



Montana

ImagineIF Libraries Board of Trustees
Attn: Right to Know/Public Information Request
librarytrustees@imagineiflibraries.org

PO Box 1968
Missoula, Montana 59806
406-443-8590
www.aclumontana.org

2/11/2022

RE: ACLU-MT Request for Public Records Regarding ImagineIF Library Board of Trustees

To Whom It May Concern:

Libraries are a cornerstone of American Democracy, ensuring that all people, regardless of their income, education, race, or geographic location, have free and open access to information and lifelong learning so that they can meaningfully engage in civic life. Public libraries are instrumentalities of state government and as such, their policies, rules, and guidelines are subject to First Amendment protections.¹ The ACLU of Montana is concerned that the recent book challenges at ImagineIF libraries in Kalispell and the subsequent move of the Library Board of Trustees to change its policies is not homegrown, but instead is part of a larger national effort to remove books from library shelves, specifically books focused on addressing issues faced by marginalized communities.² When libraries restrict access to books based on disagreement or discomfort with the views expressed within the book, then they run afoul of the First Amendment, violating the rights of the public to receive information and of authors to reach their audiences. The ACLU of Montana is committed to protecting the First Amendment rights of Montanans including the fair and open access to information that is at the heart of the public library system.

The First Amendment's "bedrock principle" provides that "government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989). This holds true not only for the right to expression, but also for the right to receive information.³ And it governs in libraries, which cannot "remove books from . . . 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).

¹ Daniel D. Crean, *Public Libraries, the First Amendment & the Digital Age*, (*Public Libraries and the First Amendment*), "Quiet Please!" Doesn't Apply! Legal Issues Confronting Public Libraries in a Digital Age, International Municipal Lawyers Association 2009 Annual Conference 2009.

² See ALA Office for Intellectual Freedom Staff, *Lawn Boy and Gender Queer: The Trend Toward Book Challenges*, The Office of Intellectual Freedom of the American Library Association Intellectual Freedom Blog (Oct. 13, 2021), <https://www.oif.ala.org/oif/lawn-boy-and-gender-queer-the-trend-toward-book-challenges/>. See also US Chttps://www.theguardian.com/us-news/2022/jan/24/us-conservatives-campaign-books-ban-schools

³ See *Public Libraries and the First Amendment* at 10.

Relatedly, the First Amendment requires that library governing boards establish neutral criteria for selecting and removing books.⁴ The stated mission on the ImagineIF Board Library policy page provides: “It is our *duty* to provide fair and open access to information. To do so, libraries rely on policies to help us create and maintain services. We work to provide the most access to people with the fewest restrictions, while protecting your freedom to read.”⁵ (emphasis added). Attempts by the Board of Trustees to change library policies to either remove books in circulation or to ensure that books containing ideas counter to board members’ personal values never reach library shelves are not only counter to their own mission, but likely violate the First Amendment.

Over the past few months, activist groups and politicians specifically targeted *Gender Queer* and *Lawn Boy* across the country, pushing to remove or restrict access to the books because they present and celebrate queer perspectives.⁶ The recent decision by the ImagineIF Board of Trustees to postpone removal of the book *Gender Queer*, an award winning autobiography in graphic novel form of one person’s journey to finding their gender identity, until it can rewrite the material collections policy to allow them more latitude in removing books containing ideas or values of which they disapprove seems to be directly related to this national campaign.⁷ Further, removing books in circulation and limiting which books reach library shelves solely on the basis of their content can amount to censorship in violation of the First Amendment.⁸

The Supreme Court held over 40 years ago in *Pico* that the First Amendment forbids local school boards from removing books from school library shelves based on disagreement with the ideas contained therein. *Pico*, 457 U.S. at 872. “The principles set forth in *Pico*—a school library case—have even greater force when applied to public libraries.” *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 548 (N.D. Tex. 2000). The government “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 to achieve a compelling government interest and there are no less restrictive alternatives for achieving that interest.” *Id.*

The First Amendment’s prohibition on viewpoint-based censorship of library books includes a prohibition on viewpoint-based censorship of books because they express support for lesbian, gay, bisexual, and transgender people. *See Parents, Fams., & Friends of Lesbians & Gays, Inc. v. Camdenton R-III Sch. Dist.*, 853 F. Supp. 2d 888, 897 (W.D. Mo. 2012) (holding that censorship of LGBT-supportive websites in school library violated First Amendment); *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 532 (N.D. Tex. 2000) (holding that restrictions on access to *Heather Has Two Mommies* in public libraries violated First Amendment); *Case v. Unified Sch. Dist. No. 233*, 908 F. Supp. 864, 875 (D. Kan. 1995) (holding

⁴ *Id.*

⁵ <https://imagineiflibraries.org/your-library/policies/>

⁶ See American Library Association, *Lawn Boy and Gender Queer: The Trend Toward Book Challenges* (Oct. 13, 2021), <https://www.oif.ala.org/oif/lawn-boy-and-gender-queer-the-trend-toward-book-challenges/>.

⁷ Micah Drew, *Library Board Splits Vote on Challenged Books*, Flathead Beacon (Jan. 13, 2022) ([Library Board Splits Vote on Challenged Books - Flathead Beacon](#)).

⁸Dr. Judith Haydel, *Libraries and Intellectual Freedom*, The First Amendment Encyclopedia (2009) [Libraries and Intellectual Freedom | The First Amendment Encyclopedia \(mtsu.edu\)](#).

that removal of book depicting romance between two women from school libraries violated First Amendment).

In addition to prohibiting the complete removal of library books for political or viewpoint-based reasons, the First Amendment also prohibits viewpoint-based restrictions on access, such as placing disfavored books in a separate section of the library or behind the librarians' desk. "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.'" *Sund*, 121 F. Supp. 2d at 549-50 (quoting *Turner Broadcasting, Inc. v. FCC*, 512 U.S. 622, 641 (1994)); *accord Counts v. Cedarville Sch. Dist.*, 295 F. Supp. 2d 996, 1002 (W.D. Ark. 2003) (explaining that "the stigmatizing effect of having to have parental permission to check out a book constitutes a restriction on access" based on viewpoint).

In *Pico*, the Supreme Court also emphasized that the school board failed to use "established, regular, and facially unbiased procedures" for reviewing the books and "ignored the advice of literary experts, the views of librarians and teachers within the Island Trees School system, the advice of the Superintendent of Schools, and the guidance of publications that rate books for junior and senior high school student." 457 U.S. at 874 (internal quotation marks omitted). Here, ImagineIF's Board of Trustees bid to change the established, regular, and unbiased procedures for book selection and review appears to be a thinly veiled attempt to contravene the well settled principles that protect the free and open access to information that libraries provide.

Based on the actions of the ImagineIF Board of Trustees, the ACLU is concerned that the Board is using community complaints as a pretext to limit free and open access to information. The ACLU is also concerned that the Board's efforts to change its selection and review policies is specifically intended to allow the board to censor information based on view point. To ensure the protection of the rights of Montana citizens, the ACLU is requesting the public records and information listed below.

Pursuant § 2-6-1003, MCA, the ACLU respectfully requests the following records from the entities provided below, in electronic format unless only available in paper:

ImagineIF Library Board of Trustees:

- 1) All records, communications, and public information generated or maintained by ImagineIF Library Board of Trustees, including, but not limited to, physical documents, emails, correspondence, meeting notes, special meeting notes, and informal meeting notes, regarding all Citizen Comments on Library Material forms related to consideration of removal of books or materials from the library, including but not limited to *Gender Queer*, and ongoing review process of such comments between January 1, 2021 and the present.
- 2) All records, communications, and public information generated or maintained by ImagineIF Board of Trustees, including, but not limited to, physical documents, emails, correspondence, meeting notes, special meeting notes and informal meeting

notes, related to ImagineIF Library Board of Trustees Policy Committee meetings regarding:

- a) the consideration of removal of books or materials from the library; and
- b) changes to policies related to the removal of books or materials from the library; and
- c) changes to policies related to collection development and management of materials for the library between January 1, 2021 and the present.

If the ImagineIF Board refuses to provide any of the information requested, the ACLU requests that those refusals be provided to them in writing. The ACLU also requests that the refusals contain specific reasons for each denial, and those reasons provided contain “specific findings concerning privacy or confidentiality of a particular document before withholding it” specific to each denial.⁹ If access to the records I am requesting will take longer than a “reasonable” amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records. If this request could be restructured to minimize the demands on your department’s resources, I would be willing to discuss alternatives with you. Similarly, should you have any questions regarding the information sought in this request, please call me directly at 406.203.3374.

The ACLU of Montana was founded in 1972 and is a nonprofit and nonpartisan organization dedicated to fighting for racial justice and protecting civil rights in Montana. The ACLU of Montana also engages with Montanans to educate and help communities organize when dealing with issues of equality, racial justice, and civil rights. The ACLU of Montana provides newsletters, news briefings, and other materials that are widely disseminated to the Montana public. These materials are made available via website (<https://www.aclumontana.org>) to everyone—including tax-exempt organizations, non-profit groups, students and faculty.

Please contact me should you have any questions regarding this request. We look forward to your response and thank you for your prompt attention to this matter. Please furnish all documents to the address below.

Sincerely,



Akilah Lane
Staff Attorney
ACLU of Montana
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⁹ *Great Falls Tribune v. Montana Pub. Serv. Comm’n*, 2003 MT 359; 319 Mont. 38; 82 P.3d 876.