



April 20, 2022

Via email

**Re: Katy Independent School District Book Removals**

Dear Katy ISD Board Members and Superintendent Gregorski,

As organizations committed to protecting civil liberties and rights, racial justice, LGBTQ+ equality, and education equity, we write to express our deep concern about Katy ISD’s recent book reviews, removals, and restrictions. We urge that Katy ISD immediately remedy this violation of the First Amendment and the Texas Constitution by changing its policy and practice to ensure that books remain on the shelves during review and to prevent the weaponization of the process to suppress ideas about marginalized communities. Further, the District should publicly acknowledge its grave missteps in implementing book reviews to date. It should publicly affirm its commitments to LGBTQ+ and racial inclusivity and to educating its students on both the United States’ history of racism and the Holocaust. The District must take these urgent steps to protect against the suppression of ideas through book bans.

The attached legal analysis sets out the recent history of concerning actions taken by Katy ISD and legal implications of such efforts in detail. To summarize, from 2018 to the present, Katy ISD has conducted approximately 118 reviews of books to reconsider whether and where they belong on district shelves. A startling number of these reviews—at least 85—have been initiated internally, meaning that a district employee requested the review. Over half the books that the district has reviewed have related to the following topics:

- **The United States’ history of racism:** *This Is Your Time*, by Ruby Bridges; *Etched in Clay*, by Andrea Chang; *Stamped: Racism, Antiracism, and You*, by Ibram X. Kendi; and *Beloved*, by Toni Morrison;
- **Anti-Black police brutality:** *Ghost Boys*, by Jewell Parker Rhodes; *All American Boys*, by Jason Reynolds; and *The Hate U Give*, by Angie Thomas;
- **LGBTQ+ and racial inclusivity, and LGBTQ+ and Black and brown characters:** *New Kid* and *Class Act*, by Jerry Craft; *The Breakaways*, by Cathy Johnson; *Princess Princess*, by Kay O’Neil; and *Meg, Jo, Beth, and Amy*, by Ray Terrierio;
- **Immigrant and refugee experiences:** *Persepolis*, by Marjane Satrapi; *Esperanza Rising*, by Pam Muñoz Ryan; and *Refugee*, by Alan Gratz;
- **The Holocaust:** *Night*, by Elie Wiesel; *Maus I* and *Maus II*, by Art Spiegelman; and *Anne Frank’s Diary: The Graphic Adaptation*, by Ari Folman.

For 38 books, the district has removed the book from the shelves entirely or restricted access to older students—including limiting access to the critically acclaimed graphic novels *New Kid* and *Class Act* and to the classic *Beloved*. While Katy ISD publicly announces removals, it does not typically announce when it deems books appropriate only for older students. For example, after controversy in October the district announced that *New Kid* would remain on the shelves—conveniently omitting that it had deemed the book appropriate only for grades 4 and up. Further, some books have been removed without formal review, contrary to Katy ISD policy.

It is concerning that the majority of Katy ISD reviews center on books regarding the history and experiences of marginalized communities in part because, under district policy, an externally requested review automatically triggers the removal of the book during the review process. In other words, even if the district ultimately decides that books should remain on district shelves, the district bars student access to books—and the ideas they contain—during a formal review requested by a community member. This allows racist, anti-LGBTQ+, anti-immigrant, and anti-Semitic motivations for removing books—or other motivations aimed directly at the suppression of ideas—to result in at least temporary removal of books from district shelves.

It is likewise especially concerning that Katy ISD employees are requesting a large number of book reviews related to marginalized communities. The highly disproportionate number of books about marginalized communities reviewed indicate a targeting of these books for increased scrutiny due to improper motivations. And in addition to these concerns, as detailed below, Katy ISD appears to have targeted books championed by student activists for review and potential removal.

These are serious violations of the First Amendment and of Katy ISD’s own policy for book evaluation. According to the district’s own legal policy, the district “shall not remove materials from a library for the purpose of denying students access to ideas with which the district disagrees.” Yet, the district has targeted books on specific topics for review based on the ideas they contain, and it has created a process that is being used to target books based on their ideas and to obtain at least temporary removal of those books from the shelves. For example, parents sought review of *New Kid* and *Class Act* because of the books’ exploration of racism. Katy ISD accordingly temporarily pulled the books from the shelves and ultimately restricted them to upper-elementary grades.

As the Supreme Court stated nearly a century ago, “if there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”<sup>1</sup> Schools, and in particular school libraries, must be a place where students have broad access to a wide variety of

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<sup>1</sup> *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

ideas—both the popular and unpopular ones of the moment. Simply put, Katy ISD cannot target school library books for increased scrutiny and removal because of disagreement with the content and the views the books express. The First Amendment prevents the district from suppressing the ideas that LGBTQ+ people belong, deserve acceptance and inclusion in American society, and have a wide array of life experiences. It likewise prevents the district from suppressing messages of racial inclusivity and belonging, or accounts of the United States’ long history of racial injustice. This is because the comfort of some cannot come at the expense of students’ constitutional rights.

Katy ISD’s mass book reviews, and its removal and restriction of many of those books, harm students in the district. They do so both by directly suppressing speech and access to ideas and by sending the message to Black, brown, and LGBTQ+ students that Katy ISD rejects their history and belonging in the community. Students perform better, both academically and socially, with access to texts that reflect their identities and experiences in the world.<sup>2</sup> Katy ISD is committed to “prepar[ing] and inspir[ing] *each student* to live an honorable, fulfilling life.”<sup>3</sup> To live up to that goal and to comply with the First Amendment, the district must take steps to remedy the harms from its actions in removing books.

Katy ISD must keep books on shelves during the pendency of the review process and must cease targeting books on marginalized communities for scrutiny. It must further revise its policy to provide for access to books during the review process. The district must publicly acknowledge its error in the large number of internally triggered reviews, and it must implement policy and training to prevent internal reviews from targeting marginalized communities in future. It must affirm its commitment to LGBTQ+ and racial inclusivity and teaching the history of racism and racial injustice in the United States. These steps are necessary for Katy ISD to comply with the First and Fourteenth Amendments.

Thank you for your attention to this matter. We look forward to your prompt response.

Sincerely,

American Civil Liberties Union of Texas  
Big Thought  
IDRA (Intercultural Development Research Association)  
Texas Civil Rights Project  
Young Leaders, Strong City  
**Addendum: Legal Analysis**

American Civil Liberties Union  
Children’s Defense Fund – Texas  
Equality Texas  
Texas Freedom Network

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<sup>2</sup> See, e.g., Rudine Sims Bishop, “Mirrors, Windows, and Sliding Glass Doors,” in *Perspectives: Choosing and Using Books for the Classroom*, Vol. 6, No. 3 (summer 1990).

<sup>3</sup> Katy ISD, *District Improvement Plan, 2021-2022* at 2, <https://www.katyisd.org/Documents/DIP.pdf> (emphasis added).

## Addendum: Legal Analysis

### I. Background: Book Review and Removals in Katy ISD

Since 2018, Katy ISD has reviewed at least 118 books for potential removal. Of these reviews, at least 85 have been triggered internally, by a district employee. This is a very high number of books designated for review. The majority of the books reviewed relate to issues of race and racism, LGBTQ+ and racial inclusivity, immigrant and refugee experiences, and the Holocaust. For 38 books (in roughly 30% of cases), the district has decided to effectuate some restriction to book access—either removing the books entirely or reassigning the books to higher grade levels.

#### A. The Reviewed Books

In practice, Katy ISD follows three processes for review: internal review; formal review; and informal review. As described below, these processes do not all track the processes delineated in Katy ISD's policy. Internal review is review initiated by a district employee. Formal review and informal review are both externally initiated. The identified themes below predominate, by far. An asterisk signifies a book for which review was triggered internally:

- Books that advance racial equity and inclusion and that explore the history of racism in the United States, such as:
  - *Beloved*, by Toni Morrison: Restricted to grades 11 and 12
  - *New Kid*, by Jerry Craft\* [both internally and externally initiated]: Restricted to grades 4 and up
  - *Class Act*, by Jerry Craft: Restricted to grades 5 and up
  - *Salvage the Bones*, by Jesmyn Ward
  - *Children of Blood and Bone*, by Tomi Adeyemi\*
  - *All American Boys*, by Jason Reynolds\*
  - *Out of Darkness*, by Ashley Hope Pérez\*: Removed
  - *This Is Your Time*, by Ruby Bridges\*: Moved from elementary to middle school
  - *Stamped: Racism, Antiracism, and You*, by Ibram X. Kendi
  - *Etched in Clay*, by Andrea Chang\*: Restricted to grades 5 and up
  - *The War Outside*, by Monica Hesse\*
- Books that advance LGBTQ+ inclusion, such as:
  - *Princess Princess Ever After*, by K. O'Neill\*: Moved from elementary to middle school
  - *Flamer*, by Mike Curato
  - *George*, by Alex Gino\*: Moved from elementary to middle school

- *The Breakaways*, by Cathy G. Johnson\*: Moved from elementary to middle school
- *Meg, Jo, Beth, and Amy*, by Ray Terciero\*: Moved from elementary to middle school
- *Game Changer*, by Neal Shusterman\*: Moved from middle to high school
- Books about immigrant and refugee experiences:
  - *Persepolis*, by Marjane Satrapi\*: Moved from middle to high school
  - *Esperanza Rising*, by Pam Muñoz Ryan\*
  - *Refugee*, by Alan Gratz\*
- Books about the Holocaust:
  - *Maus* and *Maus II*, by Art Spiegelman (apparently reviewed as one work)\*
  - *Anne Frank's Diary: The Graphic Adaptation*, by Ari Folman\*: Moved from middle to high school
  - *Night*, by Elie Wiesel

## **B. Flaws in Katy ISD Book Review Policy and Practice**

Katy ISD's book review process—both in policy and practice—has severe flaws. Most notably, unlike many book review processes in the state, in Katy ISD books are pulled off library shelves for the pendency of the review process. This means that any challenged book—no matter how frivolous or at odds with the First Amendment the challenge is—is unavailable to students for the duration of the review process.

For example, in fall 2021, district parents challenged Jerry Craft's *New Kid* and *Class Act*—part of a series of highly acclaimed graphic novels about Black preteens' experiences in school—specifically because of the ideas they contain about difficulties related to inclusivity and belonging that Black students face, such as microaggressions. Along with the book challenges, parents started a petition to seek to cancel a speaking event in the district by Mr. Craft. The parent who started the petition explained that she did so because she views Mr. Craft's books as promoting “critical race theory and Marxism.” She said, “He discusses microaggressions, which is a racial term coined by the conceptual founders of critical race theory. That let me know the ideology of these books.”<sup>4</sup> The two books follow a preteen Black student who enrolls at a private school and experience exclusion based on race and class. They are loosely based on Mr. Craft's life and his sons' lives. Plot lines include characters joining the school soccer team, arguing over Halloween costumes with friends, and navigating microaggressions like school staff misnaming Black students and peers seeking to touch Black students' hair.

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<sup>4</sup> Hannah Dellinger, *How Did 400 Katy ISD Parents Get a Book Removed? Accusations of Marxism and 'Critical Race Theory,'* Houston Chronicle, Oct. 6, 2021, <https://www.houstonchronicle.com/news/houston-texas/education/article/Woman-whose-petition-led-Katy-ISD-to-cancel-16512034.php>.

During the pendency of this review triggered by the goal of removing the ideas the books contain, the book remained off library shelves entirely. As a result of the review, Katy ISD determined *New Kid* appropriate only for grades 4 and up and *Class Act* only for grades 5 and up. But the First Amendment does not permit the removal of books from school libraries, or restriction of access to them, based on the ideas that they contain.

Moreover, Katy ISD's review process is plagued with issues regarding both compliance with district policy and transparency. In at least some instances, removal has apparently not been in accordance with district policy. District policy provides for book removal only following formal—not merely informal—reconsideration. But Katy ISD has decided to remove at least six books, four of which are LGBTQ+, following only informal reconsideration.

Katy ISD has said that the district has removed only 10 books from its shelves. But in fact, review has led to the restriction of access to books, and limitations on which students can encounter them in many more instances. The district has determined that that more than 30 books are not appropriate for students who originally had access but only for older students, though it has not publicized this information. For example, in October, the district announced that *New Kid* had been reviewed and was “already back on District library shelves.”<sup>5</sup> But the district has in fact determined, as a result of the reconsideration process, that *New Kid* is appropriate only for fourth grade and up and that *Class Act*, another graphic novel in the same series, is appropriate only for fifth grade and up. It has determined that *Beloved* is appropriate only for eleventh and twelfth grade. *This Is Your Time*, a book on civil rights by Ruby Bridges—who integrated a New Orleans elementary school at age six—was deemed appropriate for middle schoolers, not elementary schoolers. The district likewise found *Meg, Jo, Beth, and Amy*, a retelling of *Little Women* in which the family is multiracial and Jo is gay, appropriate for middle schoolers and not elementary schoolers. The result is that books on racism and LGBTQ+ and racial inclusivity are being shifted out of libraries for younger readers—meaning that young library-goers have fewer opportunities to encounter these ideas.

Finally, the district's reviews of *Maus*, *Maus II*, *Beloved*, and *Flamer* appear retaliatory and threaten to chill student activists' speech. Students at Katy ISD high schools distributed hundreds of copies of books in FReadom Week at the end of February. As student organizer Cameron Samuels explained, “Considering that it's Black history month, and in response to all these efforts to ban books, the selection of books we have to distribute are perfect for providing access to storylines and works that will be affirming to so many students. It's important for students to have access to all content, regardless of the fact that these books challenge the notion

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<sup>5</sup> Ariana Garcia, 'New Kid' by Jerry Craft Reinstated by Katy ISD After Controversial Petition and Review, Houston Chronicle, Oct. 15, 2021, <https://www.chron.com/news/houston-texas/article/Houston-Texas-New-Kid-Jerry-Craft-Katy-ISD-race-16535174.php>.

of white supremacy and a heteronormative society.”<sup>6</sup> In February, students announced plans to distribute *Maus* and *Maus II*, two graphic novels on the Holocaust. Also in February, the district initiated a review of these books, triggered internally by a district employee. After students announced plans to distribute *Beloved*, Katy ISD restricted students’ access to the book. Students distributed *Flamer*, which received a Lambda Literary Award for its portrayal of LGBTQ+ themes, as part of FReadom Week. *Flamer* was then formally challenged, resulting in its removal from district shelves for review.

## **II. Katy ISD’s Book Removal Practices Violate the First Amendment**

More than 40 years ago, the Supreme Court held that “local school boards may not remove books from their school library shelves simply because they dislike the ideas contained in those books.” *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 872 (1982) (plurality opinion). Katy ISD recognizes that this Supreme Court case controls the district’s actions in decisions regarding the removal of library materials. The district’s own legal policy explains, citing *Pico*: “Students’ First Amendment rights are implicated by the removal of books from the shelves of a school library. A district shall not remove materials from a library for the purpose of denying students access to ideas with which the district disagrees.”<sup>7</sup> Yet Katy ISD regularly removes books from the shelves during reviews triggered by the books’ content; has singled out books about race and racism, LGBTQ+ inclusivity, the experiences of refugees and immigrants, and the Holocaust for review and removal or restriction; and has allowed its process to be used specifically to target books that are the subject of student activism. These are plain violations of the First Amendment of the U.S. Constitution and its state corollary, Article I, Section 8 of the Texas Constitution, as well as Katy ISD policy.

### **A. Katy ISD’s Book Removals Are Inconsistent with the Supreme Court’s Decision in *Pico***

As the Supreme Court explained in *Pico*, school districts may not “seek by [books’] removal to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.” 457 U.S. at 872. Importantly, school districts cannot exercise discretion over library contents “in a narrowly partisan or political manner.” *Id.* at 870. For example, “if an all-white school board, motivated by racial animus, decided to remove all books authored by [Black authors] or advocating racial equality and integration,” doing so would plainly violate the First Amendment. *Id.* at 871.

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<sup>6</sup> Hannah Dellinger, *Katy ISD Students Organize to Distribute Books about Racism, LGBTQ+ Issues*, Houston Chronicle, Feb. 20, 2022, <https://www.houstonchronicle.com/news/houston-texas/education/article/Katy-ISD-students-organize-to-distribute-books-16929892.php>.

<sup>7</sup> Katy ISD EF (Legal) Policy, Instructional Resources at 1 (Oct. 7, 2021), [https://pol.tasb.org/Policy/Download/594?filename=EF\(LEGAL\).pdf](https://pol.tasb.org/Policy/Download/594?filename=EF(LEGAL).pdf).

In *Pico*, taking into account such evidence, the Supreme Court reversed a decision that had ended the case in favor of the district. *Id.* at 875. The Court explained, “The evidence plainly does not foreclose the possibility that petitioners’ decision to remove the books rested decisively upon disagreement with constitutionally protected ideas in those books, or upon a desire . . . to impose upon the students . . . a political orthodoxy to which [the school board] and their constituents adhered.” *Id.* Although the school board in *Pico* was able to cherry-pick excerpts from many of the disfavored books containing vulgar or sexually explicit language, the Supreme Court held that the school board nevertheless violated the First Amendment if they “intended by their removal decision to deny [students] access to ideas with which [the board members] disagreed, and if this intent was the decisive factor in [the school board’s] decision.” *Id.* at 871. The Supreme Court also emphasized that the school board failed to use “established, regular, and facially unbiased procedures” for reviewing the book, noting that evidence that the book “removal procedures were highly irregular and ad hoc” could undercut the district’s claims of viewpoint neutrality. *Id.* at 874.

Katy ISD’s book removals directly contravene the settled principles of *Pico*. Katy ISD routinely removes books from the shelves for content-based reasons—because review is sought based on their content. Katy ISD’s own employees regularly and disproportionately trigger reviews for books about the experiences of marginalized communities: about race and racism, about LGBTQ+ and racial inclusivity, about immigrants and refugees, and about the Holocaust. The district appears to have targeted and permitted the targeting of books that are the subject of student activism for review and potential removal through the Katy ISD process. The district has moved many books related to themes of racism, racial inclusivity, and LGBTQ+ inclusivity out of libraries for younger students—limiting those students’ access to the ideas those books contain. It has done so in a non-transparent manner, stating that books have returned to shelves without mention of the restrictions placed on them. And it has removed some books contrary to policy, without a formal review process.

It is plain that the removals in Katy ISD suppress students’ access to the ideas that books contain, and that Katy ISD’s process for book review and restriction or removal facilitates doing so. But *Pico* and Katy ISD’s own policy are clear: Katy ISD cannot remove books from libraries due to the ideas they express.

## **B. Katy ISD’s Book Removals Are Inconsistent with Post-*Pico* Cases, Including Cases on Censorship of LGBTQ+ Books**

Following *Pico*, courts within the Fifth Circuit and throughout the country have reaffirmed these principles. As the Fifth Circuit has explained, “In light of the special role of the school library as a place where students may freely and voluntarily explore diverse topics, [a] 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.’” *Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184, 190 (5th Cir. 1995) (quoting *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)).

Both in the Fifth Circuit and throughout the country, courts have affirmed that the First Amendment’s prohibition on viewpoint-based censorship of library books includes a prohibition on viewpoint-based censorship of books because they express support for lesbian, gay, bisexual, and transgender people. *E.g.*, *Case v. Unified Sch. Dist. No. 233*, 908 F. Supp. 864, 875 (D. Kan. 1995) (holding that the removal from school libraries of a book depicting romance between two women violated the First Amendment); *Parents, Fams., & Friends of Lesbians & Gays, Inc. v. Camdenton R-III Sch. Dist.*, 853 F. Supp. 2d 888, 897 (W.D. Mo. 2012) (holding that censorship of LGBT-supportive websites in a school library violated the First Amendment). For example, more than two decades ago, the Northern District of Texas held that the removal of two children’s picture books about LGBTQ+ inclusion from the children’s section of the Wichita Falls Public Library, and the enactment of a city resolution on book removal procedures to facilitate the books’ removal, were “impermissible content-based and viewpoint-based discrimination” in violation of the First Amendment. *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 548 (N.D. Tex. 2000). This logic applies with equal force today, including to Katy ISD’s removal of books furthering LGBTQ+ and racial inclusion and discussing racism in the United States.

In addition to prohibiting the complete removal of library books because of the ideas they contain, the First Amendment bars school districts from restricting access—such as by limiting which students may check out a book—on this basis as well. “Even where a regulation does not silence speech altogether, the Supreme Court has given ‘the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content.’” *Sund*, 121 F. Supp. 2d at 549–50 (quoting *Turner Broadcasting, Inc. v. FCC*, 512 U.S. 622, 641 (1994)). Katy ISD’s choice to restrict access to books on LGBTQ+ and racial inclusivity and on racism is, like Katy ISD’s book removals, at odds with the First Amendment.

The ACLU has previously successfully sued to restore books to school libraries, including one found on the initial list of removed books, *In Our Mothers’ House*. The book is a children’s picture book about three adopted children and their two mothers. In that instance, a school district had removed it for “advocacy of homosexuality.” In response to the lawsuit, the school district ultimately agreed to restore the book to the shelves and allow it to be checked out on the same terms as any other children’s book, and to pay \$15,000 in attorneys’ fees.<sup>8</sup>

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<sup>8</sup> See Joshua Block, *School Promises In Settlement To Stop Removing Library Books For ‘Advocacy of Homosexuality,’* Jan. 31, 2013, <https://www.aclu.org/blog/free-speech/school-promises-settlement-stop-removing-library-books-advocacy-homosexuality>.

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When a school “board has used its official power to perform an act clearly indicating that the ideas contained in the [books] are unacceptable and should not be discussed or considered,” that “message is not lost on students and teachers, and its chilling effect is obvious.” *Pratt v. Indep. Sch. Dist. No. 831*, 670 F.2d 771, 779 (8th Cir. 1982). Katy ISD has done just that—indicated that the ideas in reviewed and removed books are unacceptable. Katy ISD’s book removals are a plain violation of the First Amendment, and of the Texas Constitution and district policy.

We urge that Katy ISD remedy this violation of the First Amendment, the Texas Constitution, and Katy ISD’s own policy as swiftly as possible by keeping books on the shelves during the pendency of the review process and by implementing policy and training to prevent internal reviews from targeting books based on the ideas they contain. Any challenges should proceed in accordance with district policy. Further, the district should publicly commit to LGBTQ+ and racial inclusivity and ensuring students have access to the United States’ history of racism and racial injustice in Katy ISD libraries. The district should apologize for the removal of books inconsistent with the First Amendment and with district policy. Katy ISD’s review and removal / restriction process, and its targeting of books on marginalized communities for removal, have created a chilling effect on students and teachers that must be remedied.