

December 1, 2022

St. Marys City Commission

Via email: richjbusiness@gmail.com; childs.matthew5@gmail.com;
fawerkamp@gmail.com; philip.borgerding@yahoo.com;
njhall4@gmail.com; charlesriccomin@gmail.com;
gakleinsmith@gmail.com



**Re: *Threatened adverse actions against the Pottawatomie
Wabaunsee Regional Library***

Kansas

PO Box 917
Mission, KS 66201
(913) 490-4100
aclukansas.org

Susan Estes
President

Micah W. Kubic
Executive Director

Brad Stuewe, M.D.
Treasurer

Leslie Bissell
Secretary

James Bell
Amii Castle
Robert Eye
Brandi Fisher
Liz Hueben
Mark Johnson
Lon Lewis
Raymond Rico
Joy Springfield
Annie Tietze
Marie Woodbury
Board of Directors

City Commissioners:

We write concerning the St. Marys City Commission’s proposed Pottawatomie Wabaunsee Regional Library lease and the Commission’s alarming and discriminatory attempt to ban all “explicit sexual or racially or socially divisive material, or events. . .that support the LGBTQ+ or critical theory ideology or practice” from the library.¹ We understand the Commission will vote on whether to renew the library’s lease at its upcoming December 6th commission meeting.² We strongly urge the Commission to renew the library’s lease and to abandon its extreme attempt to censor the library’s materials.

Background

Over the past few months, the St. Marys City Commission held multiple meetings discussing the lease renewal of the Pottawatomie Wabaunsee Regional Library. The Commission requested that the library remove all LGBTQ+, sexual, racial, or otherwise “socially divisive” content from its shelves, and the library refused to do so.³ Public reports indicate that, as a result of the library’s refusal to censor its publicly available materials, the Commission is threatening to reject the library’s lease renewal in favor of creating its own city-run library with full control of content. Alternatively, the Commission proposed adding a clause to the library’s lease requiring the formation of an oversight group to determine “whether or not texts and programs in the public library are up to community standards.”⁴

¹ See <https://kansasreflector.com/2022/11/16/future-of-kansas-towns-library-uncertain-after-outpouring-of-support-at-commission-meeting/>

² *Id.*

³ *Id.*

⁴ *Id.*



The taxpayer-funded Pottawatomie Wabaunsee Regional Library serves not only St. Marys’ residents, but also the residents of seven other Kansas towns—Alma, Alta Vista, Eskridge, Harveyville, Olsburg, Onaga, and Westmoreland. The library has been physically located in St. Marys since the 1980s, but if the Commission refuses to renew its lease, it will be forced to relocate to another town because no other building in St. Marys’ could accommodate it.⁵ And residents of St. Marys and beyond have made clear that they do not want the library to close or relocate—a petition in support of the library gathered more than 1,000 signatures and at the Commission’s most recent meeting, the majority of the residents who provided public comment spoke in favor of the library.⁶

Legal Implications of Proposed Ban

The First Amendment of the United States Constitution protects the freedom of expression and individuals’ rights to receive information and knowledge. The Commission’s proposed materials ban is a blatant attempt to suppress learning and discussion about race, gender equality, and LGBTQ+ rights—solely because the Commission deemed these topics “socially divisive.” But the Supreme Court held over 40 years ago that local government may not remove books from library shelves “simply because they dislike the ideas contained in those books.”⁷ And courts have held this protection from viewpoint-based censorship clearly extends to books that express support for LGBTQ+ people.⁸

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.”⁹

⁵ *Id.*

⁶ *Id.*; <https://kansasreflector.com/2022/11/14/future-of-kansas-towns-library-in-jeopardy-over-refusal-to-remove-divisive-books/>.

⁷ *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 872 (1982) (plurality).

⁸ 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 that removal of book depicting romance between two women from school libraries violated First Amendment).

⁹ See, e.g., *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 548 (N.D. Tex. 2000); *International Soc’y of Krishna Consciousness, Inc v. Lee*, 505 U.S. 672, 678, 120 L. Ed. 2d 541, 112 S. Ct. 2701 (1992) (holding that regulation of speech on government property considered a traditional or designated public forum—whether limited or unlimited in character—is “subject to the highest scrutiny.”)



Kansas

Notably, the Commission’s stated goal of censoring all LGBTQ+, racial, or sexual materials to ensure the library’s content is up to “community standards” is likely not a compelling interest—considering courts have held that public libraries, like any other State-run enterprise, “may not be run in such a manner as to ‘prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.’”¹⁰ Further, the library already has policies in place allowing community members to challenge the presence of certain material in the library, and provides parents and guardians the option of limiting their children’s access to certain books or filtering which books their children can check out.¹¹

The Commission’s attempt to force a materials ban on the library runs afoul of established freedom of expression rights and violates the First Amendment of the United States Constitution. The very framework of our democracy relies on a society in which ideas are openly shared and debated and individuals have the right to make up their own minds, especially on deeply complex and nuanced issues. This proposed materials ban is a dangerous exercise of power by the Commission, prioritizing the Commission’s beliefs over the wants, needs, and First Amendment rights of the community.

Public libraries are invaluable resources in our local communities, and they exist in part to provide individuals and families access to a diversity of ideas and information. Banning books on the grounds that they include racial, sexual, or LGBTQ+ content is not only antithetical to a library’s mission, it is patently unconstitutional. And threatening to not renew Pottawatomie Wabaunsee Regional Library’s lease solely because the library declined to violate the constitution and engage in viewpoint-based censorship is a troubling and authoritarian step for the Commission to take.

The ACLU of Kansas urges the Commission to make the right decision for its community—renew the library’s lease and abandon its extreme attempt to censor the library’s materials. The ACLU of Kansas will continue to monitor this situation and consider next steps depending on the outcome of the Commission’s December 6th meeting.

¹⁰ See *Mainstream Loudoun v. Bd. Of Trustees of Loudoun Cty. Library*, 2 F. Supp. 2d 783, 794-95 (E.D. Va. 1998) (quoting *Pico*, 457 U.S. at 876); *Case*, 908 F. Supp. at 875-76 (D. Kan. 1995).

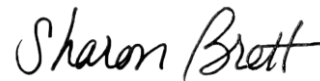
¹¹ See <https://kansasreflector.com/2022/11/14/future-of-kansas-towns-library-in-jeopardy-over-refusal-to-remove-divisive-books/>.

Thank you for your prompt attention to this matter. Should you wish to discuss this or any other related issues, please do not hesitate to contact me at dhiegert@aclukansas.org.

Kind regards,



D.C. Hiegert
Skadden Foundation LGBTQ+
Fellow
ACLU of Kansas



Sharon Brett
Legal Director
ACLU of Kansas

ACLU

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Kansas