



August 18, 2022

*Via email*

**Re: Keller Independent School District Removals of Previously Challenged Books Primarily Relating to LGBTQ+ Identity, Black and Brown Identity, the United States’ History of Racism, and Anti-Semitism**

Dear Keller ISD Board Members and Superintendent Westfall,

As organizations committed to protecting civil liberties and rights, racial justice, LGBTQ+ equality, and education equity, we write to express our deep concern about Keller ISD’s recent removal from the shelves of all 41 books challenged within the district last year. We urge that Keller ISD remedy this violation of the First Amendment and the Texas Constitution by immediately returning books to the shelves. We further urge that the district (1) review only books that have in fact been challenged in accordance with district policy and for which the challenge has not been finally adjudicated, not re-review books that have already gone through the challenge process and (2) change its policy and practice to ensure that books remain on the shelves during review. Both the law and best educational practices require that Keller ISD prevent the weaponization of the book challenge process to suppress ideas about marginalized communities. Further, Keller ISD should publicly affirm its commitments to LGBTQ+ and racial inclusivity and to educating its students on the United States’ history of racism. Keller ISD must take these urgent steps to protect against the suppression of ideas through book removals.

The attached analysis sets out the specific books removed by Keller ISD and legal implications of Keller ISD’s ordered book removal in detail. To summarize, one day before the start of classes Keller ISD ordered that schools remove from the library, classrooms, and the online library catalogue “all books that were challenged last year” by the end of the day. The district apparently plans to review these 41 books again under new district policies, even though the books were already returned to district shelves following challenge.

**More than half of the books that Keller ISD has ordered removed from all library and classroom shelves relate to LGBTQ+ themes and characters, race and the United States’ history of racism, or anti-Semitism and the Holocaust.** At least 22 of the 41 books, or 54%, fall within these categories. Specifically:

- **LGBTQ+ themes and characters:** At least 18 of the 41 removed titles relate to the experiences of LGBTQ+ individuals. These books include *Last Night at the Telegraph*

*Club*, winner of the National Book Award for Young People’s Literature, and *Fun Home*, winner of the Stonewall Book Award and the Lambda Literary Award.

- **Race and the United States’ history of racism:** At least 5 of the 41 removed titles relate to Black and brown experiences and the history of racism in this country.<sup>1</sup> These books include *The Bluest Eye*, by Toni Morrison, and *Out of Darkness*, winner of the Américas Award and the Tomás Rivera Mexican American Children’s Book Award.
- **Anti-Semitism and the Holocaust:** Keller ISD has ordered the removal of *Anne Frank’s Diary: The Graphic Adaptation*.

Additionally, at least 6 of the removed books not counted among the above include feminist themes.

It is deeply concerning that the majority of the removed books center on the history and experiences of marginalized communities. This is both a disturbing and an unsurprising outcome, since the removals are based on the mere fact that at least one community member objected to the books. Keller ISD’s removal of books during the pendency of review allows anti-LGBTQ+, racist, 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.

Further, Keller ISD’s removal of these books is not even in accordance with its own flawed district policy. The books were previously challenged, but the district has not cited a new challenge as the basis for a new review. Rather, it is as a blanket matter reviewing books that have recently been judged worthy of return to the shelves. But Keller ISD’s policy adopted on August 8, 2022 requires a challenge to initiate the review process.

These are serious violations of the First Amendment and of Keller ISD’s own policies 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, by removing challenged books during the pendency of the review process, the district has created a process allowing the removal of books based on their ideas. By removing all books challenged in the last year, not in accordance with district policy, Keller ISD has targeted books predominantly about historically oppressed communities for review.

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>2</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> *All Boys Aren’t Blue*, a memoir by queer Black author George Johnson, relates to both LGBTQ+ and Black identity and experience. *Last Night at the Telegraph Club*, a historical novel about a queer Chinese-American teenager, relates to both LGBTQ+ identity and the United States’ history of racism.

<sup>2</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, Keller 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. The same is true for anti-Semitism and the history of the Holocaust. This is because the comfort of some cannot come at the expense of students’ constitutional rights.

Keller ISD’s removal of these 41 books harms students in the district. It does so both by directly suppressing speech and access to ideas and by sending the message to LGBTQ+, Black, brown, and Jewish students that Keller 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>3</sup> Keller ISD states that it values “respect for the diversity of our school community.”<sup>4</sup> To live up to that value and to comply with the First Amendment, the district must take steps to remedy the harms from its actions in removing books.

Keller ISD must immediately return the 41 books to the shelves. Moreover, it must keep books on shelves during the pendency of the review process and revise its policy to provide for access to books during the review process. The district must affirm its commitment to LGBTQ+ and racial inclusivity and ensuring students have access to books about the history of racism in the United States and about anti-Semitism. These steps are necessary for Keller 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  
Children’s Defense Fund – Texas  
Equality Texas  
IDRA (Intercultural Development Research Association)  
Texas Civil Rights Project  
Texas Freedom Network  
Young Leaders, Strong City

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<sup>3</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>4</sup> Keller ISD, *Core Documents*, <https://www.kellerisd.net/Page/214>.

## Addendum: Legal Analysis

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

On August 16, 2022, one day before the start of school, Keller ISD’s executive director of curriculum and instruction directed principals to remove all books challenged in the preceding year from library and classroom shelves. The district employee also directed librarians to remove the books from online catalogues. Later in the day, the district stated, “Our district is beginning the process of reviewing these books under the new policies” adopted by the school board at its August 8, 2022 meeting.

The policies adopted at the board’s August 8 meeting provide for review of challenged books. They do not provide for review of previously challenged books absent a new challenge. At no point has Keller ISD provided any indication that any of the 41 books have been challenged anew.

#### A. The Removed Books

The majority of the removed books—at least 22 of the 41 removed books—relate to the experiences and history of oppressed communities. These include:

- At least 18 books that advance LGBTQ+ inclusion:
  - *Last Night at the Telegraph Club*, by Malinda Lo: Winner of the National Book Award for Young People’s Literature, the Stonewall Book Award for Young Adult Literature, and the Asian/Pacific American Award for Youth Literature.
  - *Fun Home: A Family Tragicomic*, by Alison Bechdel: Winner of the Stonewall Book Award for Nonfiction and the Lambda Literary Award.
  - *I Am Jazz*, by Jazz Jennings
  - *The Breakaways*, by Cathy G. Johnson
  - *All Boys Aren’t Blue*, by George Johnson
  - *We Are the Ants*, by Shaun David Hutchinson
  - *Jack of Hearts (and Other Parts)*, by L.C. Rosen
  - *Weird Girl and What’s His Name*, by Meagan Brothers
  - *Infinity Reaper*, by Adam Silvera
  - *More Happy than Not*, by Adam Silvera
  - *Flamer*, by Mike Curato
  - *George*, by Alex Gino
  - *Go with the Flow*, by Karen Scheemann
  - *Gender Queer*, by Maia Kobabe
  - *King and the Dragonflies*, by Kacen Callender

- *Keeping You a Secret*, by Julie Anne Peters
- *If You Could Be Mine*, by Sara Farizan
- *Tricks*, by Ellen Hopkins
- At least 5 books about Black, Latinx, and Asian-American identities and the United States' history of racism:
  - *The Bluest Eye*, by Toni Morrison
  - *Out of Darkness*, by Ashley Hope Pérez
  - *47*, by Walter Mosley
  - *Last Night at the Telegraph Club*, by Malinda Lo
  - *All Boys Aren't Blue*, by George Johnson
- At least one book about anti-Semitism and the Holocaust:
  - *Anne Frank's Diary: The Graphic Adaptation*, by Ari Folman

Additionally, Keller ISD has removed at least 6 books with feminist themes, including:

- *Milk and Honey*, by Rupi Kaur
- *Moxie*, by Jennifer Mathieu
- *This One Summer*, by Mariko Tamaki and Jillian Tamaki
- *L8r, g8r*, by Lauren Myracle
- *What Girls Are Made Of*, by Elana Arnold
- *Red Hood*, by Elana Arnold

## **B. Keller ISD Book Removals**

Keller ISD's removal of these books disproportionately about historically marginalized communities during the pendency of the review process is inconsistent with the First Amendment. Unlike many book review processes in the state, in Keller 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 Katy ISD 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>5</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. During the pendency of this review plainly triggered by the goal of removing the ideas the books contain, the book remained off library shelves entirely.

Such action is unconstitutional. The 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.

## **II. Keller 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). Keller 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>6</sup> Yet Keller ISD regularly removes books from the shelves during reviews triggered by the books’ content; has singled out books about LGBTQ+ inclusivity, race and racism, and the Holocaust for review and removal or restriction. Keller ISD has in fact deviated from policy in removing 41 such books, the majority of which are about such themes. This is a plain violation of the First Amendment of the U.S. Constitution and its state corollary, Article I, Section 8 of the Texas Constitution, as well as Keller ISD policy.

### **A. Keller 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

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<sup>5</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>.

<sup>6</sup> Keller ISD EF (Legal) Policy, Instructional Resources at 1 (Oct. 14, 2021), [https://pol.tasb.org/Policy/Download/1103?filename=EF\(LEGAL\).pdf](https://pol.tasb.org/Policy/Download/1103?filename=EF(LEGAL).pdf).

authors] or advocating racial equality and integration,” doing so would plainly violate the First Amendment. *Id.* at 871.

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.

Keller ISD’s book removals directly contravene the settled principles of *Pico*. Keller ISD is removing books from the shelves for content-based reasons—because review is sought based on their content. The district appears to have targeted and permitted the targeting of books that are related to themes of LGBTQ+ inclusivity, racism, racial inclusivity, and anti-Semitism. And it has done so contrary to policy, with no evidence that a new challenge has been filed. The removals in Keller ISD suppress students’ access to the ideas that books contain. *Pico* and Keller ISD’s own policy are clear: Keller ISD cannot remove books from libraries due to the ideas they express.

**B. Keller 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 Keller ISD’s removal of books furthering LGBTQ+ and racial inclusion and discussing racism in the United States.

The ACLU has previously successfully sued to restore books to school libraries. For example, *In Our Mothers’ House* is a children’s picture book about three adopted children and their two mothers. In one lawsuit, a school district had removed it for “advocacy of homosexuality.” In response to the litigation, 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>7</sup>

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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). Keller ISD has done just that—indicated that the ideas in reviewed and removed books are unacceptable. Keller ISD’s book removals are a plain violation of the First Amendment, and of the Texas Constitution and district policy.

We urge that Keller ISD remedy this violation of the First Amendment, the Texas Constitution, and Keller 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

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<sup>7</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>.



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 Keller ISD libraries. Keller ISD's removal of 41 books and its targeting of books on marginalized communities for removal have created a chilling effect on students and teachers that must be remedied.