



April 20, 2022

Via email

Re: Klein Independent School District Book Removals

Dear Klein ISD Board Members and Superintendent McGown,

As organizations committed to protecting civil liberties and rights, racial justice, LGBTQ+ equality, and education equity, we write to express our deep concern about Klein ISD’s recent clandestine removal of books from its library shelves. We urge that Klein ISD immediately remedy this violation of the First Amendment, the Texas Constitution, and Klein ISD’s own policy by immediate reinstatement of the removed books and a return to existing policies and procedures. Further, the District should publicly acknowledge its grave missteps in taking these actions and affirm its commitments to LGBTQ+ and racial inclusivity and to educating its students on the history of racism and racial injustice in the United States. The District must take these urgent steps to protect against the suppression of ideas through book bans.

The attached legal analysis sets out the recent history of concerning actions taken by Klein ISD and legal implications of such efforts in detail. To summarize, since November 2021, Klein ISD has disappeared books from its libraries—it has secretly removed dozens of books from its shelves, in contravention of district policy. High-level district employees began checking out books from district libraries in November, under one employee’s account and as part of new district policies and practices related to district library books, in order to make the books inaccessible to Klein ISD students. There is no timeline for the books’ return to the shelves or indication that they will in fact be returned. A parent and Klein ISD volunteer informed the school board that the district had removed books without review, in violation of policy, at the December 13, 2021 board meeting; the district has taken no action since then to halt this practice, and instead has removed many more books. The following is just a subset of topics and books targeted by the district for surreptitious removal:

- **The United States’ history of racism:** *The New Jim Crow*, by Michelle Alexander; *They Called Themselves the K.K.K.: The Birth of an American Terrorist Group*, by Susan Bartoletti; and *Everything You Love Will Burn: Inside the Rebirth of White Nationalism in America*, by Vegas Tenold;
- **Prominent books by Black women authors with themes of race and racism:** *Beloved*, by Toni Morrison; *The Bluest Eye*, by Toni Morrison; *And Still I Rise*, by Maya Angelou; and *Homegoing*, by Yaa Gyasi;

- **Fiction centered on LGBTQ+ and Black and brown characters and plotlines:** *Aristotle and Dante Discover the Secrets of the Universe*, by Benjamin Alire Sáenz; *Ash*, by Malinda Lo; *Out of Darkness*, by Ashley Hope Pérez; and *Monday's Not Coming*, by Tiffany Jackson;
- **LGBTQ+ issues:** *Gender Identity: The Search for Self*, by Kate Light; *Transgender Rights and Protections*, by Rebecca T. Klein; and *Gay Issues and Politics*, by Jaime Seba;
- **Reproductive rights:** *Roe v. Wade: The Untold Story of the Landmark Supreme Court Decision that Made Abortion Legal*, by Marian Faux; and
- **Sex education:** *100 Questions You'd Never Ask Your Parents*, by Elisabeth Henderson.

It is plain that Klein ISD has targeted books with these topics for removal. In October, State Representative Matt Krause sent a content-based list of books to school districts and requested information on whether those books were on the districts' shelves. Those books overwhelmingly feature LGBTQ+ issues and characters, race and racism, abortion, and sex education. 56 of the 67 books removed by Klein ISD appear on that list. Of the 11 selected for removal from Klein ISD shelves that are not on the list, a majority—including *Beloved*, *The Bluest Eye*, and *Homegoing*—relate to race and racism and/or LGBTQ+ issues or characters. In many instances, Klein ISD has removed *all* copies of a listed book from the shelves either at a particular district library or anywhere in the district system. For example, *The New Jim Crow*, *How to Be an Antiracist*, *An African American and Latinx History of the United States*, and *Transgender Rights and Protections* are all now unavailable to students in Klein ISD as a result of the district's removals.

Klein ISD's clandestine mass book removals violate the First Amendment and Klein ISD's own policy and process for book evaluation. According to the district's own legal policy, the district "shall not remove materials from a library for the purpose of denying students access to ideas with which the district disagrees." Yet, the district has plainly selected books for removal based on a list circulated by a state representative chosen, as that representative has publicly stated, specifically for their "content." The mass removal also provides a roadmap for further removals that violate the First Amendment's clear protections for access to an array of ideas. As the Supreme Court stated nearly a century ago, "if there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion."¹

Schools, and in particular school libraries, must be a place where students have broad access to a wide variety of ideas—both the popular and unpopular ones of the moment. Simply

¹ *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

put, Klein ISD cannot remove or ban school library books selected for scrutiny—by Klein ISD or by a state legislator—due to their content or the views they express. The First Amendment prevents the district from suppressing the ideas that LGBTQ+ people belong, deserve acceptance and inclusion in American society, and have a wide array of life experiences. It likewise prevents the district from suppressing messages of racial inclusivity and belonging, or accounts of the United States’ long history of racial injustice. This is because the comfort of some cannot come at the expense of students’ constitutional rights.

Klein ISD’s mass book removal harms students in the district, both by directly suppressing speech and access to ideas and by sending the message to Black, brown, and LGBTQ+ students that Klein ISD rejects their history and belonging in the community. Students perform better, both academically and socially, with access to texts that reflect their identities and experiences in the world.² Klein ISD is committed to supporting “every student” with a “focus on the whole student.”³ To live up to that goal and to comply with the First Amendment, the district must take steps to remedy the harms from its actions in removing books.

All books must be placed back on Klein ISD shelves as swiftly as possible. If the district seeks to review for removal any books in future, it must follow its own policy for doing so—and ensure that policy does not allow book removal pending review. The district must publicly acknowledge its error in removing the books. It must affirm its commitment to LGBTQ+ and racial inclusivity and teaching the history of racism and racial injustice in the United States. These steps are necessary for Klein ISD to comply with the First and Fourteenth Amendments.

Thank you for your attention to this matter. We look forward to your prompt response.

Sincerely,

American Civil Liberties Union of Texas
American Civil Liberties Union
Big Thought
Children’s Defense Fund – Texas
Equality Texas
IDRA (Intercultural Development Research Association)
Texas Civil Rights Project
Texas Freedom Network
Young Leaders, Strong City
Addendum: Legal Analysis

² See, e.g., Rudine Sims Bishop, “Mirrors, Windows, and Sliding Glass Doors,” in *Perspectives: Choosing and Using Books for the Classroom*, Vol. 6, No. 3 (summer 1990).

³ Klein ISD, *Strategic Plan*, https://drive.google.com/file/d/1k4_g1e-KaxdBFywepmriyz5_IHfYgh00/preview.

Addendum: Legal Analysis

I. Background: Book Removals in Klein ISD

In October 2021, State Representative Matt Krause sent a letter to the Texas Education Agency and selected school district superintendents in Texas, asking for the number of copies districts had of certain books from a list of roughly 850 titles.⁴ Analysis of the books on Rep. Krause’s list determined that 62% of the books relate to LGBTQ+ issues or mention LGBTQ+ people; 14% relate specifically to transgender issues or mention transgender people; 14% relate to sex education; and 8% relate to race and racism.⁵ Rep. Krause has declined to explain how he created the list.⁶ In March 2022, shortly after anti-LGBTQ+ comments by the Granbury ISD superintendent came to light, Rep. Krause was the lead signatory on a letter from state legislators commending the superintendent for his “courageous leadership.”⁷

Beginning in November 2021, Klein ISD began surreptitiously removing books from district library shelves. District employees began quietly checking books out of Klein ISD libraries under the account for the district’s coordinator of resource materials, a position located within the district’s digital learning and media department. The surreptitious book removals are part of a wave of initiatives within Klein ISD regarding books in libraries and classrooms. The books remain off the shelves. There is no timeline for their return. The purpose behind their removal is to make the books inaccessible to Klein ISD students. More than 50 removed books appear on Rep. Krause’s list. Many of the others feature themes of race and racism or LGBTQ+ issues. Several are major works by Black women authors.

A. The Removed Books

Books that Klein ISD has removed from district libraries, in contravention of district policy, include the following. The identified themes below predominate, by far. An asterisk signifies a book that *does not* appear on Rep. Krause’s list and has been removed from the shelf by Klein ISD:

⁴ Letter from Rep. Matt Krause to Texas Education Agency Deputy Commissioner for Student Programs and selected school district superintendents, Oct. 25, 2021, https://static.texastribune.org/media/files/965725d7f01b8a25ca44b6fde2f5519b/krauseletter.pdf?_ga=2.213430097.416218816.1635283558-609342680.1588008770. The list of roughly 850 books attached to Rep. Krause’s letter is available at https://static.texastribune.org/media/files/94fee7ff93eff9609f141433e41f8ae1/krausebooklist.pdf?_ga=2.142117751.416218816.1635283558-609342680.1588008770.

⁵ Danika Ellis, *All 850 Books Texas Lawmaker Matt Krause Wants to Ban: An Analysis*, Book Riot, Nov. 5, 2021, <https://bookriot.com/texas-book-ban-list/>.

⁶ Brian Lopez, *San Antonio-Area School District Reviews 400 Books Flagged by a Texas Lawmaker’s Inquiry*, Texas Tribune, Dec. 6, 2021, <https://www.texastribune.org/2021/12/06/north-east-isd-books-review/>.

⁷ Letter from Rep. Matt Krause, et al., to Granbury ISD Superintendent Jeremy Glenn, Mar. 29, 2022, available at <https://www.facebook.com/KrauseforTexas/posts/508259647525087>.

- Books that advance racial equity and inclusion and that explore the history of racism in the United States, such as:
 - *Beloved*, by Toni Morrison*
 - *The Bluest Eye*, by Toni Morrison*
 - *And Still I Rise*, by Maya Angelou*
 - *Homegoing*, by Yaa Gyasi*
 - *How to Be an Antiracist*, by Ibram X. Kendi
 - *The New Jim Crow*, by Michelle Alexander
 - *They Called Themselves the KKK: The Birth of an American Terrorist Group*, by Susan Bartoletti
 - *Everything You Love Will Burn: Inside the Rebirth of White Nationalism in America*, by Vegas Tenold
 - *An African American and Latinx History of the United States*, by Paul Ortiz
 - *Out of Darkness*, by Ashley Hope Pérez
 - *Monday's Not Coming*, by Tiffany Jackson
- Books that advance LGBTQ+ inclusion, such as:
 - *Aristotle and Dante Discover the Secrets of the Universe*, by Benjamin Alire Sáenz
 - *Ash*, by Malinda Lo
 - *It Gets Better: Coming Out, Overcoming Bullying, and Creating a Life Worth Living*, by Dan Savage
 - *Gender Identity: The Search for Self*, by Kate Light
 - *Transgender Rights and Protections*, by Rebecca T. Klein
 - *Gay Issues and Politics*, by Jaime Seba
- Books about abortion, such as:
 - *Roe v. Wade: The Untold Story of the Landmark Supreme Court Decision that Made Abortion Legal*, by Marian Faux
 - *Abortion: Opposing Viewpoints*, by James D. Torr
 - *The Abortion Debate*, by Courtney Farrell
 - *The Cider House Rules*, by John Irving
- Books about sex education, such as:
 - *100 Questions You'd Never Ask Your Parents: Straight Answers to Teens' Questions about Sex, Sexuality, and Health*, by Elisabeth Henderson
 - *Birth Control*, by Roman Espejo

B. Contravention of District Policy

Klein ISD's clandestine book removals violate the district's own policies for book removal processes. Most fundamentally, no central administrators may unilaterally remove

books from the library. Under both the policy in effect when book removals began in fall 2021 and the policy in effect now, the book review and removal process has many safeguards in place to prevent this kind of unilateral removal—with its attendant risks of First Amendment violations. Both policies provide for review by an advisory review committee—which has not occurred here. Both likewise provide for books to remain on the shelves pending review, with limited exceptions—none of which involve the wholesale disappearance of books prior to a review.

To be clear, Klein ISD’s current book removal policy itself raises serious First Amendment issues in providing for book removal pending reconsideration. The policy provides for restriction of access to a challenged book during reconsideration “if copies of the resources are needed for the advisory review committee process,” as well as “if the material is considered to be pervasively vulgar or not age-appropriate.”⁸ Any removal of books during the pendency of the review process allows challenges for the purpose of suppressing ideas to at least temporarily effectuate a ban—what First Amendment law calls “a heckler’s veto.” Further, the policy does not specify *who* decides whether material “is considered to be” removable, nor does it define what makes material “not age-appropriate” in a way that can provide for unilateral removal. To comply with the First Amendment and prevent book removals that suppress access to ideas, Klein ISD should revise this portion of its policy to keep books on the shelves pending review.

II. Klein ISD’s Book Removals Violate the First Amendment

More than 40 years ago, the Supreme Court held that “local school boards may not remove books from their school library shelves simply because they dislike the ideas contained in those books.” *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 872 (1982) (plurality). Klein ISD recognizes that this Supreme Court case controls the district’s actions in decisions regarding the removal of library materials. The district’s own legal policy explains, citing *Pico*: “Students’ First Amendment rights are implicated by the removal of books from the shelves of a school library. A district shall not remove materials from a library for the purpose of denying students access to ideas with which the district disagrees.”⁹ Yet Klein ISD has secretly removed 67 books from its shelves that convey particular ideas about racial (particularly Black) and LGBTQ+ equity and inclusion, the history of racism in the United States, abortion, and sex education. Many of those books come from a list chosen by a state representative specifically for their content. This is a plain violation of the First Amendment of the U.S. Constitution and its state corollary, Article I, Section 8 of the Texas Constitution, as well as Klein ISD policy.

⁸ Klein ISD EF (Local) Policy, Instructional Resources at 4 (Mar. 10, 2022), [https://pol.tasb.org/Policy/Download/595?filename=EF\(LOCAL\).pdf](https://pol.tasb.org/Policy/Download/595?filename=EF(LOCAL).pdf).

⁹ Klein ISD EF (Legal) Policy, Instructional Resources at 1 (Nov. 14, 2019), [https://pol.tasb.org/Policy/Download/595?filename=EF\(LEGAL\).pdf](https://pol.tasb.org/Policy/Download/595?filename=EF(LEGAL).pdf).

A. Klein ISD’s Book Removals Are Inconsistent with the Supreme Court’s Decision in *Pico*

As the Supreme Court explained in *Pico*, school districts may not “seek by [books’] removal to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.” 457 U.S. at 872. Importantly, school districts cannot exercise discretion over library contents “in a narrowly partisan or political manner.” *Id.* at 870. For example, “if an all-white school board, motivated by racial animus, decided to remove all books authored by [Black authors] or advocating racial equality and integration,” doing so would plainly violate the First Amendment. *Id.* at 871.

In *Pico*, taking into account such evidence, the Supreme Court reversed a decision that had ended the case in favor of the district. *Id.* at 875. The Court explained, “The evidence plainly does not foreclose the possibility that petitioners’ decision to remove the books rested decisively upon disagreement with constitutionally protected ideas in those books, or upon a desire . . . to impose upon the students . . . a political orthodoxy to which [the school board] and their constituents adhered.” *Id.* Although the school board in *Pico* was able to cherry-pick excerpts from many of the disfavored books containing vulgar or sexually explicit language, the Supreme Court held that the school board nevertheless violated the First Amendment if they “intended by their removal decision to deny [students] access to ideas with which [the board members] disagreed, and if this intent was the decisive factor in [the school board’s] decision.” *Id.* at 871. The Supreme Court also emphasized that the school board failed to use “established, regular, and facially unbiased procedures” for reviewing the book, noting that evidence that the book “removal procedures were highly irregular and ad hoc” could undercut the district’s claims of viewpoint neutrality. *Id.* at 874.

Klein ISD’s book removals directly contravene the settled principles of *Pico*. Klein ISD has secretly disappeared at least 67 books from its shelves by checking them out, with no timeline for return. The district plainly selected these books on the basis of their content, as is obvious both from the themes that predominate the list of removed books and the fact that the overwhelming majority of the books appear on a state legislator’s content-based list. This clandestine removal of books is not consistent with district policy—neither the district’s policy in November nor the district’s policy today. It is plain that the removals are for the purpose of, and have the effect of, suppressing students’ access to the ideas the books contain. But *Pico* and Klein ISD’s own policy are clear: Klein ISD cannot remove books from its libraries due to the ideas they express.

B. Klein ISD’s Book Removals Are Inconsistent with Post-*Pico* Cases, Including Cases on Censorship of LGBTQ+ Books

Following *Pico*, courts within the Fifth Circuit and throughout the country have reaffirmed these principles. As the Fifth Circuit has explained, “In light of the special role of the school library as a place where students may freely and voluntarily explore diverse topics, [a] School Board’s non-curricular decision to remove a book well after it had been placed in the public school libraries evokes the question whether that action might not be an unconstitutional attempt to ‘strangle the free mind at its source.’” *Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184, 190 (5th Cir. 1995) (quoting *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)).

Both in the Fifth Circuit and throughout the country, courts have affirmed that 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. *E.g.*, *Case v. Unified Sch. Dist. No. 233*, 908 F. Supp. 864, 875 (D. Kan. 1995) (holding that the removal from school libraries of a book depicting romance between two women violated the First Amendment); *Parents, Fams., & Friends of Lesbians & Gays, Inc. v. Camdenton R-III Sch. Dist.*, 853 F. Supp. 2d 888, 897 (W.D. Mo. 2012) (holding that censorship of LGBT-supportive websites in a school library violated the First Amendment). For example, more than two decades ago, the Northern District of Texas held that the removal of two children’s picture books about LGBTQ+ inclusion from the children’s section of the Wichita Falls Public Library, and the enactment of a city resolution on book removal procedures to facilitate the books’ removal, were “impermissible content-based and viewpoint-based discrimination” in violation of the First Amendment. *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 548 (N.D. Tex. 2000). This logic applies with equal force today, including to Klein ISD’s removal of books furthering LGBTQ+ and racial inclusion.

In “checking out” books with no plans for return, Klein ISD has removed some of these titles from district shelves altogether; others are unavailable in certain district libraries or have fewer copies available in the system overall. In addition to prohibiting the complete removal of library books because of their content or viewpoint, the First Amendment bars the restriction of access—such as by removing even one copy of a book from district libraries—on these bases as well. “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)).

The ACLU has previously successfully sued to restore books to school libraries, including one found on the initial list of removed books, *In Our Mothers’ House*. The book is a children’s picture book about three adopted children and their two mothers. In that instance, a school district had removed it for “advocacy of homosexuality.” In response to the lawsuit, the

school district ultimately agreed to restore the book to the shelves and allow it to be checked out on the same terms as any other children's book, and to pay \$15,000 in attorneys' fees.¹⁰

When the school “board has used its official power to perform an act clearly indicating that the ideas contained in the [books] are unacceptable and should not be discussed or considered,” that “message is not lost on students and teachers, and its chilling effect is obvious.” *Pratt v. Indep. Sch. Dist. No. 831*, 670 F.2d 771, 779 (8th Cir. 1982). Klein ISD has done just that—indicated that the ideas in removed books are unacceptable. Klein ISD's book removals are a plain violation of the First Amendment, and of the Texas Constitution and district policy.

We urge that Klein ISD remedy this violation of the First Amendment, the Texas Constitution, and Klein ISD's own policy as swiftly as possible by returning all of the books to library shelves. Any challenges should proceed in accordance with district policy. Further, the district should publicly commit to LGBTQ+ and racial inclusivity and ensuring students have access to the United States' history of racism and racial injustice in Klein ISD libraries. The district should apologize for the removal of books inconsistent with the First Amendment and with district policy. The removals have created a chilling effect on students and teachers that must be remedied.

¹⁰ See Joshua Block, *School Promises In Settlement To Stop Removing Library Books For 'Advocacy of Homosexuality'*, Jan. 31, 2013, <https://www.aclu.org/blog/free-speech/school-promises-settlement-stop-removing-library-books-advocacy-homosexuality>.