IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

REBECKA VIRDEN, on their own behalf and on behalf of their minor children; SAMANTHA ROWLETT, on their own behalf and on behalf of their minor children; NINA PRATER, on their own behalf and on behalf of their minor children **PLAINTIFFS**

vs. **No. 2:23-cv-2071-PKH**

CRAWFORD COUNTY, ARKANSAS, *et al.* **DEFENDANTS**

BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

COME NOW Defendants, Crawford County, Arkansas, County Judge Chris Keith, Interim Library Director Eva White, Quorum Court Members: Robert Kevin Arnold, Lonnie Myers, Morgan R. Morgan, Jason Peppas, Brad Martin, Mark Shaffer, Lonnie Jennings, Tia Woodruff, Jason Cox, Jeff Beauchamp, Craig Wahlmeier, Mitch Carolan, and Roger Atwell ("the Quorum Court Defendants"), and Library Board Members: Keith Pigg, Kayla Rich, Tammara Hamby, Robby Dyer, and Kaelin Schaper (collectively "Defendants"), all in their official capacities, by and through their undersigned counsel, and for their Brief in Support of their Motion for Summary Judgment, pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, state:

INTRODUCTION

This is a case about a local government—Crawford County—trying to find a compromise between warring factions. The community dispute concerns the Crawford County Library System and where certain books should be housed within each branch of the library. One faction wanted children's books with graphic pictures to remain in the children's section. The other faction wanted the books banned. The former Library Director engineered a compromise. She did not

leave the books in the children's section, nor did she remove them from the library. Instead, she placed the children's books and other books she selected into a new section called the Social Section. Plaintiffs are part of the faction of people who want the children's books to remain in the children's section. Plaintiffs seek an order from this Court mandating compliance with the policies of the American Library Association ("ALA"), in the hopes that such an order will result in the dissolution and dismantlement of the Social Section. Although it is unclear whether the ALA policies are on par with constitutional rights, or could be considered a legal right at all, *see Doc. 43*, Plaintiffs' constitutional claim turns on three legal questions: (1) does the First Amendment grant the Plaintiffs a fundamental right to receive information in a county library; (2) do the actions of Crawford County Library System infringe on such a right; and (3) if there is an infringement, do Crawford County Library System's actions survive judicial scrutiny? Defendants believe that the answers to these questions are—respectively—No, No, and Yes. As such, Plaintiffs' Complaint, *Doc. 41*, should be dismissed.

LEGAL STANDARD

Summary judgment requires the movant to show that there is no genuine dispute of material fact and that it is entitled to judgment as a matter of law. *See* FED. R. CIV. P. 56; *Counts v. Cedarville Sch. Dist*., 295 F. Supp. 2d 996 (W.D. Ark. 2003). Once the movant has met their burden, the non-movant must present specific facts showing a genuine dispute of material fact exists for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585–87 (1986). For there to be a genuine dispute of material fact, the evidence must be "such that a reasonable jury could return a verdict for the nonmoving party." *Allison v. Flexway Trucking, Inc.*, 28 F.3d 64, 66-67 (8th Cir. 1994) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

THE FACTS

In December 2022 and January 2023 there was a movement by certain members of the Crawford County community to remove certain books in the Crawford County Library System. *See Doc. 63-11*. The movement created a dispute between neighbors that centered on what books are and are not appropriate for children. *See id*. In seeking to win the disagreement, both groups sought to impose their ideas: one group sought to ban books while the other wanted children's books with graphic pictures to remain in the children's section. *See id*. At the height of tensions, former Library Director Deidre Grzymala created a compromise. *Doc. 65* at ¶¶18–22.

Ms. Grzymala's compromise did not give either side everything they wanted. Instead of removing the books, Ms. Grzymala's solution was to relocate certain books from the children's section to a new section called the Social Section. *Id*. The books of concern in the children's section were few in number and contained graphic images that could be considered inappropriate for children. *Id*. However, Ms. Grzymala selected more books than just children's books to place in the Social Section. *Doc. 65* at ¶3. The books that ended up in the Social Section contain a wide variety of material, both in subject and reading level. *Id.*. The exact reason Ms. Grzymala expanded the scope of her relocation efforts is unknown. *Doc. 65* at ¶23.

However, this solution was not good enough for some people, such as the Plaintiffs. The Plaintiffs are a group of mothers who want the Social Section dissolved and the Social Section books placed back in their previous locations. *Doc. 41*. Plaintiffs' entitlement to having the Crawford County Library System follow their preferences instead of the librarians' best judgment is the crux of the Plaintiffs' complaints. For example, instead of allowing the librarian of the Cedarville Branch of the Crawford County Library System to curate the library's collection as the librarian saw fit, Plaintiff Samantha Rowlett took matters into her own hands. Plaintiff Rowlett

donated books to the Cedarville Branch "in hopes of growing their collection because it was concerning to [her] that they had not a single children's book that would have fit the criteria for the social shelf" despite Plaintiff Rowlett never using the Cedarville Branch, not knowing the criteria of 'social shelf' books, and recognizing that authority over growing the collection rests with the librarian. *Doc. 63-4* at 10, 42, 77. And when the library does not capitulate to Plaintiff Rowlett's preferences, she often takes to social media and news interviews, explaining that "Crawford County is in its FAFO[1] phase." *Doc. 63-4* at 17, 28, 89.

Although Plaintiffs are upset that their preferences are not being catered to, the Social Section provides a constitutionally compliant community compromise. The Social Section ensures that (1) material that may be considered inappropriate for children, based on the community's standards, is available to children whose parents want their children to read such material while simultaneously (2) allowing parents who may have concerns about such material the ability to discharge their constitutionally protected right of parental oversight. *Doc. 65* at ¶27. The community standards by which material is judged are based upon the input from librarians, the Library Board, and community members. *Doc. 65* at ¶28. County librarians have the statutory authority to run the library by the best methods known to them. ARK. CODE. ANN. § 13-2-402. The community members are allowed to ask that books be placed into or taken out of the library, including the Social Section, through the Reconsideration Policy. *Doc. 65* at ¶¶29–30. Such requests are presented to and voted on by the Crawford County Library Board, which serves the constituents of the community. *Id.*

Despite the Social Section's efforts to serve the community's goals while not restricting access, Plaintiffs' preferences again take center stage by manifesting into this lawsuit. *Doc. 41*.

[1] Plaintiff Rowlett's term of art—FAFO—was defined by her in her deposition. *Doc. 63-4* at 28. Defendants direct the Court there for an explanation.

Plaintiffs claim that the Social Section infringes their First Amendment right to receive information, despite the Social Section being freely accessible to all patrons of the library. *Doc. 41* at 12. Plaintiffs claim they have been denied the right to receive information in the library. *Doc. 41*. However, Plaintiffs explain that they can still access all information in the library; it's just that they must locate that information in a slightly new manner. *Doc. 65* at ¶¶47–49, 61–64, 76–78, 92–94, 101–102, 111–112, 118, 121. Again, such a change in preferences and habits does not provide a factual basis for a First Amendment claim.

ARGUMENT

Plaintiffs' First Amendment claim turns on the three legal questions recited previously. However, there are threshold procedural issues with Plaintiffs' case that must be addressed before the constitutional analysis.

I. Procedural Issues: Plaintiffs' Lack of Standing and Capacity

A. Plaintiffs Lack Standing as to the Quorum Court Defendants

"To have standing to seek injunctive relief, a plaintiff must show that he is under threat of suffering injury in fact that is concrete and particularized; the threat must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury." *Missourians for Fiscal Accountability v. Klahr*, 830 F.3d 789, 794 (8th Cir. 2016) (citing *Summers v. Earth Island Inst.*, 555 U.S. 488, 493, 129 S.Ct. 1142,173 L.Ed.2d 1 (2009)). When cases involve several defendants, the Supreme Court has made it clear that "standing is not dispensed in gross" and a plaintiff must "demonstrate standing for each claim [they] seek to press and for each form of relief that is sought." *Town of Chester, N.Y. v. Laroe Ests., Inc.*, 581 U.S. 433, 439 (2017)

(internal quotes and citation omitted). Here, Plaintiffs cannot make such a demonstration as to the Quorum Court Defendants.

Plaintiffs have sued all justices of the Crawford County Quorum Court and yet only seek relief in an injunction mandating that the Crawford County Library System comply with all American Library Association policies. *Doc. 41* at 12. Plaintiffs pray for no relief from the Quorum Court Defendants specifically, and rightfully so, as the Quorum Court lacks authority to redress the injury Plaintiffs complain of.

A comprehensive reading of Arkansas's statutes shows that a Quorum Court's main power is to appropriate funds for various county and district purposes. ARK. CODE ANN. § 14-20-103. The Quorum Court can also appropriate money for a library, as well as create a library system and a Library Board. ARK. CODE ANN. § 13-2-401. The testimony of Judge Keith confirms these duties. *Doc. 65* at ¶32. At law, the Quorum Court's only authority as to the Crawford County Library System is that of appropriation of funds. ARK.CODE ANN. § 14-20-103(a). Statutes governing county librarians further show that the Quorum Court's authority is limited to funding and not oversight:

> The county librarian shall conduct the library according to the most acceptable library methods.

ARK. CODE. ANN. § 13-2-402. Thus, even if the Plaintiffs sought their remedy of ALA compliance against the Quorum Court Defendants, which they do not, the Quorum Court has no statutory authority to implement such compliance within the library system. *Id.* That authority rests with the county librarian. *Id.*

Therefore, even if Plaintiffs receive a favorable ruling from the District Court, the Quorum Court is without power to implement the order. A causal connection and redressability between the alleged injury and the judicial relief requested is lacking as it pertains to the members of the

Quorum Court. *Town of Chester, N.Y.*, 581 U.S. at 439. Moreover, as admitted by Judge Keith, the Library Board oversees the Library System, not the Quorum Court. *Doc. 65* at ¶33. Accordingly, the thirteen Quorum Court Defendants should be dismissed.

B. Plaintiff Samantha Rowlett Lacks the Capacity to Sue on behalf of KGR and HMR

Plaintiff Samantha Rowlett asserts claims on behalf of her four minor children—KGR, HMR, SES, and JJR. *Doc. 41* at ¶1; *Doc. 65* at ¶41. However, KGR and HMR are not Ms. Rowlett's custodial children; rather, they are her stepchildren. *Doc. 65* at ¶38. This leaves Ms. Rowlett without legal custody or the legal capacity to assert legal claims on behalf of KGR and HMR.

Federal Rule of Civil Procedure 17 governs who has the capacity to sue on behalf of minors. FED. R. CIV. P. 17; *see* ARK. CODE ANN. § 9-25-101. Rule 17 allows for a (1) general guardian, (2) committee, (3) conservator, or (4) fiduciary to sue on a minor's behalf. FED. R. CIV. P. 17. The term "general guardian" is undefined by Federal Rules of Civil Procedure 17. *Id.* Thus, the term is given its common and ordinary meaning, taking into account the context in which it is used. *Calzone v. Summers*, 942 F.3d 415, 426 (8th Cir. 2019). Black's Law Dictionary defines a guardian as "someone who has the legal authority and duty to care for another's person or property, esp. because of the other's infancy, incapacity, or disability." GUARDIAN, Black's Law Dictionary (11th ed. 2019) (emphasis added).

Arkansas recognizes the legal process of that legal authority by obtaining a general guardianship over a person and their estate. *See* ARK. CODE ANN. §§ 28-65-101, 203. However, Ms. Rowlett has no formal general guardianship over KGR or HMR. Ms. Rowlett also does not have legal custody over KGR or HMR. *Doc. 65* at ¶38. Ms. Rowlett's only relationship with KGR and HMR is that of being their stepmother. *Id.* Stepparents do not have legal authority or a

duty to care for minors simply by virtue of being stepparents. *See Daniel v. Spivey*, 2012 Ark. 39 at 6-7, 386 S.W.3d 424, 428. "A stepparent who furnishes necessities for a minor child of his or her spouse and who exercises some control over the child does not establish a parental relationship by those acts alone. *Id.* Looking at the context of Rule 17, it is clearly written to authorize only people with legal obligations to the minor to sue on their behalf. *See* FED. R. CIV. P. 17.

Ms. Rowlettt lacks the legal capacity under Rule 17 to assert claims on behalf of KGR and HMR. Therefore, this Court should dismiss the claims brought by Ms. Rowlett on behalf of HMR and KGR.

II. Plaintiffs Do Not Have a First Amendment Right to Receive Information in this Case

Plaintiffs' claim of having a First Amendment right to receive information has already been questioned once in this case. *See Docs. 20, 21*, *22 & 28*. Defendants will not belabor arguments previously made. Therefore, Defendants adopt and incorporate by reference their previous arguments in Doc. 20, 21, 22, and 28 as if fully stated herein.

In addition to incorporating arguments previously raised, Defendants respectfully respond to the Court's previous ruling, *Doc. 36*. In the Court's order denying Defendants' motion to dismiss, the Court explained that the Supreme Court has ruled in various contexts that the First Amendment protects the right to receive information. *Doc. 36* at 10. The Court cited two example cases: *Stanley v. Georiga*, 394 U.S. 557 (1969) and *Griswold v. Connecticut*, 381 U.S. 479 (1965). These cases predate the opinion of *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853 (1982), and the Supreme Court relied on *Stanley* and *Griswold* and a host of other cases in Part II-A-(1) of the *Pico* opinion. 457 U.S. at 867. However, *Stanley* and *Griswold* do not explicitly state that there is a First Amendment right to receive information in a public library and Part II-A-(1) is not a majority portion of the *Pico* opinion—only three justices supported that

part of *Pico*. *Id.* at 854–55. Thus, the extent to which the right to receive information exists and requires unfettered access to material in a public library is not established by *Pico*, *Stanley*, or *Griswold*.

Even if *Pico* stands for such a right, the right is limited to the school library context. Justice Brennan, speaking for the Court, and Justice Rehnquist, dissenting, explained that the ruling was narrowed to the junior high and high school settings. *Pico*, 457 U.S. at 863, 910; *See Doc. 21* at 12. This Court's order highlighted the various Justices' opinions on such school-related contexts. *See Doc. 36* at 10–11.

The narrow scope of *Pico*'s holding is highlighted by the Supreme Court's subsequent ruling in *U.S. v. American Library Association, Inc*. 539 U.S. 194 (2003) (plurality). In *American Library Association* the plaintiffs sued to stop a federal law that withdrew funding from public libraries that did not install software to block pornography from library computers and "to prevent minors from obtaining access to material that is harmful to them." *Id.* at 199. Four Justices of the Supreme Court found no First Amendment violation, and their plurality opinion explained that public libraries do not cater to one subset of patrons:

> To fulfill their traditional missions, public libraries must have broad discretion to decide what material to provide to their patrons. Although they seek to provide a wide array of information, their goal has never been to provide 'universal coverage.' Instead, public libraries seek to provide materials 'that would be of the greatest direct benefit or interest to the community.' To this end, libraries collect only those materials deemed to have 'requisite and appropriate quality.'

Id. at 204 (cleaned up). Despite the plaintiffs' claim of having a right to receive information in a public library in a preferred uninhibited manner, public libraries are not required to provide "universal coverage" of information[2]. *Id.*

Apply this precedent to this case, former Library Director Deidre Grzymala enjoyed "broad discretion" to curate materials in the Crawford County Library System in a way "that would be of the greatest direct benefit and interest to the community." *Id.*; *Doc. 65* at ¶¶18–21. Arkansas law also supports such discretion because Ms. Grzymala, as the county Library Director, has the statutory authority to oversee the library. ARK. CODE ANN. § 13-2-402. Plaintiffs' claim of having a First Amendment right to access information at a public library in a universal manner and according to their preferences is not a viable First Amendment right based on *American Library Association*, 539 U.S. at 204.

Plaintiffs may attempt to argue that *American Library Association* as not on-point or inapplicable to their case, as compared to *Pico*. Plaintiffs are mistaken. First, *American Library Association* is a plurality opinion like Pico. *Compare Pico,* 457 U.S. at 853 *with American Library Association*, 539 U.S. at 198. However, the *American Library Association* provides greater guidance for this Court because it deals with the specific context of a public library and four justices supported the opinion compared to *Pico*'s three justices discussing school libraries. *Id.* Second, although *American Library Association* is a First Amendment case examining the Free Speech Clause, it is still applicable to the Plaintiffs' First Amendment right to receive information claim because it examines the nature of patrons' access to material in public libraries and—as this Court notes—the First Amendment's clauses "have complementary purposes, not marring ones

[2] The dissent in *Pico* is in accord with such limitations as to preference: the "'right to receive information and ideas' does not carry with it the concomitant right to have those ideas affirmatively provided at a particular place by the government." 457 U.S. at 888 (Burger, C.J., dissenting) (citations omitted).

where one Clause is always sure to prevail over the others." *Doc. 36* at 9 (quoting and citing *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2428 (2022)). Therefore, *American Library Association* is applicable to Plaintiffs' case and forecloses Plaintiffs' claim of an unfettered right to access information in a public library.

Therefore, Plaintiffs' claims should be dismissed as there exists no right to receive information in a universal and preferred manner at a public county library.

III. Plaintiffs' Right to Receive Information Has Not Been Infringed

Although Defendants dispute whether the First Amendment provides a right to receive information as alleged by the Plaintiffs, the Eighth Circuit has determined that *Pico* does provide such a right in the school setting and that removing materials is a requirement for infringing that right. To the extent that such precedent applies to Plaintiffs' case, Defendants respond.

Removal Requirement.

In *Pratt v. Indep. Sch. Dist. No. 831, Forest Lake, Minn.,* the Eighth Circuit found that a school board's decision to remove certain materials from the school's curriculum violated the students' First Amendment right to receive information based on the *Pico* plurality. 670 F.2d 771, 779 (8th Cir. 1982). The Court of Appeals drew upon the fact that the school in *Pico* had removed the books from the school library and the students could not pick the books off the shelf for perusal or to check out. *Id.*; *Pico*, 457 U.S. at 858, 866. Then in 2012, the Eighth Circuit in *Turkish Coal. of Am., Inc. v. Bruininks*, found that the right to receive information applied in the university setting but that the conduct of the university did not violate the right established by *Pico* because the website at issue was not removed from a university's internet system; the site was just labeled as unreliable. 678 F.3d 617, 623–24 (8th Cir. 2012). The Eighth Circuit explained that the plaintiff had pled a cognizable stigmatization injury based on the labeling and could pursue their First

Amendment right to receive information claim. *Id.* at 623. However, the First Amendment claim ultimately failed because the website had not been removed; the students remained free to access the website, email material from the site, or "regale passers-by on the sidewalk with quotes from the…website." *Id.* at 624.

In accordance with these precedents, the Southern District of Iowa last year concluded that a state law "requiring the removal of…more than 500 books" violated the students' right to receive information based on *Pico* and *Pratt*. *GLBT Youth in Iowa Sch. Task Force v. Reynolds*, No. 4:23-CV-00474, 2023 WL 9052113 (S.D. Iowa Dec. 29, 2023) (Locher, J.). The common thread at the Circuit and District Court levels remains the same: removal, not mere relocation, is required to infringe on the right to receive information.

Removal Requirement Applied.

In this case, the undisputed facts clearly show that Plaintiffs' right to receive information has not been infringed based on the removal precedent. The books in the Social Section have not been removed from any library branch. *Doc. 65* at ¶¶5–16, *Doc. 53-13* at 34. The books in the Social Section remain available to all library patrons regardless of age; the Social Section is not restricted to adults only. *Doc. 65* at ¶¶5–16. Moreover, Plaintiffs admit that they regularly and freely access the Social Section for both them and their minor children. *Doc. 65* at ¶¶47–48, 76–79, 118–120. In fact, some of the minor children access the Social Section independently of their parents[3]. *Doc. 65* at ¶¶51, 60–62, 74, 92–94, 101–102.

[3] Plaintiffs previously moved for preclusion asking this Court to find that the Social Section is for adults-only despite Plaintiffs' knowledge of their own children freely accessing the Social Section and knowing that the Social Section was not limited to only adults. *Doc. 26*. Such motion practice was not only premature, *see Doc. 36*, but disingenuous to the well-established reality known to Plaintiffs. Moreover, when Defendants asked Plaintiffs why they denied requests for admissions regarding the Social Section being unrestricted, Plaintiffs did not provide their own explanations but instead Plaintiffs' counsel, in coordination with Dr. Joudrey, provided the explanation to Plaintiffs. *See Doc. 60-4* at 4 (Plaintiffs' counsel explaining that he was in the process of providing answers to his clients so they could respond). Such maneuvers by the Plaintiffs wreak of the gamesmanship that has no place in this Court. *See, e.g., Sentis Grp., Inc., Coral Grp., Inc. v. Shell Oil Co*, 559 F.3d 888 (8th Cir. 2009).

Plaintiffs may attempt to argue that because children's books were 'removed' from the children's section, and placed in the Social Section, their right of access to such material is infringed due to this removal. However, such an argument conflates facts by ignoring that the children's books were not *removed* from the library, but instead were *moved* from one area to another. *Doc. 65* at ¶¶ 3, 5–10, 18–22. Both sections—the children's section and Social section—are freely accessible to all library patrons. *Doc. 65* at ¶¶5–10, 13–16.

Plaintiffs may also attempt to argue that because they are no longer able to 'browse' children's books as they once did, their right to receive information is infringed. *Doc. 65* at ¶¶49, 81, 121. There are two problems with such an argument. First, Plaintiffs may have a right to access information, but such a right does not equate to a fundamental right to browse in a preferred way. *See Turkish,* 678 F.3d at 623–24 (explaining that students' dislike of the label did not infringe their ability to receive information); *American Library Association*, 539 U.S. at 209 (explaining that the Constitution does not protect against embarrassment when acquiring material at a public library). Plaintiffs' argument is akin to the frustration felt when the grocery store rearranges the location of store items. Although inconvenient, it is not a restriction on access. Second, Plaintiffs indicate that browsing is their preferred means of access to information, but this is by no means the exclusive way Plaintiffs utilize the library or gain access to books and other materials. *Doc. 65* at ¶¶ 58–59, 70, 89–90, 122. Plaintiffs and their children routinely seek assistance from library staff to locate books, utilize the library's card catalog, and engage in frequent use of interlibrary loans between the five branches to obtain books not available at their local branches. *Doc. 65* at ¶¶ 54, 58, 71, 82–83, 122, 124. Because Plaintiffs can and do still access all of the material contained in the Social Section, their right to receive information in that material is not restricted. Therefore, Plaintiffs' right to receive information in the Crawford County Library is not infringed.

Non-removal of Materials.

Although the Eighth Circuit's precedents are clear in requiring the removal of materials before a possible constitutional violation can be found, there has been a Western District of Arkansas court case that did not require such a finding. That case is *Counts v. Cedarville School District*.

In *Counts*, the school did not outright remove Harry Potter books from the library, but instead placed them behind the circulation desk and required the students "to have parental permission to check out the books." 295 F. Supp.2d at 996. The student-plaintiff was not able to readily access the books in question and instead had to "locate the librarian, perhaps waiting her turn to consult the librarian, then ask to check out the book and wait while the librarian verifies that she has parental permission to do so before she can even open the covers of the book." *Id.* at 999. Although the books were not removed, Judge Hendren ruled that the student's right of access was burdened because "she cannot simply walk into the library and [review a passage in one of the books]." *Id.* at 999, 1002. As this Court noted in its previous order: "'the stigmatizing effect of having to have parental permission to check out a book constitutes a restriction on access' for First Amendment purposes based on *Counts*." *Doc. 36* at 12 (citing *Counts*, 295 F. Supp.2d at 1002).

Precedent Applied.

Regarding Plaintiffs' claim, there are both legal and factual arguments as to why Crawford County Library's actions do not violate the First Amendment in such non-removal context.

Beginning with the legal arguments, *Counts* is not applicable or in step with current First Amendment jurisprudence governing public libraries like Crawford County Library System. The court in *Counts* was dealing within the confines of a school library, and it relied heavily on *Pico*.

295 F. Supp.2d at 999. The decision was handed down in April 2003. *Id.* at 996. Two months later, the Supreme Court clarified the right of access in the context of the First Amendment and public libraries. *American Library Association*, 53 US. at 203–04.

In *American Library Association,* the Supreme Court explained that public libraries may seek to provide "a wide array of information, [but] their goal has never been to provide 'universal coverage.'" *Id.* at 204 (internal citation omitted). Public librarians must "necessarily consider content in making collection decisions and enjoy broad discretion in making them" based upon the "benefit or interest of the community." *Id.* at 204–05. (internal quotes and citation omitted). The Supreme Court explained that such content considerations are not unconstitutional but part of the library's role:

> A library's need to exercise judgment in making collection decisions depends on its traditional role in identifying suitable and worthwhile material; it is no less entitled to play that role when it collects material from the Internet than when it collects material from any other source. *Id.* at 208.
>
> [I]t is entirely reasonable for public libraries to reject that approach and instead exclude certain categories of content, without making individualized judgments that everything they do make available has requisite and appropriate quality. *Id.*

A public library is allowed to make content-based curation decisions and not run afoul of the First Amendment. *Id.* These decisions apply to websites as well as books because a website is "no more than a technological extension of the book stack. *Id.* at 207 (internal citation and quote omitted). This plurality ruling runs counter to the reasoning set forth in *Counts*, and rightfully so, as Counts was not dealing with a public library. 295 F. Supp.2d at 998–99.

The court in *Counts* also discussed how requiring parental permission to retrieve a book may cause stigmatization and result in a restriction on access. 295 F. Supp.2d at 1002. The court noted that having to ask a librarian to retrieve the book from behind the circulation desk could

result in stigmatization because others could see such a book as a "bad book." *Id.* at 999. This Court relied on such rulings in denying Defendants' motion to dismiss. *Doc. 36* at 12. However, such stigmatization concerns do not exist within the public library arena.

In *American Library Association*, the public library had the ability to unblock certain websites that may have been erroneously blocked. 539 U.S. at 209. The District Court determined that having to ask a librarian to unblock a certain website was inadequate to remedy the First Amendment violation because it would deter patrons from asking due to embarrassment or desiring to protect their privacy. *Id.*; *Am. Libr. Ass'n, Inc. v. United States*, 201 F. Supp. 2d 401, 411 (E.D. Pa. 2002), rev'd, 539 U.S. 194 (2003). The Supreme Court explained that such a concern is not a concern of the Constitution: "the Constitution does not guarantee the right to acquire information at a public library without any risk of embarrassment." *American Library Association*, 539 U.S. at 209

Turning to the factual application of *American Library Association's* embarrassment conclusion, Crawford County Library's implementation of Social Sections and Plaintiffs' use of them shows that no First Amendment violation has occurred. Unlike in *Counts*, the minor children Plaintiffs are not required by Crawford County Library System to obtain parental permission to peruse or check out books from the Social Section[4]. 295 F. Supp.2d at 999; *Doc. 65* at ¶¶13–14. The Social Section is not located behind the circulation desk, so there is no potential stigmatizing effect of having to ask a parent or librarian for permission to retrieve a Social Section book like in *Counts*. *Doc. 65* at ¶13–15; 295 F. Supp.2d at 999. The adult Plaintiffs are not required to give permission for their children to peruse or check out books from the Social Section. *Doc. 65* at

[4] Crawford County Library has a general policy that parents accompany their children under 10 years of age, but that policy is not unique to the Social Section, nor does it prevent any patron from entering the Social Section. *Doc. 65* at ¶12.

¶¶13–15; 295 F. Supp.2d at 999. The Social Section is open to all library patrons, and anyone with a library card can check out a book from the Social Section. *Doc. 65* at ¶13–16 .

As discussed above, Plaintiffs' utilize a myriad of access methods. Plaintiffs and their children admit that they ask library staff where books are located as part of their standard practices in locating material in the library. *Doc. 65* at ¶¶54, 58–59, 70–71, 82–83, 89–90, 122, 124. Plaintiffs also admit that they consult the online card catalog in searching for materials. *Doc. 65* at ¶¶83, 124. Plaintiffs and their children utilize interlibrary loans between the five branches to obtain books in circulation that are available at another library branch but not immediately available in their own local library branch. *Doc. 65* at ¶¶ 54, 59, 71. These general access methods apply equally to all sections physically in the library branch and to the system as a whole. *Doc. 65* at ¶¶9–16, 54, 58–60, 71, 82, 91, 99, 109–110 , 122, 124. Plaintiffs are not required to engage in any unique or specialized search process to locate materials that may be housed in the Social Section. *Id*.

But the Plaintiffs' arguments do not end there. Plaintiffs argue that their access to information in the Social Section is restricted based on potential stigmatization from being in the Social Section and the use of the blue/green spine sticker on Social Section books. *Doc. 65* at ¶85. Again, the Constitution does not guarantee the right to acquire information at a public library without any risk of embarrassment. *American Library Association*, 539 U.S. at 209. Moreover, the blue/green sticker was placed on the books' spines to assist the librarians in cataloging and sorting books, not to alienate Plaintiffs or their children. *Doc. 65* at ¶24. The use of spine stickers is not unique to the Social Section. *Doc. 65* at ¶25. The Crawford County Library uses spine-stickers on books such as Romance, Christian, Western, Large Print, and Young Adult. *Doc. 65* at ¶25. Plaintiffs take no issue with those stickers. *Doc. 65* at ¶26. Plaintiffs' selective and curated sticker argument

is best highlighted by the fact that they are concerned others will see the sticker and judge them for their reading selection, but the Plaintiffs are not concerned that others will judge them if they see just the covers of the Social Section book they are reading in public. *Doc. 65* at ¶52. According to the Plaintiffs, the First Amendment should shield them from the judgment of the public while being in public. The Constitution grants them no such right. *American Library Association*, 539 U.S. at 209.

Therefore, based upon the case law precedents of both removal and non-removal as applied to the undisputed facts, the Plaintiffs have not suffered an infringement of their First Amendment right to receive information.

IV. Crawford County Library System's Use of Social Sections is in Furtherance of its Substantial and Reasonable Interest

Should this Court find that the Plaintiffs and their minor children have suffered an infringement of their First Amendment right to receive information, then this Court should find that the infringement and use of Social Sections is in furtherance of Crawford County's substantial and reasonable interest.

Although a government's action implicates a constitutional right, such an action will only be held unconstitutional if it does not survive judicial scrutiny. According to the Eighth Circuit's decision in *Pratt*, when a person's First Amendment right to receive information in a school library is infringed the Court must determine whether a "substantial and reasonable governmental interest exists for interfering with the [Plaintiffs'] right to receive information." 670 F.2d at 777; *Reynolds*, 2023 WL 9052113 at *14 (applying the same scrutiny standard); *see also Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184, 198 (5th Cir. 1995). The Supreme Court's guidance on the appropriate level of scrutiny to be applied to actions of a public library, likewise, does not invoke strict scrutiny, but rather asks: would the government action "unreasonably interfere with the discretion

necessary to create, maintain, or select a library's 'collection.'" *American Library Association*, 539 U.S. at 217 (Breyer, J. concurring). Justice Breyer went on to explain that the level of scrutiny should seek to find "a fit that is not necessarily perfect, but reasonable." *Id.* Crawford County's interest in maintaining the Social Section is both reasonable and substantial.

Former Library Director Deidre Grzymala created the Social Section. *Doc. 65* at ¶18. Ms. Grzymala had the sole authority to select and move books into the Social Section. *Doc. 65* at ¶19; ARK. CODE. ANN. § 13-2-402. Ms. Grzymala's method for selecting books is unknown, but based on the resulting Social Section, some of the books selected contain sexually explicit material and material containing gay and transgender characters. *Doc. 65* at ¶23; ARK. CODE. ANN. § 13-2-402. The selected books contain material that could be considered too mature for some children. *Doc. 65* at ¶21. Crawford County seeks to maintain the use of the Social Section for housing books that contain sexually explicit material and material containing gay and transgender characters. However, the exact books housed in the Social Section are permitted to change based upon the County Library's implementation of its reconsideration policy, which allows patrons to challenge a book's placement in the library. *Doc. 65* at ¶¶29–31. By having such policies in conjunction with the Social Section, all patrons, including children, can enjoy access to material while giving parents the ability to determine what is appropriate for their child. *Id.* The County Library's interest in promoting parental rights and protecting children from potential sexual content is reasonable and substantial.

The Supreme Court has "long held that obscene speech—sexually explicit material that violates fundamental notions of decency—is not protected by the First Amendment." *United States v. Williams*, 553 U.S. 285, 287 (2008). That is no less true when a county or its library regulates

the availability of obscene materials to children. *See Ginsberg v. New York*, 390 U.S. 629, 640 (1968); *American Library Association*, 539 U.S. at 204.

In *Ginsberg* the Supreme Court explained that the well-being of children is within the State's authority to regulate. *Id.* at 639. Such regulatory authority is partly rooted in a parent's right to "direct the rearing of their children" because parents are "entitled to the support of laws designed to aid discharge of that responsibility." *Id.* The Supreme Court explained that preventing a child from obtaining certain material that was "harmful to minors according 'to prevailing standards in the adult community'" was not unconstitutional because the parent was not barred from obtaining such material and giving it to their children if the parent so chose. *Id.*

The rule that the community's standards determine what is harmful to minors, as set forth in *Ginsberg*, also applies to public libraries and their broad discretion in determining what materials best serve the interest of the community. *See American Library Association*, 539 U.S. at 204 (explaining that the community's interests are what drive material curation). In *American Library Association*, the Supreme Court acknowledged that public libraries seek to provide materials that serve the interest of the community. *Id.* In doing so, the public librarians are vested with broad discretion in determining what should and should not be available to patrons. *Id.* at 205 ("Public library staff necessarily consider content in making collection decisions and enjoy broad discretion in making them").

Although *Ginsberg*, like *American Library Association*, is a First Amendment case examining the Free Speech Clause, it is still applicable to the Plaintiffs' First Amendment right to receive information claim because, as this Court noted, the First Amendment's clauses "have complementary purposes, not marring ones where one Clause is always sure to prevail over the others." *Doc. 36* at 9 (quoting and citing *Kennedy*, 142 S. Ct. at 2428); *Ginsberg*, 390 U.S. at 640.

In this case, the Social Section furthers the substantial and reasonable government interest outlined in *Ginsberg*. First, no policy prohibits or prevents any child or adult from browsing, retrieving, or checking out a book in the Social Section. *Doc. 65* at ¶¶9–16. The Social Section is for all patrons and accessible to all patrons. *Id*. Second, the Social Section, in connection with the reconsideration policy, allows the community to impose its community standards of what is appropriate for children as allowed by *Ginsberg*. *Doc. 65* at ¶¶9–16, 29–31; 390 U.S. at 639. Third, just as in *Ginsberg*, the Social Section allows parents who want to expose their children to certain topics that may offend community standards the ability to retrieve such materials in the Social Section and give them to their children. *Doc. 65* at ¶¶47–48, 76–78, 118–120; 390 U.S. at 639. The Plaintiffs' actions in this case are demonstrative of these reasonable governmental interests at work.

Plaintiff Rowlett utilized the book reconsideration policy to challenge the placement of books housed in the Social Section, allowing her to participate in the community standards discussion. *Doc. 65* at ¶87; *American Library Association*, 539 U.S. at 204. Plaintiff Virden takes her children to the Social Section, exposing her children to the ideas and material housed in the Social Section. *Doc. 65* at ¶¶118–120. The children of Plaintiff Rowlett and Prater also go to the Social Sections without their parents present, and they retrieve material from the section. *Doc. 65* at ¶¶51, 61–62, 92–94 101–102, 112

Pursuant to the holdings in *Ginsberg* and *American Library Association*, and as demonstrated by the Plaintiffs' own interactions with the Library, Crawford County Library's use of Social Sections is not unconstitutional because it is in furtherance of Crawford County Library's substantial and reasonable interest of protecting minors from material considered not appropriate

for children by the community and enabling parents to discharge their parental rights in the manner they see fit.

CONCLUSION

There has been a growing movement to ban books from public libraries. Such a movement found its way to Crawford County in the Winter of 2022. But instead of engaging in the historical practice of book banning, Crawford County Library and the Crawford County community established a compromise. Instead of removing books that may be inappropriate for children from the library, Crawford County Library would move the books to a new section—the Social Section. Crawford County libraries are book movers, not book *re*movers.

The Social Section strikes a balance. The Social Section houses material that may, according to community standards, be inappropriate for minor children. However, any patron of the library can access the Social Section, as it is just like any other section in the library. This allows both parents and children the freedom to explore while giving parents the ability to discharge their right of parental oversight. It also keeps the material in the library; again, Crawford County libraries are book movers, not book removers.

Although everyone may not like the compromise, the Plaintiffs' lawsuit, alleging that the Social Section infringes on their First Amendment right to receive information, is not viable for the reasons demonstrated herein. Plaintiffs seek an injunction mandating the Defendants to comply with ALA policies; according to Plaintiffs such an order will result in the dissolution of the Social Section and remedy the constitutional harm.

However, there has been no constitutional violation for three reasons: (1) Plaintiffs do not have a First Amendment right to receive information in a public county library, (2) the Social section does not restrict access to material; the books were moved, not *removed,* and (3) even if

there is a First Amendment infringement, Crawford County Library's basis for establishing a community compromise that protects children and enables parents' trust of the County Library's system is in furtherance of a reasonable and substantial governmental interest. Plaintiffs have failed to make their case to the contrary.

WHEREFORE, Defendants pray that their motion for summary judgment be granted; that Plaintiffs' claims against the Quorum Court Defendants be dismissed; that KGR and HMR be dismissed as Plaintiffs; that Plaintiffs' Second Amended Complaint, *Doc. 41*, be dismissed with prejudice; Defendants recover their fees, costs and disbursements incurred in defending this action; and for such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

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