



Who Decides Which Books Are Appropriate for Public Libraries?

Lessons from *Little v. Llano County* — September 27, 2024

Did the Llano County Public Library (TX) violate the First Amendment when it removed certain books from its shelves? The Fifth Circuit Court of Appeals is still deliberating, but this case will have major implications for public libraries across America. In a divided preliminary ruling, dissenting Judge Kyle Duncan explained why book removal by board action is not a First Amendment violation.¹

A library can't stock every book in the world. So every board makes decisions about which books to include and which to exclude. Some are excluded because they are not appropriate for education, particularly in sections dedicated to children. In other words, library boards must engage in viewpoint discrimination of some form, since not every viewpoint is worthy of inclusion in the library, especially the children's section.

Can library board members decide what's appropriate for their library?

The 2003 SCOTUS case *United States v. American Library Assn.* provides important precedent.

Judge Duncan: “[That case] makes one thing clear: the Free Speech Clause allows public libraries to shape their collections based on the content and viewpoint of books. Indeed, the notion that the Clause forbids this is preposterous. How else are libraries supposed to choose the books on their shelves if not by ‘discriminating’ according to content and viewpoint” (14)?

Can public library patrons demand that a library carry certain books?

No. SCOTUS has never applied this private right to a public library. And in only one divided decision (*Island Trees School District v. Pico*) has the Court ever applied a “right to receive information and ideas”² to a public school library.

Does the First Amendment apply to government speech?

No, SCOTUS has clearly ruled that the First Amendment does not require a government entity to say anything. It “is entitled to say what it wishes.”³

Judge Duncan argues that a public library board's selection of books falls under this category: “A public library's choice of some books for its collection, and its rejection of others, is government speech. ... It means the Free Speech Clause does not constrain a public library's collection decisions (5).

The library board, not a court, should determine which books are “suitable and worthwhile.”⁴

To whom is the public library board accountable?

They are accountable to the citizens.

Judge Duncan: “Nor should we forget the most effective constraint on public officials’ speech: the good sense of the citizens who elected them. ‘[The Llano County commissioners court] is ultimately “accountable to the electorate and the political process for its [choice of library books].”’⁵ Energized voters can bend public officials to their will, as this case amply shows. Plaintiffs’ lamentations to the contrary, that does not amount to ‘book banning.’ It means that a local government heeded its citizens. True, the upshot is that Llano County’s books may differ from the books in Travis or Harris County. But variety is a feature of our system, not a bug” (46).

Will public library boards that remove offensive books face expensive lawsuits?

1. Cases like *Little v. Llano County* and *Read Freely Alabama v. Autauga-Prattville Public Library Board of Trustees* are not yet decided. Their outcomes, potentially before SCOTUS, will inform the prudence of litigation.
2. Even if these cases incur expense, isn’t protecting our children from age-inappropriate and obscene content worth it?

¹ *Little v. Llano County*, No. 23-50224 (5th Cir. 2024) (Duncan, K., dissenting)

² *Stanley v. Georgia*, 394 U.S. 557, 564 (1969)

³ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)

⁴ *United States v. American Library Assn., Inc.*, 539 U.S.194 (2003) at 208 (plurality)

⁵ *Pleasant Grove v. Summum*, 555 U.S. 460 (2009) at 468 (quoting *Board of Regents, Univ. of Wisconsin System v. Southworth*, 529 U.S. 217 (2000) at 235) (brackets added)