



February 2, 2022

BY E-MAIL AND MAIL TO:

Gene McGee
Mayor.McGee@Ridgelandms.org
Mayor of Ridgeland
100 W School St.
Ridgeland, MS 39157
(601) 856-7113

Re: Forcing Library to Purge LGBTQ+ Books By Withholding Funding

AMERICAN CIVIL
LIBERTIES UNION OF
MISSISSIPPI
P.O. BOX 2242
JACKSON, MS 39225
T/601.354.3408
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WWW.ACLU-MS.ORG

Dear Mayor McGee,

The American Civil Liberties Union of Mississippi writes to you regarding a library funding issue in your city. Libraries are intended to function as places of learning and exploration, a marketplace of ideas free of censorship. However, it has been reported that you have withheld funding for use by the Ridgeland Public Library because you disapprove of the viewpoints expressed in some of their books, particularly those which favorably portray LGBTQ+ (lesbian, gay, bisexual, transgender, queer, plus all of the queer gender identities and sexual orientations that are not specifically covered by the other five initials) themes, stories, and identities. The explanation of such conduct by Tonja Johnson, the Madison County Library Services executive director, is that you “explained [your] opposition to what [you] called ‘homosexual materials’ in the library, that it went against [your] Christian beliefs, and that [you] would not release the money as the long as the materials were there.” Explicitly denying funding to the public library based on the views within its catalog can subject you and the City of Ridgeland to liability under federal constitutional law.

Background

The Board of Aldermen of Ridgeland approved their budget for 2022, which included appropriations for Ridgeland Public Library. As Mayor of Ridgeland, you failed to send City of Ridgeland’s first quarterly payment for the Ridgeland Public Library and later informed Tonja Johnson that you would not direct payment to be made until Ridgeland Public Library purges its collection of “homosexual materials.” You allege that your actions are a result of citizen complaints, saying you are “holding (the money) right now because we found a large number of citizens who have complained about displays of sexual, whatever you want to call it, content. We’re just responding to those citizens’ complaints, and that’s the position we’re in.” You have no authority to undertake such measures, and your actions are unconstitutional.

Legal Analysis

The Supreme Court held over 40 years ago that the government “may not remove books from . . . 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). “The principles set forth in *Pico* —a school library case—have even greater force when applied to public libraries.” *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 548 (N.D. Tex. 2000). The government “cannot limit access to library materials solely on the basis of the content of those materials, unless the [government] can demonstrate that the restriction is necessary to achieve a compelling government interest and there are no less restrictive alternatives for achieving that interest.” *Id.*

“[T]he special characteristics of . . . *library[ies]* make that environment especially appropriate for the recognition of the First Amendment rights of [library patrons].” *Pico*, 457 U.S. at 868 (emphasis in original). That also holds for young patrons. “[J]ust as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares [young people] for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.” *Id.* “[I]n light of the special role of the . . . library as a place where [people] may freely and voluntarily explore diverse topics, [a government] decision to remove a book well after it had been placed in the public . . . 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 *W.V. Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)).

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. *See 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 school library violated First Amendment); *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 532 (N.D. Tex. 2000) (holding that restrictions on access to *Heather Has Two Mommies* in public libraries violated First Amendment); *Case v. Unified Sch. Dist. No. 233*, 908 F. Supp. 864, 875 (D. Kan. 1995) (holding that removal of book depicting romance between two women from school libraries violated First Amendment).

In addition to prohibiting the complete removal of library books for political or viewpoint-based reasons, the First Amendment also prohibits viewpoint-based restrictions on access, such as placing disfavored books in a separate section of the library or behind the librarians’ desk. “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)); *accord Counts v. Cedarville Sch. Dist.*, 295 F. Supp. 2d 996, 1002 (W.D. Ark. 2003) (explaining that “the stigmatizing effect of having to have parental permission to check out a book constitutes a restriction on access” based on viewpoint). When a mayor uses his “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*, Forest Lake, Minn., 670 F.2d 771, 779 (8th Cir. 1982).

Your required removal of books with LGBTQ+ themes, identities and stories directly contravenes these settled principles. Over the past few months, activist groups and politicians specifically targeted LGBTQ+ books across the country, pushing to remove or restrict access to the books because they present and celebrate queer perspectives. See The Guardian, *US conservatives linked to rich donors wage campaign to ban books from schools*, (Jan. 24, 2022), available at <https://www.theguardian.com/us-news/2022/jan/24/us-conservatives-campaign-books-ban-schools>. Your removal of the same genre of books appears to be directly related to that nationwide campaign.

The circumstances here are strikingly similar to the facts of *Pico* itself, where school board members removed books from the library shelves after obtaining a list of “objectionable” books from a “politically conservative organization of parents concerned about education legislation.” *Pico*, 457 U.S. at 857. Although the school board was able to cherry-pick excerpts from many of the disfavored books containing vulgar or sexually explicit language, the Supreme Court held that school board 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 books and “ignored the advice of literary experts, the views of librarians and teachers within the Island Trees School system, the advice of the Superintendent of Schools, and the guidance of publications that rate books for junior and senior high school student.” *Id.* at 874 (internal quotation marks omitted). Here, your removal of “homosexual materials” did not follow established, regular, and unbiased procedures.

Resolution

We hope this letter has given you a firm understanding of why your actions are unconstitutional and why your office should disburse the withheld funds to the Madison County Library System.

Continued attempts at censorship of LGBTQ+ materials and failure to release the funds, previously withheld by you, to the Madison County Library System may subject you and the City to legal liability.

Mayor Gene McGee
February 2, 2022
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We are happy to discuss how we can ensure that the City of Ridgeland is inclusive of all its citizens. You may contact me at (601) 354-3408 or LGBTQ@aclu-ms.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'MKR', followed by a long horizontal line and a large, stylized flourish.

McKenna Raney-Gray
LGBTQ Justice Project Staff Attorney
ACLU of Mississippi

cc:
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