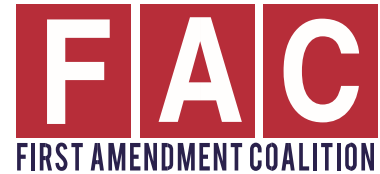




The Freedom
to Read



November 27, 2023

Board of Supervisors
County of Fresno
Hall of Records, Room 301
Fresno, CA 93721-2198
ClerkBOS@fresnocountyca.gov

VIA ELECTRONIC MAIL

**Re: Unconstitutional Censorship of Books in Fresno County Libraries
Amended Resolution, Agenda Item 24, November 28, 2023 Meeting**

Dear Board of Supervisors:

Following on the letter that we submitted November 6, 2023,¹ the ACLU of Northern California, the First Amendment Coalition, and PEN America write to reiterate our strong opposition to the Amended “Resolution Establishing a ‘Parents Matter’ Approach to Reviewing Age-Appropriate Children’s Books in Fresno County Libraries” set as Item 24 on the November 28 Agenda.² The Amended Resolution does nothing to remedy the constitutional defects identified in our letter opposing the original resolution. We urge the Board to pull this item from the consent calendar, provide the public sufficient time to be heard, and then vote to reject the Amended Resolution in its entirety. Failure to do so risks violating the free speech rights of Fresno’s residents and exposing the County to costly litigation.

The letter submitted by the undersigned on November 6, and attached again here, provided an (inexhaustive) analysis of the problems plaguing the original resolution. Namely, that the resolution was an invasive and unconstitutional form of censorship; that it was overbroad, ambiguous, and unworkable; that it was aimed at materials centering gender identity and sexual orientation; and that it was unnecessary given current library policies. All of these infirmities remain unaddressed. The Amended Resolution is just as invasive, just as overbroad, just as vague, and just as unnecessary. We therefore incorporate the points made in our November 6 letter and write briefly to explain why the three changes in the Amended Resolution still leave the County open to a legal challenge.

¹ The letter dated November 6, 2023 is attached for reference as **Exhibit A**.

² The Amended Resolution, together with the Agenda Item 24 discussion, are attached to this letter as **Exhibit B**. These documents are also available on Fresno County’s official website at: <https://fresnocounty.legistar.com/View.ashx?M=A&ID=1004496&GUID=98701D79-2CFB-4AAC-8E45-1681D6C6B560>.

Amendment re Committee Size – Reducing the number of members on the “Community Parent and Guardian Review Committee” from 15 to 11 does not narrow or cabin the Amended Resolution’s defects. It means only that an even smaller group of unelected people will be responsible for making decisions that parents and guardians should be able to make on an individual basis for their own children. This reduction is no answer to the larger critique that speech “cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.” *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213-214 (1975). As the U.S. Supreme Court ruled decades ago, because “one man’s vulgarity is another’s lyric,” the Constitution leaves to individuals the right to decide what protected speech to view or to read. *Cohen v. California*, 403 U.S. 15, 25 (1971); *see also Board of Education v. Pico*, 457 U.S. 853, 867-68 (1982) (plurality opinion).

In fact, it is debatable whether this change to the committee structure does anything meaningful at all. Section 3(d) in the Amended Resolution—which is unchanged from the original resolution—states that the committee’s initial meeting “shall take place as soon as possible” after the appointment of a quorum of at least 8 members. Neither 11 nor 15 members has ever been required for the work of the committee to begin. More concerning, only those 8 members are needed to complete critical tasks at the committee’s initial meeting, such as approving committee bylaws, nominating and electing both a Chairperson and Vice-Chairperson, and adopting a Community Standards Policy.

Amendment re List of Removed Books – Compiling a public list of books that are moved out of the children’s section does not transform the unconstitutional censorship at play here. As other courts across the country have ruled, segregating certain books and making them subject to a special retrieval process—versus banning those materials outright—can still rise to the level of a constitutional violation. *See, e.g., Little v. Llano County*, Case No. 22-CV-424-RP, 2023 WL 2731089, at *12-13 (W.D. Tex. Mar. 30, 2023) (concluding that patrons who had to “make a special request for [a segregated] book to be retrieved from behind the counter” suffered harm under the First Amendment); *see also Fayetteville Public Library*, Case No. 5:23-CV-05086, 2023 WL 4845636, at *16 (W.D. Ark. July 29, 2023) (enjoining overbroad law that would have placed an “unnecessary and unjustified burden on any older minor’s ability to access free library books appropriate to his or her age and reading level”).

Additionally, in the context of future library acquisitions, the list threatens to become either obsolete or misleading. According to Section 4 of the Amended Resolution, the Committee will be responsible for reviewing all new books proposed for procurement to library branches. How the “moved book” list will operate as to newly acquired books is an open and troubling question.

And regardless of how this list applies to the library’s current or future collections, the Amended Resolution still fails to identify criteria delineating what material is “age-inappropriate” for a group ranging in age from newborn to 12 years old.³ The terms “sexual

³ We understand that Fresno designs its children sections for library patrons from birth to 12 years old and that any child less than 8 years of age must be in “the immediate vicinity” of a caregiver. *See Fresno County Library, Unattended Children Policy*, <https://www.fresnolibrary.org/about/childrenpolicy.html>. Additionally, pursuant to

writings,” “sexual content,” “sexual references,” and “other content” remain so inherently subjective as to be entirely arbitrary. As such, the Amended Resolution continues to grant unbridled discretion for decisions restricting access to protected speech—which, in turn, creates an unacceptable risk of viewpoint discrimination. *See Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828-29 (1995); *see also Kaahumanu v. Hawaii*, 682 F.3d 789, 807 (9th Cir. 2012).

If anything, the comments made at the November 7 Board Meeting deepen our concerns about the Amended Resolution’s hostility to materials that center the experiences of LGBTQ+ individuals, discuss gender identity, or provide guidance about sexual and reproductive health. By restricting and stigmatizing access to books perceived to concern these topics, the Amended Resolution infringes the public’s right to receive critical information and invades the rights of young people and their families.

Amendment re Appeals Process – The Amended Resolution’s addition in Section 5 of a process for appealing “the removal” of any book is poorly delineated and gives rise to new problems as well. It offers no guidance, for example, as to the timeframe for bringing an appeal or the grounds on which an appeal might be based or evaluated. Furthermore, this appeal process is unnecessary given that—under current library policies—a member of the public who has a concern about some material on the library shelves may submit a “Request to Reconsider Library Materials.”⁴ Incidentally, it was concerning to learn from statements at the November 7 Board Meeting that many supervisors were unaware of this reconsideration process. As one member of the public stated, the Board of Supervisors should understand how the County’s libraries work, before they decide that they don’t.

In sum, like the original version, the Amended Resolution licenses censors to exercise unfettered discretion and to supplant the wisdom of parents with the autocracy of a committee. It limits access to protected speech based on vague standards and the whims of 11 people unaccountable to the electorate. While no person can be forced to read a library book to which they object, no one has the right—through force of government—to limit an entire community’s access to materials based on their own narrow and arbitrary view of what books are “appropriate” to read. The Board of Supervisors would serve the people of Fresno far better by respecting the public’s right to freedom of expression. For all these reasons, we renew our prior opposition to the resolution and urge the Board to reject the Amended Resolution.

current library policies, children from “birth to 35 months” can get a Baby’s First Library Card and children under 13 years of age are eligible for a library card only with the consent and signature of a parent or guardian. *See id.*, *Get a Library Card*, <https://www.fresnolibrary.org/card/apply.html>.

⁴ *See* Fresno County Public Library, *Request to Reconsider Library Materials*, <https://fs30.formsite.com/frsnweb/form52/index.html>; *see also id.*, *Book Selection Process*, <https://www.fresnolibrary.org/about/bookselectionprocess/index.html>; *Id.*, *Library Materials Selection and Weeding*, <https://www.fresnolibrary.org/about/selection.html>; *id.*, *Weeding Standards*, https://www.fresnolibrary.org/about/weeding_guidelines.pdf.

We conclude this letter with one final point as to process. At the November 7 meeting, the Board of Supervisors allocated only 20 minutes for the public to comment on this important matter. We understand that, when the public comment period closed, at least 60 people were still hoping to make a statement and that the line to the podium snaked around the building. By comparison, review of the recorded meeting reflects that the Board dedicated more time (approximately 27 total minutes) to Agenda Items 4-7, which were proclamations recognizing themes for days and the month of November. Moreover, with respect to the resolution itself, Supervisor Brandau enjoyed more than 12 minutes just introducing the issue, while the Board spent nearly 20 minutes debating and voting on the matter. The Board should have provided at least as much time hearing from the public as it did from itself. The Brown Act contemplates—and the public deserves—much better.

The Amended Resolution is important to a lot of people and will impact civil liberties protected under state and federal law. We therefore urge you not to rush this process, and after careful deliberation, to soundly reject the Amended Resolution.

Sincerely,

s/Chessie Thacher

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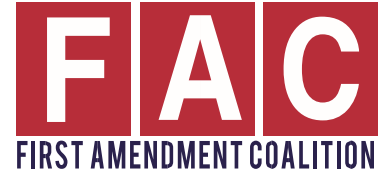
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EXHIBIT A



The Freedom
to Read



Freedom to Read Foundation
FREE PEOPLE READ FREELY

November 6, 2023

Board of Supervisors
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ClerkBOS@fresnocountyca.gov

VIA ELECTRONIC MAIL

**Re: Unconstitutional Censorship of Books in Fresno County Libraries
Proposed Resolution Before the Board, Agenda Item 10, November 7, 2023 Meeting**

Dear Board of Supervisors:

The ACLU of Northern California, the First Amendment Coalition, the Freedom to Read Foundation, and PEN America strongly oppose the “Resolution Establishing a ‘Parents Matter’ Approach to Reviewing Age-Appropriate Children’s Books in Fresno County Libraries” set as Item 10 on the November 7th Agenda.¹

Libraries play a special role in the public’s civic education and the free exchange of diverse ideas and information. The Resolution severely undermines this goal for at least the following three reasons. First, the Resolution is an invasive and unconstitutional form of censorship that targets books based on seemingly disfavored speech, namely references to bodily autonomy, “sexual content,” and “gender identity.” Second, the Resolution—which is both overbroad and ambiguous—lacks objective standards and is unworkable. And finally, the Resolution is unnecessary given the library policies currently in place to let parents and guardians decide what is appropriate for minors in their care.

Taken literally, the Resolution would cover countless books, for example the Bible, *Peter Pan*, *Little Women*, and *Harry Potter and the Order of the Phoenix*. It transforms the government

¹ The proposed Resolution, together with the Agenda Item 10 discussion, are attached to this letter as **Exhibit A**. These documents are also available on Fresno County’s official website at: <https://fresnocounty.legistar.com/LegislationDetail.aspx?ID=6398082&GUID=4A573622-A73E-4E4C-BE25-8681F27AA637&Options=&Search=>. The full meeting agenda can be found at: <https://fresnocounty.legistar.com/View.ashx?M=A&ID=1004495&GUID=2B5DEE9E-909A-491E-85D5-3A616C9B63B9>.

into both nanny and censor while perverting the public's civil liberties. The government has no business interfering with the decisions of young people and their families about what library books to read. Should you vote to adopt this Resolution, you risk violating the constitutional rights of Fresno residents and exposing the County to costly litigation. We urge you to reject the Resolution in the strongest possible terms.

A. The First Amendment protects the fundamental right to freedom of speech, which encompasses the right to receive information in public libraries.

The First Amendment of the U.S. Constitution protects not only the right to speak, but also “the public’s interest in receiving information.” *Pac. Gas & Elec. Co. v. Pub. Utils. Comm’n*, 475 U.S. 1, 8 (1986) (citations omitted). In the words of the U.S. Supreme Court, “the right to receive ideas is a necessary predicate to the recipient’s meaningful exercise of his own rights of speech, press, and political freedom.” *Board of Education v. Pico*, 457 U.S. 853, 867–68 (1982) (plurality opinion).

Simply put: “The right of freedom of speech . . . includes not only the right to utter or to print, but the right to distribute, the right to receive, [and] the right to read.” *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965) (citation omitted). California’s constitution similarly affords the highest protection to these rights of self-expression. *See* Cal. Const. art. I, § 2.²

These constitutional rights are especially salient in the context of public libraries, which serve as “the ‘quintessential’ locus for the exercise of the right to receive information and ideas.” *Kreimer v. Bureau of Police*, 958 F.2d 1242, 1256 (3d Cir. 1992). The founders of this nation “understood the necessity of public libraries for a well-functioning democracy,” and “[f]or more than a century, librarians have curated the collections of public libraries to serve diverse viewpoints.” *Fayetteville Pub. Libr. v. Crawford County*, __ F. Supp. 3d __, No. 5:23-CV-05086, 2023 WL 4845636, at *10 (W.D. Ark. July 29, 2023).

B. Speech does not lose its protection merely because it contains allegedly sexual or controversial content, and any restriction of such speech must be viewpoint-neutral.

Speech is not stripped of its protections just because it contains allegedly sexual content or strikes some in the community as controversial. *See Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 245 (2002); *Reno v. ACLU*, 521 U.S. 844, 875 (1997). As the Supreme Court aptly observed, “one man’s vulgarity is another’s lyric.” *Cohen v. California*, 403 U.S. 15, 25 (1971). Because governmental officials “cannot make principled distinctions in this area,” the Constitution leaves to individuals the right to decide what protected speech to view or read. *Id.*

² The state constitution also enshrines “privacy” as an enumerated inalienable right. *See id.*, art. I, § 1. And California law explicitly recognizes a privacy interest in “any written record or electronic transaction that identifies a patron’s borrowing information or use of library information resources.” Gov. Code § 7927.105(a)(2).

Above all else, the First Amendment prohibits the government from discriminating based on viewpoint. The grant of unbridled discretion to restrict access to speech inherently creates an unacceptable risk of viewpoint discrimination. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828-29 (1995); *Kaahumanu v. Hawaii*, 682 F.3d 789, 807 (9th Cir. 2012).

Moreover, speech “cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.” *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213–14 (1975). For example, in the school library setting, a plurality of the U.S. Supreme Court in a case known as *Pico* held that a local school board had violated students’ free speech rights when it removed books “from school library shelves simply because they dislike[d] the ideas contained in those books.” 457 U.S. at 872 (considering challenge to school’s removal of books by Kurt Vonnegut and Langston Hughes on grounds that some considered their books “anti-American” and “just plain filthy”).

A Massachusetts federal district court, applying *Pico* just a few years later, ruled that a school committee had violated the First Amendment when it barred from its high school library an anthology featuring a fifteen-year-old student’s poem. *See Right to Read Defense Committee of Chelsea v. Sch. Comm. of Chelsea*, 454 F. Supp. 703, 704–05 (D. Mass. 1978). The committee had objected to the poem, which was entitled “The City to a Young Girl,” because it contained graphic descriptions of sexuality. *Id.* But the court enjoined the removal of the book on free speech grounds, finding that “[w]hat is at stake here is the right to read and be exposed to controversial thoughts and language”—“a valuable right subject to First Amendment protection.” *Id.* at 714. The court continued that the danger was not in the exposure to “a broad sweep of ideas and philosophies,” but instead the “danger is in mind control.” *Id.* at 715.

Other federal courts across the country have also found a First Amendment violation where books were removed from school libraries because they depicted romance between two women, *see Case v. Unified Sch. Dist. No. 233*, 908 F. Supp. 864, 875 (D. Kan. 1995); discussed African tribal religions, *see Delcarpio v. St. Tammany Parish Sch. Bd.*, 865 F. Supp. 350 (E.D. La. 1994); or addressed the Vietnam War, *see Scheck v. Baileyville Sch. Comm.*, 530 F. Supp. 679 (D. Maine 1982).

C. The Resolution would impose an unlawful and invasive censorship regime on the constitutional right to access library books.

The Resolution seeks to restrict anyone under the age of 18 from having “ready access” to “children’s books and other materials in the children’s section that contain sexual writings, sexual references, sexual images, gender-identity content, and other sexual content or content deemed age-inappropriate.”³ It also seeks to establish a 15-person “community parent and guardian review committee.” The committee will be charged with reviewing “all current,

³ The Resolution applies to much more than materials deemed legally “obscene” as to adults or minors or child sexual abuse material produced with actual minors, all of which the First Amendment does allow restricting. Additionally, California law already prohibits the creation and distribution of such materials, which should already be unavailable in Fresno’s libraries. *See Miller v. California*, 413 U.S. 15 (1973); *Ginsberg v. New York*, 390 U.S. 629 (1968); *New York v. Ferber*, 458 U.S. 747 (1982); Cal. Penal Code §§ 311-313.5.

proposed or new Children’s books and other materials that may contain Age-Inappropriate Content before the books or other materials are placed in the County Libraries.”⁴

The sweep of the Resolution’s language is breathtaking. The terms “sexual writings,” “sexual content,” “sexual references,” and “other content deemed age-inappropriate” are so inherently subjective as to be entirely arbitrary. More concerning, and vaguer still, is the Resolution’s focus on books and materials that touch on “gender identity content,” which the Resolution wrongly categorizes as “sexual content.” Taken to the letter, the Resolution would restrict access to materials implicating the gender identities of, not just transgender people, but also of cisgender men and woman. Doing so could result in limited access to famous works like Rudyard Kipling’s poem “If,” which defines what it is to “be a Man, my son!”⁵

The Resolution’s ambiguity is further amplified by the fact that it is devoid of “sufficiently definite and objective” standards “to prevent arbitrary or discriminatory enforcement” of “the policy as a pretext for censorship.” *Amalgamated Transit Union Loc. 1015 v. Spokane Transit Auth.*, 929 F.3d 643, 654 (9th Cir. 2019). An especially acute risk of viewpoint-based censorship exists where, as here, decisions are to be made by elected officials and their appointees, who are “the object of political pressures” that often “run contrary to the protections that the First Amendment affords political and other controversial forms of expression.” *Cinevision Corp. v. City of Burbank*, 745 F.2d 560, 575 (9th Cir. 1984).

Although the Resolution lacks key defining principles, the parameters that it does include are confusing to the point of being unworkable. There is therefore a significant risk that library staff and the review committee will over-censor library materials. Where, as here, “First Amendment freedoms are at stake,” the law requires “specificity and clarity” because ambiguity “might have the effect of chilling protected speech or expression.” *Edge v. City of Everett*, 929 F.3d 657, 664–65 (9th Cir. 2019) (citation omitted).

To provide just one example of how overbroad the Resolution is, consider that it focuses on the access of minors—persons under the age of eighteen—to “Age-Inappropriate Content contained within designated children’s sections or areas.” The children’s sections in Fresno’s libraries are, however, geared to a subset of minors—those ranging in age from the very young to preteen. What might be of vital interest to a 12-year old approaching the confusions of puberty may not be of much interest to a 6-year old learning how to read her first chapter book, and yet that 6-year old’s “ready access” to works in the children’s section could mean that the 12-year old is deprived of the right to learn about what is happening to their body.⁶

⁴ With respect to the committee’s composition, the Resolution includes a worrisome clause that implies representation from each district could be manipulated with decision-making authority not evenly distributed among the districts. Specifically, section 3(d) of the Resolution states that the committee’s initial meeting “shall take place as soon as possible” after the appointment of a quorum of at least 8 members—not 15. Additionally, at that initial meeting, those 8 members will be charged with approving committee bylaws, and nominating and electing a Chairperson, a Vice-Chairperson, and adopting a Community Standards Policy.

⁵ See *If* by Rudyard Kipling, available at <https://www.poetryfoundation.org/poems/46473/if-->

⁶ This scenario should not be dismissed as hyperbolic speculation. During the November 2, 2023 press conference that Supervisor Brandau recorded on Facebook Live, he specifically called out the literary work *It’s Perfectly*

The Resolution also leaves it troublingly ambiguous as to what rights the older subset of minors—teenagers—might retain when seeking access to books that contain supposedly sexual content. It raises further questions about what privacy invasions these individuals might suffer were they forced to go through some special procedure to access materials that the Resolution stigmatizes as inappropriate.

In sum, the Resolution licenses censors to exercise unbridled discretion and invade the rights of young people and their families. It limits access to protected speech based on vague standards and the arbitrary whims of a committee unaccountable to the electorate. While no person can be forced to read a library book to which they object, no one has the right—through force of government—to limit an entire community’s access to materials based on their own narrow and arbitrary view of what books are acceptable for minors of any age to read.

D. The Resolution would disparately restrict access to books and materials that center questions about gender identity, sexual orientation, and sexual and reproductive health.

Notwithstanding efforts to characterize the Resolution as a way to protect minors from obscenity and to ensure that books are age appropriate, the Resolution promises to have a disparate and pernicious impact on access to books and other educational materials that concern gender identity, sexual orientation, and sexual and reproductive health. Some minors can and do seek parental guidance or support on such matters, but many others are unable to do so safely—especially those individuals who identify as LGTBQ+. Ready access to materials about our bodies helps ensure that all youth who want to learn such information can feel safe and supported as they mature into young adults. It also can help other youth be more supportive of friends and peers as their cohort grows up.⁷

The Resolution’s message that books are “inappropriate” for young people of all ages if they center the experiences of LGTBQ+ individuals sends a harmful, stigmatizing message about gender identity and sexual orientation. The message also mimics a worrisome nationwide political effort aimed at restricting protected speech which discusses gender identity and sexual orientation. These political and partisan efforts to remove from the marketplace of ideas such inclusive representation runs afoul of the Constitution. *See Pico*, 457 U.S. at 870-71 (discretion to control content of school libraries “may not be exercised in a narrowly partisan or political manner” or “to deny [students] access to ideas with which [some] disagree[]”); *id.* at 907

Normal by Robie H. Harris as material that does not belong in the children’s section of Fresno’s libraries. *See* https://www.facebook.com/watch/live/?ref=watch_permalink&v=726860299288755. But this book is intended for readers ages 10 and older, and is widely acclaimed as “a trusted resource” on sex, sexuality, bodies, and puberty. More than 1.5 million copies of the book have sold since it was first published in 1994. In his remarks, Supervisor Brandau also took aim at *Pink, Blue, and You!* by Elise Gravel and Mykaell Blais, which styles itself as a book posing “questions for kids about gender stereotypes.”

⁷ Access to LGBTQ-inclusive information and education about relationships and sexual and reproductive health has been shown to result in better outcomes for mental health and bullying and harassment, and reduced incidences of dating and intimate partner violence. *See, e.g.,* Goldfarb & Lieberman, *Three Decades of Research: The Case for Comprehensive Sex Education*, 68 J. Adol. Health 13-27 (Jan. 2021), available at [https://www.jahonline.org/article/S1054-139X\(20\)30456-0/fulltext#secsectitle0050](https://www.jahonline.org/article/S1054-139X(20)30456-0/fulltext#secsectitle0050).

(Rehnquist, J. dissenting) (restrictions motivated by “partisan or political” interests, as well as those based on “racial animus,” are unconstitutional).

Unsurprisingly, courts have rejected similarly misguided attempts to restrict access to library books and materials. In *Sund v. City of Wichita Falls*, for example, a federal court in Texas held that a resolution conferring on residents “the power to remove from the children’s section any books they found objectionable” was unconstitutional. 121 F. Supp. 2d 530, 549 (N.D. Tex. 2000). The resolution had “effectively permitt[ed] them to veto lawful, fully-protected expression simply because of their adverse reaction to it.” *Id.* Significantly, the *Sund* court found it immaterial that the challenged resolution did not ban any books outright, but rather called for the “segregation” of books “promoting acceptance of LGBTQ families from the children’s section to the adult section.” *Id.* at 553-54.

More recently, in July of this year, a federal court in Arkansas enjoined a law that prohibited furnishing to minors material “with any amount of sexual content.” *Fayetteville Public Library*, 2023 WL 4845636, at *15-16. The Court concluded that such a law swept in “a broad category of protected speech,” and thus “would likely impose an unnecessary and unjustified burden on any older minor’s ability to access free library books appropriate to his or her age and reading level. *Id.*; see also *Little v. Llano County*, Case No. 22-CV-424-RP, 2023 WL 2731089, at *12-13 (W.D. Tex. Mar. 30, 2023) (concluding that patrons who had to “make a special request for [a segregated] book to be retrieved from behind the counter” suffered harm under the First Amendment).

If this Resolution is adopted and then challenged in litigation, there is no reason to think that a court would reach a different result. The Resolution violates federal and state constitutional protections. A lawsuit to prove this self-evident conclusion will only subject the County to a high profile loss, attorneys’ fees, and costs.

E. The Resolution is unnecessary given current library policies and the role that parents or guardians are already supposed to serve at the library.

The materials submitted to the Board in support of the Resolution are misleading in multiple important respects. Specifically, the Board Agenda Item 10 Discussion erroneously asserts that allegedly age-inappropriate library materials are “available for check out without parental knowledge or consent” in all circumstances. Not true. According to the County’s already existing library policies, children under 13 years of age need the signature of a parent or guardian to even get a library card, and parents who have their child’s card information can access the list of materials their children have checked out at any time.⁸ Additionally, the library requires that a parent, guardian, or caregiver of any child less than 8 years of age be “in the immediate vicinity of the children in their charge at all times.”⁹

⁸ Fresno County Public Library, *Get A Library Card*, <https://www.fresnolibrary.org/card/apply.html>.

⁹ See *id.*, *Unattended Children Policy*, <https://www.fresnolibrary.org/about/childrenpolicy.html>.

Taken together, these policies make it difficult to conceive of a scenario where a parent or guardian of a minor under the age of 13 has no means of knowing what that minor is accessing at the library. Any suggestion to the contrary is disingenuous. Moreover, if a parent or guardian has a concern about a book or some material on the shelves in the library, a recourse already exists. They may propose removing that book by submitting a “Request to Reconsider Library Materials.”¹⁰

The undersigned do not disagree that parents “matter” to the education and growth of their children, but this Resolution is no friend of that purpose. The Board of Supervisors would serve the people of Fresno far better by respecting the public’s right to freedom of expression. The Board should not be in the business of stoking division or adopting an arbitrary and unconstitutional censorship regime. For all these reasons, we oppose the Resolution and strongly urge the Board to reject it.

Sincerely,

s/Chessie Thacher

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Supervisor Nathan Magsig, District5@fresnocountyca.gov

¹⁰ See *id.*, *Request to Reconsider Library Materials*, <https://fs30.formsite.com/frsnweb/form52/index.html>; see also *id.*, *Book Selection Process*, <https://www.fresnolibrary.org/about/bookselectionprocess/index.html>; *Id.*, *Library Materials Selection and Weeding*, <https://www.fresnolibrary.org/about/selection.html>; *id.*, *Weeding Standards*, https://www.fresnolibrary.org/about/weeding_guidelines.pdf.

EXHIBIT B



Board Agenda Item 24

DATE: November 28, 2023

TO: Board of Supervisors

SUBMITTED BY: Steve Brandau, Supervisor, District 2

SUBJECT: Adopt an amended Resolution establishing a "Parents Matter" approach to reviewing age-appropriate children's books in Fresno County Libraries

RECOMMENDED ACTION(S):

- 1. Adopt an amended Resolution establishing a "Parents Matter" approach to reviewing age-appropriate children's books in Fresno County Libraries; and**
- 2. Direct staff to return to the board within 90 days with bylaws for implementation of Community Parent and Guardian Review Committee.**

ALTERNATIVE ACTION(S):

Your Board may choose not to adopt the proposed resolution or choose to modify the resolution as written. Your board may also direct staff to return with a bylaws report by a different date.

FISCAL IMPACT:

No direct fiscal impact from adoption of the resolution. However, implementation of the policies of the Resolution and Community Parent and Guardian Review Committee will result in increased use of staff and facility time.

DISCUSSION:

The Fresno County Library consists of 34 locations across Fresno County, each with a section dedicated to children's books and other reading materials. Starting earlier this year, complaints were received from parents and community groups that books containing sexually graphic and other age-inappropriate content were available in several children's sections and as a result easily accessible by young children.

Parents should be aware of and involved in the books their young children are reading, but especially so regarding content of a sexual, gender-identity, or otherwise mature nature. But as of now, these materials are available for check out without parental knowledge or consent.

The "'Parents Matter' approach to reviewing age-appropriate children's books in Fresno County Libraries" or the "Parents Matter Act" requires that the Fresno County Librarian establish procedures to identify and sequester age-inappropriate content currently available in the children's section of County libraries, including procedures that dictate how material deemed age-inappropriate would only be accessible and available to check out in the presence of a parent or guardian.

The Parents Matter Act creates the "Community Parent and Guardian Review Committee", a fifteen-person committee appointed by the Board of Supervisors representing members of the community who would be tasked with the review of current and incoming library books and materials intended for children, and determining if those materials contain age-inappropriate content as determined by this resolution and a

to-be-established community standards policy. Books and materials identified by the Community Parent and Guardian Review Committee shall be made only accessible and available for check out thereafter in the presence of a parent or guardian. This committee shall commence as soon as bylaws have been drafted by County staff and a minimum of eight members have been appointed.

Approval of this resolution directs the Fresno County Library to the procedures to comply with this Resolution, as well the bylaws of the Community Parent and Guardian Review Committee.

Implementation of the necessary Library policies and the bylaws of the Community Parent and Guardian Review Committee will require considerable resources of the County Librarian and staff. To ensure progress is being made, further direction to return within 90 days with an update to your Board is recommended.

On November 7, 2023 your board directed staff to amend the resolution to include the following additions for approval at your next meeting:

- Mandate a list of all books and materials moved from the children's section and posting said list for public access.
- Reduce the Community Parent and Guardian Review Committee from 15 members to 11, with two members chosen by each Supervisor and one chosen by the CAO.
- Creation of an appeals process for materials removed from the children's section.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Resolution (Amended)

CAO ANALYST:

Salvador Espino

1 BEFORE THE BOARD OF SUPERVISORS

2 OF THE COUNTY OF FRESNO

3 STATE OF CALIFORNIA

4 RESOLUTION NUMBER _____

5 A RESOLUTION ESTABLISHING A "PARENTS MATTER" APPROACH TO REVIEWING
6 AGE-APPROPRIATE CHILDREN'S BOOKS IN FRESNO COUNTY LIBRARIES
7

8 WHEREAS, the Fresno County Board of Supervisors has observed that there are some
9 children's books and other materials in the children's section of County's libraries that contain
10 sexual writings, sexual references, sexual images, gender-identity content, and other sexual
11 content or content deemed age-inappropriate (Age-Inappropriate Content); and

12 WHEREAS, the Fresno County Board of Supervisors is concerned that some of the
13 children's books and other materials (Books and Other Materials) in the County's libraries
14 contain sexual content that is viewed by the community as obscene and/or age inappropriate;
15 and

16 WHEREAS, those books and other materials containing Age-Inappropriate Content are
17 presently readily available to children without any parental or guardian involvement or
18 requirement for parental or guardian requirement; and

19 WHEREAS, it is critical that parents or guardians of younger children, rather than the
20 government or any other entity, are able to make decisions of the type of content that their
21 children are exposed to; and

22 WHEREAS, the Fresno County Board of Supervisors seeks to protect our community's
23 children by necessarily involving parental and guardian oversight and participation regarding
24 children's access to Age-Inappropriate Content in books and other materials at or from the
25 County's libraries; and

1 WHEREAS, the County's libraries are funded by taxpayers from the community and
2 children's books and other materials are generally judged by "community standards" per Miller
3 v. California (1973) 413 U.S. 15.
4

5 **NOW THEREFORE, THE FRESNO COUNTY BOARD OF SUPERVISORS**
6 **RESOLVES AS FOLLOWS:**

- 7 1. Accessibility to Library books
- 8 a. Nothing in this Resolution shall require or authorize the removal of any book
9 or other material from a Fresno County Library.
- 10 2. Adult Consent or Approval for Access to Age-Inappropriate Content
- 11 a. No Fresno County Library or other County facility shall allow ready access to
12 minors of books and other materials that contain Age-Inappropriate Content
13 contained within designated children's sections or areas.
- 14 b. Parental or guardian consent will be required before accessing or checking
15 out of books and other materials that contain Age-Inappropriate Content.
- 16 c. The Fresno County Library Shall establish efficient procedures for the
17 removal of access from minors, obtaining access to, or checking out of
18 books and other materials that contain Age-Inappropriate Content. The
19 procedures shall establish the process by which parental or guardian
20 consent is obtained or given to accessing or checking out books and other
21 materials restricted by this Resolution.
- 22 d. A list shall be maintained of all books and other materials moved from the
23 children's section as required by this Resolution. A current copy of this list
24 shall be posted for public access.
25

1 e. The County Librarian may make determinations regarding any books and
2 other materials subject to the parental or guardian consent procedures as
3 required by this Resolution or may allow the community parent and guardian
4 review committee established by this Resolution to make all such
5 determinations. Any determination by the County Librarian under the
6 standards in this Resolution shall be reviewed by the community
7 parent/review committee at the next occurring meeting.

8 3. Establishment of a Community Parent and Guardian Review Committee

9 a. A community parent and guardian review committee (Committee) shall be
10 established to review all current, proposed, or new Children's books and
11 other materials procured for County Libraries by the County Librarian or staff
12 that may contain Age-Inappropriate Content before the books or other
13 materials are placed in the County Libraries or facilities.

14 b. The Committee shall be comprised of eleven (11) community members over
15 18 years of age, and each County Supervisor member shall appoint two (2)
16 individuals who reside within that Board Member's district within Fresno
17 County. The final at-large member shall be appointed by the County
18 Administrative Officer. The term for each member shall be two (2) years.

19 c. The Committee shall meet four (4) times a year and more as necessary (as
20 determined by the County Librarian or Committee members) to review
21 children's books or other materials recommended for procurement and
22 currently available for County's libraries. The meetings of the Committee
23 shall be conducted pursuant to the requirements of the Ralph M. Brown Act
24 (Government Code § 54950, et seq.).

1 d. The initial meeting of the Committee shall take place as soon as possible
2 after a quorum of at least 8 members has been appointed by the Board of
3 Supervisors and all requirements for creation of a committee are complete.
4 The initial meeting shall include approval of Committee bylaws, prepared in
5 advance by County staff, and the nomination and election of Chairperson
6 and Vice-Chairperson of the Committee, and a Community Standards
7 Policy.

8 4. Procurement of New books and other materials Required to Meet Community
9 Standards and Review of books Currently in Circulation

10 a. The Committee shall review proposed new books and other materials for
11 placement in the children's section as requested by the County Librarian for
12 procurement to library branches. The Committee shall determine by majority
13 vote of the quorum present if the books and other materials presented meet
14 the community standards of acceptance for Fresno County or whether they
15 should be subject to the parental or guardian consent provisions of this
16 Resolution.

17 b. The Committee may also review books and other materials currently in
18 circulation at County libraries and subject them to the same process on a
19 case-by-case basis.

20 c. If the Committee decides any of the recommended books or other materials
21 do not meet the community standards of acceptance, the Committee may
22 vote to make said books or other materials subject to the parental or
23 guardian consent provisions of this Resolution and the procedures
24 established to comply with this Resolution by the Fresno County Library.
25

1 d. Once the committee has been established with approved bylaws and
2 community standards policies, at the next possible meeting the Committee
3 shall conduct a review of books or materials currently in circulation that have
4 been brought to the attention of the review board by members of the public
5 and/or Library staff and which may be subject to the provisions of this
6 Resolution.

7 5. Appeal Process to Return Books and Other Materials to the Children's Section

8 a. Any person may appeal the removal of any book or other materials by the
9 Librarian or Committee from the Children's Section. All appeals shall be
10 heard and reviewed by the Committee at their next regular meeting or as
11 soon as possible.

12 b. Appeals may be submitted in writing or heard in-person during the
13 Committee's regular meeting.

14 6. General Provisions

15 a. This Resolution provides the direction of the Board of Supervisors to the
16 County Administrative Officer and the County Librarian to carry out the
17 provisions of this Resolution.

18 b. Following adoption of this Resolution by the Board of Supervisors, the Clerk
19 of the Board shall list the available provisions for appointment to the review
20 board as required by law, accept and process applications for the vacancies,
21 and forward qualifying individuals to the Board of Supervisors for
22 consideration of appointment.

23 c. This Resolution shall take effect upon passage by a majority of the Board of
24 Supervisors. The rules and procedures required by this resolution shall be
25 effective upon the appointment of a quorum of at least eight members of the

1 community parent/guardian review board and the holding of the first meeting
2 of the review board.

3
4 THE FOREGOING was passed and adopted by the following vote of the Board of Supervisors
5 of the County of Fresno this ____ day of _____, 2023, to wit:

6 AYES:

7 NOES:

8 ABSENT:

9 ABSTAINED:

10
11 _____
12 Sal Quintero, Chairman of the Board of
Supervisors of the County of Fresno

13 ATTEST:
14 BERNICE E. SEIDEL
15 Clerk of the Board of Supervisors
County of Fresno, State of California

16 By _____

17 Deputy
18
19
20
21
22
23
24
25