ 18–19, ECF No. 25-1.) The at-issue titles contain, among other things, graphic violence, graphic sexual content, and extreme drug and alcohol use. (See *id.*; Olsen Decl., ¶¶ 12, 28, 31, ECF No. 25-3; Powell Decl., ¶¶ 12, 31–37, ECF No. 25-4; Waller Decl., ¶¶ 9, 23, 25, ECF No. 25-5; Calahan Decl., ¶¶ 10, 24, 26, ECF No. 25-6.) The

¹ Initially, 19 titles were identified for potential removal, but one of those titles was not available for community review and thus was not included in the School Board's September 9, 2024 removal vote. (See ECF No. 25-12 at 6 (Sept. 9, 2024 Meeting Minutes) (voting to "permanently remove the 18 books that were temporarily displayed at the district office"); ECF No. 25-19 at 1 (Superintendent communication listing the 18 titles temporarily displayed for community review and potential removal and noting that *Speak* was originally on the list but was not presently available).)

Board determined that the titles were of little educational value for children and should be pulled from school library shelves. Weeks after the Board's vote, Superintendent Snowberger disposed of the physical books in the District's possession bearing the at-issue titles.² (Snowberger Decl. (March 21, 2025), ¶¶ 5–7.)

Months later, on December 19, 2024, the NAACP, The Authors Guild, and two students filed suit, alleging that removal of the books violated their rights under the First Amendment and the Colorado Constitution because the District's motivations for removing them were unconstitutional. (See Compl., ECF No. 1.) The next day, on December 20, Plaintiffs moved for a preliminary injunction ordering the books be put back on the shelves. Plaintiffs' request was accompanied by eighteen exhibits purporting to demonstrate the School Board's improper motives. (See ECF Nos. 9-1–9-18.) The District responded with declarations from each Board member explaining their actual motives, moving to exclude the Plaintiffs' evidence, and requesting an evidentiary hearing to resolve the factual disputes underlying the motion for a preliminary injunction. (See Def's Opp'n, ECF No. 25; Def's Mot to Exclude, ECF No. 27.) The parties then filed a joint request for a status conference to schedule the evidentiary hearing and discuss the scope of the hearing. (Joint Mot. for Status Conf., ECF No. 34.)

On March 19, 2025, the Court granted a broad preliminary injunction without an evidentiary hearing. (Order, ECF No. 35.) The Court relied on Plaintiffs' contested evidence to hold that Plaintiffs were likely to succeed on the merits of their underlying

² After this lawsuit commenced, a donor donated to the District copies of the at-issue titles under the condition that (1) they be made available only to the two Student-Plaintiffs and to any student in the District who is either a member of Plaintiff NAACP or who has a parent or guardian who is a member of Plaintiff NAACP, and (2) they not be placed on the District's library shelves. (Snowberger Decl. (March 21, 2025), ¶ 11.) The donated books have been placed in the District libraries from which the 18 titles had been removed, and they are available to the above-identified students upon request. (*Id.* ¶ 12.)

claim. Based on that holding, it issued a preliminary injunction giving the Board six days to “return” every book it had removed “to their respective libraries.” (*Id.* at 45.) It also broadly prohibits the Board from removing any additional books for the reasons the Court found problematic, which effectively creates a cloud of constitutional doubt over every future book-removal decision by the Board or the District’s librarians.

LEGAL STANDARD

In considering whether to grant a motion for a stay pending appeal, the Court must balance four factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009); *United States v. Peck*, No. 23-4000, 2023 WL 3011416, at *1 (10th Cir. Apr. 17, 2023) (granting stay pending appeal). Additionally, the Court has the power to grant a temporary stay of its preliminary injunction pending a decision on this motion. Every court has the inherent power to “control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Carbajal v. Colorado Dep’t of Corr.*, No. 22-CV-03062-PAB-KAS, 2025 WL 746918, at *1 (D. Colo. Feb. 25, 2025) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936)).

ARGUMENT

The District acknowledges that the Court just granted a preliminary injunction to Plaintiffs based on a similar standard. In seeking a stay, the District is not arguing that the Court should reconsider its previous order; it is asking the Court only to recognize that there is a substantial likelihood that the Tenth Circuit may disagree with the Court’s view of the case. The considerations attending a short-term stay pending appeal differ from those relevant to a preliminary injunction. *See Mohammed v. Reno*, 309 F.3d 95, 101 n.6

(2d Cir. 2002) (“a preliminary injunction will last until the end of the trial, often a considerable length of time after issuance, whereas a stay pending appeal, at least in the case of an expedited appeal, might last for a very brief interval”).

I. The District is Likely to Succeed on Appeal

A. The Court granted the preliminary injunction by resolving contested fact issues with inadmissible evidence without an evidentiary hearing

“[M]ost courts hold that when the written evidence reveals a factual dispute, an evidentiary hearing must be provided[.]” Wright & Miller, *Federal Practice & Procedure*, § 2949 Procedure on Application for Preliminary Injunction (3d ed.). To prevail on their motion for a preliminary injunction, Plaintiffs had to at least show that the five-member School Board exercised its discretion—as a body—in a narrowly partisan or political manner such that its subjective motivation was unconstitutional. (See Pls.’ Mot. for Prelim. Injunc. 17, ECF No. 9 (citing *Pico* and stating “the plurality gleaned the rule that school boards cannot constitutionally exercise their discretion to determine the content of school libraries ‘in a narrowly partisan or political manner’”).) The constitutional standard advanced by Plaintiffs is inherently fact based, and the Court acknowledged the District’s motivation for removing the books is in dispute. (Order 12, ECF No. 35.)

Thus, in addition to rejecting the District’s arguments challenging the applicability of the *Pico* plurality standard (see Def.’s Opp’n 12–24, ECF No. 25), the Court had to find that “narrow[] partisan or political” motive was the “decisive factor” in the School Board’s decision to remove the 18 at-issue titles.

All members of the School Board that voted on the removal decision submitted declarations opposing Plaintiffs’ motion and disputing they were individually, or collectively, motivated by partisan or political motive. (Olsen Decl., ¶¶ 12–31, 33–34, ECF No. 25-3; Powell Decl., ¶¶ 12–38, ECF No. 25-4; Waller Decl., ¶¶ 9–27, ECF No. 25-5; Calahan Decl., ¶¶ 10–27, ECF No. 25-6; see *a/so* Booth Decl., ¶¶ 9–26, ECF No. 25-7

(explaining why she agreed with the Board’s removal decision).) Each declaration stated in detail the Board member’s respective motivation, which was informed by a variety of factors, including the problematic nature of the at-issue titles’ content (graphic violence, excessive obscenity, explicit descriptions of sexual acts, troubling portrayals of suicide attempts and school shootings), inappropriateness for the age groups that could access the books, lack of sufficient educational value and lack of connection to a public-school curriculum, and parental opposition to the continued inclusion of the books in the District’s libraries. (See, e.g., Olsen Decl., ¶¶ 27–31, ECF No. 25-3.)

Nonetheless, without a hearing, the Court determined the decisive factor in the Board’s removal decision was “blatantly unconstitutional” based on statements from three Board members in five out-of-context emails.³ (Order 25–28.) In so doing, the Court elevated statements by a Board member who did not vote on the final removal decision (ECF No. 25-12 at 6 (Sept. 9, 2024 Meeting Minutes)), and an email about a book the Board has never voted to remove (*compare id.* (voting to remove 18 titles under consideration); ECF No. 25-19 at 1 (listing titles under consideration), *with* ECF No. 9-16 (Olsen email regarding *Redwood and Ponytail*), *and* Olsen Decl., ¶¶ 32, 36, ECF No. 25-3)), over each School Board member’s specific explanation for his or her vote. The Court also assumed that any Board member’s reference to “conservative values” doubled as an admission of a partisan or political motive (Order 29–30, 33), rather than an expression of a commitment to honoring parental rights, protecting students from exposure to

³ Only two of those emails mention any of the 18 at-issue titles, and even then, the discussion addressed just two titles. (See ECF Nos. 9-12 & 9-14.) Further, and contrary to the Court’s finding that Defendant’s objections to the admissibility of these emails as hearsay were “meritless,” the emails are hearsay (in fact, hearsay within hearsay) until Plaintiffs establish the predicates in Fed. R. Evid. 801(d)(2)(D). An evidentiary hearing would have permitted Plaintiffs and Defendant to explore the context of these emails with their apparent authors and recipients.

inappropriate content, and ensuring that library content furthers the District's educational mission. At the very least, the Court should have heard testimony from the Board members, weighed the competing evidence, and made credibility determinations before reaching a conclusion about the Board's motives. Instead, the Court discounted the statements in the Board members' declarations as "after-the-fact" and "prepared with counsel's advice." (Order 30.) This presents a fairness problem. It is prejudicial to make a fact-based determination, such as the Board's motive, without the benefit of a hearing, while at the same time refusing the District's competing evidence because it was prepared in defense of the motion for preliminary injunction.

B. The District's removal of books is government speech

"A government entity has the right to 'speak for itself.'" *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 467 (2009) (quoting *Board of Regents of Univ. of Wis. System v. Southworth*, 529 U.S. 217, 229 (2000)). Just as a person has a right to speak or not speak as they see fit, a government entity can choose what to say. And, just like a person, "[w]hen government speaks, it is not barred by the Free Speech Clause from determining the content of what it says." *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 207 (2015). Therefore, if the District's curation of its libraries constitutes government speech, the Plaintiffs cannot prevail on their book-removal claims.

The Supreme Court has held that "[a]n entity exercis[ing] editorial discretion in the selection and presentation of content is engage[d] in speech activity." *Moody v. NetChoice, LLC*, 603 U.S. 707, 731 (2024) (internal quotations omitted). This is true even when the content involved is the speech of another party: "Deciding on the third-party speech that will be included in or excluded from a compilation—and then organizing and presenting the included items—is expressive activity of its own. And that activity results in a distinctive expressive product." *Id.*

As the Court recognized, *Moody* provides “compelling” reason to believe that the District’s removal of books is expression. (Order 18.) The District’s editorial practices with respect to its libraries are expressive in the same way as social media or newspaper editorial practices. This is not because inclusion of books in a library conveys an express endorsement or sponsorship; a social media company does not explicitly endorse the content it puts in a user’s feed. “Deciding on the third-party speech that will be included in or excluded from a compilation—and then organizing and presenting the included items—is expressive activity of its own.” *Moody*, 603 at 731.

Under *Moody*, a private library’s choice of books would constitute protected expression. There is a substantial likelihood that a higher court will hold that a government library’s choice of books is government speech.

C. Even if government speech does not apply, the District prevails under *Hazelwood*

Even if the government-speech doctrine does not apply, the District’s removal of books was a constitutional restriction of speech that might reasonably be perceived to bear the District’s imprimatur. *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988), sets the standard for restrictions of speech within “activities that might reasonably be perceived to bear the imprimatur of the school” and that “involve pedagogical concerns.” *Fleming v. Jefferson Cnty. Sch. Dist. R-1*, 298 F.3d 918, 924 (10th Cir. 2002). A school may restrict speech under *Hazelwood* so long as the restrictions are “reasonably related to legitimate pedagogical concerns.” *Pompeo v. Bd. of Regents of the Univ. of New Mexico*, 852 F.3d 973, 982 (10th Cir. 2017). The universe of “legitimate pedagogical concerns” is large, including “the academic ... discipline, courtesy, and respect for authority.” *Fleming*, 298 F.3d at 925. Even the mere “desire to avoid controversy within a school environment” is enough to satisfy *Hazelwood*. *Id.* (collecting cases). This is a

lenient test, and courts will only step in to stop restrictions of *Hazelwood* speech if the restrictions have “no valid educational purpose.” *Hazelwood*, 484 U.S. at 273. Nor should a court “second-guess the *pedagogical* wisdom or efficacy of an educator’s goal.” *Axson-Flynn*, 356 F.3d 1277, 1292 (10th Cir. 2004) (emphasis in original).

The Tenth Circuit has previously applied *Hazelwood* to a collection of third-party expression hosted by a school. In *Fleming*, the Tenth Circuit held that *Hazelwood* applied to works of art hung in a school that were painted by third parties who were not students and, in some cases, had no relationship to the school. See 298 F.3d at 921. The court held that *Hazelwood* controlled because “[t]he presence of permanently affixed tiles on the walls implicates the school’s approval of those tiles. When coupled with organizing, supervising, approving the funding, and screening the tiles, the school’s decision permanently to mount them on the walls conveys a level of approval of the message.” *Id.* at 930. This is closely analogous to a school library: speech of third parties hosted in the school, funded by the school, and screened by the school.

The restrictions imposed by the District served a legitimate pedagogical interest and were constitutional under *Hazelwood*. The District acted to avoid exposing students to what it considered to be inappropriate or objectionable content, which is one of the “legitimate pedagogical concerns” identified in *Hazelwood* itself. Indeed, one of the conceptual foundations of *Hazelwood* was the Supreme Court’s conclusion that schools needed control over school-sponsored speech to ensure students “are not exposed to material that may be inappropriate for their level of maturity.” *Hazelwood*, 484 U.S. at 271.

D. Plaintiffs have no cause of action under the Colorado Constitution

Article II, Section 10 of Colorado’s Constitution does not contain an express right of action and there is no state statute creating one. See *Vanderhurst v. Colorado Mountain College Dist.*, 16 F. Supp. 2d 1297, 1304 (D. Colo. 1998); Colo. Const. Art. II, Section 10.

Plaintiffs are therefore asking this Court to recognize an implied cause of action to enforce the Freedom of Expression provisions in the Colorado Constitution.

In *Board of County Commissioners v. Sundheim*, the Colorado Supreme Court held that courts may imply such a cause of action only where there is “no other adequate remedy.” 926 P.2d 545, 553 (Colo. 1996). *Sundheim* further held that a Section 1983 action under the federal constitution is an “adequate remedy” sufficient to foreclose the need for an implied cause of action. *See id.*

This holding forecloses the Plaintiffs’ state constitutional claims. The Tenth Circuit has applied the rule of *Sundheim* to dismiss state law claims in precisely the situation presented by this case. Citing *Sundheim*, the Tenth Circuit held that a plaintiff may not bring an action under Article II, Section 10 of the Colorado Constitution if they can also bring a Section 1983 action for violation of the First Amendment. *Arndt v. Koby*, 309 F.3d 1247, 1255 (10th Cir. 2002). This disposes of Plaintiffs’ state constitutional claims.

E. The Author Plaintiffs have no First Amendment right to have their books in school libraries

The author Plaintiffs have no right to have their books in school libraries. First, the authors’ claim is properly analyzed under the government-speech doctrine. Authors have no right to have the government purchase and stock their books. Such a right would amount to a right to government sponsorship of the authors’ speech. Even assuming government speech does not apply, the author Plaintiffs’ claim fails under *Hazelwood* because the books in the library bear the imprimatur of the school and were removed based on legitimate pedagogical concerns. While the authors argue that the library is a forum for speech, their position would destroy the library as we know it.

Taking the authors forum argument to its logical conclusion demonstrates the necessity of employing either *Hazelwood* or the government-speech doctrine. If a school

library is a nonpublic forum, the District is not permitted to exclude books for the views they espouse. *See Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 682 (1998). Books of every stripe must be allowed in the library, no matter if they are unscientific, racist, sexist, or otherwise objectionable. This is not the way of libraries.

Authors have no right to have the government purchase, stock, and display their work. The curation of libraries is an act of expression and the authors are not entitled to the government's speech. The District does not offend the First Amendment when it removes inappropriate books from its library shelves. And even then, the relevant consideration is the rights of students, not the authors. Libraries are not fora where an author is entitled to the display of their work. They are reserved for the works judged proper for inclusion. The authors have no First Amendment rights at stake here.

II. The District will suffer irreparable harm in the absence of a stay

The District will suffer irreparable harm without a stay. The “irreparable harm requirement is met if a [party] demonstrates a significant risk that he or she will experience harm that cannot be compensated after the fact by monetary damages.” *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1258 (10th Cir. 2003) (quoting *Adams v. Freedom Forge Corp.*, 204 F.3d 475, 484–85 (3d Cir.2000)). Irreparable harm can include “increased costs of compliance” and “alterations in operating procedures.” *Career Colls. & Sch. of Tex. v. U.S. Dep’t of Educ.*, 98 F.4th 220, 235 (5th Cir. 2024), *cert. granted in part*, No. 24-413, 2025 WL 65914 (U.S. Jan. 10, 2025). If the injunction goes into effect, the District will suffer irreparable harm in at least two respects, as outlined below.

A. Intrusion into future Board decisions regarding library collection

Under the Court's order, the District will be unable to curate its own library collection. The Court has ordered that “the District is enjoined from removing additional books because the District disagrees with the views expressed therein or merely to further

their preferred political or religious orthodoxy.” (Order 45.) Given the Court’s findings that the sworn declarations of District officials are “pretext” covering for an unconstitutional decision based on political or religious bigotry, this injunction is breathtakingly broad. Any decision to remove any book for any facially valid reason could be subject to second-guessing by the Court based on nothing more than a declaration from an aggrieved party who claims to know the motivations of the District’s School Board members. Indeed, the Court’s order appears to acknowledge the authority it is assuming when it refused to categorically approve the removal of books promoting holocaust denial. (*Id.* at 35 n.11.) What is age-appropriate for the District’s children, and what is too sexually explicit for them, are necessarily political issues. It is for this reason that the U.S. Supreme Court has cautioned that “Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems, and which do not *directly and sharply implicate basic constitutional values*.” *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) (emphasis added). This Court’s injunction mandates precisely this sort of intervention in order to vindicate a constitutional right of suspect provenance. In effect, the Court is now the District’s de-facto library superintendent. This will necessarily paralyze Board’s statutory decision-making authority regarding its library collections. This harm is irreparable absent a stay pending appeal.

B. Mandatory actions required of the District

The Court’s preliminary injunction does not only require the District to refrain from certain actions, it mandates the District do two things: (1) repurchase and shelve copies of the 18 at-issue titles, and (2) adopt new interim library policies. The limited purpose of a preliminary injunction “is merely to preserve the relative positions of the parties until a trial on the merits can be held.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Preliminary injunctions requiring the nonmoving party to take such affirmative actions

before a trial on the merits are expressly disfavored. See *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258–59 (10th Cir. 2005).

The District discarded its copies of the at-issue titles after the School Board's September 9, 2024 decision to remove them from the District's library collection. (Snowberger Decl. (March 21, 2025), ¶¶ 5–7.) If Plaintiffs or their attorneys had made a demand for the books' preservation pending litigation before that time, the District could have preserved them. (*Id.* ¶¶ 8–9.) But the first communication the District received regarding this lawsuit was Plaintiffs' complaint filed over three months after the Board's decision to remove these books from its libraries. (*Id.* ¶¶ 8, 10.) Though a private donor made arrangements for the Plaintiffs to have access to copies of the 18 titles during the pendency of this lawsuit, the District is unable to place these copies on the library shelves because these copies were donated on the condition that they be provided only to Plaintiffs in this lawsuit and other specific students. (*Id.* ¶¶ 11–12.) Thus, if the Court does not stay its injunction, the District will be forced to purchase a new set of books that its elected Board has determined are harmful to the students in the District's charge. (*Id.* ¶ 13.) This will cause irreparable harm by forcing the District to exercise its expressive editorial discretion against its will. See *Awad v. Ziriya*, 670 F.3d 1111, 1131 (10th Cir. 2012) (“[w]hen an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”).

If the Court does not stay its order, the District will also be forced to develop new library policies. Regardless of the District's motives for removing the books, most of them contain content that is unquestionably inappropriate for children. In fact, the book removals in question were a response to an incident where a middle school student was allowed to check out a book that the publishers of the book determined was inappropriate for her age. (See Snowberger Decl., ¶ 11, ECF No. 25-1.) A number of the books in

question contain explicit and grotesque descriptions of rape and incest. (See, e.g., BookLooks Ratings 19, ECF No. 25-18 (“Still, as I opened my mouth, his hand slapped down on it. Those sublime muscles hardened. Just relax. You’ll love it. My brand-new Victoria’s Secrets shredded, and I felt the worst of Brendan pause, savoring my terror. They all love it. Had he done it a different way, I might have responded with excitement. Instead, I froze as he pushed inside. There it is. Oh, God. There it goes. It went, all right, with an audible tear. Pain mushroomed into agony and all I could do was go stiff. You weren’t lying, you bitch! I laid there, sobbing, as he worked and sweated over me. Stoked by the monster, it took him a long time to finish. Give me a line, I’ll give you an encore. He pulled away sticky and bloody.”); see also *id.* 55–57, 80.) Politics or not, the District will have to find a way to accommodate reasonable parental concerns about student access to such grotesque material. And it will have to do so while trying to navigate a preliminary injunction. These “necessary alterations in operating procedures” constitute irreparable harm sufficient to justify a stay. *Career Colleges*, 98 F.4th at 235.

III. The Plaintiffs will not be substantially injured by a stay

Recognizing the serious harms above, the balance of equities tips decidedly in the District’s favor. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). In contrast to the irreparable harm faced by the District, Plaintiffs will suffer no harm if the Court stays its injunction. As briefed to the Court, Plaintiffs currently have full and free access to the books in question. Plaintiffs have no claim to substantial injury when they already have access to the information they seek. See *C.K.-W. by & through T.K. v. Wentzville R-IV Sch. Dist.*, 619 F. Supp. 3d 906, 919 (E.D. Mo. 2022) (“The removal of the books at issue from the District’s schools does not stop any student from reading or discussing the book, which surely would raise a more serious issue.”).

The Plaintiffs' significant delay in seeking preliminary relief also weighs in the District's favor. See *GTE Corp. v. Williams*, 731 F.2d 676, 678 (10th Cir. 1984). "Courts in both this jurisdiction and others have uniformly determined that a movant's delay in seeking injunctive relief warranted the relief's denial." *Colo. Motor Carriers Ass'n v. Town of Vail*, No. 123CV02752CNSSTV, 2023 WL 8702074, at *12 (D. Colo. Dec. 15, 2023). Even if the Plaintiffs' delay was not sufficient per se to require denial of their request for preliminary-injunctive relief, it should weigh in the District's favor when considering the request for a stay pending appeal.

IV. The public interest favors a stay

The public interest inquiry "primarily addresses impact on non-parties rather than parties." *Bernhardt v. L.A. Cty.*, 339 F.3d 920, 931–32 (9th Cir. 2003). The Court must "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Here, the public interest favors granting a stay. Thousands of students and their parents rely on the District to appropriately curate its library collections. The Court should at least wait to intervene in the decisions of the District's elected school board until the Tenth Circuit has had an opportunity to weigh the significant legal issues presented by its order.

CONCLUSION

The District asks the Court to stay its preliminary injunction pending appeal to the Tenth Circuit. Additionally, the District asks the Court to enter an administrative stay pending briefing on the District's motion for a stay pending appeal, extending until at least 48 hours after the Court decides the motion. Such a stay would give the parties time to fully brief the District's motion without the threat of an impending injunction, which will require the District to repurchase and stock the at-issue titles.

Dated: March 21, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 21, 2025, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following email addresses:

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s/ Kelly Callender
FIRST & FOURTEENTH PLLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**Declaration of Dan Snowberger, Superintendent, Elizabeth School District, in
Support of Defendant's Motion for Administrative Stay and Stay Pending Appeal**

I, Dan Snowberger, being over 18 years of age, submit the following declaration in support of Defendant Elizabeth School District's Motion for Administrative Stay and Stay Pending Appeal, and state as follows:

1. I have reviewed and am generally familiar with the Court's order granting a preliminary injunction (ECF No. 35).
2. I make this declaration based on personal knowledge.
3. As the Superintendent of Schools for the Elizabeth School District, I serve as the chief executive and operations officer of the District. Among other things, I communicate and collaborate with the School Board on all issues that may impact the District, including implementing School Board decisions.
4. On September 9, 2024, the School Board voted to remove 18 titles from the District's school libraries. (ECF No. 25-12 (Sept. 9, 2024 Meeting Minutes) at 6 (voting to permanently remove 18 titles that were temporarily displayed at the District office); ECF

No 25-19 (Aug. 16, 2024 Superintendent Letter) at 1 (listing the 18 titles on temporary display and noting that a nineteenth book, *Speak*, had been on the list but was unavailable for public review because it had been checked out and not yet returned).)

5. After the School Board's September 2024 removal vote, the Board directed me to discard the District's physical copies of the 18 titles, as they were no longer needed. For some of the titles, the District had more than one physical book either because the title was located in two District libraries, or because there was more than one copy of the title in a single library.

6. Due to an oversight, these physical books remained in my possession at my District office for several weeks following the School Board's September 2024 vote. Upon discovery, I collected the books and discarded them, as instructed by the Board.

7. Between the School Board's September 2024 vote and when I discarded the books, no one requested preservation of the books.

8. After I discarded the books, I did not think anything more about them until this lawsuit was filed on December 20, 2024, which was over three months after the School Board voted to remove the 18 titles from the District's libraries.

9. If Plaintiffs or their attorneys had made a demand for the books' preservation pending litigation, the District could have preserved them.

10. The first communication the District received regarding this lawsuit was when Plaintiffs' attorney served the District's outside general counsel with the complaint via email at 12:23 A.M. on December 20, 2024.

11. In January 2025, after the lawsuit was filed, a private donor gave the District copies of the 18 at-issue titles, as well as the nineteenth title that was not available for

public review and that the Board did not vote to remove (*see supra* ¶ 4),¹ subject to two conditions: (1) the books are only made available to the two Student-Plaintiffs and to any student in the District who is either a member of Plaintiff NAACP or who has a parent or guardian who is a member of Plaintiff NAACP, and (2) the books are not to be placed on the District's library shelves. The donor indicated that he donated the books because he wanted the District to avoid unnecessary distraction while the lawsuit is being litigated, and not because he supports the presence of the books in the District's schools. The District did not expend any District resources on these donated books.

12. Upon receipt of the conditional donation, the School Board directed me to place the donated books in the libraries from which they had been removed. The donated books are being kept at their respective libraries behind the desk and are available upon request by the individuals described above. The donated books will remain at the libraries for the duration of this litigation. (See ECF No. 25-3 ¶¶ 35, 37–39 (Olsen Decl.); ECF No. 25-4 ¶¶ 39, 41–43 (Powell Decl.); ECF No. 25-5 ¶¶ 28, 30–32 (Waller Decl.); ECF No. 25-6 ¶¶ 28, 30–32 (Calahan Decl.).)

13. Because the District disposed of its physical copies of the at-issue books before this lawsuit was filed, it would have to purchase new books that could be placed on the District's library shelves to comply with the Court's preliminary injunction.

¹ In total, the donor gave the District 21 physical books. One book for 16 of the 18 at-issue titles; two books for two of the 18 at-issue titles, because those titles appeared in two District libraries before they were removed; one book for the nineteenth title (*Speak*) that was not on display and not voted on by the School Board.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 21, 2025, in Springer, New Mexico.

s/ Dan Snowberger

Dan Snowberger
Superintendent
Elizabeth School District

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a
minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on
behalf of E.S.;
NAACP-COLORADO-MONTANA-WYOMING STATE AREA
CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR ADMINISTRATIVE
STAY AND STAY PENDING APPEAL**

Defendant Elizabeth School District (the "District") asks this Court to backtrack on last week's ruling granting Plaintiffs' motion for a preliminary injunction by, in effect, maintaining its book ban while it seeks relief from the Tenth Circuit. In support, the District relies on legal arguments that the Court considered and rejected in a well-reasoned opinion and a spurious argument that putting the books back constitutes "irreparable harm." There is no reason to permit the District to continue abridging Plaintiffs' federal and state constitutional rights during the pendency of the District's appeal when all that is required is simply placing the books at issue (the "Removed Books") back on the shelves. The District's Motion for Administrative Stay and Stay

Pending Appeal filed on March 21, 2025 (ECF No. 42), should be denied by this Court because the District cannot make a strong showing that it will succeed on the merits or be irreparably harmed absent a stay.

First, as this Court just held, the District's position is contrary to applicable First Amendment authority. The District's book ban is not government speech; it is not school-sponsored speech; nor is it reasonably related to legitimate pedagogical concerns. Instead, this Court found Plaintiffs are likely to prevail in showing the District removed the books to further its partisan viewpoints and because it disagreed with the views expressed in the books in violation of both the federal and Colorado Constitutions. Having made the requisite showing, Plaintiffs are entitled to move forward with discovery and a trial on the merits while the District remains enjoined from violating their constitutional rights.

Second, the District cannot show it will be irreparably harmed absent a stay. The District has copies of the Removed Books that it can put back on shelves immediately. There is no irreparable harm caused by reshelving the books. Further, the District's argument that it will be irreparably harmed by the "intrusion" caused by the injunction is baseless. Enjoining the District from removing additional books based on political ideology, is not, as the District states, an "intrusion"—it is the law. Every day that the books are not returned to the school libraries inflicts irreparable harm to Plaintiffs' federal and state constitutional rights. The Court should not allow Plaintiffs' rights to be violated any longer and deny the District's request for a stay of its Order pending appeal.

BACKGROUND

Because the Court is intimately familiar with the facts of this case—having just issued a thorough 45-page Order granting Plaintiffs’ motion for preliminary injunction (ECF No. 35)—Plaintiffs will not repeat the facts again here.

Since the Court issued its Order on March 19, 2025, there have been several developments. On March 20, the District filed a notice of appeal with the Tenth Circuit, appealing both the Court’s denial of its motion to exclude evidence and the Court’s grant of Plaintiffs’ motion for preliminary injunction. (ECF No. 38.) On March 21, the District filed its Motion for Administrative Stay and Stay Pending Appeal with this Court. (ECF No. 42 (“Motion”)). This Motion alleged—for the first time—that the Removed Books were donated by a community member with the condition that they would not be placed back on library shelves. (*Id.* at 3 n.2.) The District neglected to mention this condition earlier, only stating that it made a set of Removed Books available to Plaintiffs. (ECF No. 25-1 ¶ 38.)

On March 24, the District filed an Emergency Motion for Administrative Stay and Stay Pending Appeal with the Tenth Circuit. (No. 25-1105, ECF No. 18-1.) Before the filing of that motion, Plaintiffs’ counsel communicated to the District’s counsel that it was donating copies of all of the Removed Books to the District. Plaintiffs’ counsel stated the books would be delivered by March 25 to help facilitate the District’s compliance with this Court’s Order, since the District’s new allegations that it discarded the Removed Books prior to litigation and that the copies provided by an anonymous donor were not available to all students—just Plaintiffs. (Exhibits 1 & 3, Decl. of Thomas Dec.) The

District did not inform the Tenth Circuit that it was receiving copies of the Removed Books that would allow it to comply with this Court's Order on time. (See No. 25-1105, ECF No. 18-1.) Copies of the Removed Books were delivered to defense counsel's offices on the afternoon of March 25. (Exhibit 2, Decl. of Thomas Dec.)

On March 25, this Court issued an order staying its Order granting Plaintiffs' motion for preliminary injunction until 48 hours after it rules on the District's Motion. (ECF No. 45.) Shortly thereafter, the Tenth Circuit issued an order denying the District's emergency motion for stay without prejudice. (No. 25-1105, ECF No. 19.)

LEGAL STANDARD

In determining whether a stay pending appeal of a preliminary injunction is warranted, this Court considers four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009). The first two factors "are the most critical." *Id.* "[M]ore than a mere possibility" of success on the merits and irreparable injury is required. *Id.* at 434–35 (internal quotations omitted). A "stay is not a matter of right, even if irreparable injury might otherwise result." *Id.* at 433. As the party requesting a stay, the District bears the burden of showing that such a stay is warranted under the circumstances.

ARGUMENT

The Court should deny the District's request to stay its Order granting a preliminary injunction pending appeal. The District fails to meet its burden of making a strong showing that it is likely to succeed on the merits of its arguments on appeal and that it will suffer irreparable harm absent a stay of the preliminary injunction. The District has not met its burden under any of the four relevant factors.

I. THE DISTRICT HAS NOT MADE THE REQUISITE STRONG SHOWING THAT IT IS LIKELY TO SUCCEED ON APPEAL.

A. The Court properly found that a full evidentiary hearing was unnecessary.

This Court correctly found that it could proceed with its ruling without a full evidentiary hearing and without applying the federal rules of evidence. (Order at 10–13.) Without a single citation to case law, the District relitigates this Court's decision to grant a preliminary injunction without a full evidentiary hearing, asserting that this "presents a fairness problem" and "is prejudicial." (Motion at 7.)

Federal Rule of Civil Procedure 65 does not require courts to hold a hearing in advance of deciding a motion for preliminary injunction. Indeed, district courts have broad discretion in determining whether to hold such a hearing. *See Carbajal v. Warner*, 561 F. App'x 759, 764 (10th Cir. 2014) (reviewing district court's denial of a request for evidentiary hearing on a motion for preliminary injunction for abuse of discretion, and finding none); *Buentello v. Boebert*, 545 F. Supp. 3d 912, 914 n.1 (D. Colo. 2021). And courts are certainly not required to hold a full-scale evidentiary hearing applying the federal rules of evidence. As the Tenth Circuit has explicitly stated, "[t]he Federal Rules of Evidence do not apply to preliminary injunction hearings." *Heideman v. S. Salt Lake*

City, 348 F.3d 1182, 1188 (10th Cir. 2003). Therefore, the District's characterization of evidence as "inadmissible" at this stage is incorrect. The District has not made the requisite strong showing that it is likely to succeed on appeal because the Court did not hold such an evidentiary hearing.

B. The Court correctly determined that the government speech doctrine is inapplicable to the District's removal of the books.

No court, including this one, has agreed with the District's assertion that its library curation decisions are government speech. In fact, every court to have addressed this issue has found the opposite. See *GLBT Youth in Iowa Sch. Task Force v. Reynolds*, 114 F.4th 660, 667 (8th Cir. 2024) ("[T]he placement and removal of books in public school libraries" is not government speech.); *PEN Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd.*, 711 F. Supp. 3d 1325, 1331 (N.D. Fla. 2024) (school library not viewed "as the government's endorsement of the views expressed in the books"); *Virden v. Crawford County*, No. 2:23-CV-2071, 2024 WL 4360495, at *5 (W.D. Ark. Sept. 30, 2024) ("[T]he Supreme Court has not extended [government-speech] doctrine to the placement and removal of books in libraries."). Indeed, "if placing these books on the shelf of public school libraries constitutes government speech, the State is babbling prodigiously and incoherently." *GLBT Youth in Iowa Sch. Task Force*, 114 F.4th at 668 (internal quotations omitted).

Moreover, the Supreme Court has explicitly warned against expanding the government speech doctrine given that "it is a doctrine that is susceptible to dangerous misuse." *Matal v. Tam*, 582 U.S. 218, 235 (2017) ("[W]e must exercise great caution before extending our government-speech precedents."). Thus, the District's reliance on

Moody v. NetChoice—although characterized as “compelling” by the Court—does not establish a “strong showing” that such an argument would be successful, especially in light of all of the other case law that has held to the contrary when squarely addressing the question of government speech in the context of library book removals. The District cannot make the requisite strong showing of success on the merits where courts have historically limited the doctrine it seeks to expand. *See Bradford v. U.S. Dep’t of Labor*, No. 21-cv-03283-PAB-STV, 2022 WL 266805, at 3 (D. Colo. Jan. 28, 2022) (no “strong showing” of success on appeal established where higher courts had not previously decided the issue and courts had “historically” applied doctrine differently than moving party argued).

C. The Court properly found that the District cannot prevail under the *Hazelwood* standard.

The District maintains its argument that *Hazelwood* bars Plaintiffs’ claims. It does not. *Hazelwood* applies only to restrictions on *curricular* speech—not to the removal of books from school libraries—and the District could not satisfy *Hazelwood*’s test even if it did apply.

In *Hazelwood*, the Supreme Court distinguished between speech that a school “tolerate[s]” and “speech that may fairly be characterized as part of the school curriculum,” which “the public might reasonably perceive to bear the imprimatur of the school.” 484 U.S. 260, 271 (1988). The Supreme Court held that any restrictions on curricular speech must be “reasonably related to legitimate pedagogical concerns.” *Id.* at 273. Here, the Board’s decision to remove books from school libraries “concerns a non-curricular matter” making *Hazelwood* inapplicable. *See Case v. Unified Sch. Dist.*

No. 233, Johnson Cnty., Kan., 895 F. Supp. 1463, 1469 (D. Kan. 1995) (declining to apply *Hazelwood* where book was removed from school library because *Hazelwood* “was a curriculum case”).

And even if *Hazelwood* did apply, the District cannot meet its standard. “The imprimatur concept covers speech that is so closely connected to the school that it appears the school is somehow sponsoring the speech.” *Fleming v. Jefferson Cnty. Sch. Dist. R-1*, 298 F.3d 918, 925 (10th Cir. 2002). As this Court rightfully explained, “no reasonable person would assume that the District is sponsoring the speech or the views contained in the Removed Books.” (Order at 32); *see also PEN Am. Ctr., Inc.*, 711 F. Supp. 3d at 1331 (“[T]he Court simply fails to see how any reasonable person would view the contents of the school library (or any library for that matter) as the government’s endorsement of the views expressed in the books on the library’s shelves.”).

Moreover, the Board Members’ contemporaneous statements about the Removed Books show that their decisions were not “reasonably related to legitimate pedagogical concerns.” *Hazelwood*, 484 U.S. at 273. While the District attempts to walk back the Board Members’ statements by pointing to the Board Members’ declarations which insist that the books were removed due to vulgarity or age-inappropriateness, the Board Members’ emails explicitly state otherwise. (See Order at 29 (citing Board Member emails).) In its Motion, the District cherry picks passages from three of the Removed Books in an effort to sensationalize their arguments and re-write their motivations for removing the books. (See Motion at 1.) Notably, its Motion says nothing

about books like *You Should See Me in a Crown*, *#Pride: Championing LGBTQ Rights*, or *It's Your World—If You Don't Like It, Change It*—none of which contain any sexually explicit content. At the preliminary injunction stage, the Court correctly refused to credit the District's litigation-inspired attempts to claim it removed the books due to legitimate pedagogical concerns. The District will have an opportunity to persuade a jury or this Court otherwise upon a full evidentiary record at trial.

The District has not shown that its library curation decisions are curricular speech under the purview of *Hazelwood*, or that the removal of the books was based on any legitimate pedagogical concern. Thus, the District has not made a strong showing that it will succeed on this argument on appeal.

D. The District's argument that Plaintiffs have no cause of action under the Colorado Constitution is both waived and erroneous.

For the first time in this matter, the District argues that Article II, Section 10 of Colorado's Constitution does not confer a private right of action. Because this argument was not raised to the Court in the District's response to Plaintiffs' motion for preliminary injunction, it is waived, so there is no possibility that it would be successful on appeal. This argument is also wrong.

The District cites *Board of County Commissioners v. Sundheim* for the proposition that there is no cause of action under the Colorado Constitution where a plaintiff may recover under the federal Constitution. 926 P.2d 545, 553 (Colo. 1996). But *Sundheim* held as such for damages actions, not for actions requesting declarative or injunctive relief, as Plaintiffs seek under the Colorado Constitution. For claims seeking declarative or injunctive relief, the law allows for a private right of action under the

Colorado Constitution. See *Bock v. Westminster Mall Co.*, 819 P.2d 55, 56 (Colo. 1991) (recognizing private right of action under Article II, Section 10 of the Colorado Constitution for declaratory and injunctive relief); *Brammer-Hoelter v. Twin Peaks Charter Acad.*, 81 F. Supp. 2d 1090, 1098 (D. Colo. 2000) (explaining that Colorado courts recognize a private right of action under Article II, Section 10 where the plaintiffs “sought prevention of future violations of their free speech rights”).

And regardless of the District’s waiver and its incorrect interpretation of the case law, even if Plaintiffs’ Colorado Constitution claims were invalidated, this Court’s reasoning with respect to Plaintiffs’ federal claims still stands. So any invalidation of Plaintiffs’ Colorado Constitution claims would have no effect on the Court’s decision to grant Plaintiffs’ motion for preliminary injunction.

E. The Court correctly found the Author Plaintiffs’ First Amendment rights were violated.

It is well-settled that the Author Plaintiffs have a First Amendment right to share their books free from viewpoint discrimination. See *Martin v. City of Struthers, Ohio*, 319 U.S. 141, 143 (1943) (The First Amendment “embraces the right to distribute literature.”); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 64 (1963) (The First Amendment “embraces the circulation of books”).

Nonetheless, the District contends that the Author Plaintiffs have no right to have their books in school libraries and reasserts that the government speech doctrine and *Hazelwood* should apply. As explained above, neither of these doctrines are applicable here, but *Hazelwood* particularly not so. *Hazelwood* identified the relevant question as one of exercise of editorial control over *student speech*. See 484 U.S. at 273. “Here, the

‘speakers’ are not students, but rather the authors and publishers of the books that are subject to removal.” *Penguin Random House LLC v. Robbins*, No. 4:23-cv-00478-SHL-SBJ, ECF No. 113, at 15 (S.D. Iowa March 25, 2025) (granting preliminary injunction in favor of author plaintiffs).

The District argues that “[t]aking the authors [sic] forum argument to its logical conclusion” means that “the District is not permitted to exclude books for the views they espouse.” (Motion at 10–11.) As this Court ruled, the District is not permitted to *remove books* from its libraries based on an author’s viewpoint, and the removals made here were expressly viewpoint-based. (Order at 36.) The District fails to make a strong showing that it is likely to show otherwise and succeed on the merits of this claim on appeal.

II. THE DISTRICT WILL SUFFER NO IRREPARABLE HARM ABSENT A STAY.

The District claims it will suffer two types of irreparable harm without a stay, neither of which are availing. Irreparable harm requires that the alleged injuries be “both certain and great” and “not merely serious or substantial.” *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001).

First, the District manufactures an injury based on speculation and an overbroad reading of the Court’s Order. In addition to ordering that the books be returned to the libraries, the Court ordered that “the District is enjoined from removing additional books because the District disagrees with the views expressed therein or merely to further their preferred political or religious orthodoxy.” (Order at 45.) This is simply a restatement of Plaintiffs’ constitutional protections under the First Amendment.

Enjoining the District from making decisions to remove additional books based on political ideology is not, as the District states, an “intrusion”—it is the law. *See Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 872 (1982) (explaining school districts “may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion”); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988) (school districts may only limit “student speech in school-sponsored activities so long as their actions are reasonably related to legitimate pedagogical concerns”); *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503, 509 (1969) (school districts may not restrict speech based on a “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint”). As the Court clearly explained, the “requested injunction does not require the District to do something that it was not already doing during the uncontested period.” (Order at 15.) That the District characterizes decisions about age-appropriate book content as “necessarily political issues” is highly concerning (Motion at 12), and underscores the necessity of this Court’s Order.

Second, the District states that it will be required to take affirmative action absent a stay in the form of repurchasing and reshelving the Removed Books and by adopting new interim library policies. Not so. In addition to the books loaned to the District by an anonymous donor, the District was provided with a second set of books free of charge and free of any restrictions on who may access them. (Exhibit 1, Decl. of Thomas Dec.)

The contention that the mere reshelving of the Removed Books would cause irreparable harm is “absurd.” (Order at 43.) And even if the District had not received this donation, the minimal cost of 19 books is purely monetary, and, by definition, reparable. See *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1258 (10th Cir. 2003). Moreover, the Removed Books had been on the District’s library shelves for years prior to their removal—ten of the books had been on library shelves for over a decade—and the District cannot (and does not) claim that the books were causing irreparable harm then.

As to the need for new library policies, nothing in the Court’s order requires it. And even if it did, the District fails to explain how the creation of constitutionally-compliant library curation policies will cause it irreparable harm. The District’s lone citation in support of this argument is inapposite, as the Fifth Circuit held there that “altered business operations and missed opportunities” such as “abandoning plans to open a [business] location” or to consolidate locations, may constitute irreparable harm. *Career Colleges & Schs. of Texas v. U.S. Dep’t Educ.*, 98 F.4th 220, 237 (5th Cir. 2024). The mere modification of existing library protocols of a school district presents no such harm. The District has failed to satisfy its burden of showing “more than a mere possibility” of injury, *Nken*, 556 U.S. at 434–35, both “certain and great” absent a stay, *Prairie Band of Potawatomi Indians*, 253 F.3d at 1250.

III. PLAINTIFFS, HOWEVER, WILL BE SUBSTANTIALLY HARMED IF THE ORDER IS STAYED.

Where, as here, Plaintiffs’ First Amendment rights are implicated, there is a presumption of irreparable injury. *Cnty. Commc’ns Co., Inc. v. City of Boulder, Colo.*, 660 F.2d 1370, 1376 (10th Cir. 1981). “[T]he loss of First Amendment freedoms, for

even minimal periods of time, unquestionably constitutes irreparable injury.” *Verlo v. Martinez*, 820 F.3d 1113, 1127 (10th Cir. 2016) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Plaintiffs are injured both by the loss of access to the Removed Books in the school libraries, and by the stigma that the District’s actions have placed on the Removed Books and the ideas they contain. See *Counts v. Cedarville School District*, 295 F. Supp. 2d 996, 1002 (W.D. Ark. 2003) (holding that requiring parental permission to check out Harry Potter books violated students’ First Amendment rights in part because “the stigmatizing effect of having to have parental permission to check out a book constitutes a restriction on access”).

The fact that the Removed Books are only available to Plaintiffs upon identification of their affiliation with this litigation is further stigmatizing and harmful. Courts have long recognized that “compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association” as other restrictions on expression. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958). As this Court aptly stated, the District’s “proposed remedy” to make available the Removed Books only to Plaintiffs is in fact “no remedy at all.” (Order at 39.) And the fact that Plaintiffs may be able to access the Removed Books through other sources—including public libraries, online libraries, Amazon, or even, as the District proposes, adult bookstores—is also not a remedy under the First Amendment. See *Pratt v. Ind. Sch. Dist. No. 831, Forest Lake, Minn.*, 670 F.2d 771, 779 (8th Cir. 1982).

IV. THE PUBLIC INTEREST WEIGHS AGAINST A STAY.

“[A]s far as the public interest is concerned, it is axiomatic that the preservation of First Amendment rights serves everyone’s best interest.” *Local Org. Comm., Denver Chapter, Million Man March v. Cook*, 922 F. Supp. 1494, 1501 (D. Colo. 1996). Indeed, “[i]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Awad v. Ziri*ax, 670 F.3d 1111, 1132 (10th Cir. 2012). The longer the Removed Books are kept off the shelves, the longer Plaintiffs will be denied their fundamental First Amendment rights under the federal and Colorado Constitutions.

CONCLUSION

The District fails to meet its burden of making a strong showing that it is likely to succeed on the merits of its arguments on appeal and that it will suffer irreparable harm absent a stay of the preliminary injunction. Plaintiffs and the public interest will be harmed if the Order is stayed. The District’s request for a stay of the Order pending appeal should be denied.

Dated: March 28, 2025.

Respectfully submitted,

s/ Kendra Sendler Kumor

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Celyn D. Whitt
Kendra Sendler Kumor
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*In cooperation with American Civil
Liberties Union Foundation of Colorado*

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Sara R. Neel
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sneel@aclu-co.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on March 28, 2025, I electronically filed the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR ADMINISTRATIVE STAY AND STAY PENDING APPEAL** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

- **Timothy R. Macdonald**
tmacdonald@aclu-co.org, mbailey@aclu-co.org, sneel@aclu-co.org
- **Sara R. Neel**
sneel@aclu-co.org, mbailey@aclu-co.org
- **Christopher Owen Murray**
chris@first-fourteenth.com, pchesson@bhfs.com
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michael@first-fourteenth.com, bethany@statecraftlaw.com
- **Julian R. Ellis, Jr**
julian@first-fourteenth.com, kelly@first-fourteenth.com, milly@First-fourteenth.com
- **Laura J. Ellis**
laura@first-fourteenth.com, kelly@first-fourteenth.com, milly@first-fourteenth.com
- **Bryce D. Carlson**
bryce@millerfarmercarlson.com
- **Jonathan F. Mitchell**
jonathan@mitchell.law

s/ Kendra Sendler Kumor

Exhibit 1



Thomas C. Dec
303.244.1935
dec@wtotrial.com

March 25, 2025

Julian R. Ellis, Jr.
First & Fourteenth PLLC
2 N. Cascade Ave., Suite 1430
Colorado Springs, CO 80903

Re: *Crookshanks, et al v. Elizabeth School District*
USDC Case No.: 24-cv-03512-CNS-STV

Dear Mr. Ellis:

We understand from Elizabeth School District's ("ESD") recent briefing that it discarded the books subject to the U.S. District Court's preliminary injunction order. In an effort to ensure ESD complies with the District Court's order, we are providing ESD with free copies of the nineteen books removed from certain ESD libraries, including two copies of *The Hate U Give* and *13 Reasons Why* because they were previously available at two separate schools. These books are being donated to ESD without charge and without any conditions so that they may be placed in the school libraries in compliance with the District Court's order.

We planned to send the books directly to the school district to ensure they would become available immediately for ESD to put back on library shelves. However, yesterday night, you insisted that we instead send the books to your law offices. We expect that you will transmit the books to ESD today so that the school district can comply with the District Court's preliminary injunction order and ensure the books promptly become available to students.

A copy of this letter and delivery confirmation will be provided to the District Court and Tenth Circuit.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas C. Dec', written over a horizontal line.

Thomas C. Dec

Enclosure

Exhibit 2

From: info@SwiftCourierServices.com
To: [Beeby, Tia](#)
Subject: Delivery Notification
Date: Tuesday, March 25, 2025 2:31:56 PM

WARNING: This is an external email. Please take care when clicking links or opening attachments. When in doubt, contact the IS Department at i.s.dept@wtotrial.com



Delivery Notification

Our records indicate that the following order has been delivered:

Order Number: 800453

Order was Placed by: Tia Beeby
Signed By: Millie. Front Counter.

Delivered On: 03/25/2025 14:31:45

Delivery Address:
Law Offices Of First & 14th
2 N Cascade Ave
Colorado Springs,CO, 80903

Pickup Address:
Wheeler Trigg O'Donnell
370 17th St
Denver,CO, 80202

You can track your shipment in more detail at any time from www.SwiftCourierServices.com

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Please note that this communication was automatically generated at the request of the Shipper and any attempt to reply to the communication cannot and will not be answered or received by Shipper. Therefore, if you have any questions regarding this referenced shipment you must contact the Shipper directly. In addition, if you would like to discontinue this notification service you must inform the Shipper directly.

Exhibit 3

Dec, Tom

From: Julian Ellis <Julian@first-fourteenth.com>
Sent: Monday, March 24, 2025 7:55 PM
To: Dec, Tom; May, Craig
Cc: Chris Murray; Laura Ellis; Tim Macdonald; Neel, Sara; Whitt, Celyn; Kumor, Kendra
Subject: RE: Crookshanks - Conferral on Motion for Stay Pending Appeal

WARNING: This is an external email. Please take care when clicking links or opening attachments. When in doubt, contact the IS Department at i.s.dept@wtotrial.com

Tom:

To be clear, I assume you meant the courier delivery scheduled for tomorrow morning will be to First & Fourteenth's office in Colorado Springs. Any communication with the District, including any attempted donation, should be direct to counsel.

Also, this evening's filings are here for convenience: [ShareFile](#). Thanks

Julian



**First and
Fourteenth**

Julian R. Ellis, Jr.

Partner

W 1-719-286-2475

C 1-303-656-7685

julian@first-fourteenth.com

First & Fourteenth PLLC

2 N. Cascade Ave., Suite 1430

Colorado Springs, CO 80903

From: Julian Ellis
Sent: Monday, March 24, 2025 5:35 PM
To: Dec, Tom <Dec@wtotrial.com>; May, Craig <may@wtotrial.com>
Cc: Chris Murray <Chris@first-fourteenth.com>; Laura Ellis <Laura@first-fourteenth.com>; Tim Macdonald <tmacdonald@aclu-co.org>; Neel, Sara <sneel@aclu-co.org>; Whitt, Celyn <Whitt@wtotrial.com>; Kumor, Kendra <Kumor@wtotrial.com>
Subject: RE: Crookshanks - Conferral on Motion for Stay Pending Appeal

We will note Plaintiffs' opposition in the motion. Thanks for the quick reply, Tom.

**First and
Fourteenth****Julian R. Ellis, Jr.**

Partner

W 1-719-286-2475

C 1-303-656-7685

julian@first-fourteenth.com**First & Fourteenth PLLC**

2 N. Cascade Ave., Suite 1430

Colorado Springs, CO 80903

From: Dec, Tom <Dec@wtotrial.com>**Sent:** Monday, March 24, 2025 5:32 PM**To:** Julian Ellis <Julian@first-fourteenth.com>; May, Craig <may@wtotrial.com>**Cc:** Chris Murray <Chris@first-fourteenth.com>; Laura Ellis <Laura@first-fourteenth.com>; Tim Macdonald <tmacdonald@aclu-co.org>; Neel, Sara <sneel@aclu-co.org>; Whitt, Celyn <Whitt@wtotrial.com>; Kumor, Kendra <Kumor@wtotrial.com>**Subject:** RE: Crookshanks - Conferral on Motion for Stay Pending Appeal

Julian,

We have copies of the nineteen books at issue (including two copies of the books removed from two different schools) that we will donate and provide to Elizabeth School District free of charge and with no conditions, to assist with the District's compliance with the District Court's preliminary injunction. I can deliver them to you or your office tonight. We will otherwise plan to ship them via courier first thing in the morning to Elizabeth School District, with arrival before 12 noon MT. Please advise.

Plaintiffs oppose the emergency motion for administrative stay and stay pending appeal. Defendant can comply with the District Court's preliminary injunction order.

Best,
Tom**Thomas C. Dec (He/Him) | Associate**
Wheeler Trigg O'Donnell LLP

From: Julian Ellis <Julian@first-fourteenth.com>**Sent:** Monday, March 24, 2025 4:33 PM**To:** May, Craig <may@wtotrial.com>**Cc:** Chris Murray <Chris@first-fourteenth.com>; Laura Ellis <Laura@first-fourteenth.com>; Tim Macdonald <tmacdonald@aclu-co.org>; Neel, Sara <sneel@aclu-co.org>; Dec, Tom <Dec@wtotrial.com>; Whitt, Celyn <Whitt@wtotrial.com>; Kumor, Kendra <Kumor@wtotrial.com>**Subject:** RE: Crookshanks - Conferral on Motion for Stay Pending Appeal

WARNING: This is an external email. Please take care when clicking links or opening attachments. When in doubt, contact the IS Department at i.s.dept@wtotrial.com

Craig:

Considering the District Court's preliminary injunction requires the District to comply with the order by Tuesday, March 25 (tomorrow), the District intends to file its emergency motion for administrative stay and stay pending appeal with the Tenth Circuit this evening. We will ask the Tenth Circuit to (1) grant an administrative stay while the emergency motion is decided, (2) stay the District Court's preliminary injunction pending appeal, and (3) stay the proceedings before the District Court while the appeal is heard.

We assume Plaintiffs' position has not changed and that Plaintiffs oppose the relief. Please let us know if we are mistaken. Thanks

Julian



**First and
Fourteenth**

Julian R. Ellis, Jr.

Partner

W 1-719-286-2475

C 1-303-656-7685

julian@first-fourteenth.com

First & Fourteenth PLLC

2 N. Cascade Ave., Suite 1430

Colorado Springs, CO 80903

From: Julian Ellis

Sent: Friday, March 21, 2025 9:40 AM

To: May, Craig <may@wtotrial.com>

Cc: Chris Murray <Chris@first-fourteenth.com>; Laura Ellis <Laura@first-fourteenth.com>; Tim Macdonald <tmacdonald@aclu-co.org>; Neel, Sara <sneel@aclu-co.org>; Dec, Tom <Dec@wtotrial.com>; Whitt, Celyn <Whitt@wtotrial.com>; Kumor, Kendra <Kumor@wtotrial.com>

Subject: RE: Crookshanks - Conferral on Motion for Stay Pending Appeal

Thanks, Craig, we'll note Plaintiffs' opposition.



**First and
Fourteenth**

Julian R. Ellis, Jr.

Partner

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julian@first-fourteenth.com

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2 N. Cascade Ave., Suite 1430

Colorado Springs, CO 80903

From: May, Craig <may@wtotrial.com>

Sent: Friday, March 21, 2025 9:38 AM

To: Julian Ellis <Julian@first-fourteenth.com>

Cc: Chris Murray <Chris@first-fourteenth.com>; Laura Ellis <Laura@first-fourteenth.com>; Tim Macdonald <tmacdonald@aclu-co.org>; Neel, Sara <sneel@aclu-co.org>; Dec, Tom <Dec@wtotrial.com>; Whitt, Celyn <Whitt@wtotrial.com>; Kumor, Kendra <Kumor@wtotrial.com>

Subject: RE: Crookshanks - Conferral on Motion for Stay Pending Appeal

Hi Julian, thank you for the email. I assume that you are moving to stay the PI order. Plaintiffs would oppose that.

Best

Craig
Craig R. May | Partner
Wheeler Trigg O'Donnell LLP

From: Julian Ellis <Julian@first-fourteenth.com>
Sent: Thursday, March 20, 2025 1:20 PM
To: May, Craig <may@wtotrial.com>
Cc: Chris Murray <Chris@first-fourteenth.com>; Laura Ellis <Laura@first-fourteenth.com>
Subject: Crookshanks - Conferral on Motion for Stay Pending Appeal

WARNING: This is an external email. Please take care when clicking links or opening attachments. When in doubt, contact the IS Department at i.s.dept@wtotrial.com

Craig:

Well done on the PI order.

I am sure it's no surprise that the District intends to appeal. Based on the six-day timeframe in the order, we intend to notice the appeal today and file our motion for stay pending appeal tomorrow before noon. The motion for stay pending appeal will ask for (1) an administrative stay while the Court considers the motion for stay pending appeal, extending to at least 48 hours after the Court denies the motion, assuming the Court does deny the motion; and, separately, (2) a stay during the pendency of the appeal to the Tenth Circuit.

Will you please let us know your clients' positions on both components of the requested relief by 10a tomorrow morning. Thanks, Craig.

Julian



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C 1-303-656-7685
julian@first-fourteenth.com

First & Fourteenth PLLC
2 N. Cascade Ave., Suite 1430
Colorado Springs, CO 80903

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

DECLARATION OF THOMAS C. DEC

I, Thomas C. Dec, hereby state as follows:

1. I am a United States Citizen, resident of Colorado, and am over 21 years of age. I make this declaration upon personal knowledge and review of the documents referenced herein.

2. I am employed as an attorney by Wheeler Trigg O'Donnell LLP.

3. Wheeler Trigg O'Donnell LLP is counsel for Plaintiffs in the above-captioned action currently pending in this Court.

4. On March 19, 2025, the Court granted Plaintiffs' Motion for Preliminary Injunction and ordered Elizabeth School District ("ESD") to return nineteen banned books to their respective library shelves by March 25, 2025 (See ECF 35).

5. Following the Court's order granting Plaintiffs' Motion for Preliminary Injunction, ESD stated that ESD previously discarded the books subject to the Court's

order. ESD further indicated that an unidentified donor provided copies of the nineteen books to ESD, but access is restricted to only Plaintiffs.

6. Accordingly, counsel for Plaintiffs provided a copy of each of the nineteen books¹ to ESD for free and without conditions on their use. See Exhibit 1 – Letter to Julian R. Ellis, Jr. at First & Fourteenth, PLLC, dated March 25, 2025.

7. The book donation was delivered to the law offices of counsel for ESD via courier on March 25, 2025. See Exhibit 2 – Courier Delivery Confirmation.

8. Plaintiffs' counsel planned to send the books directly to ESD, to ensure they were immediately available to put back on library shelves, but ESD's counsel insisted that the books be sent to counsel's office instead. See Exhibit 3 – Email from Mr. Ellis to Mr. Dec, dated March 24, 2025.

¹ Counsel provided two copies of *The Hate U give* and *13 Reasons Why* because the books were previously available at two separate schools.

Dated: March 28, 2025.

Respectfully submitted,

s/ Thomas C. Dec

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dec@wtotrial.com
whitt@wtotrial.com
kumor@wtotrial.com

*In cooperation with the American Civil
Liberties Union Foundation of Colorado*

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on March 28, 2025, I electronically filed the foregoing **DECLARATION OF THOMAS C. DEC** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

- **Bryce D. Carlson**
bryce@millerfarmercarrson.com
- **Thomas Carl Dec**
dec@wtotrial.com, christman@wtotrial.com, beeby@wtotrial.com, wall@wtotrial.com
- **Julian R. Ellis, Jr**
julian@first-fourteenth.com, milly@First-fourteenth.com, kelly@first-fourteenth.com
- **Laura J. Ellis**
laura@first-fourteenth.com, milly@first-fourteenth.com, kelly@first-fourteenth.com
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- **Craig Ruvel May**
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- **Sara R. Neel**
sneel@aclu-co.org, mbailey@aclu-co.org

s/ Thomas C. Dec

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**Defendant's Reply in Support of Its
Motion for Stay Pending Appeal**

Defendant Elizabeth School District (the District) files this reply in support of its motion for stay pending appeal (ECF No. 42), to reply to arguments made in Plaintiffs' response in opposition to the motion (ECF No. 48).

To comply with the Court's preliminary injunction, the District must take two actions against the stated policy preferences of its elected board: it must (1) purchase and shelve copies of the very books the School Board has found to be inappropriate for the students, and (2) implement new interim library policies that apply to the student body generally. Further, if the Court does not stay its preliminary injunction, the District will be subject to the Court's second-guessing of the School Board's curation of the District's library collection for the remainder of this litigation. Compared to the harm Plaintiffs will suffer—which is essentially none because they have, and will continue to have, access to the at-issue titles—the balance of the harm tips decidedly in the District's favor.

Plaintiffs appreciate this. It's why their law firm attempted to "donate" the 18 at-issue titles to the District the day after the District sought relief in the Tenth Circuit.¹ The attempted donation is tacit admission of the seriousness of the irreparable harm.

Nor are Plaintiffs correct that the proposed donation eliminated the irreparable harm. The District's counsel presented the book donation to the School Board and, on Friday, March 28, 2025, the District held a special public meeting to consider the donation consistent with the Board's role in deciding the acceptance and selection of library materials. (See Library Protocols 2–3, ECF No. 25-9.) At the special meeting, the School Board

¹ Plaintiffs criticize counsel's reasonable insistence that any communications, including their law firm's attempted book donation, be directed to counsel rather than to the District. (Resp. 4; Dec Decl., ¶ 8, ECF No. 48-4.) This is blackletter professional-responsibility law. Colo. R. Prof'l Cond. 4.2 ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer ... in the matter, unless the lawyer has the consent of the other lawyer ... or is authorized to do so by law or a court order.").

voted to reject all the donated books except one (*#Pride*) and made detailed oral and written findings as to why it rejected the books, including because the books are age-inappropriate for the libraries for which they were donated, inconsistent with the District's curricular goals, and otherwise lacking in educational value.

Further, Plaintiffs' response confirm that, at least in their view, the Court's preliminary injunction prohibits all weeding of the District's library collections during this case. Any attempt by the District to remove a book from any of its school libraries for any reason will necessarily be subject to challenge by Plaintiffs and this Court's oversight under the preliminary injunction. This encroachment on the District's educational mission is at once banal and severe: it's the kind of harm that money cannot fix and emblematic of why the preliminary injunction should be stayed pending appeal to the Tenth Circuit.

ARGUMENT

I. The Preliminary Injunction Will Require the District to Purchase and Re-shelve the At-Issue Titles

On March 19, 2025, the Court entered a preliminary injunction instructing the District to "return" copies of the removed books to its library shelves. The Order asserted that, because the District still had copies of the removed titles in its libraries, the injunction was only prohibitive, not mandatory. That assertion was based on a mistake of fact. The District discarded its physical copies of the 18 at-issue titles² after the School Board's September 2024 decision to permanently remove them from the libraries.³

² Initially, 19 titles were identified for potential removal, but the School Board only voted to permanently removed 18 of those titles. (ECF No. 42 at 2, n.1.)

³ After Plaintiffs sued the District, a donor donated copies of the at-issue titles under the condition that the donated books (1) be made available only to the two Student-Plaintiffs and to any student in the District who is either a member of Plaintiff NAACP or who has a parent or guardian who is a member of Plaintiff NAACP, and (2) are not placed on the District's library shelves. (Snowberger Decl. (March 21, 2025), ¶ 11, ECF No. 42-1.) Upon receipt, the donated books were placed in the District libraries from which the 18 titles had been removed and they will remain there during this litigation. (*Id.* ¶ 12.)

Recognizing the mandatory nature of the Court's preliminary injunction, Plaintiffs' law firm proposed to donate copies of the at-issue titles to the District by delivering 21 books to the District's counsel. (Dec Decl., ¶ 8, ECF No. 48-4.) After the books were delivered to counsel, the School Board noticed and held a special meeting to consider the disposition of the donation from Plaintiffs' law firm. (Snowberger Decl. (March 30, 2025), ¶¶ 4–5.) The Board decided to accept *#Pride* but rejected the other titles.⁴ (*Id.* ¶ 8, Ex. A at 21) The Board's detailed rationale for its vote on the proposed donation was recorded via public meeting (*id.* ¶¶ 6–7), and the Board likewise approved 21 pages of written findings outlining in detail its reasoning for rejecting or accepting each the donated titles (*id.* ¶ 8, Ex. A).

Broadly, the School Board rejected 18 of the 19 donated titles because, in addition to not advancing the District's curricular or educational goals, the titles are age-inappropriate for the students served by the libraries from which the books were to be placed and most of them include affirmatively harmful content: explicit descriptions of sexual activity, including scenes of rape and incest; suicidal ideations; detailed descriptions of the abuse of hard drugs and themes of an expressly adult nature. (*Id.* ¶ 8, Ex. A at 8–19.) Based on the Board's review of the books, guidance from the Superintendent and Chief Academic Officer, community feedback, and research from third-party rating sources, the Board found that acceptance of the 18 titles was not consistent with District policy on acceptance and selection of material for the District's libraries. (*Id.* ¶ 8, Ex. A at 2–3.)

Contrary to Plaintiffs' new claim (Resp. 3 (stating the District "neglected to mention this condition earlier")), Plaintiffs' counsel have been on notice of the donation and conditions for weeks. Undersigned counsel confirmed the conditions in a phone call with lead counsel for Plaintiffs on February 27, 2025, at 9:00 a.m.

⁴ While the School Board did not vote to permanently remove the book, *Speak*, Plaintiffs' law firm included that title in its proposed book donation as well.

Though the School Board accepted *#Pride* because this book includes factual—albeit one-sided—information regarding the history of civil rights in America, the Board directed Superintendent Snowberger to hold the book and not return it to the middle-school library. The Board reasoned that the one-sided nature of the book’s presentation of history does not comport with the District’s curricular goals and objectives, and does not contain material with sufficient educational value such that it satisfies the District’s strict selection process. (*Id.* ¶ 7, recording at 31:07–38; *id.* ¶8, Ex. A at 21.)

II. The Court’s Order Eliminates the District’s Ability to Curate Its Libraries

The District explained the breathtaking scope of the Court’s injunction in its motion (Mot. 12); Plaintiffs appear to agree. Plaintiffs contend that, under the Court’s Order, “the District is not permitted to *remove books* from its libraries based on an author’s viewpoint.” (Resp. 11 (emphasis in original).) According to Plaintiffs, books denying the holocaust or lauding the Confederacy must remain in the District’s libraries unless their removal is sanctioned by this Court. Of course, the District would never wittingly purchase such books—just as it would never have wittingly purchased the books whose eventual removal gave rise to this case—but the District (as is the case in many libraries) has, at times, purchased books in bulk and accepted large donations of books without vetting each and every title donated. (Snowberger Decl. ¶ 12, ECF No. 25-1.)

Even if the Court’s Order is more circumscribed than the District and Plaintiffs believe, the District’s ability to make decisions regarding its library collections will still be enervated. The Court’s Order states that removing books out of a commitment to “conservative values” is “blatantly unconstitutional.” But conservative values are not ordinarily political. To espouse “conservative values” in America ordinarily means belief in an enduring moral order, and an attendant distaste for obscenity, vulgarity, or impropriety in keeping with a classical Western sense of these terms. Similarly, it may mean that one

appreciates the imperfectability of human nature and as a result values innocence—particularly in matters of sexuality and the use of mind-altering substances—in children. The Court’s Order proclaiming it unconstitutional for the District to act on such values arrogates to the Court the power to decide what is appropriate for the children in the Elizabeth School District.

This will cause irreparable harm to the District and its educational mission by making the District and its elected School Board powerless to do their jobs. Providing valuable and appropriate learning materials to children is the District’s one mission. The Court’s Order prevents it from doing that, at least in its school libraries. No amount of money can repair that kind of damage to a school system and its library collection. Hence, the injunction should be stayed pending review of the first-impression constitutional questions presented in this case by the Tenth Circuit.

III. Plaintiffs’ Attempted Donation Demonstrates the Mandatory Nature of the Court’s Injunction

Plaintiffs’ attempted donation of books shows exactly why the preliminary injunction is mandatory and therefore disfavored. *See Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258–59 (10th Cir. 2005). *First*, the donation itself is tacit admission that the Court’s Order requires affirmative action from the District. There would be no need for a donation if the injunction did not require the District to acquire the titles.⁵

Second, the act of acquiring the books was only a small part of what the Court commanded the District to do. Even if the books were in the District’s possession, the Court’s injunction would require the District to reshelve them and offer them to students against the elected school board’s directive. In so doing, the injunction would “require[]

⁵ Even with the donation, the School Board still must affirmatively exercise its legal authority to accept donations on behalf of the District. *See Colo. Rev. Stat. § 22-32-110(y)*. (See *also* Library Protocols 2–3, ECF No. 25-9.)

the nonmoving party to take affirmative action.” *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1208 (10th Cir. 2009). That means the Court’s injunction is mandatory, just like an injunction requiring the reinstatement of an employee, *Schrier*, 427 F.3d at 1261, the removal of statues, *Trial Laws. Coll. v. Gerry Spence Trial Laws. Coll. at Thunderhead Ranch*, 23 F.4th 1262, 1274 (10th Cir. 2022), or the returning of seized equipment, see *Wyandotte Nation v. Sebelius*, 443 F.3d 1247, 1255 (10th Cir. 2006). That the books, employee, statues, or equipment may be near to hand is irrelevant—it is the required conduct that matters. The fact that the Court’s order requires the purchasing of the books only magnifies the mandatory nature of the injunction, it doesn’t underlie it.

Third, both Plaintiffs’ response and the Court’s Order refer to the fact that the injunction preserves “the uncontested period,” but “injunctions are not necessarily prohibitory merely because they preserve the status quo.” *Schrier*, 427 F.3d at 1260. Regardless of what was happening during the uncontested period, the Court’s Order requires the District to act in a particular way *right now*. Thus, the order is “properly characterized as mandatory and, as a result, constitutes a specifically disfavored injunction” requiring heightened scrutiny. *Id.*

IV. Plaintiffs Cannot Articulate a Real Harm from a Stay

Plaintiffs fail to identify any harm from a stay of the Court’s order. Crucially, the First Amendment freedom at issue in this case is the right to receive information. Plaintiffs can receive the information at issue even if the Court stays its injunction—indeed, copies of all the books have been made available to Plaintiffs. Thus, there is no meaningful loss of First Amendment freedoms for the Plaintiffs if the preliminary injunction is stayed pending appeal. This is not a case where the Plaintiffs have lost the ability to speak in one place but are being offered a substitute; they currently have full and complete access to the books in question and can read them wherever they like. That Plaintiffs’ law firm

recently possessed (and then attempted donate) copies of every single book that Plaintiffs allege to have been deprived of puts a fine point on the absence of any irreparable harm: Plaintiffs have access to the at-issue titles from multiple sources. Public sources (the District's libraries) and private sources (Plaintiffs' counsel) alike.

CONCLUSION

The Court should stay its mandatory preliminary injunction pending appeal of the first-impression legal questions to the Tenth Circuit. Without a stay, the District will be rendered unable to meaningfully curate its own libraries and will be forced to buy and provide to District students books the elected school board believes to be inappropriate. Any harm to the Plaintiffs—if it exists at all—is relatively small and does not outweigh the severe burden the Court's Order would place on the District.

Dated: March 31, 2025

Respectfully submitted,

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that on March 31, 2025, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following email addresses:

may@wtotrial.com
sneel@aclu-co.org
tmacdonald@aclu-co.org
dec@wtotrial.com
whitt@wtotrial.com
kumor@wtotrial.com

s/ Larua J. Ellis
FIRST & FOURTEENTH PLLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

**Declaration of Dan Snowberger, Superintendent, Elizabeth School District, in
Support of Defendant's Reply in Support of Its Motion Stay Pending Appeal**

I, Dan Snowberger, being over 18 years of age, submit the following declaration in support of Defendant Elizabeth School District's Reply in Support of Its Motion for Stay Pending Appeal, and state as follows:

1. I make this declaration based on personal knowledge.
2. As the Superintendent of Schools for the Elizabeth School District, I serve as the chief executive and operations officer of the District. Among other things, I communicate and collaborate with the School Board on all issues that may impact the District, including implementing School Board decisions.
3. On March 25, 2025, the Court ordered Plaintiffs to respond to the District's motion for stay pending appeal and administratively stayed its order granting Plaintiffs' motion for preliminary injunction until 48 hours after the Court rules on the District's motion to stay. (ECF No. 45.)
4. Shortly thereafter, also on March 25, 2025, I was informed by counsel that

the law firm Wheeler Trigg O'Donnell LLP had donated 21 books to the District via a courier that delivered a box of books to counsel's office. In the letter that accompanied the books, Wheeler Trigg O'Donnell indicated the donation was made "without charge and without any conditions so that [the donated books] may be placed in the school libraries in compliance with the District Court's order."

5. I immediately notified the School Board of the proposed donation. The Board thereafter noticed a special meeting for March 28, 2025, at 8:00 PM to consider the disposition of Wheeler Trigg O'Donnell's book donation.

6. The special meeting was held on March 28, 2025, via Zoom. All five School Board members were present. In addition to receiving legal advice on specific questions regarding this court case, the School Board voted on various motions related to Wheeler Trigg O'Donnell's proposed book donation and instructed counsel to prepare written findings that reflected each vote for the Board's review and approval.

7. A recording of the non-privileged portions of the School Board's special meeting is available here: https://www.youtube.com/live/_LfAjoFbw6o?t=9s.

8. A true and accurate copy of the written findings that reflect the School Board's vote on each motion presented at the special meeting, which have been reviewed and unanimously approved by the Board, is attached as Exhibit A.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 30, 2025, in Falcon, Colorado.

s/ Dan Snowberger

Dan Snowberger
Superintendent
Elizabeth School District

Elizabeth School District Board of Education

Findings of the School Board from the March 28, 2025 Special Meeting

A special meeting of the **Elizabeth School District Board of Education** (School Board) was called for March 28, 2025, to consider the disposition of books donated to the **Elizabeth School District** (District) by the Denver law firm **Wheeler Trigg O'Donnell LLP**. The findings reflected here represent the School Board's decision on whether to accept or reject the proposed book donation from Wheeler Trigg O'Donnell.

I. Background

The District and its efforts to improve curriculum

The District consists of four traditional public schools that serve students from preschool through high school:

- Running Creek Elementary (RCE) - preschool through fifth grade (ages 3–11)
- Singing Hills Elementary (SHE) - preschool through fifth grade (ages 3–11)
- Elizabeth Middle School (EMS) - sixth to eighth grade (ages 11–14)
- Elizabeth High School (EHS) - ninth to twelfth grade (ages 14–18)

Over the last two years, the School Board, in coordination with District staff, has worked to adopt and execute on policies aimed at ensuring the curriculum and instructional materials align with the Board's educational vision for the District and the values of the community. This includes efforts to unify and integrate the District curriculum from preschool through twelfth grade, so all students of the same level are taught the same core competencies and where the curriculum from grade to grade builds and complements those competencies.

District Policy IJ—Instructional Resources and Materials (last revised Nov. 2014), establishes that all instructional resources and materials, including “for school classrooms and school libraries,” “shall be aligned with the district’s academic standards and support the district’s educational objectives.” Through the school library, the District can curate books that are specifically designed to support, reinforce, and build on the classroom curriculum. Unlike research or public libraries, which serve a much broader age demographic and which strive to provide a wide array of materials that appeal to a variety of readers with diverse interests, goals, and entertainment preferences, the purpose of the District’s library collection is first and foremost to provide materials with educational value to the District’s students and teachers.

The District has not historically had a clear or uniform approach for curating its library collection. Book-purchase decisions were ad hoc and often did not meaningfully consider each book’s suitability for an educational setting, the age of the students who would access it, and how the book would support and reinforce the curriculum for that age group. Compounding the problem, publishers offer discounted rates for bulk purchases and schools often receive large

book donations from a variety of sources, causing many books of questionable or no educational value to be included in the District's libraries. Book weeding decisions were similarly ad hoc and made on the individual school level.

In the fall of 2023, the School Board became aware of the disconnect between its curricular goals and the content in the District's library collection when a School Board member's then 11-year-old daughter (a sixth grader) checked out a book from the middle-school library that contained profanity and explicit sexual content inappropriate for her age. The School Board thereafter charged the Board Curriculum Review Committee (Curriculum Committee) with understanding the existing process by which books are selected for the library and by which controversial materials in the library are accessed by students, and recommending changes.

The Library Protocols, Sensitive Topics List, and Suspended Books List

In addressing those charges, the Curriculum Committee developed the Library Services Guiding Protocols (Library Protocols). The Library Protocols were recommended to the School Board for adoption in early August 2024. The School Board unanimously adopted the Library Protocols at its August 12, 2024 Business Session. Broadly, the Library Protocols provide guidelines for how the District: (1) analyzes, selects, and reviews library materials; (2) develops and maintains sensitive content catalogs (called Sensitive Topic Lists); and (3) provides full parental access to the library catalog and their student's library account. Although the School Board has discretion to decide what educational materials will remain available in the library, the protocols provide a framework for exercising that discretion in a manner that is more consistent across schools and more transparent to parents.

The Library Protocols clarify that, "Library services in [the District] aim to ensure students have access to age-appropriate materials necessary to facilitate the [D]istrict's mission of providing students with excellent learning opportunities that inspire a passion for learning." "Library materials" include "any print or nonprint materials that are available to students for general use through the District schools' libraries and classrooms." Consistent with the Library Protocols' purpose, selection of titles to be included in the District's libraries "is conducted in a manner that promotes the educational needs and values of the community and considers age-appropriateness." To do so, the Library Protocols instruct:

- Reviewers to "evaluate existing library materials for potential age-level sensitive content using the following resources: Goodreads, Trigger Warning Database, Book Trigger Warnings, booklooks.org, and/or Junior Library Guild."
- "Although any flag for sensitive content will be considered for age-level appropriateness, special attention will be given to: graphic violence, sexual content, profanity/obscenity, ideations of self-harm or mental illness, religious viewpoints, drug or excessive alcohol use, racism/discrimination."
- "All materials maintained and purchased by schools are to facilitate the district's mission of providing students with excellent learning opportunities that inspire a passion for learning, developing individual potential, and preparing them for a successful future."

- If “any materials are determined to be inappropriate based on age level, [sensitive-content] flags, or lacking educational merit, these materials will be brought to the principal of the school for further consideration. The principal will bring the materials to the Chief Academic Officer who will present the information to [the Curriculum Committee] which will make a recommendation to the Chief Academic Officer and the Elizabeth School Board of Education.”

The School Board’s September 9, 2024 decision to permanently remove 18 titles

At the time it adopted the Library Protocols, the School Board also considered the Curriculum Committee’s recommendation to temporarily suspend 19 titles pending further review by the public and the School Board. Those 19 titles and their respective school-library locations are presented below:

Title	Library
The Hate U Give	EMS & EHS
Thirteen Reasons Why	EMS & EHS
#Pride: Championing LGBTQ Rights	EMS
You Should See Me in a Crown	EMS
It’s Your World—If You Don’t Like It, Change It: Activism for Teenagers	EMS
The Kite Runner	EHS
Beloved	EHS
The Bluest Eye	EHS
The Perks of Being a Wallflower	EHS
Looking for Alaska	EHS
Nineteen Minutes	EHS
Identical	EHS
Fallout	EHS
Glass	EHS
Burned	EHS
Crank	EHS
Smoke	EHS
Speak	EHS
George/Melissa	RCE

The School Board agreed to temporarily take these titles out of circulation and made 18 of the 19 books¹ available for public review at the District office for a period of 25 days. The District made clear its “goal is to implement a system where parents are empowered to make important decisions on the content their children will be able to access.” The School Board also heard from the community in various public meetings and through individual communications.

¹ The book *Speak* was not available because it had been checked out and not returned.

The community feedback indicated a clear preference for permanently removing the 18 suspended titles, which the Superintendent and Chief Academic officer supported after their own independent review. Removal was supported by a variety of factors, including the lack of clear educational value in a public-school setting or a connection to the District’s curriculum, concerns regarding age-group appropriateness, the highly sensitive nature of content (e.g., excessive graphic violence, explicit sexual content, extreme drug and alcohol use, ideations of self-harm), and clear community feedback favoring removal.

In addition to considering feedback from the community, the Superintendent, and the Chief Academic Officer, the School Board members utilized research, including from BookLooks.org and other third-party rating sources. The BookLooks rating system provides ratings from “0” to “5” and is designed to assess the appropriateness of a book for a child or young adult based on the content of the book taken as a whole. Of the 19 suspended titles, 16 were reviewed by BookLooks and 15 were assigned “3” or “4” ratings. One book (*Melissa/George*), which was in RCE, was assigned a “2” rating. The meaning of those ratings is summarized in the chart below:

Teen Guidance Some content may not be appropriate for children under 13.	Minor Restricted Under 18 requires guidance of parent or guardian	No Minors Adult content. No child under 18.
<div>2</div> <ul style="list-style-type: none"> Moderate Violence Moderate Hate Moderate Profanity Non-Sexual Nudity involving genitalia Inexplicit Sexual Nudity/Sexual Activities Drug or Alcohol Use Explicit Sexuality Explicit Gender Ideologies 	<div>3</div> <ul style="list-style-type: none"> Excessive/Explicit violence Extreme/Frequent Hate Excessive/Frequent Profanity References to Sexual Activities (NOT involving penetration, cunnilingus, fellatio, or ejaculation) Drug or Alcohol Abuse 	<div>4</div> <ul style="list-style-type: none"> Explicit Sexual Nudity (depictions of sexual organs in a state of arousal) “Obscene” References to Sexual Activities (involving anal, oral, or vaginal intercourse; fingering, anilingus, or ejaculation)

After months of research by the Curriculum Committee, and careful deliberation by the School Board, on September 9, 2024, the Board voted 4-0² to permanently remove the 18 titles that had been made available for public review from the District's libraries.

The federal court lawsuit against the District

On December 19, 2024, the NAACP, The Authors Guild, and two students filed a lawsuit against the District in the U.S. District Court for the District of Colorado. Plaintiffs allege that the School Board's decision to remove the 18 titles violated the First Amendment and the Colorado Constitution. Plaintiffs also asked the district court for a preliminary injunction ordering the 18 titles be returned to the District's libraries shelves. The District has retained legal counsel and is defending the lawsuit, including Plaintiffs' request for a preliminary injunction.

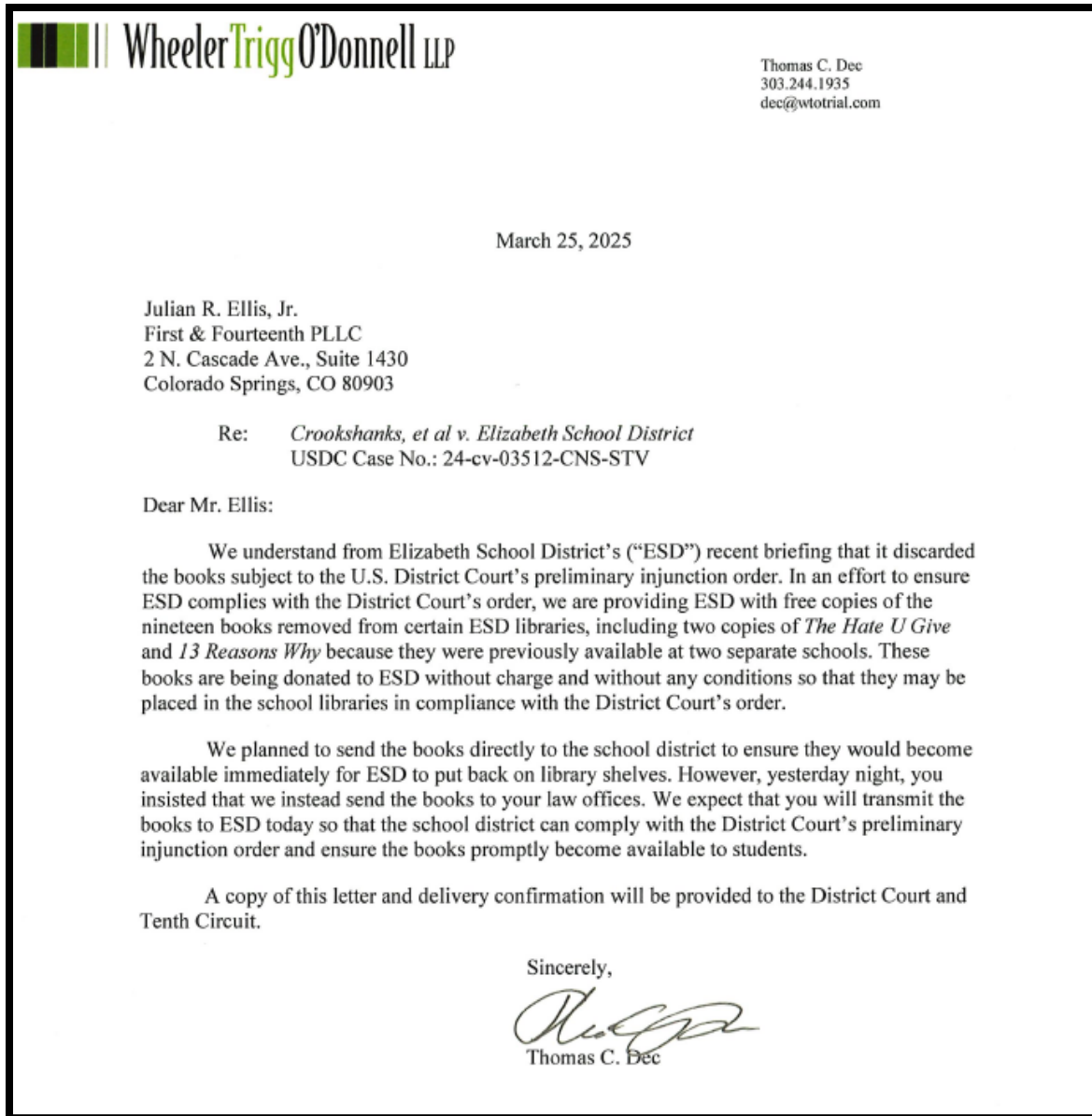
On March 19, 2025, the district court granted a preliminary injunction. The injunction gave the School Board six days (or to March 25) to return the 18 titles "to their respective libraries." The injunction also prohibits the School Board from removing books in the future for reasons the district court found problematic.

On March 21, 2025, the District moved for an administrative stay and stay pending appeal. Because the district court had yet to rule, on the evening of March 24, 2025, the District filed an emergency motion for the same relief with the U.S. Court of Appeals for the Tenth Circuit. The next day, the district court administratively stayed its preliminary injunction and ordered the Plaintiffs to respond to the District's motion by March 28, 2025. The district court indicated that its administrative stay would remain in place for at least 48 hours after it decides the District's motion for stay pending appeal.

Wheeler Trigg O'Donnell's March 25 book donation

On March 25, 2025, the District's counsel received on behalf of the District an unsolicited donation of 21 books from the Denver law firm of Wheeler Trigg O'Donnell. The donated books were accompanied by a letter, which is reproduced below for completeness:

² Due to a prearranged absence, former School Board member Heather Booth did not participate in the September 9, 2024 vote to permanently remove the 18 titles.



Wheeler Trigg O'Donnell's letter states the 21 books are "being donated to [the District] without charge and without any conditions so that they may be placed in the school libraries in compliance with the District Court's order." The 21 books include the 18 titles that the School Board voted to permanently remove (with duplicate copies of *The Hate U Give* and *13 Reasons Why*, as those titles were previously in both the middle-school and high-school libraries), and the book that was unavailable for public review (*Speak*).

Upon receipt, the District's counsel presented the proposed donation to the Superintendent, who presented the donation to the School Board for disposition.

II. March 28 Special Meeting and Motions Considered

On March 27, 2025, the School Board noticed and called a special public meeting of the Elizabeth School District Board of Education to consider the disposition of Wheeler Trigg O'Donnell's proposed book donation. The special meeting was called to order at 8 p.m. on March 28, 2025. Present at the meeting were School Board members: Rhonda Olsen, Mary Powell, Mike Calahan, Jon Waller, and David Fletcher.

At the March 28 special meeting, the School Board decided whether to accept or reject Wheeler Trigg O'Donnell's proposed book donation through five separate motions or questions. The motions are categorized based on which school library the books were to be returned to and the book's respective BookLooks ratings, if they had one.

1. Whether to accept or reject Wheeler Trigg O'Donnell's donation of *The Bluest Eye*, *The Kite Runner*, *The Perks of Being a Wallflower*, *Nineteen Minutes*, and *Identical*?

All five books were initially removed from the high-school library, and all are rated "4" on BookLooks, which means "No Minors – Adult Content. No Child Under 18."

2. Whether to accept or reject Wheeler Trigg O'Donnell's donation of *The Hate U Give*, *Thirteen Reasons Why*, *Beloved*, *Looking for Alaska*, *Speak*, *Fallout*, *Glass*, *Burned*, *Crank*, and *Smoke*?

All 10 books were initially removed from the high-school library. Additionally, two of the books, *The Hate U Give* and *Thirteen Reasons Why*, were also removed from the middle-school library. All 10 book are rated "3" on BookLooks, which means "Minor Restricted – Under 18 Requires Guidance of Parent or Guardian."

3. Whether to accept or reject Wheeler Trigg O'Donnell's donation of *Melissa/George*?

This book was initially removed from one elementary-school library and is rated "2" on BookLooks, which means "Teen Guidance – Some Content May Not Be Appropriate for Children Under 13."

4. Whether to accept or reject Wheeler Trigg O'Donnell's donation of *It's Your World—If You Don't Like It, Change It: Activism for Teenagers* and *You Should See Me in a Crown*?

These two books were initially removed from the middle-school library. Neither book was reviewed by BookLooks.

5. Whether to accept or reject Wheeler Trigg O'Donnell's donation of *#Pride: Championing LGBTQ Rights*?

This book was initially removed from the middle-school library. It was not reviewed by BookLooks.

The School Board members decided each motion or question in the public meeting, which was recorded and can be accessed at <https://www.youtube.com/watch?v=LfAjoFbw6o>. In addition to the School Board's oral findings on the record at the special meeting, it makes the following additional written findings.

III. Findings of the School Board from the March 28 Special Meeting

1. Whether to accept or reject the donation of *The Bluest Eye*, *The Kite Runner*, *The Perks of Being a Wallflower*, *Nineteen Minutes*, and *Identical*?

The School Board votes to **reject** Wheeler Trigg O'Donnell's donation of *The Bluest Eye*, *The Kite Runner*, *The Perks of Being a Wallflower*, *Nineteen Minutes*, and *Identical*. Each of the five books in this category have a BookLooks rating of "4." That means the books contain "explicit sexual nudity" (i.e., depictions of sexual organs in a state of arousal) or "obscene references to sexual activities" (i.e., anal, oral, or vaginal intercourse, fingering, anilingus, or ejaculation). BookLooks defines "obscene" material to include material the average person, applying contemporary community standards, would judge as appealing primary to prurient interest; the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and the work lacks serious literary, artistic, political or scientific value.

The School Board's review of the content of these five books supports finding that these books contain profanity and derogatory terms; sexual activities including sexual assault and battery as well as sexual molestation; inflammatory racial and religious commentary and references; prostitution involving minors and adults; sexual nudity; violence; alcohol and drug use; controversial social and political commentary; alternate sexualities; hate; abortion; and suicide commentary and suicidal ideations. Below are just a few illustrative excerpts:

The Perks of Being a Wall Flower

This one couple, whom I was told later were very popular and in love, stumbled into my room and asked if I minded them using it. I told them that my brother and sister said I had to stay here, and they asked if they could use the room anyway with me still in it. I said I didn't see why not, so they closed the door and started kissing. Kissing very hard. After a few minutes, the boy's hand went up the girl's shirt, and she started protesting.

"C'mon, Dave."

"What?"

"The kid's in here."

"It's okay."

And the boy kept working up the girl's shirt, and as much as she said no, he kept working it. After a few minutes, she stopped protesting, and he pulled her shirt off, and she had a white bra on with lace. I honestly didn't know what to do by this point. Pretty soon, he took off her bra and started to kiss her breasts. And then he put his hand down her pants, and she started moaning. I think they were both very

drunk. He reached to take off her pants, but she started crying really hard, so he reached for his own. He pulled his pants and underwear down to his knees.

“Please. Dave. No.”

But the boy just talked soft to her about how good she looked and things like that, and she grabbed his penis with her hands and started moving it. I wish I could describe this a little more nicely without using words like penis, but that was the way it was.

After a few minutes, the boy pushed the girl’s head down, and she started to kiss his penis. She was still crying. Finally, she stopped crying because he put his penis in her mouth, and I don’t think you can cry in that position. I had to stop watching at that point because I started to feel sick, but it kept going on, and they kept doing other things, and she kept saying “no.” Even when I covered my ears, I could still hear her say that.

The Bluest Eye

So it was on a Saturday afternoon, in the thin light of spring, he staggered home reeling drunk and saw his daughter in the kitchen.

She was washing dishes. ... Why did she have to look so whipped? She was a child—unburdened—why wasn’t she happy? The clear statement of her misery was an accusation. He wanted to break her neck—but tenderly.

...

He closed his eyes, letting his fingers dig into her waist. The rigidity of her shocked body, the silence of her stunned throat, was better than Pauline’s easy laughter had been. ... He wanted to f[-]ck her—tenderly. But the tenderness would not hold. The tightness of her vagina was more than he could bear. His soul seemed to slip down to his guts and fly out into her, and the gigantic thrust he made into her then provoked the only sound she made—a hollow suck of air in the back of her throat. Like the rapid loss of air from a circus balloon.

...

Removing himself from her was so painful to him he cut it short and snatched his genitals out of the dry harbor of her vagina. She appeared to have fainted. Cholly stood up and could see only her grayish panties, so sad and limp around her ankles. Again the hatred mixed with tenderness. The hatred would not let him pick her up, the tenderness forced him to cover her.

So when the child regained consciousness, she was lying on the kitchen floor under a heavy quilt, trying to connect the pain between her legs with the face of her mother looming over her.

Identical

Mom Was Gone Again

Can’t exactly remember why,
only that we didn’t expect her
to come home until very late.

It was dark in our room.

Velvety black. Someone had closed
the curtain. Kaeleigh was scared.
I tried to tell her not to worry, but just
then, Daddy burst through the door.

I closed my eyes tight, made myself
no more than a shadow. Something
about him was different. I didn't
want that something to find me.

I cracked my eyes just a slit as he sat
on Kaeleigh's bed, pulled her into
his lap. He smelled of Brut and Wild
Turkey. His peculiar potpourri.

*I love you so much, my little
flower. Daddy needs something
from my girl, my sweet rose.
Will you give it to me?*

I wanted to be his little flower,
would have given my Daddy anything.
What did he want from Kaeleigh?
She laid her head on his chest. "What?"

*I want you to see something,
something that proves how
much I love you. This is only
for you, Kaeleigh girl.*

He lifted her gently, sat her
down on the bed beside him.
Then he opened the snaps on
the fly of his flannel pajamas.

It stood up, stiff as a stalagmite.
*See how much Daddy loves you?
Show me you love me, too. Touch
it.* He closed her hand around it.

I know it sounds bad, but I wanted
to touch it too. I didn't know
what it meant, only that it made Daddy
happy. I wanted to make him happy, too.

That's right, that's right.
His voice rocked in rhythm
with his body. *Oh yes, my Kaeleigh
loves me. My little flower . . .*

Kaeleigh Didn't Know

What any of it meant
either.
But we both knew

somehow it was
important,
because when Daddy

finished, he burrowed
his face
into Kaeleigh's hair

and wept. Confused at
his tears,
and at the sticky stuff icing

her hands, still Kaeleigh
pleaded,
"Don't cry, Daddy.

What's the matter? Didn't
I love
you good enough?"

Based on the School Board's review of the books, guidance from the Superintendent and Chief Academic Officer, community feedback, and research of third-party resources, the Board finds that these five books are not age appropriate for the high-school library, do not comport with the District's curricular goals and objectives, and lack educational value and merit.

2. Whether to accept or reject the donation of *The Hate U Give*, *Thirteen Reasons Why*, *Beloved*, *Looking for Alaska*, *Speak*, *Fallout*, *Glass*, *Burned*, *Crank*, and *Smoke*?

The School Board votes to **reject** Wheeler Trigg O'Donnell's donation of *The Hate U Give*, *Thirteen Reasons Why*, *Beloved*, *Looking for Alaska*, *Speak*, *Fallout*, *Glass*, *Burned*, *Crank*, and *Smoke*. Each of the ten books (and duplicate copies of *The Hate U Give* and *Thirteen Reasons Why* for the middle-school library) in this category have a BookLooks rating of "3." This means the books contain "excessive/explicit violence," "extreme/frequent hate," "excessive/frequent profanity," "references to sexual activities," and "drug or alcohol abuse." BookLooks defines "excess" to mean exceeding a reasonable limit; extreme in frequency, intensity, or severity.

The School Board's review of the content of these ten books supports finding that these books contain inflammatory racial commentary; excessive/frequent profanity; explicit sexual activities; bestiality commentary; violence; derogatory terms; suicidal ideations; sexual nudity; alcohol and drug use and abuse; gender ideologies; and sexual battery. Below are just a few illustrative excerpts:

Crank

Hands

covered my mouth,
rough,
held my arms,
strong,
ripped my clothes,
vicious.

Fear danced
up my spine,
jolted
my brain,
dripped onto
the ground.

No! I
screamed
into dirty
flesh.

Not
this way!

Buttons burst,
zippers
opened,
I closed my
eyes, braced
for pain.

...

It Started with a Kiss

Crank-revved, pistons firing full bore,
passion firecracked in tiny bursts
from thigh to belly button.

Oh, baby.

I want you so bad!

“B-b-bad to the bone?” We laughed,
but it wasn’t a joke. Not for long.
My shirt tore open. “Wait.”

I’ve waited for weeks.

Put up and shut up.

Kisses segued to bites. Bruises.
Pain rippled through my body.
“Brendan, please stop.”

*No. You promised,
you damn little tease.*

Off came my shorts. Down went
his zipper. I realized I was in

serious trouble. "I'll scream."

*Go ahead. No one can hear
but skunks and coyotes.*

Still, as I opened my mouth, his
hand slapped down on it. Those
sublime muscles hardened.

Just relax.

You'll love it.

My brand-new Victoria's Secrets
shredded, and I felt the worst of
Brendan pause, savoring my terror.

They all love it.

Had he done it a different way, I
might have responded with excitement.
Instead, I froze as he pushed inside.

There it is.

Oh, God. There it goes.

It went, all right, with an audible
tear. Pain mushroomed into agony
and all I could do was go stiff.

*You weren't lying,
you bitch!*

I laid there, sobbing, as he worked
and sweated over me. Stoked by the
monster, it took him a long time to finish.

Give me a line,

I'll give you an encore.

He pulled away sticky and bloody.
Throbbing inside and out, I didn't move,
didn't dare look him in the eye.

What the hell

is the matter, Bree?

I stared up at the clouds, gathering
into gloom, shrouding the moon.

"My name is Kristina"

Beloved

Paul D looked at the spot where the grief had soaked him. The red was gone but
a kind of weeping clung to the air where it had been.

Probably best, he thought. If a Negro got legs he ought to use them. Sit down
too long, somebody will figure out a way to tie them up. ...

...

Paul D smiled then, remembering the bedding dress. Sethe was thirteen when
she came to Sweet Home and already iron-eyed. ... The five Sweet Home men
looked at the new girl and decided to let her be. They were young and so sick with
the absence of women they had taken to calves. ... The restraint they had exercised

possible only because they were Sweet Home men—the ones Mr. Garner bragged about while other farmers shook their heads in warning at the phrase.

“Y’all got boys,” he told them. “Young boys, old boys, picky boys, stropping boys. Now at Sweet Home, my ni[--]ers is men every one of em. Bought em thataway, raise em that away. Men every one.”

“Beg to differ, Garner. Ain’t no ni[--]er men.”

...

She shook her head from side to side, resigned to her rebellious brain. Why was there nothing it refused? No misery, no regret, no hateful picture too rotten to accept? Like a greedy child, it snatched everything up. Just once, could it say, No thank you? I am full God damn it of two boys with mossy teeth, one sucking on my breast the other holding me down, their book-reading teacher watching and writing it up. I am still full of that, God damn it, I can’t go back and add more. Add my husband to it, watching, above me in the loft—hiding close by—the one place he thought no one would look for him, looking down on what I couldn’t look at all. And not stopping them—looking and letting it happen. But my greedy brain says, Oh thanks, I’d love more—so I add more. And no sooner than I do, there is no stopping. There is also my husband squatting by the churn smearing the butter as well as its clabber all over his face because the milk they took is on his mind. And as far as he is concerned, the world may as well know it.

Fallout

Mine isn’t the only one

But it’s the only one I’m qualified
to talk about. I don’t know if my parents

were ever in love, but for argument’s
sake, I’ll imagine they were.

So along comes the monster [crystal meth]. Then what?
Sex, obviously, or I wouldn’t be here.

Good sex? Bad sex? Group sex?
All of the above? I mean, why did any

of that have to change because they
decided to get high together? I don’t

understand. Did they go gay
in lockup? Decide they liked same-sex

sex better than sex with each other?
Did they ever even try to put things

right with each other after they got out?
Did they ever even once think about me?

...

A memory slams into me

A different room.
A different house.

A different town.

I was young.
I was small.
I was afraid.

He was big.
He was strong.
He was supposed
to keep me safe.
No one saw when
he came to me,
put his hand over
my mouth, and said,
*If you tell, I'll
make you sorry. Understand?*

He was all over me.
He was on top of me.
He was inside me.

I never told.
I never screamed.
I never healed.

A different night.
A different place.
A different girl.

Sorcery or hormones

Something *has* possessed me,
and whatever it is, *it* stops
kissing Bryce. But only long
enough to say, "Come on."
It leads him down the hall,
into my bedroom. I think
I should stop *it*. Don't know
if I can. Don't know if I want to.

Autumn (me?) has no control
as it invites Bryce onto my bed.
He pushes me back against
my pillow. Peels away his shirt.
Unbuttons mine. Stares down
at me with love (lust) harbored
in his eyes. *Wow*, he says, before
kissing me again. Only this time,

his lips move across my neck,
down over my collarbone. To

the soft mounds beneath. I want
to say, "Wait." But *it* won't let me.
I can barely catch my breath, but
this time for all the right (wrong!)
reasons. My heart jackhammers
in my chest. Bryce must hear!

His lips stop traveling my torso,
long enough to encourage me
out of my jeans. His come off too,
and I might stop to fold everything
correctly, but *it* insists I just leave
our clothes heaped together
and take a good long look at Bryce.
Except for sex ed pictures, I've never
seen a penis before. But I'm def

seeing one now. "No," I want
to say. But *it* reaches out. Touches
Bryce there. Likes how the skin
feels. Likes the heat. "Stop,"
I want to say, but *it* makes Autumn
(me?) do things she doesn't know
how to do. I realize suddenly that
it means to make her go all the way.

This is like watching a movie, only
I can't find the remote. No way
to pause. No way to reverse.
Off go my panties. Now everything
moves slow motion. Finally I find
my voice. "Wait. I'm not sure..."
It doesn't let me push him away,
but *it* does let me say, "I'm a virgin."

That slows him down

But he doesn't want to stop.
Instead he becomes gentle.
You want to, don't you?

I want to say, "Maybe not,"
but *it* maintains control,
kisses him. "Yes. I want to."

I won't hurt you, he promises.
Let me make you ready.
He touches that place.

Kisses that place. *It* moans.
No, Autumn moans. No, I moan.
And I see that it is really me.

Really me

Here with Bryce,
wanting to give
him all of me.
I'm scared.

But he has made me ready.

"I love you."
The words spill
from my mouth
just before
a bright flash
of pain.
Breathe.

He is in me when he promises again,

And I love you.

Did it hurt?

Can I keep going? He waits

for my answer.
"Not too much.
And yes."
He starts to move.
Slowly at first.
Rhythmically.

I follow his lead and together

we move faster.
Into the tornado.
Rocked by an
apple-scented
maelstrom,
skin to skin

with the person I love, every vestige of

doubt vanishes in
white-hot bolts
of lightning.
No pain now.
No sense
of wrong.

Everything is perfect.

We lie together, silent.

For a while, legs knotted
his fingers twisted in my hair.

A foreign sent lifts from our
skin. After-sex perfume.
Not altogether unpleasant. ...

Thirteen Reasons Why

Before that party, I'd thought about giving up so many times. I don't know, maybe some people are just preconditioned to think about it more than others. Because every time something bad happened, I thought about it.

It? Okay, I'll say it. I thought about suicide.

The anger, the blame, it's all gone. Her mind is made up. The word is not a struggle for her anymore.

After everything I've talked about on these tapes, everything that occurred, I thought about suicide. Usually it was just a passing thought.

I wish I would die.

I've thought about those words many times. But it's a hard thing to say out loud. It's even scarier to feel you might mean it.

But sometimes I took things further and wondered how I would do it. I would tuck myself into bed and wonder if there was anything in the house I could use.

A gun? No. We never owned one. And I wouldn't know where to get it.

What about hanging? Well, what would I use? Where would I do it? And even if I knew what and where, I could never get beyond the visual of someone finding me—swinging—inches from the floor.

I couldn't do that to Mom and Dad.

So how did they find you? I've heard so many rumors?

It became a sick sort of game, imagining ways to kill myself. And there are some pretty weird and creative ways.

You took pills. That, we all know. Some say you passed out and drowned in a bathtub full of water.

It came down to two lines of thinking. If I wanted people to think it was an accident, I'd drive my car off the road. Someplace where there's no chance of survival. And there are so many places to do that on the outskirts of town. I've probably driven by each of them a dozen times in the past couple weeks.

Others say you drew the bathwater, but fell asleep on your bed as it was filling. Your mom and dad came home, found the bathroom flooded, and called your name. But there was no answer.

...

So, I've decided on the least painful way possible.

Pills.

My stomach pulls in, wanting to rid my body of everything. Food. Thoughts. Emotions.

But what kind of pills? And how many? I'm not sure. And I don't have much time to figure it out because tomorrow... I'm going to do it.

Wow.

Based on the School Board's review of the books, guidance from the Superintendent and Chief Academic Officer, community feedback, and research of third-party resources, the Board finds that these ten books are not age appropriate for the high-school library (and for *The Hate U Give* and *Thirteen Reasons Why* they are not age appropriate for the middle-school library either), do not comport with the District's curricular goals and objectives, and lack educational value and merit. The Board also emphasizes its concern that *Nineteen Minutes* (which depicts a school shooting) and *Thirteen Reasons Why* (which depicts a completed suicide) present genuine safety concerns for the District's students. For example, the District learned that other school districts removed *Thirteen Reasons Why* from their libraries, one did so after *seven students* committed suicide.

3. Whether to accept or reject the donation of *Melissa/George*?

The School Board votes to **reject** Wheeler Trigg O'Donnell's donation of *Melissa/George*, to be returned to the Running Creek Elementary School library. The book contains alternate gender ideologies and transitioning; sexuality; non-sexual nudity; and sexual activities and has a BookLooks rating of "2." This means the book contains content that is not appropriate for children under age 13.

The Running Creek Elementary School library serves students ranging in age from three to 11. While those students who are younger (e.g., preschoolers) may not check out library books, and most of these students cannot read, a broad age range of students with varying maturity levels have access to the library and can browse the library's collection. The book, *Melissa/George*, contains material that is age-inappropriate for all elementary school students, but particularly those students younger in age. For example, if the book were placed on the shelf at the library, five-, six-, and seven-year-olds would have access to passages like:

Melissa/George

While Mom made dinner, George headed upstairs to take a bath. She took off her shirt while the tub filled, waiting until the last possible moment to take off her pants and underwear. She immersed her body in the warm water and tried not to think about what was between her legs, but there it was, bobbing in front of her.

...

What if I'm a girl?

George had seen an interview on television a few months ago with a beautiful woman named Tina. She had golden-brown skin, thick hair with blond highlights, and long, sparkling fingernails. The interviewer said that Tina had been born a boy, then asked her whether she'd had *the surgery*. The woman replied that she was a *transgender woman* and that what she had between her legs was nobody's business but hers and her boyfriend's.

So George knew it could be done. A boy could become a girl. She had since read on the Internet that you could take girl hormones that would change your body, and you could get a bunch of different surgeries if you wanted them and had the money. This was called *transitioning*. You could even start before you were eighteen with pills called androgen blockers that stopped the boy hormones already

inside you from turning your body into a man's. But for that, you needed your parents' permission.

...

"I know about your magazines," he said.

"Mom *told* you?"

"Naw, I found them this weekend. I knew mom was upset about something, and then I saw the bag sitting on her bed. Dude, I thought you had porn or something in there, so I took a peek. You know, just to find out what kind of stuff my little bro was into. So I figured you were gay. But I didn't think you were *like that*." Scott popped a corn fritter into his mouth. "So, like, do you want to"—he made a gesture with two fingers like a pair of scissors—"go all the way?"

George squeezed her legs together. "Maybe someday," she said.

Based on the School Board's review of the books, guidance from the Superintendent and Chief Academic Officer, community feedback, and research of third-party resources, the Board finds that *Melissa/George* is not age appropriate for the Running Creek Elementary School library, does not comport with the District's curricular goals and objectives, and lacks educational value and merit, particularly at an elementary-school level.

4. Whether to accept or reject the donation of *It's Your World—If You Don't Like It, Change It: Activism for Teenagers* and *You Should See Me in a Crown*?

The School Board votes to **reject** Wheeler Trigg O'Donnell's donation of *It's Your World—If You Don't Like It, Change It: Activism for Teenagers* and *You Should See Me in a Crown*. The School Board finds that these two books are not age appropriate for a middle-school audience. Reviews of *You Should See Me in a Crown* by *Seventeen* magazine (as reproduced on the inside cover of the book) suggest the book is for recent high-school graduates and those students going to college. Similarly, reviews of *It's Your World—If You Don't Like It, Change It: Activism for Teenagers* suggest an audience ninth grade and up. For instance, the *School Library Journal's* editorial review states:

Gr 9 Up-Animal rights, racism, war protest, AIDS, school violence and bullying, women's rights, and promoting tolerance are among the topics covered here. Halpin provides basic information about each one and then makes myriad suggestions for action at home, in the community, the "five-minute activist," etc. The ideas are easy to implement. Each section is accompanied by authentic accounts of student experiences, including successes as well as difficulties, in trying to change their school or community or influence a world issue, such as the war in Iraq. Many of the ideas are easily doable—in school violence the suggestion is made to set up "bully boxes" so that students can anonymously and comfortably report incidents of harassment. The discussions end with an annotated list of Web sites, books, and movies while the book concludes with a seven-page resource list for general activism. This is an important book that will empower any young adult who would like to make a difference.

Based on the School Board's review of these two books, the Board agrees their content is more suitable for older teenagers and young adults, and not the students (ages 11–14) served by the District's middle school. The age and maturity of early and late teens differ significantly. Consistent with the Library Protocols, the School Board finds that these two books, which are rated for a more mature, high-school-level audience, should not be included in the middle school library, which is accessible to students who are not yet teenagers.

These two books also do not advance the District's curricular goals and educational mission. For instance, the book, *You Should See Me in a Crown*, describes itself as a "rom-com" (romantic comedy) for young adults. The School Board has emphasized that the District's libraries differ from public libraries. While public libraries serve a broader age demographic and provide materials that appeal to a variety of readers with different interests, goals, and entertainment preferences, the District's libraries exist to provide materials with educational value that will facilitate the District's mission of providing students with excellent learning opportunities that inspire a passion for learning. The District is aware there are other titles in its library collections of similarly questionable educational value; as contemplated by the Library Protocols, it is the District's intention to gradually identify and weed such works from its collections.

Based on the School Board's review of the books, guidance from the Superintendent and Chief Academic Officer, community feedback, and research of third-party resources, the Board finds that these two books are not age appropriate for the middle-school library, do not comport with the District's curricular goals and objectives, and lack educational value and merit.

5. Whether to accept or reject the donation of *#Pride: Championing LGBTQ Rights*?

Unlike the other titles, the School Board votes to **accept** Wheeler Trigg O'Donnell's donation of *#Pride: Championing LGBTQ Rights*. After review of the book's content, the School Board finds that this book does not advance the District's curricular goals and objectives, and does not contain material with sufficient educational value such that it satisfies the District's strict selection process for library material. The School Board therefore directs the Superintendent not to return the book to the middle-school library and to hold it at this time.

IV. Conclusion

For the reasons stated, the School Board votes to reject all the books donated to the District by the law firm Wheeler Trigg O'Donnell, except for *#Pride: Championing LGBTQ Rights*. The District's counsel is instructed to return the rejected book donations to Wheeler Trigg O'Donnell. For *#Pride: Championing LGBTQ Rights*, the Superintendent is instructed to hold the book until further notice from the School Board and not return it to any District library.

Dated March 30, 2025

Approved by:

Rhonda Olsen (President)
David Fletcher (Vice President)
Mike Calahan (Treasurer)
Mary Powell (Secretary)
Jon Waller (Assistant Secretary/Treasurer)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Charlotte N. Sweeney

Civil Action No. 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.;
MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.;
NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and
THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

ORDER

This is a book-removal case stemming from the Elizabeth School District (the District) in Elizabeth, Colorado. On March 19, 2025, the Court granted Plaintiffs' motion for preliminary injunction and denied the District's motion to exclude Plaintiffs' proffered evidence supporting their preliminary injunction motion. ECF No. 35 (order). The District appealed and simultaneously moved to stay the Court's order pending appeal. ECF No. 42. Plaintiffs responded to the motion to stay, ECF No. 48, and the District replied, ECF No. 49. Because all four factors weigh against the District's requested stay, the Court DENIES the District's motion. The District is ordered to return the Removed Books to the library shelves by 5:00 p.m. on April 5, 2025, and it is enjoined from any conduct that violates the Court's order on Plaintiffs' motion for preliminary injunction.

I. RELEVANT PROCEDURAL BACKGROUND¹

The day after the Court entered its order on Plaintiffs' motion for preliminary injunction, the District filed a notice of appeal with the Tenth Circuit, appealing both the Court's denial of its motion to exclude evidence and the Court's grant of Plaintiffs' motion for preliminary injunction. ECF No. 38. And the next day, on March 21, 2025, the District filed its motion to stay pending appeal with this Court. ECF No. 42.

On March 24, 2025, the District filed an Emergency Motion for Administrative Stay and Stay Pending Appeal with the Tenth Circuit. ECF No. 46. On March 25, 2025, this Court issued an order staying its March 19 order granting Plaintiffs' motion for preliminary injunction until 48 hours after it rules on the District's motion. ECF No. 45. The Tenth Circuit then issued an order denying without prejudice the District's emergency motion for stay. ECF No. 46. The District's motion to stay is now ripe for review.

II. LEGAL STANDARD

In determining whether a stay pending appeal of a preliminary injunction is warranted, the Court considers four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). There is "substantial overlap between these and the factors governing

¹ The Court provided a thorough factual background of this dispute in its March 19, 2025 order, ECF No. 35 at 1–7, and declines to repeat that background here.

preliminary injunctions.” *Id.* The first two factors are the “most critical,” and the movant must show that the “chance of success on the merits [is] better than negligible.” *Id.* (internal citation and quotations omitted); *Instructure, Inc. v. Canvas Techs. Inc.*, No. 221CV00454-DAK-CMR, 2022 WL 170067, at *3 (D. Utah Jan. 19, 2022) (denying the defendant’s motion to stay pending appeal, explaining that the defendant failed to meet its burden). “[S]imply showing some possibility of irreparable injury fails to satisfy the second factor.” *Nken*, 556 U.S. at 434 (internal citation and quotations omitted).

III. ANALYSIS

A. The District’s Likelihood of Success on Appeal (Factor 1)

The District acknowledges that the Court has already held that Plaintiffs are likely to succeed on the merits of their claims, and thus it is unlikely that the Court will find that the District will succeed on the merits of its appeal. ECF No. 42 at 4–5. On this point, the Court agrees. However, the Court will briefly address each argument raised by the District in turn.

i. The Court’s Denial of the District’s Motion to Exclude Evidence

The District first argues that the Court “granted the preliminary injunction by resolving contested fact issues with inadmissible evidence without an evidentiary hearing.” ECF No. 42 at 5. The District thus contends that it is likely to prevail on its appeal because the Court did not hold an evidentiary hearing. ECF No. 42 at 5–7. The Court disagrees.

On its first point, the District fails to identify any such “inadmissible” evidence the Court relied on despite its broad argument to the contrary. To rehash the District’s

objections, it objected to its own employees' and Board directors' emails as hearsay. ECF No. 35 at 8 (summarizing the District's objections). The Court explained that statements by Superintendent Snowberger, Board directors, Chief Academic Officer Moore, and other District employees are not hearsay; under Federal Rule of Evidence 801(d)(2)(D), these are opposing party statements that are excluded from the definition of hearsay. *Id.* at 8–9.

Moreover, even if the Court did rely on hearsay statements, courts in this Circuit routinely find that “hearsay statements . . . are fair game” at the preliminary injunction stage. *EIS Ultimate Holding, LP v. Huset*, No. 23-CV-02324-GPG-MDB, 2024 WL 4472008, at *9 (D. Colo. Sept. 19, 2024) (citing *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trustees*, 680 F. Supp. 3d 1250, 1268 (D. Wyo. 2023) (observing that “a court may consider affidavits based on hearsay when evaluating requests of preliminary injunctions”), and *Shea v. Ditech Fin. LLC*, 208 F. Supp. 3d 380, 382 (D. Mass. 2016) (“The Court may also rely on otherwise inadmissible evidence, including hearsay, in deciding a motion for preliminary injunction.”)).

On its second point, the Court is not persuaded that the District is likely to prevail on its appeal because the Court did not hold an evidentiary hearing. ECF No. 42 at 5–7. That is because no hearing was required to distill the District's motivations for removing the books: the Board members' motivations were plain from their contemporaneous emails. See, e.g., ECF No. 9-9 at 3 (Director Booth email to the Board directors and Superintendent Snowberger: “it's equally important to remember that our commitment to conservative values was a key aspect of our campaign”); *id.* (“conservative values are

exactly what we are and plan to continue to bring into the district”); ECF No. 9-12 at 3–4 (Director Powell explaining that she initially was in favor of keeping *#Pride* and *You Should See me in a Crown* in the libraries because “it would be a good thing to show some openness to other viewpoints,” to which Director Booth responded, “[p]ersonally, LGBTQ is only regarding sexual preference which doesn’t belong in any school,” prompting Director Powell to “change[her] vote to on these two to REMOVE”); ECF No. 9-14 (Director Powell referring to one of the Removed Books as the “LGBTQ book,” noting that two books have “gender identity ideology in them, and do we really want that out there at all?”). The Court thus puts no weight in the District’s post-litigation statements that no Board director voted to remove any books based on partisan or political motives. ECF No. 42 at 5.²

And equally important is the Tenth Circuit’s guidance that the “Federal Rules of Evidence do not apply to preliminary injunction hearings.” *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003) (“We must be mindful, therefore, as the Supreme Court has cautioned, that ‘a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.’” (quoting *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981))). Finally, courts have broad discretion in determining whether to hold such a hearing. *See Carbajal v.*

² In its reply in support of its motion to stay, the District attaches a 25-page affidavit from Superintendent Snowberger detailing a March 28, 2025 special meeting of the School Board. ECF No. 49-1. The Court has reviewed that affidavit and makes the following observations: First, the District appears to be attempting to supplement the record that was before the Court on the motion for preliminary injunction. This is improper. Second, the affidavit is purportedly offered to support the District’s decision to reject the donation of the subject books that was necessitated by the District’s undisclosed decision to destroy the books. Whether the District accepts the donation is not this Court’s concern.

Warner, 561 F. App'x 759, 764 (10th Cir. 2014) (reviewing the district court's denial of a request for evidentiary hearing on a motion for preliminary injunction for abuse of discretion, and finding no abuse).

The Court finds that the District is not likely to prevail on its appeal because the Court did not hold an evidentiary hearing applying the Federal Rules of Evidence.

ii. The District's Book Removal Decision was Not Government Speech

The District again argues that the District's book removal decision was government speech immune from First Immunity scrutiny. *Id.* at 7. The Court previously explained that the District's argument found little support in the caselaw, and nothing in the District's motion changes that finding. Indeed, the District does not cite a single case to the contrary, instead relying on *Moody v. NetChoice, LLC*, a case that had nothing to do with government speech (it concerned states' power to control whether and how third-party social-media posts are presented to other users). 603 U.S. 707, 717 (2024). The District cannot clear the hurdle that every court to have addressed this issue disagreed with the District's position. See *GLBT Youth in Iowa Sch. Task Force v. Reynolds*, 114 F.4th 660, 667 (8th Cir. 2024) ("the placement and removal of books in public school libraries" is not government speech); *PEN Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd.*, 711 F. Supp. 3d 1325, 1331 (N.D. Fla. 2024) (school library not viewed "as the government's endorsement of the views expressed in the books"); *Viriden v. Crawford Cnty.*, No. 2:23-CV-2071, 2024 WL 4360495, at *5 (W.D. Ark. Sept. 30, 2024) ("[T]he Supreme Court has not extended [government-speech] doctrine to the placement and removal of books in libraries.").

The Court reiterates that it will not accept the District's invitation to extend the scope of government-speech by applying *NetChoice* or its other cited authority to the facts at hand—something the Supreme Court has expressly discouraged. *Matal v. Tam*, 582 U.S. 218, 235 (2017) (“[W]hile the government-speech doctrine is important—indeed, essential—it is a doctrine that is susceptible to dangerous misuse. If private speech could be passed off as government speech by simply affixing a government seal of approval, government could silence or muffle the expression of disfavored viewpoints. For this reason, we must exercise great caution before extending our government-speech precedents.”).

iii. Hazelwood Does Not Apply, But Even if it Did, it Would Not Compel a Different Result

The District also argues that the *Pico* plurality is inapplicable and instead the *Hazelwood* standard applies. ECF No. 42 at 8–9. The Court, however, found that Plaintiffs are likely to succeed on the merits of their claims under each standard advanced by the parties (*Pico*, *Hazelwood*, and *Tinker*). ECF No. 35 at 25. *Hazelwood* asks whether the activity at issue “might reasonably be perceived to bear the imprimatur of the school and that involve pedagogical concerns.” *Fleming v. Jefferson Cnty. Sch. Dist. R-1*, 298 F.3d 918, 924 (10th Cir. 2002). If it does, then the speech is “school-sponsored speech” that may be immune from First Amendment scrutiny. *Id.* The Court already held that the District cannot make this showing.

Specifically, the Court found that the District provided no persuasive authority that merely maintaining a book on a school library shelf constitutes school-sponsored speech. “The imprimatur concept covers speech that is so closely connected to the school that it

appears the school is somehow sponsoring the speech.” *Id.* at 925. The Court reasoned that, given the District’s stated position concerning the Removed Books, there is no chance that anyone will connect the views expressed in the Removed Books to the District. ECF No. 35 at 32. The Court also held that the District’s book-removal decision was not “reasonably related to legitimate pedagogical concerns.” ECF No. 35 at 32 (quoting *Hazelwood*, 484 U.S. at 273, and explaining that, “[o]ther than pretextual declarations, at this stage, there simply is no reason to believe that the books were removed because of vulgarity, age-inappropriateness, or for legitimate pedagogical concerns; the Board’s own emails strongly suggest that the book removal was motivated by the directors’ ‘commitment to conservative values’”). Finally, the Court went on to explain why it found the facts of *Hazelwood* and *Fleming* are plainly distinguishable. *Id.* at 33–34.

Nothing in the District’s motion to stay warrants modification of the Court’s order.

iv. Plaintiff’s Cause of Action Under the Colorado Constitution

For the first time in this matter, the District argues that Article II, Section 10 of the Colorado Constitution does not confer a private right of action. ECF No. 42 at 9–10. Because this argument was not raised before the Court in the District’s response to Plaintiffs’ motion for preliminary injunction, the Court finds that there is little to no possibility that the District would be successful on appeal on this issue. *McDonald v. Kinder-Morgan, Inc.*, 287 F.3d 992, 999 (10th Cir. 2002) (“[A]bsent extraordinary circumstances, arguments raised for the first time on appeal are waived.”).

Moreover, Plaintiffs cite two cases in response that recognized a private right of action under Article II, Section 10 of the Colorado Constitution. ECF No. 48 at 10 (citing *Bock v. Westminster Mall Co.*, 819 P.2d 55, 56 (Colo. 1991) (recognizing private right of action under Article II, Section 10 of the Colorado Constitution for declaratory and injunctive relief), and *Brammer-Hoelter v. Twin Peaks Charter Acad.*, 81 F. Supp. 2d 1090, 1098 (D. Colo. 2000) (explaining that Colorado courts recognize a private right of action under Article II, Section 10 where the plaintiffs “sought prevention of future violations of their free speech rights”). The District ignores this argument in its reply and thus apparently abandons its argument.

v. *The Author Plaintiffs have a First Amendment Right to Share Their Viewpoints*

The District argues that the Author Plaintiffs have no right to have their books in the District libraries. ECF No. 42 at 10–11. The District again points to the government-speech doctrine and *Hazelwood* for support. *Id.* The Court is not persuaded.

As the Court previously found, the Author Plaintiffs are likely to succeed on their claims because they have a constitutional right to share their books free from undue viewpoint-based censorship.³ ECF No. 35 at 19; *see also Martin v. City of Struthers, Ohio*, 319 U.S. 141, 143 (1943) (“The right of freedom of speech and press has broad scope. The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance. *This*

³ The Court notes that the District did not respond to this argument in its preliminary injunction response, thus providing another reason why it is unlikely to succeed on appeal on this issue.

freedom embraces the right to distribute literature, and necessarily protects the right to receive it.” (internal citation omitted and emphasis added)); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 64 n.6 (1963) (“The constitutional guarantee of freedom of the press embraces the circulation of books as well as their publication, and the direct and obviously intended result of the Commission’s activities was to curtail the circulation in Rhode Island of books published by appellants.” (internal citation omitted)).

* * *

The District has not shown that it is likely to succeed on its appeal. The Court thus finds that this factor weighs in against a stay.

B. Threat of Irreparable Harm if Stay Not Granted (Factor 2)

The District presents two arguments that it will suffer irreparable harm if the Court does not stay its preliminary injunction order. ECF No. 42 at 11–14. The Court will briefly address each argument in turn, concluding that neither argument is persuasive.

i. The Court’s Order Does Not Intrude Into Future Board Decisions—Except to the Extent that those Decisions Violate the Constitution

The District argues that it will be unable to curate its own library collection under the Court’s order due to the “breathhtakingly broad” nature of the Court’s order. ECF No. 42 at 11–12. The Court is not persuaded by the District’s manufactured injury.

The Court’s order merely requires the District to adhere to the minimum basic constitutional requirements by enjoining the District from removing additional books because the District disagrees with the views expressed therein or merely to further their preferred political or religious orthodoxy—as was made apparent in the Board’s contemporaneous emails. To the extent the order “intrudes” on the District’s decision-

making abilities, it is because the District's conduct at issue violated the constitutional requirements set forth in *Pico*, *Hazelwood*, and *Tinker*.

ii. *The Preliminary Injunction is Not a Disfavored Injunction*

The District argues that the Court's order is a disfavored injunction because it mandates that the District do two things: (1) repurchase and re-shelve copies of the Removed Books, and (2) adopt new interim library policies. ECF No. 42 at 12. The District, however, ignores that it waived this argument. Plaintiffs clearly sought "a preliminary injunction in order to preserve the status quo—when all of the Removed Books were available in ESD libraries." ECF No. 9 at 13. The District did not respond to this argument in response to Plaintiff's preliminary injunction motion. *See generally* ECF No. 25.

Courts in this Circuit routinely deem an issue waived when a party fails to respond to a movant's substantive argument. *See Phillips v. Calhoun*, 956 F.2d 949, 953–54 (10th Cir. 1992) ("[A] litigant who fails to press a point by supporting it with pertinent authority, or by showing why it is sound despite a lack of supporting authority or in the face of contrary authority, forfeits the point." (quoting *Pelfresne v. Vill. of Williams Bay*, 917 F.2d 1017, 1023 (7th Cir. 1990))); *In re Stone Pine Inv. Banking, LLC*, 635 B.R. 379, 395 (D. Colo. 2021), *aff'd*, No. 21-1423, 2023 WL 8758947 (10th Cir. Dec. 19, 2023) ("Appellants neither contest this assertion in their reply nor identify any place in the record where they previously raised this argument before the Bankruptcy Court [Thus], the Court finds that Appellants have waived this argument."); *Rock Roofing, LLC v. Travelers Cas. & Sur. Co.*, 413 F. Supp. 3d 1122, 1128 (D.N.M. 2019) (plaintiff's failure to respond to defendant's argument waived the issue); *Zane v. Kramer*, 195 F. Supp. 3d 1243, 1256

(W.D. Okla. 2016) (plaintiff waived claim where he did not respond to argument raised in defendants' summary judgment motion); *Palmer v. Unified Gov't of Wyandotte Cnty./Kansas City, Kansas*, 72 F. Supp. 2d 1237, 1250–51 (D. Kan. 1999) (“[T]he court deems plaintiff’s failure to respond to an argument raised in defendants’ papers tantamount to an express abandonment of any such claim.”).

Assuming *arguendo* that the District did not waive this argument, the Court is still not persuaded. The District discloses—for the first time—that it “discarded” its copies of the Removed Books after the Board’s September 9, 2024 decision to permanently remove them. ECF No. 42 at 13. Notably, the District failed to include that fact in its prior briefing. See ECF No. 25. The District then discloses—again, for the first time—that the Removed Books in its current possession were donated by a community member with the condition that they would not be placed back on the library shelves for general access. ECF No. 42 at 14. Rather than being forthcoming with the Court about these facts, the District previously represented that the Removed Books were available to Plaintiffs, and only Plaintiffs, upon disclosure of their relationship with this lawsuit. ECF No. 25 at 10, 28 (“As of January 27, 2025, the District decided to place copies of each of the 19 titles that the School Board voted to remove in the library from which they were taken. These titles are available only to C.C., E.S., or any student who is either a member of the NAACP [], or who has a parent or guardian who is a member of the NAACP. All the current members of the School Board are aware of and have approved the return of the disputed books for the purpose of allowing the plaintiffs in this litigation to browse, read, or check out those

books in the school district's libraries." (internal citations omitted)). No mention was made of the destruction of the Removed Books.

The District's argument fails for three additional reasons. First, Plaintiffs have since provided the District with a set of books free of charge and free of any restrictions on who may access them. ECF No. 48 at 12–13. Thus, the District can no longer argue that it will suffer irreparable harm by being forced to repurchase the books.⁴ Second, it is well-established that a harm is not irreparable when the losses may be compensated by monetary damages. *See Heideman*, 348 F.3d at 1189. And third, the District could have argued that the Court should order Plaintiffs to provide a bond in the event the Court granted Plaintiffs' preliminary injunction motion but decided not to make that argument.⁵

Turning to the District's argument that it would need to implement new library policies, nothing in the Court's order requires such conduct. The Court's order merely requires the District to return the Removed Books to the library shelves. Thus, there is no cognizable injury.

The second factor also weighs against a stay.

⁴ Yet, in its reply brief, the District continues to argue that it suffer harm because it must purchase the Removed Books. ECF No. 49 at 2 (twice stating that it will need to repurchase the books); *id.* at 6 ("The fact that the Court's order requires the purchasing of the books only magnifies the mandatory nature of the injunction, it doesn't underlie it."). The District's decision to reject the donation and thus manufacture an injury is its own doing and will not create an irreparable harm. *Id.* at 1–2 (explaining that the Board "voted to reject all the donated books except one (*#Pride*)" in an emergency Board meeting).

⁵ As the Court explained, Federal Rule of Civil Procedure 65(c) provides that a "court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." ECF No. 35 at 45 n.15. Plaintiffs argued that a security is not necessary here because the District will not suffer any undue harm if the Court grants Plaintiffs' motion, ECF No. 9 at 29, but the District offered no response and therefore conceded that security is unwarranted in this instance. Thus, the District's argument at this stage is untimely and waived.

C. Harm to Opposing Party if Stay Granted (Factor 3)

The District next argues that Plaintiffs will not be injured by a stay. ECF No. 42 at 14–15. The Court disagrees. As the Court previously held, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Verlo v. Martinez*, 820 F.3d 1113, 1127 (10th Cir. 2016) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Stated differently, where “First Amendment rights are violated, irreparable injury is presumed.” *Biogonic Safety Brands, Inc. v. Ament*, 174 F. Supp. 2d 1168, 1182–83 (D. Colo. 2001) (citing *Utah Licensed Bev. Ass’n v. Leavitt*, 256 F.3d 1061, 1076 (10th Cir. 2001)); see also *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012) (“[W]hen an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” (citation and quotations omitted)). Nothing in the District’s motion warrants reconsideration of this finding.

Like the prior factors, this factor weighs against a stay.

D. Public Interest (Factor 4)

The District argues that the public interest favors granting a stay because “[t]housands of students and their parents rely on the District to appropriately curate its library collections.” ECF No. 42. The District fails to acknowledge that courts often find that “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 237 F. Supp. 3d 1126, 1134–35 (D. Colo. 2017), *aff’d*, 916 F.3d 792 (10th Cir. 2019) (quoting *Connection Distrib., Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998)); *Loc. Org. Comm., Denver Chapter, Million Man Mar. v. Cook*, 922 F. Supp. 1494, 1501 (D. Colo. 1996) (“[A]s far as

the public interest is concerned, it is axiomatic that the preservation of First Amendment rights serves everyone's best interest.").

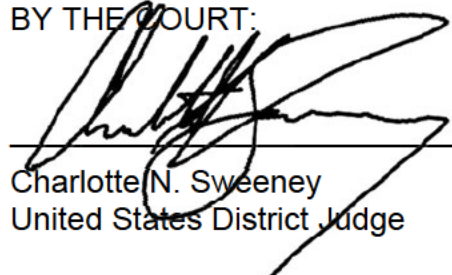
The public interest factor weighs against a stay.

IV. CONCLUSION

Because all four factors weigh against a stay pending appeal, the Court DENIES Defendant's motion. ECF No. 42. Pending a final trial on Plaintiffs' request for a permanent injunction or other resolution, the Court orders the District to return the Removed Books to their respective libraries by 5:00 p.m. on April 5, 2025, and the District is enjoined from any conduct that violates the Court's order on Plaintiffs' motion for preliminary injunction.

DATED this 3rd day of April 2025.

BY THE COURT:



Charlotte N. Sweeney
United States District Judge