

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' MOTION FOR SUMMARY JUDGMENT

Plaintiffs Fayetteville Public Library, 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, and Freedom to Read Foundation (collectively, “Plaintiffs”), by and through their attorneys, respectfully submit this Motion for Summary Judgment (the “Motion”). In support of their Motion, Plaintiffs state as follows:

1. This case involves a constitutional challenge to Sections 1 and 5 of Arkansas Act 372 of 2023, implementation and enforcement of which is presently enjoined pursuant to the Court’s July 29, 2023 order. *See* Prelim. Inj. Op. (hereinafter “PI Op.”) (Doc. 53); Am. Compl. (Doc. 75).

2. Section 1 of Act 372 creates “a new Class A misdemeanor offense called ‘furnishing a harmful item to a minor.’” PI Op. at 13 (quoting Act 372 § 1). An individual is guilty of this new crime, which is punishable by imprisonment for up to one year, “if, knowing the character of the item involved, the person knowingly . . . [f]urnishes, presents, provides, makes available, gives, lends, shows, advertises, or distributes to a minor an item that is harmful to minors.” Act 372 § 1(b)(1).

3. Section 5 of Act 372 “concerns the ‘[e]stablishment of guidelines for selection, relocation, and retention of [library] materials.’” PI Op. at 15 (quoting Act 372 § 5(a)). Section 5 requires that public libraries establish “a written policy for addressing challenged material that is physically present in the library and available to the public.” Act 372 § 5(b). In particular, the

required procedure must allow any “person affected” to “challenge the *appropriateness* of material available in the” public library’s collection. *Id.* § 5(c)(1) (emphasis added).

4. As set forth fully in Plaintiffs’ accompanying Brief, Sections 1 and 5 restrains public libraries and booksellers in Arkansas from making available constitutionally protected books and other materials to their patrons and customers, which burdens the rights of those individuals to read and to receive information.

5. Section 1 violates the First and Fourteenth Amendments because it imposes a content-based restriction on speech that is not narrowly tailored, is overly broad, and is vaguely worded.

6. Section 5 violates the First and Fourteenth Amendments by relying on vague and undefined terms that permit arbitrary implementation; imposing a content-based restriction on protected speech that is not narrowly tailored to serve a compelling interest; failing to prove a mechanism for judicial review; and facilitating discrimination on the basis of viewpoint.

7. Plaintiffs seek an order declaring Sections 1 and 5 unconstitutional and permanently enjoining Defendants¹ from implementing or enforcing those provisions.

8. The parties have completed the agreed upon discovery and there are no material facts that are genuinely in dispute. Accordingly, summary judgment is appropriate to resolve Plaintiffs’ claims as a matter of law. *See* Fed. R. Civ. P. 56.

¹ Defendants Crawford County and Chris Keith are referred to, collectively, as the “County Defendants.” Defendants 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 Ethridge, 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 are referred to, collectively, as the “Prosecutor Defendants.”

9. Plaintiffs submit a Statement of Undisputed Facts and a Brief in Support of the Motion, which Plaintiffs hereby incorporate by reference. *See* Fed. R. Civ. P. 56; W.D. Ark. L.R. 56.1; W.D. Ark. L.R. 7.2.

10. The Plaintiffs submit the following in support of this Motion:

- a. Exhibit 1: Declaration of John T. Adams;
- b. Exhibit 2: Declaration of Deborah Caldwell-Stone, Executive Director and Secretary of the Freedom to Read Foundation;
- c. Exhibit 3: Declaration of Judy Calhoun, Regional Director of the Southeast Arkansas Regional Library;
- d. Exhibit 4: Declaration of Carol Coffey, Past-President of the Arkansas Library Association;
- e. Exhibit 5: Declaration of Nate Coulter, Executive Director of the Central Arkansas Library System (CALIS);
- f. Exhibit 6: Declaration of Christina Danos, Director of the Eureka Springs Carnegie Public Library (ESCPL);
- g. Exhibit 7: Declaration of Olivia Farrell;
- h. Exhibit 8: Declaration of David Grogan, Director of the American Booksellers for Free Expression;
- i. Exhibit 9: Declaration of Patty Hector, former Library Director of the Saline County Library;
- j. Exhibit 10: Declaration of David Johnson, Executive Director of the Fayetteville Public Library;
- k. Exhibit 11: Declaration of Daniel Jordan, co-owner of Pearl's Books;

- l. Exhibit 12: Declaration of John McGraw, Regional Director of the Faulkner-Van Buren Regional Library system;
- m. Exhibit 13: Declaration of Reverend John Paul Myrick, Regional Librarian for the East Central Arkansas Regional Library;
- n. Exhibit 14: Declaration of Mary E. Rasenberger, Chief Executive Officer of the Author's Guild, Inc.;
- o. Exhibit 15: Declaration of Matthew D. Stratton, Deputy General Counsel of the Association of American Publishers;
- p. Exhibit 16: Declaration of Jeff Trexler, Interim Director of the Board of the Comic Book Legal Defense Fund;
- q. Exhibit 17: Declaration of Adam Webb, Executive Director of Garland County Library and President of Advocates for All Arkansas Libraries;
- r. Exhibit 18: Declaration of Kandi West, co-owner of WordsWorth Books;
- s. Exhibit 19: Leta Jo Caplinger Deposition Transcript;
- t. Exhibit 20: Madeline Anne Partain Deposition Transcript;
- u. Exhibit 21: Miel Ann Delorey Partain Deposition Transcript;
- v. Exhibit 22: Eva Doyce White Deposition Transcript;
- w. Exhibit 23: Crawford County Judge Christopher Lee Keith Deposition Transcript;
- x. Exhibit 24: Donald Nathan Coulter Deposition Transcript;
- y. Exhibit 25: Prosecutor Defendants' Response to Plaintiffs' Discovery Requests;
- z. Exhibit 26: November 8, 2022 Meeting Minutes of the Crawford County Library System Board;

- aa. Exhibit 27: November 10, 2022 letter from Jeffrey and Tamara Hamby to the Crawford County Quorum Court, County Judge, and County Judge-Elect;
- bb. Exhibit 28: December 19, 2022 Meeting Minutes of the Crawford County Quorum Court;
- cc. Exhibit 29: January 10, 2023 Meeting Minutes of the Crawford County Library System Board;
- dd. Exhibit 30: List of books in the “Social Sections” in the Crawford County Library System;
- ee. Exhibit 31: May 23, 2023 letter from Gentry C. Wahlmeier to Brian Meadors and Terrence Cain;
- ff. Exhibit 32: May 23, 2023 letter from Gentry C. Wahlmeier to CCLS Board.

WHEREFORE, Plaintiffs respectfully request that the Court grant their Motion and issue an order declaring unconstitutional and permanently enjoining Defendants from implementing or enforcing Sections 1 and 5 of Act 372.

Respectfully submitted,

/s/ John T. Adams

David M. Fuqua
Ark. Bar No. 80048
John T. Adams
Ark. Bar No. 2005013
Attorneys for Central Arkansas Library System,
Nate Coulter, and the Eureka Springs Carnegie
Public Library
FUQUA CAMPBELL, P.A.
Riviera Tower
3700 Cantrell Road, Suite 205
Little Rock, AR 72202
Telephone: (501) 374-0200
E-Mail: dfuqua@fc-lawyers.com
E-Mail: jadams@fc-lawyers.com

Bettina Brownstein
Ark. Bar No. 85019
BETTINA E. BROWNSTEIN LAW FIRM
Attorney for Leta Caplinger, Olivia Farrell,
Miel Partain, and Madeline Partain
904 West 2nd Street, Suite 2
Little Rock, AR 72201
Telephone: (501) 920-1764
E-Mail: bettinabrownstein@gmail.com
On Behalf of the Arkansas Civil Liberties Union
Foundation, Inc.

Ben Seel*
Will Bardwell*
Aman George*
Orlando Economos*
Attorneys for the Arkansas Library Association,
Advocates for All Arkansas Libraries, and Adam
Webb, in his individual capacity
DEMOCRACY FORWARD FOUNDATION
P.O. Box 34554
Washington, DC 20043
Telephone: (202) 448-9090
E-Mail: bseel@democracyforward.org
E-Mail: wbardwell@democracyforward.org
E-Mail: ageorge@democracyforward.org
E-Mail: oeconomos@democracyforward.org

Vincent O. Chadick
Ark. Bar No. 94075
Brandon B. Cate
Ark. Bar No. 2001203
Glenn V. Larkin
Ark. Bar No. 2020149
Attorneys for Fayetteville Public Library
QUATTLEBAUM, GROOMS & TULL
PLLC
4100 Corporate Center Drive, Suite 310
Springdale, Arkansas 72762
Telephone: (479) 444-5200
E-Mail: bcate@qgtlaw.com
E-Mail: vchadick@qgtlaw.com
E-Mail: glarkin@qgtlaw.com

Michael A. Bamberger*
Kristen Rodriguez*
Rebecca Hughes Parker*
Attorneys for Pearl's Books, LLC,
Wordsworth Community Bookstore LLC,
American Booksellers Association,
Association of American Publishers, Inc.,
Authors Guild, Inc. Comic Book Legal
Defense Fund, and Freedom to Read
Foundation
DENTONS US LLP
1221 Avenue of the Americas
New York, NY 10020
Telephone: (212) 768-6700
E-Mail: michael.bamberger@dentons.com
E-Mail: kristen.rodriguez@dentons.com
E-Mail: rebeccahughes.parker@dentons.com

* *Admitted pro hac vice*

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