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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF RIVERSIDE**

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18 MAE M., et al.,
19 Plaintiffs,
20 vs.
21 JOSEPH KOMROSKY, et al.,
22 Defendants.

Case No. CVSW2306224
Assigned to Hon. Irma P. Asberry
Department 5

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND *AMICI CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Hearing Date: January 24, 2024
Time: 8:30 a.m.
Dept.: 5

Trial Date: TBD
Action Filed: August 2, 2023

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APPLICATION TO FILE BRIEF OF AMICI

Proposed amici curiae listed below (“Amici”), will and hereby do apply to and move this Court, pursuant to the California Rules of Court and the Court’s inherent authority, for leave to file the attached Brief of Amici Curiae in Support of Plaintiffs’ Motion for Preliminary Injunction, to be heard on January 24, 2023, at 8:30 a.m., in the Department 5 of this Court. *See In re Marriage Cases*, 43 Cal.4th 757, 791 fn. 10 (2008) (“the superior court, in exercising its traditional broad discretion over the conduct of pending litigation, retain[s] the authority to determine the manner and extent of . . . participation as amici curiae that would be of most assistance to the court”); *cf.* Cal. R. Ct. 8.200(c), 8.520(f) (rules governing amicus curiae briefs in the Court of Appeal and Supreme Court, respectively).

THE PROPOSED BRIEF WOULD ASSIST THE COURT IN DECIDING THIS MATTER

Amici respectfully submit this application for leave to file a brief in the present action in support of Plaintiffs’ Motion for Preliminary Injunction. The proposed amici curiae brief would assist the Court in deciding this matter by expanding on the harms at stake and the likelihood that Plaintiffs will prevail on the merits. The proposed amici curiae brief will address the unconstitutional nature and negative impact of Temecula Valley Unified School District’s (TVUSD) challenged Policy 5020.01 and Resolution 21 and related curriculum restrictions, and the irreparable harm that will occur absent immediate injunctive relief. The proposed brief is attached to this application.

INTERESTS OF AMICI

This brief is filed on behalf of Penguin Random House LLC, The Authors Guild, The First Amendment Coalition, The Freedom to Read Foundation, PEN American Center, Inc. and Freedom to Learn Advocates.

Penguin Random House is the largest trade book publisher in the world (“PRH”). PRH publishes adult and children’s fiction and nonfiction in print and digital trade book form throughout the U.S. The Penguin Random House global family of companies employ more than 10,000 people across almost 250 editorially and creatively independent imprints and publishing houses that collectively publish more than 15,000 new titles annually. Its publishing lists include more than 60

1 Nobel Prize laureates and hundreds of the world’s most widely read authors of fiction, historical
2 fiction, narrative nonfiction and nonfiction.

3 The Authors Guild was founded in 1912, and is a national non-profit association of more
4 than 14,000 professional, published writers of all genres. The Guild counts historians, biographers,
5 academicians, journalists, and other writers of non-fiction and fiction as members; many are
6 frequent contributors to the most influential and well-respected publications in every field. The
7 Guild works to promote the rights and professional interest of authors in various areas, including
8 copyright and artificial intelligence, as well the authors’ right to fair contracts and the ability to earn
9 a livable wage. One of the Authors Guild’s primary areas of advocacy is to protect the free
10 expression rights of authors.

11 The First Amendment Coalition (“FAC”) is a nonprofit advocacy organization based in San
12 Rafael, California, dedicated to freedom of speech and government transparency and accountability.
13 Founded in 1988, FAC engages in legal consultations on First Amendment issues, educational
14 programs, and public advocacy, including extensive litigation and appellate work.

15 The Freedom to Read Foundation (“FTRF”) is an organization established by the American
16 Library Association to foster libraries as institutions that fulfill the promise of the First Amendment;
17 support the rights of libraries to include in their collections and make available to the public any
18 work they may legally acquire; establish legal precedent for the freedom to read of all citizens;
19 protect the public against efforts to suppress or censor speech; and support the right of libraries to
20 collect and individuals to access information that reflects the diverse voices of a community so that
21 every individual can see themselves reflected in the library’s materials and resources.

22 The PEN American Center, Inc. (PEN America) is a nonprofit organization that represents
23 and advocates for the interests of writers, both in the United States and abroad. PEN America is
24 affiliated with more than 100 centers worldwide that make up the PEN International network. Its
25 membership includes more than 5,000 novelists, poets, essayists, journalists, and other
26 professionals. PEN America actively monitors the removal of books from school libraries and has a
27 particular interest in opposing restrictions on literary expression.

28

1 Freedom to Learn Advocates (FTLA) was founded to promote universal access to books and
2 educational resources for all communities regardless of race, economic status, religion, sexual
3 orientation, gender identity, or political affiliation. Our mission is to resist initiatives that aim to
4 limit access to books and information, often in the form of book banning policies, which in recent
5 years have been on a troubling rise across our country. FTLA works to support organizations and
6 public policy that share our ideals, strive for equitable education, and believe that individuals and
7 families should be trusted to decide for themselves what to read and learn.

8 Young readers cannot expand their intellectual horizons if the only speech allowed in books
9 is that which aligns with the views of government authorities. In a democracy, the government can
10 contest ideas, but it cannot seek to censor them. State censorship—no matter the political cause
11 behind it—quells free thinking.

12 Temecula Valley Unified School District’s (“School District”) suppression of books, which
13 is motivated by government officials’ disagreement with the views expressed in the books, violates
14 the First Amendment. Amici has an interest in seeing the preliminary injunction entered by this
15 Court.

16 **CONCLUSION**

17 For these reasons, the Court should grant Amici’s application to file the attached brief of
18 amici curiae in support of Plaintiffs’ motion for preliminary injunction.

20 DATED: December 22, 2023

PENGUIN RANDOM HOUSE LLC

21 By: /s/ Carolyn Foley

22 CAROLYN FOLEY
23 Attorneys for *Amicus Curiae*
Penguin Random House LLC

25 DATED: December 22, 2023

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Attorneys for Amici Curiae
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Guild, First Amendment Coalition, The
Freedom to Read Foundation, PEN American
Center, Inc. and Freedom to Learn Advocates

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4 *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70–71 (1963)..... 16

5 *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 913–14 (1982).. 5, 6

6 *Cohen v. California*, 403 U.S. 15, 25-26 (1971)..... 17

7 *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603 (1967) 5

8 *Miller v. California*, 413 U.S. 15, 24 (1973)..... 16, 17

9 *Penguin Random House v. Robbins*, Case No. 4:23cv0478 (S.D. Iowa 2023)..... 8, 9

10 *Shelton v. Tucker*, 364 U.S. 479, 487 (1960) 5

11 *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512 (1969)..... 5, 6

12 *U.S. v. One Book Called “Ulysses,”* 5 F.Supp. 182, 183 (S.D.N.Y. 1933)..... 17

13 *U.S. v. One Book Entitled Ulysses by James Joyce*, 72 F.2d 705 (2d Cir. 1934)..... 17

14 *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943)..... 6

15 **STATUTES**

16 Ark. Act 372 § 1 16

17 Fla. HB 1069 (2023)..... 16

18 Fla. HB 1557 (2022)..... 15

19 Fla. HB 7 (2022)..... 16

20 Fla. HB 9-B (2023)..... 16

21 Fla. SB 266 (2023) 16

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23 Iowa Senate File 496 16

24 Tex. HB 3979 (2021) 16

25 Tex. HB 900 (2023) 16

26 Tex. SB 17 (2023) 16

27 **OTHER AUTHORITIES**

28 Banned and Challenged Books, ALA OFFICE FOR INTELLECTUAL FREEDOM (last visited May..... 15

1	<i>Banned in the USA: The Mounting Pressure to Censor</i> , PEN America, https://pen.org/report/book-	
2	bans-pressure-to-censor/	15
3	<i>Bannings and Burnings in History</i> , Freedom to Read (May 25, 2023),	
4	https://www.freedomtoread.ca/resources/bannings-and-burnings-in-history/	14
5	Chron. of Higher Educ. DEI Legis. Tracker (July 14, 2023),	
6	https://www.chronicle.com/article/here-are-the-states-where-lawmakers-are-seeking-to-ban-	
7	colleges-dei-efforts	16
8	Elizabeth A. McNeil, et. al., “ <i>Going After Something Else</i> ”: <i>Sapphire on the Evolution from PUSH</i>	
9	<i>to Precious and The Kid</i> , 37, No. 2 Johns Hopkins Univ. Pres 357 (2014),	
10	https://doi.org/10.1353/cal.2014.0073	12
11	Livia Gershon, <i>Banning The Grapes of Wrath in 1939 California</i> , JSTOR DAILY (Mar. 27, 2022)	12
12	Marc Jonathan Blitz, <i>Constitutional Safeguards for Silent Experiments in Living: Libraries, the</i>	
13	<i>Right to Read, and A First Amendment Theory for an Unaccompanied Right to Receive</i>	
14	<i>Information</i> , 74 UMKC L. Rev. 799, 861 (2006).....	6
15	PEN America, <i>Banned in the USA: State Laws Supercharge Book Suppression in Schools</i> (Apr. 20,	
16	2023), https://pen.org/report/banned-in-the-usa-state-lawssupercharge-book-suppression-in-	
17	schools/ (summarizing legislation).....	16
18	TREATISES	
19	John Stuart Mill, <i>On Liberty and Other Essays</i> , at 65 (John Gray ed. 1991)	5

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1 INTRODUCTION

2 The School District’s officials have attacked or sought the removal of books in several
3 different ways.

4 First, School District Board (“School Board”) trustees passed Resolution No. 2022-21/21
5 (“Resolution 21”) in December, 2022, which contains sweeping language that would censor
6 teaching about the history of racism, slavery, segregation, and the civil rights movement.¹

7 Second, School Board members and trustees have personally characterized some books as
8 objectionable and have expressed intent to censor books. For example, during a July 18, 2023
9 School Board meeting, School Board president, Joseph Komrosky, listed 16 books that parents
10 should investigate and request to be removed from the School District’s libraries.² In his words, “I
11 can lead [parents] to the water, but I cannot make [them] drink it.”³ School Board trustee Danny
12 Gonzalez asked whether “we can agree on some content that we just absolutely would not allow and
13 proposed actions like “flag[ging] books that may be potentially having material that . . . would be
14 objectionable” and “man[ning]” a committee to determine which books to censor.⁴

15 Third, School Board members and trustees have campaigned in support of book removal
16 based on personal animus against groups that have been historically marginalized. During her
17 campaign, School Board trustee Jennifer Wiersma lauded a parent who removed a book “with some
18 gay elements” from a School District school.⁵ School Board President Komrosky’s campaign

19 _____
20 ¹ Board of Trustees of the Temecula Valley Unified School District, Resolution No. 2022-23/21
(Dec. 13, 2022).

21 ² [Temecula Valley Unified School District, July 18, 2023, 6:00 PM – Open Session – TVUSD
22 Governing Board Meeting, YouTube \(July 18, 2023\), https://www.youtube.com/watch?v=NN-
Z_IcswqM&t=11756s.](https://www.youtube.com/watch?v=NN-Z_IcswqM&t=11756s)

23 ³ *Id* (naming *Beyond Magenta* by Susan Kuklin, *The Hate You Give* by Angie Thomas, *All*
24 *American Boys* by Jason Reynolds, *Crank* by Ellen Hopkins, *Push* by Sapphire, *The Lovely Bones*
25 by Alice Sebold, *Looking for Alaska* by John Green, *Me and Earl and The Dying Girl* by Jesse
26 Andrews, *Speak* by Laurie Halse Anderson, *The Absolutely True Diary of a Part Time Indian* by
Sherman Alexie, *Art of Racing in the Rain* by Garth Stein, *The Bluest Eye* by Toni Morrison, *The*
Kite Runner by Khaled Hosseini, *Thirteen Reasons Why* by Jay Asher, *Two Boys Kissing* by David
Levithan, and *Water for Elephants* by Sara Gruen as books that should be censored).

27 ⁴ *Id.*

28 ⁵ Wiersma (@jen4tvusd), Instagram (Oct. 29, 2022),
[https://www.instagram.com/p/CkUZc61JGCD/?hl=en.](https://www.instagram.com/p/CkUZc61JGCD/?hl=en)

1 website embedded a video that disparages books with LGBTQ+ themes.”⁶ In the video, he further
2 claims that educational materials that include LGBTQ+ themes aim to “destroy the nuclear family
3 as the indispensable support of a healthy society” and “teaches that all arrangements and groupings
4 of consenting adults are equally valid.”⁷

5 Fourth, the School District changed longstanding practices to align with the subjective
6 viewpoints of School Board officials, usurping the role of educators in meeting the academic and
7 intellectual needs of students, stripping parents of agency in deciding what materials their children
8 can engage with, and robbing students of their autonomy and freedom of expression. The School
9 Board’s desire to impose their ideological viewpoints on Temecula’s students led to a months-long
10 delay in adopting grades 1–5 history and social science curricula and instructional materials.

11 Books play a central role in educating young Americans. The School District’s actions to
12 censor a spectrum of viewpoints from the marketplace of ideas based on subjective opinions will
13 disparately remove historically marginalized voices from being heard. Censorship efforts like this
14 have historically chilled speech and negatively impacted entire generations of students by stripping
15 them of their autonomy to read important works. We argue that it is imperative that the Court grant
16 the plaintiffs’ motion for preliminary injunction.

17 ARGUMENT

18 I. Books play a central role in educating young Americans

19 Penguin Random House creates books for all readers and recognizes that not all books are
20 for all readers at every time in their life. Trained educators and librarians are charged by school
21 districts to determine what materials will advance the educational and intellectual development of
22 young Americans, in collaboration with students and their caregivers.

23 Creating libraries with books filled with a broad array of information and ideas about life,
24 culture, politics, religion, and the human experience provides rich resources for students. It is vital
25 to a democratic nation founded on principles of pluralism and democratic self-governance that

26 _____
27 ⁶ Protect Our Kids, *What is Comprehensive Sexuality Education*, YouTube (July 27, 2020),
<https://www.youtube.com/watch?v=5eU0gydb8Gc&t=261s>.

28 ⁷ *Id.*

1 educators remain free to use their expertise to curate the bookshelves of their libraries from among
2 the full spectrum of books and free from micromanagement by government actors not trained in
3 education or the library sciences. When government authorities place some books or categories of
4 books off-limits, they transform schools from laboratories of democracy to centers for
5 indoctrination.

6 “The vigilant protection of constitutional freedoms is nowhere more vital than in the
7 community of American schools.” *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S.
8 589, 603 (1967) (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)). “The classroom is
9 peculiarly the ‘marketplace of ideas.’” *Id.* “Public schools fulfill the vital role of teaching students
10 the basic skills necessary to function in our society, and of “inculcating fundamental values
11 necessary to the maintenance of a democratic political system.” *Bd. of Educ., Island Trees Union*
12 *Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 913–14 (1982) (quoting *Ambach v. Norwick*, 441 U.S.
13 68, 77 (1979)).

14 As the Supreme Court observed, “[t]he Nation's future depends upon leaders trained through
15 wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues,
16 (rather) than through any kind of authoritative selection.’” *Tinker v. Des Moines Indep. Cmty. Sch.*
17 *Dist.*, 393 U.S. 503, 512 (1969).

18 A government that shuts down alternate voices is one that has no confidence that its own
19 message can compete in the marketplace of ideas. Declaring some literature off bounds enforces
20 government orthodoxy of thought, and leaves students unprepared to respond to challenges to their
21 understanding of the world, devoid of critical thinking skills, and generally ill prepared for life
22 beyond school. As John Stuart Mill recognized, the individual must be free to explore whether the
23 majoritarian consensus is “properly applicable to his own circumstances and character.” John Stuart
24 Mill, *On Liberty and Other Essays*, at 65 (John Gray ed. 1991). “Our history says that it is this sort
25 of hazardous freedom—this kind of openness—that is the basis of our national strength and of the
26 independence and vigor of Americans who grow up and live in this ... often disputatious society.”
27 *Tinker* at 508-509.

28 Schools are not Constitutional no-fly zones. Local school boards may not remove books

1 from school libraries simply because they dislike the ideas contained in those books and seek by
2 their removal to “prescribe what shall be orthodox in politics, nationalism, religion, or other matters
3 of opinion.” *Pico*, 457 U.S. at 854 (quoting *West Virginia Board of Education v. Barnette*, 319 U.S.
4 624, 642 (1943)). “First Amendment rights, applied in light of the special characteristics of the
5 school environment, are available to teachers and students. It can hardly be argued that either
6 students or teachers shed their constitutional rights to freedom of speech or expression at the
7 schoolhouse gate.” *Tinker*, 393 U.S. at 506. “Local school boards have broad discretion in the
8 management of school affairs, but such discretion must be exercised in a manner that comports with
9 the transcendent imperatives of the First Amendment.” *Bd. of Educ., Island Trees Union Free Sch.*
10 *Dist. No. 26 v. Pico*, 457 U.S. 853 (1982). “Such rights may be directly and sharply implicated by
11 the removal of books from the shelves of a school library,” which particularly reflect “regime of
12 voluntary inquiry.” *Id.* at 853-869.

13 Schools are havens for self-exploration, self-actualization, and the development of the
14 beliefs that will define one’s own conscience. The right to receive ideas is a necessary predicate to
15 the *recipient’s* meaningful exercise of his own rights of speech, press, and political freedom. *Pico*,
16 475 U.S. at 853. Books allow individuals to engage in a “self-directed exploration,” sampling ideas
17 and exposing themselves to a wide array of lived experiences. See Marc Jonathan Blitz,
18 *Constitutional Safeguards for Silent Experiments in Living: Libraries, the Right to Read, and A*
19 *First Amendment Theory for an Unaccompanied Right to Receive Information*, 74 UMKC L. Rev.
20 799, 861 (2006). A school library, no less than any other public library, is “a place dedicated to
21 quiet, to knowledge, and to beauty.” *Brown v. Louisiana*, 383 U.S. 131, 142 (1966) (opinion of
22 Fortas, J.). “Students must always remain free to inquire, to study and to evaluate, to gain new
23 maturity and understanding... The school library is the principal locus of such freedom.” *Pico*, 457
24 U.S. at 868–69. “A student can literally explore the unknown, and discover areas of interest and
25 thought not covered by the prescribed curriculum.... Th[e] student learns that a library is a place to
26 test or expand upon ideas presented to him, in or out of the classroom.” *Id.* at 869.

27 It cannot be ignored that many banned books nationwide are coming-of-age stories,
28 memoirs, and other personal accounts of individual experience and self-discovery. Most are told

1 from marginalized perspectives; in voices not commonly heard. For many young people who feel
2 like outsiders or underdogs in one way or another, books can provide a much-needed dose of
3 validation, solace in the knowledge that they are not alone, that others share their experiences and
4 feelings of alienation.

5 In attempting to remove these books from circulation, states and districts limit the range and
6 diversity of experiences accessible to the readers who, arguably, need them the most. Accounts of
7 individuals coming to terms with family trauma, sexual and gender self-discovery, their status as
8 undocumented immigrants, or their own changing adolescent bodies are no longer on the shelves.
9 Children who have experienced these matters themselves must content themselves with stories that
10 fall into the County's imposed normative experiences.

11 Amici do not ask anyone to read – or buy – books that they do not want to. Parents should
12 have a say in the books their children read. However, this freedom does not take away the freedom
13 of other parents, students, and entire communities to choose what materials are suited for them.
14 Amici insist that the government leave those decisions to the families and avoid blocking any book
15 or category of books as transgressing state orthodoxy.

16 **II. The Targeted Works Convey Important Ideas and Information.**

17 A review of the challenged titles list in the School District reveals many books of profound
18 value to students. They include memoirs, coming-of-age stories, and other highly personal accounts
19 of lived experience from varied perspectives, also help members of the community to understand
20 themselves.

21 The list includes books that have been on the shelves for years, if not decades, and are
22 consistently circulated in schools across the country, among them *Speak* by Laurie Halse Anderson,
23 *Looking for Alaska* by John Green, *The Kite Runner* by Khaled Hosseini, *Two Boys Kissing* by
24 David Levithan, *Push* by Sapphire, and *The Blues Eyes* by Nobel Prize Winner Toni Morrison.

25 ***Speak by Laurie Halse Anderson***

26 The main character in *Speak* Melinda Sordino, a freshman in high school who was sexually
27
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1 assaulted by a senior at a party.⁸ She is ostracized because she immediately calls the police to the
2 scene of the party, but her shock renders her unable to speak, resulting in the arrest of several of her
3 peers for underage drinking.⁹ The story follows her fall into depression and journey of healing, as
4 she finds the courage to reclaim the narrative and find her voice to “speak” up for herself.¹⁰ The
5 novel is a fictionalized telling of Halse Anderson’s personal experience of being sexually assaulted
6 at the age of thirteen.¹¹

7 In writing *Speak*, Halse Anderson broke 25 years of silence. Finding her voice and
8 expressing her actual experience allowed other children, families, and sexual assault survivors to
9 find theirs. *Penguin Random House v. Robbins*, Case No. 4:23cv0478 (S.D. Iowa 2023), Decl. of Pl.
10 Laurie Halse Anderson 4 (Dec. 8, 2023). She writes not only to help survivors find solace and
11 understanding as they unpack their trauma, but to implore parents to get over their squeamishness
12 about discussing human sexuality to create a safe and nurturing environment for their children. *Id.*
13 She believes that only when victims feel safer to speak up after a sexual assault, and the judicial
14 system is prepared to consistently prosecute and punish rapists, will the need for books like *Speak*
15 disappear. *Id.*

16 *Speak*’s literary value has been recognized across the country.¹² *Speak* was adapted to a
17 motion picture in 2004 and illustrated into *Speak: The Graphic Novel* in 2019.¹³ Halse Anderson
18
19

20 ⁸ See *Speak*, Macmillan Publishers, <https://us.macmillan.com/books/9780312674397/speak>.

21 ⁹ *Id.*

22 ¹⁰ *Id.*

23 ¹¹ See Laurie Halse Anderson, *Speak is Not a Memoir, She Said Again*, Mad Woman in the Forest
24 (Dec. 7, 2006), <https://madwomanintheforest.com/2006/12/07/speak-is-not-a-memoir-she-said-again/>

25 ¹² *Speak* was a National Book Award Finalist. *Speak* won a “Blue Ribbon” by The Bulletin of the
26 Center for Children’s Books, the Golden Kite Award for Fiction, a Michael L. Printz Honor by the
American Library Association (ALA), the Carolyn W. Field Award, and the Kentucky Blue Grass
Award, among others.

27 ¹³ See *Speak: The Graphic Novel*, Macmillan Publishers,
28 <https://us.macmillan.com/books/9780374300289/speakthegraphicnovel>. *Speak: The Graphic Novel* won the Amelia Bloomer Book List Award and the See-It Award Winner, among others.

1 has been recognized several times for her illustrious career and distinguished body of work.¹⁴

2 ***Looking for Alaska by John Green***

3 *Looking for Alaska* follows Miles Halter, a teenage boy obsessed with the last words of
4 famous people who has decided to go to boarding school for his junior year of high school.¹⁵ The
5 book chronicles his new experiences and blossoming friendships, counting down to the premature
6 death of his friend Alaska Young—ultimately exploring how Miles and his friends process their
7 grief for Alaska and celebrate her life. *Penguin Random House v. Robbins*, Case No. 4:23cv0478
8 (S.D. Iowa 2023), Decl. of Pl. John Michael Green 3 (Dec. 11, 2023). It is a partially fictionalized
9 account of Green’s own time at boarding school. *Id.*

10 *Looking for Alaska* expresses Green’s viewpoints on loss, grief, and intimacy. To the extent
11 there is sexuality depicted in *Looking for Alaska*, it is there because he wanted to draw a contrast
12 between physical intimacy and emotional intimacy. *Id.* He believes it is important for young people
13 to learn not to conflate the two. *Id.* In all of his experiences, Green has found teenagers are critically
14 engaged and thoughtful readers – they don’t read *Looking for Alaska* to be titillated. Many
15 adolescents are experiencing death and loss for the first time in their lives. *Id.* If *Looking for Alaska*
16 is not available to them, they won’t have access to a book that can help them through a difficult
17 time and process their grief. *Id.*

18 *Looking for Alaska* has won many awards and has been widely recognized as one of the best
19 young adult novels of all time.¹⁶

20 ***The Kite Runner by Khaled Hosseini***

21 *The Kite Runner* tells the story of Amir, a Pashtun boy and son of a wealthy businessman,
22 and Hassan, a Hazara boy and son of Amir’s dad’s servant, who reside in Wazir Akbar Khan, an

23 ¹⁴ Halse Anderson has been awarded the Margaret A. Edwards Award by the ALA. She was
24 honored as the 2023 Astrid Lindgren Memorial Award Laureate, the most prestigious children's
literature award in the world.

25 ¹⁵ See *Looking for Alaska*, Penguin Random House,
26 <https://www.penguinrandomhouse.com/books/292717/looking-for-alaska-by-john-green/>.

27 ¹⁶ *Looking for Alaska* won the Michael L. Printz Award and was a *Los Angeles Times* Book Prize
28 Finalist. *Looking for Alaska* was named a “Great American Read” by PBS Learning Media, one of
NPR’s “100 Best-Ever Teen Novels,” and one of TIME magazine’s “Best YA Books of All
Time.”

1 affluent part of Kabul, Afghanistan. It is set in the backdrop of turbulent events, from the fall of
2 Afghanistan's monarchy through the Soviet invasion, the exodus of refugees to Pakistan and the
3 United States, and the rise of the Taliban regime. Through the boys' relationship, which rides the
4 rollercoaster of the social norms and political events around them, it explores themes of friendship,
5 prejudice, betrayal, guilt, redemption, and father-son bonds. "The purpose of a novel is precisely to
6 talk about things that people don't want to talk about, to create a debate rather than to sweep
7 unpleasant truths under a rug," Hosseini has said.¹⁷ An Afghan immigrant himself, he has stated that
8 "he is fascinated with the time when a young person has one foot in childhood and another in
9 adulthood: 'that age of 12 or so, when the foundations of the world as the child has thus far known
10 it are beginning to crack, and the world is revealing itself to be more nuanced, more complicated,
11 more messy, more troubling [than they imagined].'"¹⁸

12 *The Kite Runner* was recognized and critically acclaimed and was adapted into an award-
13 winning motion picture.¹⁹ *The Kite Runner Graphic Novel* was named in the "Great Graphic Novels
14 for Teens" by the Young Adult Library Services Association. Hosseini has been lauded for his
15 literary and humanitarian work in aiding and raising awareness for Afghan refugees.²⁰

16 ***Two Boys Kissing by David Levithan***

17 Inspired by true events, *Two Boys Kissing* follows three sets of people who identify as
18 LGBTQ+, narrated by a Greek Chorus of the generation of gay men lost to AIDS, who participate
19
20

21 ¹⁷ Pamela Constable, *Quiet Goodwill In a Homeland The Writer Knows Too Well*, WASHINGTON POST
22 (Sept. 20, 2009), [https://www.washingtonpost.com/wp-](https://www.washingtonpost.com/wp-dyn/content/article/2009/09/19/AR2009091901528.html)

23 ¹⁸ Jill Martin Wrenn, *Khaled Hosseini on parenthood and political asylum*, CNN (June 24, 2013),
<https://www.cnn.com/2013/06/24/living/hosseini-mountains-echoed-refugee>

24 ¹⁹ *The Kite Runner* received the South African Boeke Prize, the ALA's Alex Award, and the
25 Borders Original Voices Award. *The Kite Runner* was named the *San Francisco Chronicle's* "Best
26 Book of the Year", *Entertainment Weekly's* "Best Book" of 2003, and was voted the Reading
Group Book of the Year for 2006 and 2007. *The Kite Runner* motion picture was nominated for an
Academy Award, a Golden Globe, and a BAFTA.

27 ²⁰ Hosseini was awarded the Great Immigrant Award from the Carnegie Corporation of New York
28 and the John Steinbeck Award from San Jose University for his literary achievement and
humanitarian work.

1 in a kissing marathon.²¹ It follows Henry and Craig, two 17-year-old boys who set out to break a
2 Guinness World Record for kissing and used to be a couple. It also follows Peter and Neil, who are
3 a couple, and Avery and Ryan, who have just met.²² As Henry and Craig grow increasingly
4 dehydrated and sleep-deprived while locking lips, they become a focal point in the lives of other
5 boys, their friends, and families dealing with universal questions of love, identity, and belonging.²³
6 *Two Boys Kissing* connects the history of the AIDS epidemic with the present day as a memorial to
7 a lost generation and a celebration of equality.²⁴

8 Levithan has stated that he wants to provide positive role models and mentors for this
9 generation's members of the LGBTQ+ community, stating "one of the most piercing realizations
10 that came to me while writing the book was the realization that my gay generation was robbed of so
11 many role models, so many mentors [due to the AIDS epidemic]... I have to believe that they'd
12 want my generation to take up the slack. So that's what I'm trying to do. And the resulting
13 message is very simple: be who you are."²⁵

14 *Two Boys Kissing* has been critically acclaimed and won many awards.²⁶ Levithan won the
15 Margaret A. Edwards Award for his distinguished career as a writer.

16 *Push by Sapphire*

17 *Push* follows the life of Claireece Previous Jones, an obese, illiterate 16-year-old girl who
18
19

20 ²¹ See *Two Boys Kissing*, Penguin Random House,
<https://www.penguinrandomhouse.com/books/217499/two-boys-kissing-by-david-levithan/>.

21 ²² *Id.*

22 ²³ *Id.*

23 ²⁴ *Two Boys Kissing by David Levithan – Review*, The Little Contemporary Corner (Oct. 30, 2017),
<https://thelittlecontemporarycorner.com/2017/10/30/two-boys-kissing-by-david-levithan-review/>.

24 ²⁵ *Interview with David Levithan about Two Boys Kissing, longlisted for the National Book Award*,
NEW SCHOOL (Oct. 14, 2013), <https://writing.newschool.org/qa-david-levithan-author-two-boys-kissing/>

26 ²⁶ *Two Boys Kissing* won the Lambda Literary Award and was longlisted for the National Book
Award for Young People's Literature. It was named a "Stonewall Honor Book," one of ALA's
27 "Best Books for Young Adults," the "Children's Book of the Year" by the Children's Book
Committee at Bank Street college, and a "Young Adult Book of the Year" by the New Atlantic
28 Independent Booksellers Association, among other honors.

1 goes by “Precious” and lives in Harlem with her abusive mother Mary.²⁷ She is pregnant with her
2 second child – her first child, who has down syndrome and lives with her grandmother, and her
3 second pregnancy are both a product of her sexually abusive father.²⁸ Precious is transformed by a
4 teacher who gives her access to great literature, such as Alice Walker, Audre Lorde, and Langston
5 Hughes.²⁹ She begins to find her own voice and to escape her dire circumstances, moving to a
6 halfway home and joining an HIV-positive support group.³⁰ As the book progresses and Previous
7 learns to read and write, the dialect of the novel remains the same, but her narrative style changes to
8 show her progress.³¹

9 Sapphire has stated that a major focus of her art has been her determination to reconnect to
10 the mainstream of human life a segment of humanity that has been cast off and made invisible.³² In
11 her words, “I have brought into the public gaze women who have been marginalized by sexual
12 abuse, poverty, and their blackness. Through art I have sought to center them in the world.”³³

13 *Push* has won many awards and is critically acclaimed.³⁴ *Push* was adapted into the award-
14 winning motion picture *Precious*.³⁵

15 *The Bluest Eye by Toni Morrison*

16 *The Bluest Eye* tells the story of Pecola, a young Black girl who grew up following the Great

17 ²⁷ *Push (Revised)*, Penguin Random House,
18 <https://www.penguinrandomhouse.com/books/677181/push-revised-by-sapphire/>.

19 ²⁸ *Id.*

20 ²⁹ *Id.*

21 ³⁰ *Id.*

22 ³¹ *Id.*

23 ³² Elizabeth A. McNeil, et. al., “Going After Something Else”: *Sapphire on the Evolution from*
PUSH to Precious and The Kid, 37, No. 2 Johns Hopkins Univ. Pres 357 (2014),
<https://doi.org/10.1353/cal.2014.0073>.

24 ³³ *Id.*

25 ³⁴ *Push* was nominated for an NAACP Image Award for Outstanding Literary Work of Fiction.
Push won the Book-of-the-Month Club’s “Stephen Crane Award for First Fiction”, the ALA’s
26 Black Caucus’ “First Novelist Award”, and Great Britain’s “Mind Book of the Year Award”. *Push*
was also named by the *Village Voice* and *Time Out New York* as one of the “Top Ten Books of
27 1996”.

28 ³⁵ *Precious* won Academy Awards, BAFTAs, Golden Globes, NAACP Image Awards, Satellite
Awards, and SAG Awards, and garnered numerous prestigious nominations.

1 Depression.³⁶ It chronicles her developing an inferiority complex due to being regarded as “ugly”
2 due to her dark skin and mannerisms, fueling her desire for the “blue eyes” she equates with
3 “whiteness.”³⁷ Narrated partly in third-person and partly from the point of view of Claudia MacTeer,
4 the daughter of Pecola’s temporary foster parents, the novel explores themes of Black girlhood,
5 “Dick and Jane” textbooks, internalized racism, religion, conformity with media in a hegemonic
6 society, violence, and shame.³⁸

7 Morrison has stated that she wrote *The Bluest Eye* because she wanted to remind readers
8 “how hurtful racism is” and to highlight the internalized lack of self-esteem of people who are
9 “apologetic about the fact that their skin [is] so dark.”³⁹ Morrison “wanted to speak on behalf of
10 those who didn't catch that [they were beautiful] right away. [She] was deeply concerned about the
11 feelings of ugliness.”⁴⁰ Pecola, the main character, wishes for blue eyes as a way to escape the
12 oppression that results from her having dark skin – through Pecola's characterization, Morrison
13 sought to demonstrate the negative impact racism can have on one's self-confidence and worth.⁴¹
14 Morrison commented on her motivations to write the novel, saying, “I felt compelled to write this
15 mostly because in the 1960s, black male authors published powerful, aggressive, revolutionary
16 fiction or nonfiction, and they had positive racially uplifting rhetoric with them that were
17 stimulating and I thought they would skip over something and thought no one would remember that
18 it wasn't always beautiful.”⁴²

21 ³⁶ *The Bluest Eye*, Penguin Random House,
22 <https://www.penguinrandomhouse.com/books/117662/the-bluest-eye-by-toni-morrison/>.

23 ³⁷ *Id.*

24 ³⁸ *Id.*

25 ³⁹ National Visionary Leadership Project, *Toni Morrison Talks About Her Motivation For Writing*,
26 YouTube (Dec. 4, 2008),
27 https://www.youtube.com/watch?v=_8Zgu2hrs2k&list=PLCwE4GdJdVRK12Fft8rw0wXQXxMqUJBsH

28 ⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

1 Morrison is one of the most celebrated and recognized writers in literary history.⁴³

2 **III. Book Bans Have a Long and Destructive History with a Chilling Effect on Speech**

3 Any decision by a government authority to limit access to books should be viewed through
4 the lens of the history of book bans. Temecula Valley Unified School District’s book banning may
5 be part of a recent trend, but the roots of book bans go back decades.

6 Over the course of history, oppressive regimes have frequently relied on book bans to quell
7 dissent and prevent their citizens from accessing “dangerous” ideas. During World War II, the
8 Nazis destroyed or banned thousands of books, including works by Albert Einstein, Ernest
9 Hemingway, and Upton Sinclair, in an effort to silence dissenters and political opponents.⁴⁴ In East
10 Germany, the communist government suppressed various comic books due to the main characters
11 being perceived as “anti-red rebel[s].”⁴⁵ In the People’s Republic of China, the banning of books
12 has recently reached levels not seen since the days of the Cultural Revolution, as the works
13 perceived to have a pro-democracy message are deemed “deviant.”⁴⁶

14 The United States has had its own moments of book banning fervor. During the Civil War,
15 the Confederacy banned Harriet Beecher Stowe’s *Uncle Tom’s Cabin*.⁴⁷ In 1885, a public school in
16 Concord, Massachusetts banned the *Adventures of Huckleberry Finn*.⁴⁸ The library deemed the
17 book “suited to the slums.”⁴⁹ By 1907, other public libraries followed, insisting that the protagonist

18 ⁴³ Toni Morrison has won the Pulitzer Prize for Fiction, the Nobel Prize for Literature, and the
19 Presidential Medal of Freedom. She has also been awarded the American Book Award, the
20 National Humanities Medal, the Norman Mailer Prize for Lifetime Achievement, the Library of
21 Congress Creative Achievement Award for Fiction, and the National Book Foundation’s Medal of
22 Distinguished Contribution to American Letters, among others. She is an inductee of the National
23 Women’s Hall of Fame, and has been appointed as a Commander of the Arts and Letters and as
24 “Officier de la Légion d’Honneur” by the government of France.

⁴⁴ *See Bannings and Burnings in History*, Freedom to Read (May 25, 2023),
25 <https://www.freedomtoread.ca/resources/bannings-and-burnings-in-history/>.

26 ⁴⁵ *Id.*

⁴⁶ Huizhong Wu, *In echo of Mao era, China’s schools in book-cleansing drive*, REUTERS (July 9,
27 2020, 7:04 AM), <https://reuters.com/article/us-chine-books-insight/in-echo-of-mao-era-chinas-schools-in-book-cleansing-drive-idUSKBN24A1R5>.

28 ⁴⁷ *Id.*

⁴⁸ *Bannings and Burnings in History*, *supra* note 44.

⁴⁹ *Id.*

1 was a poor role model for impressionable youth.⁵⁰ During the Great Depression, many local
2 municipalities tried to ban popular books, such as John Steinbeck’s *The Grapes of Wrath*, in fear of
3 ideas they considered too dangerous for the public.⁵¹ James Joyce’s *Ulysses* was banned by U.S.
4 customs officials in the 1930s for its alleged “impure and lustful thoughts,” but the ban was vacated
5 by a federal court.⁵²

6 Canonical works have been—and continue to be—common targets of challenges and
7 censors. *To Kill a Mockingbird* was listed as the seventh most challenged book as recently as 2020,
8 with *Of Mice and Men* following in eighth place.⁵³ *The Adventures of Huckleberry Finn* was thirty-
9 third on the list of the most challenged books from 2010-2019.⁵⁴ Even the Bible has been
10 challenged, based on parents’ complaints about “pornographic” content.⁵⁵

11 Such laws have a chilling effect on the most important stakeholders in continuing our proud
12 tradition of democratic ideals – students and educators in public schools. PEN America’s most
13 recent report on book bans, *Banned in the USA: The Mounting Pressure to Censor*, recorded 3,362
14 instances of bans in the 2022- 23 school year, a 33 percent increase over the 2021- 22 school year.⁵⁶
15 This fervor is evident in recent laws passed by state legislatures around the country. Florida and
16 Texas have lead the way, having passed a myriad of laws that restrict and penalize the First
17 Amendment rights of students, educators, and parents. Some laws restrict teachers’ ability to
18 discuss topics related to race, gender, and sexual orientation in the classroom. *See Fla. HB 1557*

19 ⁵⁰ *Id.*

20 ⁵¹ Livia Gershon, *Banning The Grapes of Wrath in 1939 California*, JSTOR DAILY (Mar. 27, 2022).

21 ⁵² *Court Lifts Ban on ‘Ulysses’ Here*, The New York Times (Dec. 7, 1933),
22 <https://archive.nytimes.com/www.nytimes.com/books/00/01/09/specials/joyce-court.html>.

23 ⁵³ Banned and Challenged Books, ALA OFFICE FOR INTELLECTUAL FREEDOM (last visited May 31,
2023), <https://www.ala.org/advocacy/bbooks/frequentlychallengedbooks/top10/archive>.

24 ⁵⁴ *Id.*

25 ⁵⁵ Eesha Pendharkar, *Why the Bible is Getting Pulled Off School Bookshelves*, EDUCATION WEEK
26 (Dec. 15, 2022), <https://www.edweek.org/teaching-learning/why-the-bible-is-getting-pulled-off-school-bookshelves/2022/12>; Brooke Kato, *Utah parent wants Bible removed from schools: ‘It’s pornographic’*, NEW YORK POST (Mar. 23, 2023), <https://nypost.com/2023/03/23/utah-parentwants-bible-removed-from-schools-its-pornographic/>.

27 ⁵⁶ *Banned in the USA: The Mounting Pressure to Censor*, PEN America,
28 <https://pen.org/report/book-bans-pressure-to-censor/>.

1 (2022), Fla. HB 1069 (2023), Fla. HB 7 (2022), Tex. HB 3979 (2021). Some impose a “rating”
2 system requiring publishers to identify and categorize books based on their content, restricting
3 schools and libraries from purchasing books with certain “ratings” and placing vendors on
4 “blacklists” for any “mis-rated” books, as determined subjectively by the Texas government. *See*
5 Tex. HB 900 (2023). Some laws restrict students and educators from establishing or participating in
6 programs based on their content, such as diversity, equity, and inclusion initiatives. *See* Fla. SB 266
7 (2023), Tex. SB 17 (2023). Some explicitly retaliate against those who have publicly criticized the
8 foregoing laws. *See* Fla. SB 4-C (2022), Fla. HB 9-B (2023). Arkansas passed a law imposing
9 criminal penalties on librarians and book sellers for recommending and/or selling books that contain
10 “harmful” material.⁵⁷ Emboldened by this national movement, at least five other states have enacted
11 laws that restrict diversity, equity and inclusion activities and at least nine states have passed laws
12 that restrict dissemination of “sensitive instructional materials” and may impose civil and criminal
13 penalties for violations, leading to widespread preemptive book restrictions.⁵⁸

14 The present book banning crisis echoes the hysteria surrounding the moral panics of the
15 1960s. It evokes Supreme Court’s decision in *Bantam Books v. Sullivan*, which overturned a Rhode
16 Island commission that coerced publishers into removing “objectionable” works from circulation.
17 *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70–71 (1963). Ten years later, the Court created the
18 *Miller* test to define obscenity, holding that material must be viewed in its full context and that
19 consideration must be given to the literary, artistic, political, or scientific value within it. *Miller v.*
20 *California*, 413 U.S. 15, 24 (1973).

21 Courts have long recognized the importance of understanding how explicit material
22 functions within a work to produce literary meaning and value, and there is a great tradition of
23 deference to writers in determining the meaning and value of artistic expression that precedes

24 ⁵⁷ See Ark. Act 372 § 1.

25 ⁵⁸ See Chron. of Higher Educ. DEI Legis. Tracker (July 14, 2023),
26 [https://www.chronicle.com/article/here-are-the-states-where-lawmakers-are-seeking-to-ban-](https://www.chronicle.com/article/here-are-the-states-where-lawmakers-are-seeking-to-ban-colleges-dei-efforts)
27 [colleges-dei-efforts](https://www.chronicle.com/article/here-are-the-states-where-lawmakers-are-seeking-to-ban-colleges-dei-efforts); *see, e.g.*, PEN America, *Banned in the USA: State Laws Supercharge Book*
28 *Suppression in Schools* (Apr. 20, 2023), [https://pen.org/report/banned-in-the-usa-state-](https://pen.org/report/banned-in-the-usa-state-law-supercharge-book-suppression-in-schools/)
[law-supercharge-book-suppression-in-schools/](https://pen.org/report/banned-in-the-usa-state-law-supercharge-book-suppression-in-schools/) (summarizing legislation); *see also* Iowa Senate File
496.

1 *Miller*. In *United States v. One Book Called Ulysses*, Judge Woolsey uses his interpretation of
2 James Joyce’s technique to assess how the explicit passages function in the book, with deference to
3 Joyce’s authorial intent and artistry.⁵⁹ “To convey by words an effect which obviously lends itself
4 more appropriately to a graphic technique ... [explains] Joyce’s sincerity and his honest effort to
5 show exactly how the minds of his characters operate.” *Id.* In *Cohen v. California*, the Supreme
6 Court articulated the importance of understanding layered meaning that may not be readily apparent
7 at first blush, holding that:

8 [O]ne man’s vulgarity is another’s lyric. [I]t is largely because governmental
9 officials cannot make principled distinctions in this area that the Constitution leaves
10 matters of taste and style so largely to the individual... . [M]uch linguistic
11 expression serves a dual communicative function: it conveys not only ideas capable
of relatively precise, detached explication, but otherwise inexpressible emotions as
well.

12 *Cohen v. California*, 403 U.S. 15, 25-26 (1971). “Writers count on robust First Amendment
13 freedoms and the value that our culture places on free expression when writing about new ideas and
14 experimenting with form and style. The restriction of writers’ work on the basis of vague criteria
15 that fails to account for authorial intent is a gross violation of artistic freedom and has a chilling
16 effect on literary imagination. Writers who fear censorship may shy away from formal innovation
17 and bold exploration of challenging topics.⁶⁰

18 These book removal movements will chill literary development and lead to self-censorship
19 among both authors and publishers. Authors will become overly cautious in their creative process to
20 avoid being offensively (and often mis-) labeled so they can retain their ability to sell in the school
21 markets. Even more drastically, authors might feel compelled to eliminate any reference to sex in
22 their future books, for fear of having their books mischaracterized and removed from school
23 bookshelves for having sexual content – effectively eliminating any reference to a topic that is of

24 _____
25 ⁵⁹ See *U.S. v. One Book Called “Ulysses,”* 5 F.Supp. 182, 183 (S.D.N.Y. 1933), *aff’d sub nom.,*
26 *U.S. v. One Book Entitled Ulysses by James Joyce*, 72 F.2d 705 (2d Cir. 1934) (describing Joyce’s
27 technique as an attempt “to show how the screen of consciousness with its ever-shifting
28 kaleidoscopic impressions carries ... not only what is in the focus of each man's observation of the
actual things about him, but also in a penumbral zone residua of past impressions.”)

⁶⁰ See *Book People v. Wong*, No. 23-50668 at 19-21 (5th Cir. 2023), Brief for Pen American Center,
Inc. as Amicus Curiae supporting plaintiff-appellees.

1 particular concern to most teenagers, rendering the author’s characters unrealistic and their stories
2 unrelatable to teens. These types of bans could also result in publishers not daring to publish some
3 books out of fear that they will not be able to sell them to schools, which could devastate authors’
4 incomes and careers.

5 The expansion of these book removal movements and the lack of clear guidelines and
6 constitutional reasoning for book removal decisions makes it effectively impossible for authors to
7 know how to comply when writing their future works. The only surefire way to avoid removal is to
8 eliminate any reference to sex or sexuality altogether, which is impossible for most works about
9 humans and biology, since most humans and animals have a sex (i.e., are male or female) and have
10 children through sex. Further, because the removal makes no distinction as to age or developmental
11 maturity, subject matter which is age-relevant to teenagers will be automatically nixed and censored
12 due to a reductive categorization of such ideas as “offensive” for school children at large. The ages
13 of school-goers usually range from 6 through 18, and subject matter appropriate for older students
14 should not be reflexively eliminated from school bookshelves because it is not suitable for a six-
15 year-old. Authors who wish to sell to schools will be compelled to avoid writing stories or books
16 that address important issues that many teenagers experience in their lives or communities,
17 including important topics like family, love, and preventing or dealing with pregnancy. Like
18 teachers, authors of books written for children and young adults know their audience – they are
19 highly educated and deeply invested in understanding and speaking to the age group they are
20 addressing. Book banning movements like these will censor authors’ speech at the cost of the
21 children’s and teenagers’ comprehension of their world, including some who are of or close to
22 voting age. It is an attack on democracy itself.

23 Book removal movements such as those imposed by the School District eschew our
24 requirement of, and historical deference to, analyzing the literary merit of a work as a whole in
25 evaluating its place in our libraries. By reducing books to a single sentence or theme, School
26 District officials fail to engage with works holistically and sideline those who are trained to do so:
27 educators and librarians.

28

1 **CONCLUSION**

2 The First Amendment is not concerned with the motivations of book-banners and their
3 censorship. When books are banned due to their ideas, the Constitutional rights of students and
4 authors are both violated. When faced with the removal of books from library shelves, courts have
5 consistently applied heightened scrutiny to bans motivated by government disapproval of the views
6 and themes in the books. In hindsight, these decisions have been validated: books that once seemed
7 dangerous and destabilizing to the prevailing political, moral, or cultural consensus are now
8 considered part of the canon and celebrated. It is the censorship, not the idea, that poses the
9 existential threat to our democracy.

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12 DATED: December 22, 2023

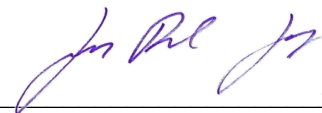
PENGUIN RANDOM HOUSE LLC

13 By: /s/ Carolyn Foley

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17 DATED: December 22, 2023

JASSY VICK CAROLAN LLP

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20 JEAN-PAUL JASSY
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22 Penguin Random House LLC, The Authors
23 Guild, First Amendment Coalition, The
24 Freedom to Read Foundation, PEN American
25 Center, Inc. and Freedom to Learn Advocates
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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on the interested parties in this action as follows:

Mark Rosenbaum (mrosenbaum@publiccounsel.org) Public Counsel 610 S. Ardmore Avenue Los Angeles, CA 90006	<i>Counsel for Plaintiffs</i>
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Marlene Rios