

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

FAYETTEVILLE PUBLIC LIBRARY, et al. a political subdivision in the City of Fayetteville, State of Arkansas; EUREKA SPRINGS CARNEGIE PUBLIC LIBRARY; CENTRAL ARKANSAS LIBRARY SYSTEM; NATE COULTER; OLIVIA FARRELL; MIEL PARTAIN, in her own capacity and as parent and next friend of MADELINE PARTAIN; LETA CAPLINGER; ADAM WEBB; ARKANSAS LIBRARY ASSOCIATION; ADVOCATES FOR ALL ARKANSAS LIBRARIES; PEARL'S BOOKS, LLC; WORDSWORTH COMMUNITY BOOKSTORE LLC d/b/a WORDSWORTH BOOKS; AMERICAN BOOKSELLERS ASSOCIATION; ASSOCIATION OF AMERICAN PUBLISHERS, INC.; AUTHORS GUILD, INC.; COMIC BOOK LEGAL DEFENSE FUND; FREEDOM TO READ FOUNDATION

PLAINTIFFS

V. NO. 5:23-CV-05086-TLB

CRAWFORD COUNTY, ARKANSAS; CHRIS KEITH, in his official capacity as Crawford County Judge; TODD MURRAY; SONIA FONTICIELLA; DEVON HOLDER; MATT DURRETT; JEFF PHILLIPS; WILL JONES; TERESA HOWELL; BEN HALE, CONNIE MITCHELL, DAN TURNER, JANA BRADFORD; FRANK SPAIN; TIM BLAIR; KYLE HUNTER; DANIEL SHUE; JEFF ROGERS; DAVID ETHREDGE; TOM TATUM, II; DREW SMITH; REBECCA REED MCCOY; MICHELLE C. LAWRENCE; DEBRA BUSCHMAN; TONY ROGERS; JOSHUA ROBINSON; CAROL CREWS; KEVIN HOLMES; CHRIS WALTON; and CHUCK GRAHAM, each in his or her official capacity as a prosecuting attorney for the State of Arkansas;

DEFENDANTS

**PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS  
IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

Plaintiffs submit the following Statement of Undisputed Material Facts (“SUMF”) in support of their Motion for Summary Judgment.

### **ACT 372**

1. On March 31, 2023, Governor Sarah Huckabee Sanders signed Arkansas Act 372 of 2023 (“Act 372”) into law. County Defs.’ Answer to Am. Compl. (Doc. 78) at ¶ 8; Prosecutor Defs.’ Answer to Am. Compl. (Doc. 79) at ¶ 8.

2. Act 372 criminalizes making available to a minor an item that is harmful to minors.

3. There is no distinction in the definition of “harmful to minors” in Act 372 between a 10-year-old and a 17-year old.

### **THE PARTIES**

4. The Fayetteville Public Library (“FPL”) is a municipal public library and political subdivision in the City of Fayetteville, formed pursuant to Arkansas law to provide library services to local residents. Mot., Ex. 10<sup>1</sup> (Declaration of David Johnson (“Johnson Decl.”)) at ¶ 2.

5. Some of the materials in FPL’s collection, though constitutionally protected, could be deemed harmful to minors and therefore subject to Section 1, or inappropriate for minors and therefore subject to Section 5 of Act 372. *Id.* at ¶¶ 7-8.

6. Eureka Springs Carnegie Public Library (“ESCPL”) is a public library formed pursuant to Arkansas law to provide library services to local residents. Mot., Ex. 6 (Declaration of Christina Danos (“Danos Decl.”)) at ¶ 5.

7. Some of the materials in the ESCPL’s collection, though constitutionally protected, could be deemed harmful to minors and therefore subject to Section 1, or inappropriate for minors and therefore subject to Section 5. *Id.* at ¶ 7.

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<sup>1</sup> Exhibit references in this Statement are to the exhibits to the motion to which it is filed in support.

8. Central Arkansas Library System (“CAL S”) is a body corporate and politic formed under Arkansas law under an interlocal agreement among the City of Little Rock, Pulaski County, Perry County, the City of Jacksonville, the City of Sherwood, and the City of Maumelle to provide library services to local residents. Mot., Ex. 24 (Donald Nathan Coulter Deposition Transcript (“Coulter Depo. Tr.”)) at 26:18-27:11; Mot., Ex. 5 (Declaration of Nate Coulter (“Coulter Decl.”)) at ¶ 4.

9. Some of the hundreds of thousands of materials in the CAL S collection, though constitutionally protected, could be deemed harmful to minors and therefore subject to Section 1, or inappropriate for minors and therefore subject to Section 5. Coulter Depo. Tr. at 98:12-99:2.

10. To comply with Section 1 and Section 5, CAL S will have to change the physical layout of its libraries in ways that will materially alter the intentionally welcome and open atmosphere the library strives to create. Coulter Decl. at ¶ 10, 14-15.

11. If CAL S does not make these burdensome changes, or even if it does but fails to segregate a single title in its large collection, it puts itself at risk of violating Section 1 and having its employees charged with a crime. *Id.* at ¶¶ 14-16.

12. Nate Coulter is a resident of Pulaski County, Arkansas and the Director of CAL S. *Id.* at ¶ 3; Coulter Depo. Tr. at 8:17-23.

13. Mr. Coulter is a member of the Arkansas Library Association (ArLA) and holds a master’s degree in Library & Information Science from an American Library Association-accredited program. Coulter Decl. at ¶ 2; Coulter Depo. Tr. at 8:13-16.

14. As a librarian, Mr. Coulter could be charged with a Class A misdemeanor under Section 1, if CAL S “makes available” materials that are “harmful to minors” under Arkansas law. Coulter Decl. at ¶ 16.

15. Olivia Farrell is an adult resident of Pulaski County, Arkansas, a CALS patron, and a WordsWorth Books customer. Mot., Ex. 7 (Declaration of Olivia Farrell (“Farrell Decl.”)) at ¶¶ 2, 7.

16. Ms. Farrell enjoys browsing the bookshelves at CALS or WordsWorth to see if there is anything she would like to check out or purchase. *Id.* at ¶ 2.

17. Ms. Farrell would be deterred from entering a section of a bookstore or library that contains materials deemed “harmful to minors” or inappropriate because she believes that doing so would signal to others that she is interested in reading pornography. *Id.* at ¶ 5.

18. Ms. Farrell sometimes visits CALS with children who are too young to be left unattended in the library. *Id.* at ¶ 5; Coulter Decl. at ¶ 9, Ex. B (CALS Rules of Conduct Policy) at CALS00008.

19. In those instances, Ms. Farrell will not be able to peruse or check out books that are located in an adults-only area because she will need to remain with the child at all times. *Id.* at ¶ 5.

20. Miel Partain is an adult resident of Crawford County and a patron of the Crawford County Library System (CCLS). Mot., Ex. 21 (Miel Ann Delorey Partain Deposition Transcript (“Miel Partain Depo. Tr.”)) at 8:17-18, 20:19-21.

21. Miel Partain is the parent and next friend of Madeline Partain. *Id.* at 9:12-17.

22. Miel Partain would be deterred from entering a section of a bookstore or library that contains materials deemed “harmful to minors” or inappropriate because she believes that doing so would signal to others that she is in some way “bad,” “wrong,” or “not normal.” *Id.* at 49:23-50:15.

23. Miel Partain sometimes takes her 10- and 8-year-old grandchildren to CCLS, who are too young to be left unattended while they are at the library. *Id.* at 52:9-24.

24. On those visits, Miel Partain will not be able to peruse or check out books that are located in an adults-only area because she will need to remain with her grandchildren at all times. *Id.* at 52:9-24.

25. It is important to Miel Partain that her children, including her daughter Madeline, have access to material that is enriching, suitable for their maturity and reading ability. *Id.* at 49:18-24.

26. Miel Partain has read novels that discuss or describe sexual relationships, which she finds to have literary merit and would recommend to her 17-year-old daughter, Madeline Partain. *Id.* at 56:10-57:11.

27. Madeline Partain is a seventeen-year-old resident of Crawford County and a Crawford County Library patron. Mot., Ex. 20 (Madeline Anne Partain Deposition Transcript (“Madeline Partain Depo. Tr.”)) at 6:10-12, 6:24-25, 13:-15-17.

28. Madeline Partain also gets books to read from bookstores in Arkansas. *Id.* at 47:7-10.

29. Madeline Partain is interested in reading books that discuss or depict complicated or sensitive subjects, including sexual relationships, which might be too mature for younger, less mature readers. *Id.* at 33:8-20, 38:15-20, 42:7-43:21.

30. Leta Caplinger is an adult resident of Crawford County and a patron of the Crawford County Library System. Mot., Ex. 19 (Leta Jo Caplinger Deposition Transcript (“Caplinger Depo. Tr.”)) at 13:12-16.

31. Ms. Caplinger also peruses and shops for new and old books at bookstores in Arkansas. *Id.* at 50:10-13.

32. Ms. Caplinger would be deterred from entering a section of a bookstore or library that contains materials deemed “harmful to minors” or inappropriate because she would find materials segregated in that manner to carry a stigma and would worry that her interest in those materials would signal an interest in materials that are pornographic or obscene. Caplinger Depo. Tr. at 66:24-67:3.

33. Adam Webb is an American Library Association-accredited Librarian and Certified Public Library Administrator. Mot., Ex. 17 (Declaration of Adam Webb (“Webb Decl.”) at ¶ 2.

34. He lives in Garland County and has worked at the Garland County Library (GCL) for more than sixteen years, including, since 2019, as GCL’s Executive Director. In his capacity as the Executive Director of GCL, Mr. Webb plans and directs the provision of library services, which means that he is primarily responsible for ensuring that GCL complies with Act 372. *Id.* at ¶ 3.

35. The Arkansas Library Association (ArLA) is an Arkansas nonprofit corporation formed under Section 501(c)(3) of the Internal Revenue Code as a professional association for libraries and individuals who work in them throughout Arkansas. Mot., Ex. 4 (Declaration of Carol Coffey (“Coffey Decl.”)) at ¶¶ 2, 5.

36. ArLA’s mission is to further the professional development of all library staff members; to foster communication and cooperation among librarians, trustees, and friends of libraries; to increase the visibility of libraries among the general public and funding agencies; and to serve as an advocate for librarians and libraries. *Id.* at ¶ 5.

37. ArLA has more than 400 members, comprised of both individuals employed by libraries and public library facilities located all across Arkansas, including in Crawford County. There exists at least one active and dues paying member of ArLA in all but one judicial district in Arkansas in which Act 372 will be enforced. *Id.* at ¶¶ 6-7.

38. Advocates for All Arkansas Libraries (AAAL) is a nonprofit corporation formed under Arkansas law as a membership organization whose mission is to advocate for the preservation and improvement of libraries and library services across the state, and to educate the public, state leaders, and legislators of the value and importance of libraries in Arkansas. Its dues-paying members are libraries, library staff, and library patrons, including both adult and minor patrons. Webb Decl. at ¶ 35.

39. ArLA and AAAL, collectively, have an active member in each judicial circuit in Arkansas. Coffey Decl. at ¶ 7 n. 1; Webb Decl. at ¶ 35 n. 7.

40. ArLA and AAAL have been forced to divert organizational resources, including staff time and money, to respond to Act 372 through public education campaigns, media training, the development of reference and training materials to help its members understand what compliance would require, and addressing concerns of members about criminal liability and costs of compliance. Coffey Decl. at ¶ 27; Webb Decl. at ¶¶ 50-51.

41. Pearl's Books, LLC is an independent bookstore that sells new books and gifts just off the downtown square in Fayetteville, Arkansas. Pearl's Books also hosts reading and writing events for readers of all ages. Mot., Ex. 11 (Declaration of Daniel Jordan ("Jordan Decl.")) at ¶ 1.

42. Wordsworth Community Bookstore LLC, d/b/a WordsWorth Books, is an independent bookstore that sells new books and gifts in the historic Heights neighborhood in Little Rock, Arkansas. WordsWorth Books sells books for people of all ages, and regularly hosts author

events and children's story time events. Mot., Ex. 18 (Declaration of Kandi West ("West Decl.)) at ¶ 1.

43. The American Booksellers Association (ABA) was founded in 1900 and is a national not-for-profit trade organization that works to help independently owned bookstores grow and succeed. Mot., Ex. 8 (Declaration of David Grogan ("Grogan Decl.)) at ¶ 2.

44. ABA represents over 2,100 member companies operating in over 2,500 locations; it has 17 members located in Arkansas who are subject to Act 372. *Id.* at ¶ 2.

45. The Association of American Publishers (AAP), a not-for-profit organization, represents the leading book, journal, and education publishers in the United States on matters of law and policy, advocating for outcomes that incentivize the publication of creative expression, professional content, and learning solutions. Mot., Ex. 15 (Declaration of Matthew D. Stratton ("Stratton Decl.)) at ¶ 2.

46. AAP's members range from major commercial book and journal publishers to small, non-profit, university, and scholarly presses, as well as leading publishers of educational materials and digital learning platforms. *Id.* at ¶ 2.

47. AAP's members publish a substantial portion of the general, educational, and religious books produced in the United States, including critically acclaimed, award-winning literature for adults, young adults, and children. *Id.* at ¶ 2.

48. The Authors Guild, Inc. (Guild) was founded in 1912 and is a national non-profit association of more than 14,000 professional, published writers of all genres, 32 of whom are located in Arkansas. Mot., Ex. 14 (Declaration of Mary E. Rasenberger ("Rasenberger Decl.)) at ¶¶ 2-4.



49. Many Guild members earn their livelihoods through their writing, which covers important issues in history, biography, science, politics, medicine, business, and other areas. Their ability to write on topics of their choosing and to have their work available through bookstores and libraries is vital to their ability to make a living in their chosen profession. *Id.* at ¶¶ 3-4.

50. The Comic Book Legal Defense Fund (CBLDF) is a nonprofit organization dedicated to protecting the legal rights of the comic arts community. CBLDF's members are creators, publishers, retailers, educators, librarians, and fans of the comic arts. Mot., Ex. 16 (Declaration of Jeff Trexler ("Trexler Decl.")) at ¶ 2.

51. Freedom to Read Foundation (FTRF) is a nonprofit membership organization established in 1969 by the American Library Association (ALA) to promote and defend First Amendment rights, to foster libraries as institutions fulfilling the promise of the First Amendment for every citizen. Mot., Ex. 2, Declaration of Deborah Caldwell-Stone ("Caldwell-Stone Decl.") at ¶ 2.

52. FTRF has library patron and public library members in Arkansas. *Id.* at ¶¶ 7, 10.

53. Crawford County is a County duly formed under the laws of the State of Arkansas. County Defs.' Answer to Am. Compl. at ¶ 31.

54. Crawford County has responsibility for maintaining and overseeing the Crawford County Library System. *Id.*

55. Chris Keith is the County Judge for Crawford County, Arkansas, and the chief executive of the county government under the laws of the State of Arkansas. *Id.* at ¶ 32.

56. Todd Murray is the Prosecuting Attorney for the First Judicial District. Prosecutor Defs.’ Answer to Am. Compl. at ¶ 33.

57. Sonia Fonticiella is the Prosecuting Attorney for the Second Judicial District. *Id.* at ¶ 34.

58. Devon Holder is the Prosecuting Attorney for the Third Judicial District. *Id.* at ¶ 35.

59. Matt Durrett is the Prosecuting Attorney for the Fourth Judicial District. *Id.* at ¶ 36.

60. Jeff Phillips is the Prosecuting Attorney for the Fifth Judicial District. *Id.* at ¶ 37.

61. Will Jones is the Prosecuting Attorney for the Sixth Judicial District. *Id.* at ¶ 38.

62. Teresa Howell is the Prosecuting Attorney for the Seventh Judicial District. *Id.* at ¶ 39.

63. Ben Hale is the Prosecuting Attorney for the Eighth Judicial District - North. *Id.* at ¶ 40.

64. Connie Mitchell is the Prosecuting Attorney for the Eighth Judicial District – South. *Id.* at ¶ 41.

65. Dan Turner is the Prosecuting Attorney for the Ninth Judicial District – East. *Id.* at ¶ 42.

66. Jana Bradford is the Prosecuting Attorney for the Ninth Judicial District – West. *Id.* at ¶ 43.

67. Frank Spain is the Prosecuting Attorney for the Tenth Judicial District. *Id.* at ¶ 44.

68. Tim Blair is the Prosecuting Attorney for the Eleventh Judicial District – East. *Id.* at ¶ 45.

69. Kyle Hunter is the Prosecuting Attorney for the Eleventh Judicial District – West. *Id.* at ¶ 46.

70. Daniel Shue is the Prosecuting Attorney for the Twelfth Judicial District. *Id.* at ¶ 47.

71. Jeff Rogers is the Prosecuting Attorney for the Thirteenth Judicial District. *Id.* at ¶ 48.

72. David Ethredge is the Prosecuting Attorney for the Fourteenth Judicial District. *Id.* at ¶ 49.

73. Tom Tatum, II is the Prosecuting Attorney for the Fifteenth Judicial District. *Id.* at ¶ 50.

74. Drew Smith is the Prosecuting Attorney for the Sixteenth Judicial District. *Id.* at ¶ 51.

75. Rebecca Reed Mccoy is the Prosecuting Attorney for the Seventeenth Judicial District. *Id.* at ¶ 52.

76. Michelle C. Lawrence is the Prosecuting Attorney for the Eighteenth Judicial District – East. *Id.* at ¶ 53.

77. Debra Buschman is the Prosecuting Attorney for the Eighteenth Judicial District – West. *Id.* at ¶ 54.

78. Tony Rogers is the Prosecuting Attorney for the Nineteenth Judicial District – East. *Id.* at ¶ 55.

79. Joshua Robinson is the Prosecuting Attorney for the Nineteenth Judicial District – East. *Id.* at ¶ 56.

80. Carol Crews is the Prosecuting Attorney for the Twentieth Judicial District. *Id.* at ¶ 57.

81. Kevin Holmes is the Prosecuting Attorney for the Twenty-first Judicial District. *Id.* at ¶ 58.

82. Chris Walton is the Prosecuting Attorney for the Twenty-second Judicial District. *Id.* at ¶ 59.

83. Chuck Graham is the Prosecuting Attorney for the Twenty-second Judicial District. *Id.* at ¶ 58.

84. None of the prosecuting attorneys have issued any guidance about what materials he or she considers “harmful to minors.” Mot., Ex. 25 (Prosecutor Defs.’ Resp. to Pls.’ Discovery Requests) at 4 (identifying no “policies or guidelines concerning identification of a material that would meet the definition of ‘harmful to minors’ as defined in Ark. Code Ann. § 5-68-501(2)”).

### **LIBRARIES AND LIBRARIANS**

85. Public libraries in Arkansas believe that their role is to provide patrons with access to all points of view on public issues. Caldwell-Stone Decl. at ¶ 4; Johnson Decl. at ¶ 5; Danos Decl. at ¶ 4; Coulter Decl. at ¶ 7, Ex. A.

86. Reviewing library materials to determine if they might be considered harmful to young minors is an expensive and incredibly time-consuming process, given the substantial number of potentially “harmful” materials at issue. Mot., Ex. 3 (Declaration of Judy Calhoun (“Calhoun Decl.”)) at ¶ 14; Caldwell-Stone at ¶ 11(c); Coffey Decl. at ¶ 13; Coulter Decl. at ¶ 12; Danos Decl. at ¶ 10); Johnson Decl. at ¶ 14; Mot., Ex. 12 (Declaration of John McGraw (“McGraw Decl.”)) at ¶ 18; Ex. 13 (Declaration of Reverend John Paul Myrick (“Myrick Decl.”)) at ¶ 8; Webb Decl. at ¶¶ 19, 39; Mot., Ex. 25 (Prosecutor Defs.’ Resp. to Pls.’ Discovery Requests) at 4-5.

87. The American Library Association’s (ALA) Library Bill of Rights, which “affirms that all libraries are forums for information and ideas,” provides that certain “basic policies should guide their services.” Webb Decl. at ¶ 7, Ex. B (Library Bill of Rights).

88. The Library Bill of Rights includes the following “basic policies,” among others:

- Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.
- Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.
- Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.
- Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.
- A person’s right to use a library should not be denied or abridged because of origin, age, background, or views.
- All people, regardless of origin, age, background, or views, possess a right to privacy and confidentiality in their library use. Libraries should advocate for, educate about, and protect people’s privacy, safeguarding all library use data, including personally identifiable information.

89. Libraries express their commitment to the principles from the ALA Bill of Rights through their policies for selecting materials, *see* Coulter Depo Tr. at 42:8-14 (testifying that materials selection policies are commonplace). *See, e.g.*, Johnson Decl. at ¶ 28, Ex. F (FPL Collection Development Policy) at FPL0002 (“endors[ing] and incorporat[ing] by reference” the Library Bill of Rights); Danos Decl. at ¶ 6, Ex. A (ECSPL Selection Policy Statement) at ESCPL 00001 (similar); Coulter Decl. at ¶ 7, Ex. A (CAL S Selection of Library Materials Policy) at

CALS00002 (“subscrib[ing] to the philosophies outlined in” the Library Bill of Rights); Webb Decl. at ¶ 8, Ex. C (Garland County Library Materials Selection Policy) at WEBB 00001 (same).

90. Professional librarians “are trained by ALA-accredited institutions” and “taught [to adhere to] the ALA’s Code of Ethics,” which impose a “duty not to limit access to information based on viewpoint,” Caldwell-Stone Decl. at ¶ 3. *See* Webb Decl. at ¶ 5 (“In my work as a librarian, I try to adhere to the principles of librarianship set forth in the American Library Association’s Code of Ethics and Library Bill of Rights.”); Coulter Decl. at ¶¶ 2, 6. The Code of Ethics also makes clear that the manner in which library materials are organized is an important component of “provid[ing] the highest level of service to all library users.” Webb Decl. at ¶ 6, Ex. A (“Code of Ethics”) ¶ 1. Indeed, library organization “is essential for the success of libraries’ mission to connect books with readers, and central for the ability of readers to find books.” Caldwell-Stone at ¶ 8.

91. Librarians take great pains to adhere to “best practices” by arranging their collections “on bookshelves that are logically arranged by topic and reading ability, such that a reader can quickly find the item they are looking for or, alternatively, browse through and consider materials that match their interests and comprehension levels.” *See, e.g.*, Danos Decl. at ¶ 6 (noting that “[t]his setup is typical for other libraries” in Arkansas); Coffey Decl. at ¶ 18 (noting the importance of “creating a welcoming and inviting environment, where readers can freely peruse the curated offerings . . . and discover materials of interest.”); Webb Decl. at ¶ 57 (aiming to provide “library users” with “the information they need to browse the library”).

92. A logically organized library is especially important for small or rural libraries, which will benefit from patrons being able to “locate materials of interest without requiring assistance from library staff.” Coffey Decl. ¶ 12; Myrick Decl. at ¶ 6; Calhoun Decl. at ¶ 12.

93. The ultimate purpose of a public library is to “facilitate[e] learning and cultural enrichment” opportunities for patrons, *United States v. Am. Library Ass’n, Inc.*, 539 U.S. 194, 203 (2003), like Plaintiffs Olivia Farrell, Leta Caplinger, Madeline Partain, and Miel Partain. Ms. Farrell, Ms. Caplinger, and the Partains are patrons of their local public library, either CALS or the Crawford County Library System (CCLS), and each values their right to read and to browse freely when they visit. *See* Farrell Decl. at ¶¶ 2, 4-5, 7 (adult resident of Pulaski County and patron of CALS); Mot., Caplinger Depo. Tr. at 13:12-16 (adult patron of CCLS testifying about her belief “in the purpose of libraries” and noting that she has “used libraries since [she] was a small child” and that “[t]hey’re very important to [her]”); *id.*, Madeline Partain Depo. Tr. at 6:11-12, 8:16-17, 13:15-17 (seventeen-year-old resident of Crawford County and patron of the Van Buren Branch of CCLS who “believe[s] everyone has a right to read any book they choose”); *id.*, Miel Partain Depo. Tr. at 13:21-23, 20:19-25 (adult patron of CCLS since approximately 2008 testifying that “older children should have access to any book that they would like to borrow from the library”).

### **BOOKSTORES, PUBLISHERS, AND AUTHORS**

94. Reviewing materials in bookstores to determine if they might be considered harmful to young minors is not feasible, given the substantial number of potentially “harmful” materials at issue and the fact that stores typically order the books before they have a chance to read them. West Decl. at ¶ 7(b); Jordan Decl. at ¶ 7(b).

95. Pearl’s and WordsWorth bookstores contain hundreds of books with sexually related narrative or pictorial content that might be deemed “harmful to minors.” Those books fall in many literary genres, such as fiction, nonfiction, romance, photography, and new releases. Many are bestsellers and prizewinners. Contemporary bestsellers like “A Court of Thorns & Roses” and the “Bridgerton” series, literary classics such as “Maus,” “Sanctuary,” and “If Beale Street Could

Talk,” and prizewinners such as “To Kill a Mockingbird” and “Beloved.” Books that are appropriate for a 17-year old, but may inappropriate for a 10-year old include “The Outsiders” and “The Absolutely True Diary of a Part-Time Indian.” Jordan Decl. at ¶ 5; West Decl. at ¶ 5.

96. Adults generally become acquainted with books in bookstores when they are readily visible. The prominent display of books shelved or displayed on tables in an orderly, easily accessible manner in an atmosphere conducive to browsing is essential for commercial success, and also essential to fulfill a bookstore’s goal of connecting readers with books. Jordan Decl. at ¶ 6; West Decl. at ¶ 6.

97. The options available to bookstores (and libraries) to comply with Section 1 of Act 372 are untenable:

- a. Bar all patrons under the age of 18 from entering the bookstore or library. This would dramatically affect children and young adult book sales, and events for children, and would imply the store only sold “adult” books, which would be immensely detrimental to business. Further, it would prevent older minors from perusing and purchasing materials constitutionally protected as to them.
- b. Limit inventory to books or other items not regulated by Section 1. It would be hard to determine what category many books fall into and would curtail the availability of a number of very popular books, including some bestsellers. Thus, this alternative is not practically or commercially feasible. In addition, this alternative would create practical difficulties in ordering new books because booksellers or librarians often do not have the opportunity or the time to review books before ordering them. This alternative would also prevent older minors from perusing and purchasing materials constitutionally protected as to them.



- c. Place all materials that could be deemed “harmful to minors” behind a counter. Given the large number of constitutionally protected books involved, that would entail a restructuring of the store or library to ensure space. For bookstores, since the display of books is crucial to book sales, this would also hurt sales. This option would also necessitate that employees perform the difficult task of designating books across multiple genres as “harmful to minors.” This too would restrict the ability of adults and older minors to peruse and purchase materials constitutionally protected as to them.
- d. Designate a room “adults only.” This would, like the “behind the counter” option, potentially involve costly renovations and burden employees with the separation of books. Further, this new room would be difficult to monitor, necessitating keys or electronic access (which would also entail additional costs) and would be confusing to patrons. For libraries, that kind of segregation would also lead to drop in sales of the segregated books, as many adults would be hesitant to go into an “adults only” room. As with the other alternatives, this would restrict the ability of adults and older minors to peruse and purchase materials constitutionally protected as to them. Jordan Decl. at ¶ 7; West Decl. at ¶ 7; Caldwell-Stone Decl. at ¶ 11.

98. The livelihood of writers, illustrators, and publishers depends on the free exercise of rights guaranteed by the First Amendment. Rasenberger Decl. at ¶ 4; Trexler Decl. at ¶ 2; Stratton Decl. at ¶ 2.

### **CRAWFORD COUNTY**

99. On November 10, 2022, Dr. Jeffrey Hamby and Tamara (Tammy) Hamby sent a letter to the Crawford County Quorum Court, the County Judge, and the County Judge-Elect to express their concern about books in the children’s section of the Van Buren Public Library, which

they maintained had been purchased as part of CCLS’ “agenda” to advertise “alternative lifestyles to prepubescent children,” and “normalize[e] and equat[e] homosexual and transsexual lifestyles with heterosexual family units.” Mot., Ex. 27 (Nov. 10, 2022 Ltr. from Jeffrey and Tamara Hamby to the Crawford County Quorum Court, County Judge, and County Judge Elect).

100. At the time, Chris Keith was the County Judge-Elect. He took office as the Crawford County Judge on January 1, 2023. Mot. Ex. 23 (Judge Chris Keith Deposition Transcript (“Keith Depo. Tr.”)) at 9:1-3.

101. Dr. Hamby, members of the River Valley City Elders, and others who objected to the display of LGBTQ-themed books in the library—took their complaints about the library “promoting homosexual lifestyles, gender confusion, glorifying drag queens” to the Quorum Court. Dec. 19, 2022 Quorum Ct. Mtg Mins. at CrawfordCo\_000024 - 000028.

102. Among the children’s books deemed objectionable by the Hambys were *Uncle Bobby’s Wedding*, *Bye Bye Binary*, and *The Big Book of Pride Flags*. *Id.* at CrawfordCo\_000025.

103. Judge-Elect Keith understood the discussion at the December 19 meeting to indicate these books were located in the children’s section and contained pornography. Keith Depo. Tr. at 19:19-22.

104. Keith never looked at these three books until his deposition over a year later, when he admitted that they do not contain pornography. *Id.* at 13:9-13.

105. Keith appointed a majority of the Crawford County Library Board of Directors, including Tammy Hamby. *Id.* at 30:12-20; County Defs.’ Answer to Am. Compl. at ¶ 81.

106. On January 10, 2023, the Crawford County Library Board announced a “[c]ompromise with [the] Quorum Court,” pursuant to which the library agreed to move

challenged books from the children’s section into “an Adult Section labeled S.” Mot., Ex. 29 (Jan. 10, 2023 CCLS Board Mtg. Mins.) at CrawfordCo\_000004.

107. This new section is known as the “Social Section.” Mot., Ex. 22 (Eva Doyce White Deposition Transcript (“White Depo. Tr.”)) at 109:2-15.

108. Crawford County Library agreed to the “compromise” that produced the “Social Section” in order to avoid two worse outcomes being threatened by Crawford County: outright “[r]emoval of the books” or the library’s closure. *Id.* at 109:22-111:9; Jan. 10, 2023 CCLS Board Mtg. Mins. at CrawfordCo\_000004.

109. The books that were moved from the children’s section to the “Social Section” predominantly have LGBTQ themes. White Depo. Tr. at 116:16-18; *see also* Social Section Book List.

110. Crawford County defended the relocation of LGBTQ-themed children’s books to the “Social Section” by pointing, through its attorney, to the County’s interest in “protecting children from exposure to materials that might harm their innocence” given that “sexualized material was in the children’s section of the libraries.” Mot., Ex. 31 (May 23, 2023 letter from Crawford County attorney, Gentry Wahlmeier, to attorneys Brian Meadors and Terrence Cain) (the “May 23, 2023 Wahlmeier Response”).

111. Crawford County’s lawyer also connected the formation of the “Social Section” to Act 372’s requirement that libraries “have a section that is inaccessible to minors” and a process through which quorum courts can “hear appeals on relocation of books within county library systems.” *Id.*

112. At the same time, the County’s attorney advised the CCLS Board that, to comply with Act 372, it would need to “create a section that is not accessible to those under eighteen (18)

and create a policy for challenging physical materials,” thereby treating all minors alike, regardless of age or maturity level. Mot., Ex. 32 (May 23, 2023 letter from Crawford County attorney, Gentry C. Wahlmeier, to the CCLS Board).

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/s/ John T. Adams

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 15, 2024, a copy of the foregoing was served upon all counsel of record contemporaneously with its filing in the CM/ECF system.

/s/ John T. Adams

John T. Adams