

March 22, 2023

To Louisiana parents, caregivers, librarians, teachers, and community members:

In recent months, we at the ACLU of Louisiana have received many questions about efforts by political actors to censor books and other educational and artistic works in public libraries. We, too, are strongly concerned about these efforts, and we applaud those communities who are resisting political pressure to censor constitutionally protected speech. We offer this letter as an open resource to help the people of Louisiana understand the Constitution’s protections against government censorship and viewpoint-based discrimination.



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Restricting speech and the free exchange of ideas—especially in public forums like libraries—undermines our fundamental freedoms guaranteed by the First Amendment. For children and young adults, restricting access to books limits their opportunities to be introduced to new ideas and information, to learn about themselves and about people who are different from themselves, and to grow into informed and engaged members of their communities. Censorship also substitutes the government’s judgment about what is best for children for the judgment of parents and caregivers.

Censorship efforts in Louisiana have closely tracked partisan trends in national-level politics, focusing largely on books that discuss or depict the experiences of LGBTQ+ people and people of color. However, politicians do not have the right to tip the scales to promote or suppress certain opinions or points of view. In the United States, it is never the proper role of the government to choose what speech, art, or ideas are appropriate for the people. Material that some find offensive may be enlightening and enriching to others. Restrictions on free speech and artistic expression, especially those that reflect the government’s preference for, or disfavor of, a certain viewpoint, are direct threats to a free society.

“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”

- Supreme Court Justice William J. Brennan, Jr., in *Texas v. Johnson*, 491 U.S. 397 (1989).

I. First Amendment Rights to Speak, Publish, and Receive Information

A. Prohibition on Government Censorship Generally

The First Amendment protects all speech and artistic expression from government censorship, except for eight narrowly defined categories of unprotected speech:

defamation, fraud, true threats, fighting words, obscenity, child sexual abuse images, incitement, and speech integral to criminal conduct. The authority to decide what speech does and does not fall into those categories is reserved to courts of law, not political bodies like legislatures or local governments.

The First Amendment has been interpreted consistently to guarantee the right to speak and the right to publish. That protection includes a prohibition on government suppression of ideas and information. As a result, the Constitution forbids government censorship of books, magazines, newspapers, art, film, music, and material on the internet.

The Supreme Court and other courts have further held that there is a First Amendment right to receive information, as a corollary to the right to speak. Justice William Brennan elaborated on this point in 1965:

“The protection of the Bill of Rights goes beyond the specific guarantees to protect from Congressional abridgment those equally fundamental personal rights necessary to make the express guarantees fully meaningful. I think the right to receive publications is such a fundamental right. The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers.”

Lamont v. Postmaster General, 381 U.S. 301 (1965). Later, in a landmark case involving a school library, the Supreme Court reaffirmed that the right to receive information is a fundamental right protected under the First Amendment. Finding that a local school board violated the Constitution by removing books from a school library, the Court held that “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 (1982).

B. Prior Restraint

A “prior restraint” is among the most likely forms of censorship to be ruled unconstitutional. The government imposes a prior restraint if it bars or limits speech before it happens. The government might attempt a prior restraint because a person, group, or the government itself finds the speech objectionable. Prior restraint restricts the exercise of a First Amendment right “before an adequate determination that [the speech at issue] is unprotected.” *Pittsburgh Press Co. v. Pittsburgh Comm’n on Human Relations*, 413 U.S. 376, 390 (1973). Because prior restraints tend to suppress protected speech and enable arbitrary or discriminatory enforcement, they “come[] to [court]



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bearing a heavy presumption against [their] constitutional validity.” *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).

C. Prohibition on Viewpoint-Based Discrimination

Further, the government cannot subject speech to unequal restrictions based on the opinions or ideas expressed. Suppressing protected speech based on its content or perceived viewpoint—i.e., “viewpoint-based discrimination”—is “an egregious form” of discrimination that clearly violates the First Amendment. *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 829 (1995). Therefore, the government may not suppress speech because of an expectation that some people might react negatively to it. This is also known as a “heckler’s veto.” *Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 134–35 (1992). “Listeners’ reaction to speech is not a content-neutral basis for regulation,” *id.*, nor is it typically a viewpoint-neutral one. *See also Bible Believers v. Wayne Cty.*, 805 F.3d 228, 248 (6th Cir. 2015) (“The heckler’s veto is . . . odious viewpoint discrimination.”).

D. First Amendment Protections Extend to Children

In addition, there is no dispute that the First Amendment’s free speech protections extend to children and young adults. Minors’ First Amendment rights include the right to receive information through the library in print, sound, images, data, social media, online applications, games, technologies, programming, and other formats. *Brown v. Entertainment Merchant’s Association, et al.* 564 U.S. 08-1448 (2011). The general constitutional prohibition against viewpoint-based discrimination also extends to minors’ right to read and receive information. The Supreme Court has held that “local school boards may not remove books from school library shelves simply because they dislike ideas contained in those books.” *Pico* 457 U.S. at 867, 872 (1982). And for nearly a half-century, the First Amendment has been interpreted to mean that **constitutionally protected speech cannot be suppressed solely to protect children or young adults from ideas or images that a legislative body believes to be unsuitable for them.** *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975).

II. First Amendment Protections as Applied to Libraries

Libraries are important sites for learning, intellectual inquiry, and the free exchange of ideas. Therefore, the Supreme Court has consistently found that the First Amendment’s protections are particularly strong when applied to library materials and restrictions on their access.



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A. *Prohibition on Viewpoint-Based Discrimination and the “Heckler’s Veto”*

The general prohibition on content-based and viewpoint-based censorship indisputably applies in the library context. The government “may not remove books from . . . library shelves simply because they dislike the ideas contained in those books and seek by their removal to ‘prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.’” *Pico* at 872 (1982) (quoting *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)).

As a more recent example, in *Sund v. City of Wichita Falls*, a court in the Fifth Circuit held that a resolution “[c]onferring upon any 300 patrons the power to remove from the children’s section [of a public library] any books they find objectionable” constituted an unconstitutional “heckler’s veto” because it “effectively permit[ed] the [complaining patrons] to veto lawful, fully-protected expression simply because of their adverse reaction to it.” 121 F. Supp 2d 530, 549 (N.D. Tex. 2000). “Any group of patrons with a particular viewpoint or agenda [could] suppress books with which they disagree,” even, “conceivably, . . . children’s Bibles.” *Id.* Likewise, proposals to ban or restrict minors’ access to books may enact a heckler’s veto by requiring officials to remove access to any book that a challenger finds objectionable. This denies all library visitors access based on the reaction of one person or group to the viewpoints and ideas described in the books.

B. *School Libraries and Public Libraries both Constitutionally Protected*

There is also no question that these First Amendment protections apply in settings where minors are the primary consumers of ideas and expression, such as school libraries. “[T]he special characteristics of the school library make that environment especially appropriate for the recognition of the First Amendment rights of students.” *Pico*, 457 U.S. at 868. When it comes to banning library materials, the leeway school officials enjoy in determining which materials should be included in curriculum does not apply. *Id.* at 869. Rather, “local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books.” *Id.* at 872. And, “just as access to ideas makes it possible for citizens generally to exercise their rights of free speech . . . in a meaningful manner, such access prepares students for . . . participation in the pluralistic, often contentious society in which they will soon be adult members.” *Id.* at 867 (plurality).

The First Amendment’s protections apply with immense force in both school libraries and public libraries. “The principles set forth in *Pico* —a school library case—have even greater force when applied to public libraries.” *Sund*, 121 F. Supp. 2d at 548. Local governments “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



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to achieve a compelling government interest and there are no less restrictive alternatives for achieving that interest.” *Id.*

C. Other Unconstitutional Burdens on Protected Speech

Even when a policy restricts access to library books without banning them outright, such as by removing certain titles from the children’s section and restricting them to the adult section, it can violate the First Amendment. When a library reshelves a children’s book into the adult section, it creates significant burdens on readers’ ability to access that book—children and parents searching for the book in the children’s section may never find it, children simply browsing for books that spark their interest will never come across it, and other patrons may avoid checking the book out of the library because the book’s relocation “attaches an unconstitutional stigma” to it. *Id.* at 550 (citing *Denver Area Educ. Telecomm. Consortium, Inc. v. FCC*, 518 U.S. 727 (1996)).

To the extent that removals, reclassifications, or other restrictions are based on the content or viewpoint expressed in the material, the action is even more likely to violate the Constitution. “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.’” *Id.* at 549–50 (quoting *Turner Broadcasting, Inc. v. FCC*, 512 U.S. 622, 641 (1994)).

D. Due Process and Unconstitutional Vagueness

In addition to the First Amendment, a library policy or local ordinance seeking to limit or regulate speech must also comport with the Due Process Clause of the Fourteenth Amendment. Specifically, vagueness in a policy’s definitions, scope, and criteria for enforcement will offend constitutional due process guarantees. Any policy or statute that dictates actions “in terms so vague that [people] of common intelligence must necessarily guess at its meaning and differ as to its application” will violate the Fourteenth Amendment’s guarantee of due process of law. *Cramp v. Bd. of Pub. Instruction of Orange Cnty., Fla.*, 368 U.S. 278, 287 (1961) (quoting *Connally v. Gen. Const. Co.*, 269 U.S. 385, 391 (1926)). Vagueness in law and policy runs counter to due process principles because it invites arbitrary, discriminatory, and disparate enforcement. *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 604 (1967) (internal citation omitted); *see also Cramp*, 368 U.S. at 279; *Sund*, 121 F. Supp. 2d at 553. And when the policy or statute at issue could inhibit fundamental constitutional rights, such as free speech, a policy or statute will be subject to even stricter standards of vagueness. *Id.* at 281.



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III. Recent Examples of Unconstitutional Censorship

A. Courts have Prohibited Censorship of LGBTQ+ Material

Censoring books based on their content, authors, or intended audiences is discriminatory and antithetical to principles of free speech and expression. Historically, censorship has been used to stigmatize people and groups disfavored by the government. We are particularly troubled that much of the political effort to censor books in Louisiana has targeted works by and about people of color and LGBTQ+ people.



Courts have consistently ruled that censoring books because they express support or tolerance for lesbian, gay, bisexual, and transgender people is a form of viewpoint-based discrimination that violates the First and Fourteenth Amendments.

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- Censorship of LGBTQ-supportive websites in school library 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).
- Districts cannot allow members of the public to demand refusal of children’s library books with LGBTQ+ content. *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 532 (N.D. Tex. 2000).
- Removal of book depicting romance between two women from school libraries violated First Amendment. *Case v. Unified Sch. Dist. No. 233*, 908 F. Supp. 864, 875 (D. Kan. 1995).
- Local school boards may not remove books from 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).

The government cannot selectively target LGBTQ+ books for removal without violating the First Amendment and the Equal Protection Clause of the Fourteenth Amendment, both of which supersede conflicting state laws. “[L]ocal school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books.” *Pico*, 457 U.S. at 867, 872 (1982). Suppressing speech based on its perceived opinions—i.e., viewpoint-based discrimination—is “an egregious form of content discrimination” that clearly violates the First Amendment. *Rosenberger*, 515 U.S. at 829.

Notably, if all books in a public or school library were removed or restricted based on the expansive definition of “sexually explicit material” included in the recently filed Senate Bill 7 and House Bill 102, it would require the restriction of the Bible, many plays by William Shakespeare and others from antiquity, and novels like the Fountainhead. S.B. 7, 2023 Leg., Reg. Sess. (La. 2023); H.B. 102, 2023 Leg. Reg. Sess. (La. 2023). To focus

primarily on LGBTQ+ books, and not include books which feature similarly explicit references to heterosexual acts or relationships is discriminatory. *See Obergefell v. Hodges*, 576 U.S. 644, 666, 135 S. Ct. 2584, 2599 (2015) (homosexual relationships are entitled to the same dignity and respect as heterosexual relationships).

Nevertheless, of the nine titles singled out in the document recently circulated by the Office of the Louisiana Attorney General, all but two of the authors identify as women, LGBTQ+, or Black. Although proponents of censoring these titles have said they are not concerned about "banning lifestyles," their explicit and disparate focus on titles by and about people of color and LGBTQ+ people suggests that, in practice, the proposed library regulations would likely burden that speech unequally. *See* Piper Hutchinson, "Attorney general, legislators call for restricting minors' access to library materials." *Louisiana Illuminator* (Feb. 7, 2023).



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B. Material Harm to LGBTQ+ Youth

Like all viewpoint-based censorship, this effort is likely to stigmatize those materials that the government deems "inappropriate," along with the groups of people represented in those stories. And such stigma can have dire consequences for LGBTQ+ youth.

Nationally, LGBTQ+ youth are far more likely to be bullied and harassed at school, alienated from their families and communities, and suffer from depression and suicidal ideation than their non-LGBTQ+ peers. According to the GLSEN 2021 National School Climate Survey, most (60.7%) LGBTQ+ students in the United States who attended school during the 2021-2022 academic year experienced harassment or physical assault based on their sexual orientation or gender expression. Clark, C. M., et al. (2022). *The 2021 National School Climate Survey: The experiences of LGBTQ+ youth in our nation's schools*. New York: GLSEN. **Students in Louisiana reported higher rates of harassment and bullying based on their sexual orientation than the national average:** 65% reported harassment in school based on their sexual orientation, and more than 90% heard anti-LGBTQ+ remarks from other students in schools. GLSEN. (2023). *School Climate for LGBTQ+ Students in Louisiana (2021 State Snapshot: Louisiana)*. New York: GLSEN.

For LGBTQ+ youth who are isolated at home, in school, or in their community, access to LGBTQ+ representation or information in books and literature can be a salve—and, in some cases, lifesaving.

C. Titles Affected

Below, we recount several of the titles recommended for censorship by the Office of the Attorney General:

The Bluest Eye by Toni Morrison

Toni Morrison was a critically acclaimed and beloved Black American author. Morrison published eleven novels, along with several non-fiction collections, children’s books, short stories, and plays. Morrison’s multifaceted works address themes including race, Black identity, and womanhood. Morrison, an African American woman, regularly challenged racism while centering the experiences of Black Americans in her writing and public discourse.

Morrison was awarded numerous honors and medals for her literary achievements, including the Pulitzer Prize for fiction in 1987, the Nobel Prize for Literature in 1993, the National Book Foundation’s Medal of Distinguished Contribution to American Letters in 1996, the Presidential Medal of Freedom in 2012, and the PEN/Saul Bellow Award for Achievement in American Fiction in 2016.

The Bluest Eye, first published in 1970, was Morrison’s first novel. The Bluest Eye portrays the experiences of a young Black girl named Pecola Breedlove growing up in Lorain, Ohio, Morrison’s hometown. Pecola faces racism, abuse, and instability. Pecola, who has dark skin, hair, and eyes, covets lighter features, particularly blue eyes. Her father rapes and impregnates her. Driven to madness, Pecola believes her wish for blue eyes has been granted.

The Bluest Eye is categorized as an essential American classic and remains a bestselling novel. As of February 1, 2022, it was the Number One Best Seller in Black & African American Literature on Amazon.com.

All Boys Aren’t Blue by George Matthew Johnson

George Matthew Johnson is a Black American journalist and activist. Their memoir All Boys Aren’t Blue, published in 2020, recounts their experiences growing up as a queer Black person. All Boys Aren’t Blue was well-reviewed.

It was included on numerous “best book of the year” or “recommended read” lists, including those published by Teen Vogue, the ALA Rainbow List, the Kids’ Book Choice awards, Young Adult Library Services Association Teen’s Top books, the New York Library Best Books of 2020, and the Chicago Public Library Best Books of 2020.

Fun Home by Alison Bechdel



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Alison Bechdel is a gay American cartoonist. Her critically acclaimed graphic memoir, *Fun Home: A Family Tragicomic* Paperback (“Fun Home”) was published in 2006. *Fun Home* chronicles Bechdel’s childhood and relationship with her father, who died by suicide shortly after she came out as a lesbian. *Fun Home* was a bestseller, the recipient of several awards and accolades, and was turned into a hit musical which opened on Broadway in 2015. The musical won five Tony awards, including the 2015 Tony Award for Best Musical.

Lawn Boy by Jonathan Evison

Jonathan Evison is the author of seven novels. His 2018 novel *Lawn Boy* explores issues of race, class, and sexual identity while portraying the struggles of a young Chicano man working as a landscaper.

In 2019, the book won the American Library Association’s Alex Award, which is given to ten books written for adults that have special appeal to children ages 12 through 18.

Jack of Hearts (And Other Parts) by Lev A.C. Rosen

Lev A.C. Rosen is a gay American novelist. He’s the author of several award-winning books. His books have been translated into many different languages and sold around the world. *Jack of Hearts (And Other Parts)* won Guardian’s Best Books of the Year and B&N Favorite Books of the Year, and was listed on the American Library Association Rainbow List Top Ten.

Parents and caregivers have an important responsibility to judge what material is appropriate for children and to guide their learning and development. However, government censorship interferes with parents’ and children’s participation in a free exchange of ideas by giving preferred treatment to certain opinions and viewpoints that are favored by the government. This is action forbidden to the state under the First Amendment.

In the words of the American Library Association, “The primary responsibility for rearing children rests with parents. If parents want to keep certain ideas or forms of expression away from their children, they must assume the responsibility for shielding those children. Governmental institutions cannot be expected to usurp or interfere with parental obligations and responsibilities when it comes to deciding what a child may read or view.”

We are Committed to Keeping You Informed of Your Rights

Ideas are powerful. That’s why intellectual freedom is protected by the First Amendment. It’s also why politicians sometimes try to suppress it.

For nearly 100 years, the ACLU has fought to make sure Americans have the right to read, write, and say what they want. And here at the ACLU of Louisiana, we remain committed to racial and gender justice, including by protecting access to diverse books, full of people with differing viewpoints, backgrounds, and experiences. We hope the information in this letter and the resources below will help equip you to stand up for free speech and expression in your community and throughout Louisiana. We are standing with you.

Sincerely,



A handwritten signature in black ink that reads "Alanah Odoms". The signature is written in a cursive, flowing style.

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Additional Resources

Connect with [Louisiana Citizens Against Censorship](#).

[Sign locALL's petition](#) against censorship in Louisiana.

Read what the [American Library Association](#) has to say about [banned books](#) and [minors' rights](#) in school.

[Learn more](#) about how the ACLU is fighting against censorship and get involved.