IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MISSOURI STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, et al.,	)	
Plaintiffs,	)	
v.	)	Case No. 4:22-cv-191-MTS
WENTZVILLE R-IV SCHOOL DISTRICT;	)	
Defendant.	)	

REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

"Boards of Education . . . have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights." *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943). When books are removed from school libraries, even temporarily, "[w]hat is at stake is the right to receive information and to be exposed to controversial ideas–a fundamental First Amendment right." *Pratt v. Indep. Sch. Dist. No. 831, Forest Lake*, 670 F.2d 771, 779 (8th Cir. 1982). Plaintiffs are entitled to a preliminary injunction because they are likely to succeed on the claim that the District's policy of automatically removing books from school library shelves upon challenge and allowing for their permanent removal based on ideas and viewpoints violates students' First Amendment rights. Indeed, accepting the District's arguments in opposition would require this Court to ignore binding circuit precedent regarding both preliminary injunctions in First Amendment cases and the right of students to receive information and ideas.

I. The District misrepresents Eighth Circuit precedent establishing the standard for preliminary injunctive relief.

While the District does not dispute that Plaintiffs need show only a "fair chance" of success, it relies upon the partial dissent in *Rodgers v. Bryant*, 942 F.3d 451, 466 (8th Cir. 2019) (Stras, C.J., concurring in part and dissenting in part), despite not labeling it as a dissent, for the proposition that "the district court must still consider the other [*Dataphase*] factors," even after a likely violation of First Amendment rights has been shown. On the contrary, the *Rodgers* majority confirmed the controlling standard: once plaintiffs have "established that the law likely violates the First Amendment," they are deemed to "have satisfied the remaining three *Dataphase* factors as well." 942 F.3d at 457 (*citing Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 870 (8th Cir. 2012) (en banc)); *see, e.g.*, *Willson v. City of Bel-Nor*, 924 F.3d 995, 1004 (8th Cir. 2019) (reversing denial of preliminary injunction and relying on *Swanson* to conclude "Willson is likely to succeed on the merits of his First Amendment challenge[; t]he preliminary injunction should be granted," without analysis of remaining *Dataphase* factors).

II. The District's removal of books likely violates students' First Amendment rights, as established by binding Eighth Circuit precedent.[1]

a. Students have a First Amendment right to receive information through school library books.

Although *Pico* was a plurality opinion, the Supreme Court's guidance is nonetheless instructive. *See Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982). If there is no clear majority, "the holding of the [Supreme] Court may be viewed as that position taken by those Members who concurred . . . on the narrowest grounds." *Marks v. United States*, 430 U.S. 188, 193 (1977). "Justice White's concurrence in *Pico* represents the

[1] Although the District suggests that the individual plaintiffs may lack standing, it does not dispute standing of the NAACP plaintiffs. "[W]here one plaintiff establishes standing to sue, the standing of the other plaintiffs is immaterial." *Nat'l Wildlife Fed'n v. Agric. Stabilization & Conservation Serv.*, 955 F.2d 1199, 1203 (8th Cir. 1992) (citing *Bowen v. Kendrick,* 487 U.S. 589, 620 n.15 (1988)); *accord Missouri v. Biden*, No. 4:21 CV 1300 DDN, 2021 WL 5998204, at *2 (E.D. Mo. Dec. 20, 2021). Thus, although the District's standing arguments lack merit, they need not be addressed here.

narrowest grounds for the result in that case, and it does not reject the plurality's assessment of the constitutional limitations on school officials' discretion to remove books from a school library." *Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184, 189 (5th Cir. 1995).

Moreover, the District ignores Eighth Circuit precedent establishing the First Amendment right of students to receive ideas and information. While selectively citing out-of-circuit cases, the District fails to acknowledge *Pratt*, the directly on-point Eighth Circuit case that entrenched the "fundamental First Amendment right" at issue here.[2] 670 F.2d 771. Even if the *Pico* plurality did not recognize students' rights in a binding manner—and it did—*Pratt* controls in the Eighth Circuit.[3]

In *Pratt*, the Eighth Circuit held that a school district violated students' First Amendment right to receive information and be exposed to ideas by removing a film adaptation and trailer of Shirley Jackson's "The Lottery." The Court adopted the framework used in challenges to the removal of books from school libraries, including *Pico*, "because the effect of banning the films

[2] Instead of addressing *Pratt*, the District cites contrary out-of-circuit cases, none of which addresses the circumstances here. *ACLU of Fla., Inc. v. Miami-Dade Cty. Sch. Bd.*, 557 F.3d 1177, 1218 (11th Cir. 2009) allowed removal of a book containing "factual inaccuracies" from a school library, but no one has suggested any of the Banned Books is factually inaccurate. *Muir v. Ala. Educ. Television Comm'n*, 688 F.2d 1033, 1046 (5th Cir. 1982) (en banc) concerned local access television programming, not the removal of books from a school library, with the court specifically noting that "[t]he right to cancel a program is, furthermore, far more integral a part of the operation of a television station than the decision to remove a book from a school library." *Chiras v. Miller*, 432 F.3d 606 (5th Cir. 2005) involved textbooks, not library books, and dicta from the footnote cited by the District does not control even in the Fifth Circuit. Indeed, the most pertinent Fifth Circuit case is *Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184 (5th Cir. 1995) where the court "disagree[d] with the School Board's contention that we are bound to reject the guidance found in *Pico* because of our *en banc* opinion in *Muir*," and applied *Pico* after concluding that "[e]ven though the constitutional analysis in the *Pico* plurality opinion does not constitute binding precedent, it may properly serve as guidance in determining whether the Board's removal decision was based on unconstitutional motives." *Id.* at 188–89.

[3] This is not an open issue in this Circuit. The Eighth Circuit's holding in *Pratt* agreed with the Second Circuit's decision in *Pico*, which was affirmed by a five-justice majority. Even a summary affirmance by the Supreme Court is a judgment on the merits. *See Hicks v. Miranda*, 422 U.S. 332, 344 (1975). The Supreme Court itself has cited to *Pico* repeatedly. *See, e.g., Nurre v. Whitehead*, 559 U.S. 1025 (2010) (citing *Pico*, 457 U.S. at 871–872) ("And our cases categorically reject the proposition that speech may be censored simply because some in the audience may find that speech distasteful."); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 684 (1986); *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 570 (1998).

due to their ideological and religious content is the same as the effect of removing books from a library….[T]he action of the school officials clearly indicates that the ideas contained in the banned materials are unacceptable and, hence, the exercise of First Amendment freedoms is inhibited." *Pratt*, 670 F.2d at 776 n. 6; *accord Parents, Fams., & Friends of Lesbians & Gays, Inc. v. Camdenton R-III Sch. Dist.*, 853 F. Supp. 2d 888 (W.D. Mo. 2012) ("*PFLAG*") (applying *Pratt* and finding violation of students' First Amendment rights).

Indeed, students' First Amendment rights are not as cramped as the District's narrow focus on "speech" suggests. "The right to read a book is an aspect of the right to receive information and ideas, an 'inherent corollary of the rights of free speech and press that are explicitly guaranteed by the Constitution.'" *Counts v. Cedarville Sch. Dist.*, 295 F. Supp. 2d 996, 999 (W.D. Ark. 2003), *quoting Pico*, 457 U.S. at 867. *Pico* continues:

> First, the right to receive ideas follows ineluctably from the sender's First Amendment right to send them: 'The right of freedom of speech and press ... embraces the right to distribute literature, and necessarily protects the right to receive it.' *Martin v. Struthers*, 319 U.S. 141, 143 (1943) (citation omitted). '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, 308 (1965) (Brennan, J., concurring).

457 U.S. at 867; *see also Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 64 n.6 (1963) (citing *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938)) ("the constitutional guarantee of freedom of the press embraces the circulation of books as well as their publication"). Reading a book and receiving the ideas contained therein is an expressive activity. Students who would express themselves by choosing to read certain books and engage with diverse ideas, information, and viewpoints cannot do so if those books are removed from library shelves and circulation pursuant to District policy.

Nor does this case involve the Board's discretionary rights to control curriculum. Like *Pico*, this case "does not involve textbooks, or indeed any books that [Wentzville] students would be required to read. On the contrary, the only books at issue in this case are *library* books, books

that by their nature are optional rather than required reading." *Pico*, 457 U.S. at 861–62. Students' "selection of books from these libraries is entirely a matter of free choice; the libraries afford them an opportunity at self-education and individual enrichment that is wholly optional." *Id.* at 869. Students may utilize school libraries to assist with classwork, but they are not required to, and none of the Banned Books is required reading.

b. The automatic removal policy is unconstitutional.

The District fails to address the current, ongoing harm this motion seeks to redress: the automatic removal of books upon complaint. Even if government officials "possess[] legitimate power to protect children from harm,… that does not include a free-floating power to restrict the ideas to which children may be exposed." *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 794 (2011) (internal citations omitted). The District's automatic-removal policy—which requires the removal of any challenged book upon receipt of a challenge whenever a challenger claims the book is "objectionable in any manner," (ECF No. 19-9)—creates a heckler's veto that allows viewpoint-based challenges to effect the immediate removal of books from shelves.[4] The District does not attempt to defend the constitutionality of this policy, and it cannot be justified.

Instead, the District points to written policy that contradicts the policy requiring immediate removal upon any challenge based on any reason. Assuming the policy preventing books of "sound factual authority" from being removed "on the basis of partisan or doctrinal approval or disapproval" has application to works of fiction and memoirs like the Banned Books,

[4] The Review of Instructional Materials challenge form asks the challenger the question, "Do you approve of presenting a diversity of points of view about this material in the classroom?" However, on the form submitted for each of the Banned Books, the challenger responded, "No" or "a big fat NO." (ECF No. 19-6; 19-9; 19-10; 19-11; 19-10; 19-11; 19-12; 19-13; 28-10; 28-11). Despite these representations that the challengers do not support students having access to books with a diversity of viewpoints, each of the Banned Books was removed from shelves and the challenge proceeded.

The District also does not dispute Plaintiffs' assertion and evidence that the District has never blocked access to books with the same content as the Banned Books expressed from a non-racial or sexual-minority viewpoint.

it does not prevail in the event of a conflict with the immediate removal policy. Here, as in *Pico*, the District's "removal procedures were highly irregular and ad hoc—the antithesis of those procedures that might tend to allay suspicions regarding petitioners' motivations." *Pico*, 457 U.S. at 875. It is not disputed that for each of the Banned Books, students were denied access for at least several months, it was removed by school officials, the school officials removed access because an individual filed a complaint, the complaint was submitted by an individual who told school officials that they do not approve of presenting a diversity of viewpoints about the material at issue, and all of this was caused by the policy allowing any person to file a challenge to any book that they find offensive in any manner and requiring school officials to block access to any challenged library materials automatically, immediately, and indefinitely. Although the District seems to suggest challenged noncurricular material might not be automatically removed in some cases, it does not provide a single instance of that happening or explain what policy would allow it.

Even if the District somehow manages to prevent books from being permanently blocked for reasons of disapproval or their viewpoints, its requirement of automatic removal pending review without providing any binding deadline for such review causes the indefinite removal of books from school libraries. Indeed, for most of the Banned Books, the District has simply disregarded any "general timeline" contemplated by Regulation 6241. The District's ongoing delays in reviewing the Banned Books has deprived students of access to ideas and information in the Banned Books for most of the school year.

For example, although students have been unable to access *Lawn Boy* for over six months, the District dubiously claims that "the preparation of the committee report has been delayed due

to logistical difficulties in obtaining copies of the book for all committee members." (ECF No. 28 at 2). However, the book is widely available at local libraries and booksellers.[5]

Similarly, despite the District's own internal and external statements that it had permanently removed three challenged books—*Fun Home*, *All Boys Aren't Blue*, and *Heavy*—from shelves using its "weeding" procedure, the District now claims that "[t]he appointment of review committees for these books were delayed due to the necessity of locating nine individuals willing and able to review the book in accordance with the District's committee guidelines" and that "[t]he review and preparation of the committee reports for these books has been delayed due to the amount of material under consideration and scheduling constraints." (ECF No. 28 at 3); *but see* Ex. 55 (Dr. Skeeters email confirming removal of these three books "without going through the review process" for purposes of responding to media inquiry); *see also* (ECF No. 12-18 at 62) (Board member stating, "[w]e as a school district, banned three books without even coming to the review committee."); (ECF No. 12-24) (representing that each of these three books "has been permanently removed from our library collections").

When considering a preliminary injunction, which requires an expeditious hearing and decision, courts receive evidence that would not ordinarily be admissible, such as an affidavit. *Movie Sys., Inc. v. MAD Minneapolis Audio Distributors, a Div. of Smoliak & Sons, Inc.*, 717 F.2d 427, 432 (8th Cir. 1983); *accord Champion Salt, LLC v. Arthofer*, No. 4:21-CV-00755-JAR, 2021 WL 4059727, at *8 (E.D. Mo. Sept. 7, 2021). Nonetheless, the court must determine how much weight to give such evidence. *Little Rock Fam. Plan. Servs. v. Rutledge*, 398 F. Supp. 3d

[5] As of April 7, 2022, there were multiple print, digital, and audiobook copies of *Lawn Boy* available for free borrowing or inter-library loan at several local library branches, including St. Charles City-County Library, Warren County Scenic Regional Library, St. Louis County Library, and St. Louis City Library. The book is also available for purchase via Kindle, Amazon, and other online sources, and Plaintiffs' attorney Rothert purchased fourteen copies of the book online on March 10, 2022. *See* Ex. 54 (Declaration of Anthony E. Rothert).

330, 337 (E.D. Ark. 2019). A self-serving affidavit that asserts the opposite of documents produced by the same party—such as the Declaration of Dr. Skeeters (ECF No. 28-12)—should be given little, if any, weight.

Yet even accepting the District's revised explanation of the status of these three books, these delays highlight the failure of the District's policy to safeguard students' First Amendment rights by de facto permanently removing books whenever "the amount of material under consideration and scheduling constraints" make timely review difficult. While "a 'loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury,'" access to each of the Banned Books has been blocked for several *months* following removal upon the lodging of a challenge pursuant to District policy. *Johnson v. Minneapolis Park & Recreation Bd.*, 729 F.3d 1094, 1101–02 (8th Cir. 2013) (quoting *Elrod v. Burns,* 427 U.S. 347, 373 (1976) (plurality opinion)). The District does not claim any progress toward forming review committees or offer any timeline by which reviews will be completed and a Board vote will be taken for the still-banned books. In addition to the books the District previously represented as permanently removed, it also claims that review of the books *Gabi* and *Modern Romance* "was delayed due to the delay in committee formation, the amount of material under consideration, and scheduling constraints." (ECF No. 28 at 3). On the whole, the District's policy causes books to be removed from shelves for the duration of the indefinite review process, depriving students of access in the meantime.

"The first amendment knows no heckler's veto." *Lewis v. Wilson*, 253 F.3d 1077, 1082 (8th Cir. 2001); *see also Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 135 (1992) ("Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment."); *Robb v. Hungerbeeler*, 281 F. Supp. 2d 989, 1002 (E.D. Mo. 2003), *aff'd*, 370 F.3d 735 (8th Cir. 2004) (finding that the Ku Klux

Klan's "expressive speech of picking up trash along a highway right-of-way cannot be trumped because some people may disagree with its beliefs and advocacy"); *Sund v. City of Wichita Falls*, 121 F. Supp 2d 530, 549 (N.D. Tex. 2000) (applying heckler's veto doctrine in library context where complainants could "veto lawful, fully-protected expression simply because of their adverse reaction to it"). Here, a heckler's veto occurs when the District prevents students from accessing the ideas and information contained in each book it automatically removes from library shelves because of a challenger's adverse reaction to the book's content.

Similarly, the District's suppression of students' rights to access ideas and information by automatically removing books from shelves upon challenge amounts to a prior restraint. *See, e.g.*, *U.S. v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 470 (1995) (reasoning that a "large-scale disincentive to Government employees' expression also imposes a significant burden on the public's right to read and hear what the employees would otherwise have written and said"); *accord Mainstream Loudoun v. Bd. of Trustees of Loudoun Cty. Libr.*, 24 F. Supp. 2d 552, 569 (E.D. Va. 1998) (finding that library internet filtering policy that blocked patrons from accessing certain websites and characterized as a removal decision constitutes an unconstitutional prior restraint). The District's policy resembles the prior-restraint scheme in *Bantam*, 372 U.S. 58. There, like here, the government acted to deny to minors access to publications deemed "'objectionable' without further elucidation." *Id.* at 71. And there, like here, those actions curtailed circulation of the ideas in particular books. *Id*. at 64. Because the District blocks access to library books immediately, indefinitely, and without standards, students' First Amendment right to access information is violated.

c. The District has not presented a legitimate justification for removal.

The District's claim that Plaintiffs challenge the Board's decision-making merely because of their own disagreement with the Board is a strawman. Plaintiffs' particular viewpoints are not

relevant here; instead, the point is that the District may not constitutionally remove books based upon the dislike of the ideas and viewpoints contained therein by a Board majority or a challenger to whom the Board has delegated the authority to cause removal of student access. (ECF No. 28 at 12).

The District does not dispute Plaintiffs' evidence of the educational value and suitability of each of the Banned Books. There is no contrary evidence. To their credit, the District's attorneys do not attempt to defend some Board members' claims that *The Bluest Eye* is "obscene" or "pornography." Nor does the District provided a clear motive for why the Board initially voted to permanently maintain the removal of student access to *The Bluest Eye*, or why the District initially stated that it had "weeded" or "banned" three other challenged books without review. Moreover, most pertinent to the preliminary relief sought, the District gives no justification for its policy's requirement that its officials permit a challenge by any person who finds the material "offensive in any manner" and immediately block student access to any library materials subject to a challenge. Finally, this District does not provide any legitimate justification for its policy allowing its Board and book challengers unbridled discretion to cause student access to particular library materials to be blocked.

Although the Skeeters Declaration highlights certain titles that are currently available at District libraries and surmises they contain ideas and viewpoints comparable to the Banned Books, the District does not explain and describe its conclusion. Furthermore, the District also ignores that the policy Plaintiffs seek to preliminarily enjoin would require its officials to immediately block student access to any—or all—of the books it identifies upon challenge by a student or parent as well as that the banning of challenged materials is indefinite pending review and lasts, at a minimum, the several months it takes the District to complete its review process. But, in any case, the notion that access to other library materials is sufficient to excuse the

removal of certain materials based on viewpoint is contrary to *Pico* and *Pratt*. Certainly, excusing the denial of the First Amendment right of access to the ideas and viewpoint in one book on the basis that the ideas and viewpoint may be accessed elsewhere would be contrary to the axiom that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v. New Jersey*, 308 U.S. 147, 151-52 (1939).

At base, the District argues that its Board has discretion to remove access to library materials and its exercise of that discretion cannot be challenged as violative of the First Amendment. The District does not cite to any cases accepting this argument, and Plaintiffs have not uncovered one. This Court should decline the District's invitation to be the first—especially because *Pratt* forecloses it.

III. In addition to the import of Plaintiffs' likelihood of success on the merits, they independently satisfy the remaining *Dataphase* factors such that preliminary injunctive relief would be merited even if there was significant doubt about their likelihood of success.

Neither the student Plaintiffs nor NAACP members are required to prove that they have attempted to check out the Banned Books, particularly where it is impossible to do so while books are removed from library shelves and, for those books for which access has been restored, they are chilled from checking out previously removed books by the resulting stigma. *See PFLAG*, 853 F. Supp. 2d at 896—97 (holding that student need not have tried to access a blocked website to show injury, particularly in light of stigmatizing and chilling impacts of blocked access).

Moreover, the District fails to acknowledge the irreparable harm that its policy causes the NAACP Plaintiffs and their members. (ECF No. 19-32). They, too, are harmed by blocked access and by the stigma resulting from book removals. Thousands of other students attend District schools and are also prevented from accessing removed books and harmed by the stigmatic

impact of book bans. [6] When a school board "has used its official power to perform an act clearly indicating that the ideas contained in [banned materials] are unacceptable and should not be discussed or considered [, t]his message is not lost on students and teachers, and its chilling effect is obvious." *Pratt*, 670 F.2d at 779; *accord PFLAG*, 853 F. Supp. 2d at 897.

The District also fails to address the irreparable harm the policy causes students every time it requires school officials to immediately block access to library materials for the sole reason that another student or another student's parent has asserted that it is "offensive in any manner." The Board has demonstrated its authority and willingness to exercise its discretion under District policy to permanently remove at least one book, *The Bluest Eye*, even if the District later rescinded that ban in response to this lawsuit. [7] Moreover, the District's view that there is no harm ignores that the policy still blocks student access to four of the Banned Books. Finally, the District has made no effort to disavow its policy, which at any moment and without notice to any student or parent will require the immediate removal of student access to any library material about which a challenge is submitted—a nearly certain event absent a preliminary injunction considering the number of books already challenged this school year, the undisputed evidence of a campaign encouraging book challenges nationwide, in Missouri, and in St. Charles County, and the unique automatic, immediate removal aspect of the District's policy.

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[6] While it has not been fully briefed as of April 7, 2022, Plaintiffs also submitted a Motion for Class Certification (ECF Nos. 26; 27). The members of the proposed class, who include current and future students in District schools who use, or will use, a District school library to access information, also face irreparable harm resulting from the District's book removals.

[7] The Board's failure to act following its initial removal, including after receiving letters from NCAC and MLA-IFC, is evidenced not only by the amount of time that passed until the ban was rescinded, but also by related communications. For example, in direct response to the NCAC letter, Garber emailed Board President Betsy Bates: "NO! I AM NOT GOING TO CHANGE MY MIND ONE BIT! I SUGGEST THAT YOU CHECK WITH THE ATTORNEY GENERAL'S OFFICE AND READ THE STATE LAW ABOUT SHOWING 'MINOIRS' OBSENITIES [sic]." Ex. 56 (Garber email to Bates re NCAC letter). Also in response to the NCAC letter, Garber emailed the entire Board: "I have NO INTENTIONS of changing my mind. This is a SUBJECT MATTER that I had been dealing with for the last 9 years. I am not going to be intimidated by any group who supports this 'TRASH' being shown to OUR MINOR CHILDREN!." Ex. 57 (Garber email to Board re NCAC letter).

Additionally, Plaintiffs have demonstrated that the balance of equities and the public interest would be served by a preliminary injunction. The District does not argue that the Banned Books are educationally unsuitable, but instead advocates for unlimited discretion of the District to "inculcate community values." (ECF No. 28 at 15); *Pico,* 457 U.S. at 869. Just as in *Pico*, the District's "reliance upon that duty is misplaced where, as here, they attempt to extend their claim of absolute discretion beyond the compulsory environment of the classroom, into the school library and the regime of voluntary inquiry that there holds sway." *Id.* Plaintiffs' request for a preliminary injunction does not contemplate any interference with the Board's discretion beyond that which is required to comply with the Constitution. Indeed, preliminarily enjoining the policy's automatic and immediate removal requirement is what maintains the status quo ante when a book is challenged, in contrast to the policy's immediate surrender of students' First Amendment right of access upon receipt of a challenge.

For the foregoing reasons, this Court should grant a preliminary injunction restoring the status quo ante by requiring access to library material removed pending review and enjoining the challenge-based removal of additional library materials while this case is decided on the merits.

Respectfully submitted,

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