

4-5-2023

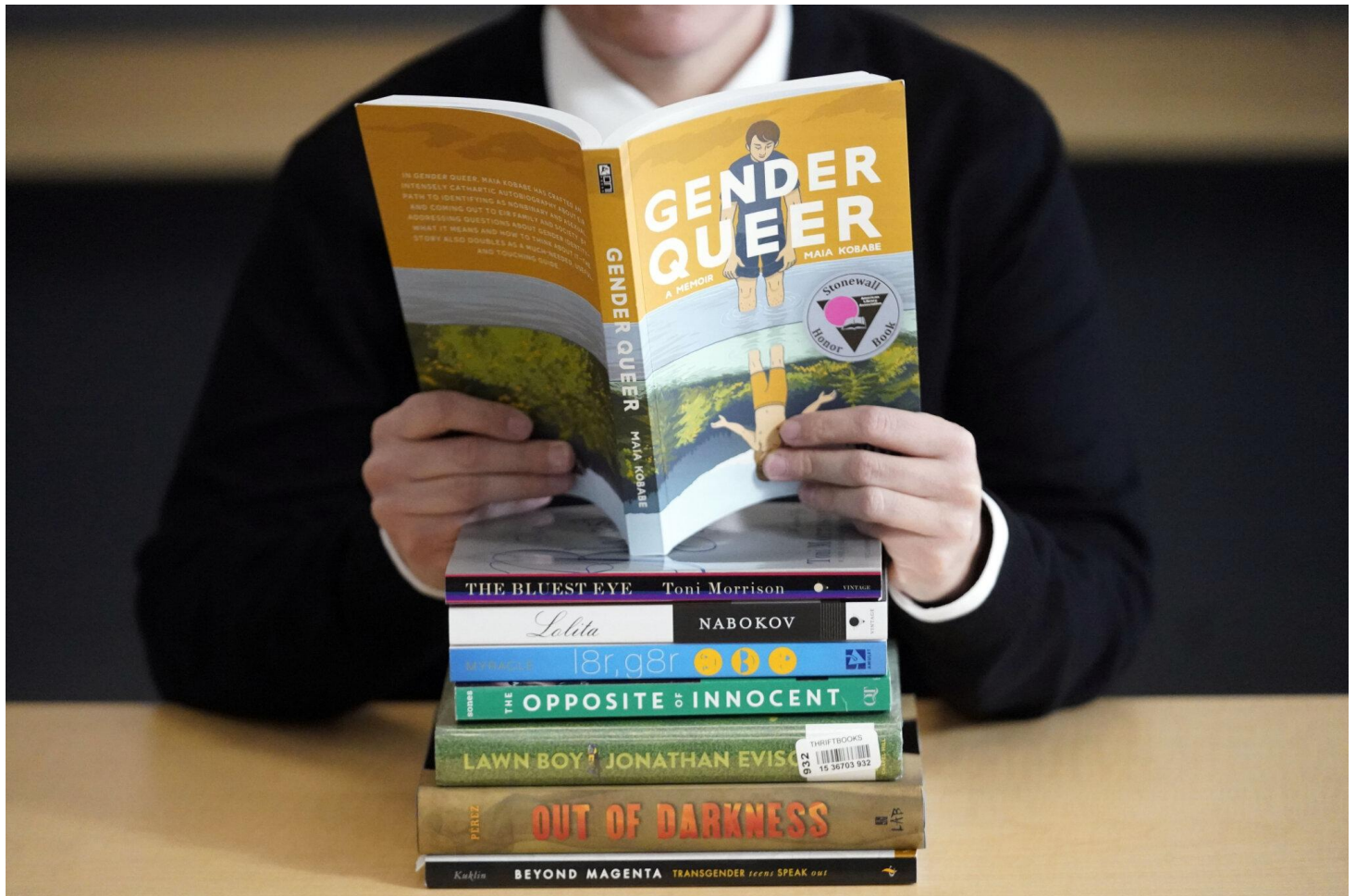
Federal judge orders Texas County to Restore Censored 'LGBTQ Books' to Library

Arthur S. Leonard

Federal judge orders Texas county to restore censored 'LGBTQ books' to library

gcn By Arthur S. Leonard

Posted on April 5, 2023



Officials in Llano County, Texas, were ordered to restore to the county’s library collection several books that had been removed because they were about racial or LGBTQ issues.

AP PHOTO/RICK BOWMER

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US District Judge Robert Pitman, an out gay man, issued an order on March 30 directing Llano County, Texas, officials to restore to the county’s library collection several books that had been removed because they were about racial or LGBTQ issues. Ruling on a motion for a preliminary injunction by a group of county residents who filed a challenge to the book removals, the judge found that the plaintiffs had alleged potentially valid constitutional free speech claims, justifying restoring the status quo while the case is being litigated.

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In essence, the plaintiffs allege that a handful of conservative activists, with the connivance of some county officials, hijacked the system for dealing with acquisition and de-acquisition of books in the Llano County Library System, with the goal of eliminating books that they deemed to be “inappropriate” and “pornographic filth.” There have been numerous reports of “hit

lists” circulating among social conservatives of books that are popular with librarians and found in many public and school library collections that social conservatives want to have removed. Prominent among them are books that they contend promote “critical race theory” or “LGBTQ rights viewpoints.” Emails originating from members of this group that were submitted as evidence together with the plaintiffs’ motion refer to the list of “CRT and LGBTQ books.”

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The Llano County Library System follows a method called “CREW” (for “continuous review, evaluation and weeding”) to keep the book collection fresh and up-to-date by removing books to make room for new acquisitions. Library Director Amber Milum told the court that the “CREW” method “is an established weeding guide used by modern libraries.” The criteria to identify appropriate candidates for “weeding” have their own acronym — “MUSTIE” — standing for “misleading, ugly, superseded, trivial, irrelevant, and elsewhere.”

Rochelle Wells, Rhonda Schneider, Gay Baskin, and Bonnie Wallace were the activists for a community group that was eager to cleanse the library of CRT and LGBTQ books through this weeding system. They filed objections to various books on their list with Director Milum, who shared these objections with the county’s Commissioner Court. Llano County Judge Ron Cunningham directed Milum to remove the books from the library shelves, and she complied. More complaints were filed and more books were removed, with particular emphasis on removing books from the children’s section that the objectors claimed to be “pornographic” because they “promoted acceptance of LGBTQ views.” Wallace, in particular, urged that such books, if retained, be transferred to the adult section. Milum was also directed to remove books from OverDrive, the library’s directory of books obtainable as e-books by library users.

Among several books that were removed were “Being Jazz: My Life as a (Transgender) Teen,” and “They Called Themselves the K.K.K.: The Birth of an American Terrorist Group.” On OverDrive, the defendants targeted, among others, “Lawn Boy” and “Gender Queer.”

On December 13, 2021, the Commissioners Court voted to close the three library locations for three days in order to review the library catalogue, making a sweep of the shelves to pull out “inappropriate” books. Milum’s declaration to the court said that the staff mainly pulled books that the activists had identified as “inappropriate.” The Commissioners Court also voted to terminate the library’s contract with the OverDrive service.

In this lawsuit, the plaintiffs sought a preliminary injunction to return all the removed books to the shelves and also make them available as e-books on OverDrive. After the lawsuit was filed, the Commissioners Court voted to initiate a contract with a different e-book database system called Bibliotheca, which the court says would provide access to some but not all of the books that had been rendered inaccessible.

The Commissioners Court also voted to dissolve the existing library board and created a new Library Advisory Board, and to appoint Wallace, Wells, Schneider and other Llano County

residents who were advocating book removal to the new board. The board would not only control the “weeding” process but would also be required to individually approve any new books to be purchased for the library.

In short, Llano County introduced a regime where conservative social activists were given control of the composition of the public library system’s collection. All of this was done without notice to the public, or any opportunity for library patrons to challenge the book removals administratively, hence this lawsuit. In fact, the Library Advisory Board voted to close their meetings to the public.

Judge Pitman rejected the defendants’ motion to dismiss the case, although he found that the part of the plaintiff’s complaint seeking restoration of access to removed e-books on OverDrive was moot since the library had terminated that contract. As to the physical books, the court pointed out that they had been removed from the shelves and the active catalogue but had not been destroyed, so it was possible to order their return to the shelves and to the active catalogue.

In order to issue a preliminary injunction, the court had to determine that the plaintiffs had potentially valid legal claims.

“Defendants, like other government officials implicated in maintaining libraries, have broad discretion to select and acquire books for the library’s collection,” Pitman acknowledged. “But the Fifth Circuit [whose decisions are binding on federal courts in Texas] recognizes a First Amendment right to access to information in libraries, a right that applies to book removal decisions. Plaintiffs have clearly stated a claim that falls squarely within this right: that Defendants removed the books at issue to prevent access to viewpoints and content to which they objected.”

As to a 14th Amendment Due Process claim, the judge noted that “many courts have held that access to public library books is a protected liberty interest created by the First Amendment... The Court follows our many sister courts in holding that there is a protected liberty interest in access to information in a public library. Accordingly, the Court finds that Plaintiff has sufficiently stated a due process claim.”

Turning to the criteria for granting a preliminary injunction ordering restoration of the books, the court found plenty of evidence that viewpoint discrimination was taking place. “Here, the evidence shows Defendants targeted and removed books, including well-regarded, prize-winning books, based on complaints that the books were inappropriate... Admittedly, Wallace, Wells, and other complainants were members of the public, not library board members, at the time. But by responding so quickly and uncritically, Milum and the Commissioners may be seen to have adopted Wallace’s and Wells’s motivations,” so their decisions were “likely motivated by a desire to limit access to the viewpoints to which Wallace and Wells objected.” This was not just part of the “routine” content-neutral weeding process.

Rejecting the defendants’ argument that only minimal judicial review would apply to a decision to remove books from the library, Pitman wrote that “when the government’s ‘substantial motivation’ appears to be a desire to prevent access to particular views, like in this case, Defendants’ actions deserve greater First Amendment scrutiny. The Court finds that Plaintiffs made a clear showing that the ‘substantial motivation’ for Defendants’ actions appears to be discrimination, as opposed to mere weeding.” And the actions are “likely to be constitutionally infirm because they are not narrowly tailored to serve a compelling state interest.”

The judge rejected the argument that because some of the books were accessible as e-books in the recently contracted Bibliotheca service, plaintiffs suffered no harm from their removal from the shelves, finding that “access through Bibliotheca is not a replacement for access to the physical books at issue. E-books and physical books are tangibly different,” he wrote. “Using Bibliotheca requires access to a compatible device, and most of the books are not available through Bibliotheca at all. Furthermore, as early as March 2022, Defendants were trying to remove books they had already purchased through Bibliotheca, due to concerns about their appropriateness.” Thus, an injunction to return the books to the shelves was necessary to assure they would be accessible to library patrons.

“The evidence demonstrates that, without an injunction, Defendants will continue to make access to the subject books difficult or impossible,” wrote Pitman. “Defendants must therefore be prevented from removing the books, and the books at issue must be made available for checkout through the Library System’s catalogs.”

The court gave the defendants 24 hours to return “all print books that were removed because of their viewpoint or content, to the Llano County Libraries,” and he included in his order a list of particular books at issue in the case, including several that the defendants would consider “LGBTQ books.” The court also ordered that “immediately” after the books were returned to the shelves, the library’s catalogues must be updated to reflect that they are available for checkout. Finally, the court enjoined Defendants “from removing any books from the Llano County Library Service’s catalog for any reason during the pendency of this action.”

Judge Pitman is the first out gay man to serve as a federal district judge within the jurisdiction of the Fifth Circuit (Texas, Louisiana and Mississippi). He was appointed by President Barack Obama. Due to his prior public service, including several years as a US Attorney (chief federal prosecutor) in West Texas and a Magistrate Judge, he was recommended by both of the Republican senators from Texas to serve as the US Attorney, and when nominated to the district court by President Obama, he was confirmed by voice vote in the Senate.