



HunterMaclean
Attorneys at Law
200 East Saint Julian Street
Post Office Box 9848
Savannah, Georgia 31412-0048

WADE W. HERRING,
Phone: 912.236.026
Fax: 912.236.493
www.huntermaclean.c
WHerring@HunterM

November 19, 2024

VIA EMAIL ONLY

Bill Tinley
Thomas Calloway
Windy Bedingfield
Lindsey Brantley
Bill Speer
Barry Paschal
Kim Kay
Richard Flakes
Kay Light

billtinley@hotmail.com
tcalloway@columbiacountyga.gov
wbedingfield@columbiacountyga.gov
lbrantley@columbiacountyga.gov
bspeer@columbiacountyga.gov
barrypaschal@gmail.com
kckay@gfbco.org
rflakes@bellsouth.net
lightx2@hotmail.com

Greater Clarks Hill Regional Library System
7022 Evans Town Center Boulevard
Evans, GA 30809

Dear Regional Board Members of the Greater Clarks Hill Regional Library System:

I write as concerned citizen of Georgia in anticipation of your vote about the proposed reclassification and relocation of books and materials in the Greater Clarks Hill Regional Library System ("Library"). Please do the right thing and vote "no" on the proposal to reclassify and relocate.

A "yes" vote to reclassify and relocate books would be wrong for many reasons:

- A "yes" vote would be against the best interests of the public, broadcasting to all the world that the Greater Clarks Hill region does not trust parents and allow them the freedom to make proper decisions about their own children and what they read.
- A "yes" vote would be censorship, profoundly contrary to the ideals of American freedom.
- A "yes" vote would be unlawful, violating the United States Constitution. A "yes" vote would put each of you at legal risk. The Greater Clarks Hill Regional

The Supreme Court held that a library may not remove books from its shelves “simply because they dislike the ideas contained in those books and seek by their removal to ‘prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.’”⁵ While a library retains discretion about its collection and displays, that discretion may not be exercised in a partisan or political manner.⁶

Lower courts have followed *Pico’s* guidance.⁷ The case of *Case v. Unified Sch. Dist. No. 233* concerned a school board’s decision to ban the book, *Annie on My Mind*, a novel depicting a romantic relationship between two teenage girls.⁸ After reviewing the evidence, the *Case* court concluded “that defendants⁹ removed *Annie on My Mind* because they disagreed with ideas expressed in the book and that this factor was the substantial motivation in their removal decision. Through their removal of the book, defendants intended to deny students . . . access to those ideas. Defendants unconstitutionally sought to ‘prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.’”¹⁰ Therefore, the court ruled that the board had violated the claimants’ constitutional rights under the First Amendment. The judge ordered the book returned to library shelves and awarded the board to pay the claimants’ attorneys’ fees, costs, and expenses.

In the case of *Sund v. City of Wichita Falls*, the public library removed two books, *Heather Has Two Mommies* and *Daddy’s Roommate*, from the children’s section of the library to the adult section.¹¹ A number of individuals and special interest groups in the community (Wichita Falls, Texas) had worked to censor the books, which they considered to be offensive and objectionable. “These individuals and groups, many of whom objected to the perceived messages of *Heather* and *Daddy’s Roommate* on religious grounds, felt as if they were waging a ‘moral battle’ against the Books.”¹²

The court found that when the library removed the books from the children’s section to the adult section, the library had placed “a significant burden on Library patrons’ ability to gain access to those books. Children searching specifically for those Books in the designated children’s areas of the Library will be unable to locate them. In addition, youths who simply wish to browse in the children’s sections of the Library

⁵ 457 U.S. at 872.

⁶ 457 U.S. at 870-871.

⁷ See *Case v. Unified Sch. Dist. No. 233*, 895 F. Supp. 1463, 1469-1470 (D. Kan. 1995).

⁸ 908 F. Supp. 864 (D. Kan. 1995).

⁹ The school board members were named individual defendants in the lawsuit.

¹⁰ 908 F. Supp. at 875-876.

¹¹ 121 F. Supp. 2d 530 (N.D. Tex. 2000).

¹² 121 F. Supp. 2d at 533.

will never find the censored Books. Moreover, parents browsing the children's areas in search of books for their children will be unable to find the censored Books."¹³

The *Sund* court easily concluded that the library had violated the constitutional right of the public to receive information. The book removals to the adult section burdened fully-protected speech on the basis of content and viewpoint and therefore could not constitutionally stand.¹⁴ As for notions of "parents' rights," the court responded, "[I]f a parent wishes to prevent her child from reading a particular book, that parent can and should accompany the child to the Library, and should not prevent all children in the community from gaining access to constitutionally protected materials."¹⁵

The General Assembly Created the Library.

The Georgia General Assembly established the public library service throughout the state as part of the provisions for Georgia's public education.¹⁶ The Library is *not* a county agency or department. Accordingly, any county insurance policy is unlikely to cover the Library or its Board members.

The Library Director, not the Board, is Responsible for the Administration of the Library.

By law, the Library Director has the duty and responsibility "[t]o administer the total library program, including all affiliated libraries, in accordance with" law.¹⁷ The Board is not responsible nor qualified for the day-to-day administration of the Library, including the classification and location of books and materials.

Library Board Members Are Responsible for Strategic Policy, not Administration.

"If there is a mantra for governing boards, it is: 'The board sets policy, the director operates the library with the assistance of staff.'"¹⁸ As trustees and stewards of the public trust, directors must ensure that the Library follows federal, state, and local laws.¹⁹ Fundamentally, directors "[p]articipate as a member of a team (the library board) *to protect and advance the interests of the broader community* by effectively

¹³ 121 F. Supp. 2d at 534.

¹⁴ 121 F. Supp. 2d at 547.

¹⁵ 121 F. Supp. 2d at 551.

¹⁶ O.C.G.A. § 20-5-1.

¹⁷ O.C.G.A. § 20-5-45(5).

¹⁸ Georgia Public Library Service Trustee Handbook, p. 12.

¹⁹ Georgia Public Library Service Trustee Handbook, p. 4.

governing the operations and promoting the development of the local public library (emphasis added)²⁰

The Library's Mission: Service to All.

The ultimate mission of the Library is to serve all members of the public. As stated in the Library's constitution, "The Greater Clarks Hill Regional Library system shall offer a full program of library service to *all* citizens of the participating counties to meet their informational, lifelong learning, and recreational reading, listening, and viewing needs; to acquire and purchase current library materials and electronic resources; to circulate library materials to the public through the branch libraries to provide computer access for the public; and to promote the use of libraries by means of instruction, outreach, library centered programs, exhibits, and other public relations activities."²¹ (emphasis added).

The Board should not allow itself to be distracted by an ill-advised reclassification and relocation policy that unnecessarily diverts limited resources away from the mission to serve all citizens.

What Are the Library's Legal and Other Risks?

1. Opening a Never-Ending Debate about Book Content and Placement.

If the Library Board opens up the issue of what books properly belong in the collection or where the books should be located, rather than leaving these matters to professional librarians and staff members with the requisite training and experience, then the Board should be prepared for ongoing debate on the subject and the accompanying time, energy, and emotions that accompany such discussions. Persons from a variety of perspectives have strong opinions about what books should or should not be found in a public library. See *Rosenberg v. Bd. of Educ.* (challenging *The Merchant of Venice* and *Oliver Twist* because of their portrayal of Jewish characters)²²

See also *Evans v. Selma Union High Sch. Dist.* (challenging *The King James Bible*).²³ The Bible includes references to nudity, homosexuality, sexual

²⁰ Georgia Public Library Service Trustee Handbook, p. 7.

²¹ <https://gchrl.org/policies/regional-library-policies/>

²² 196 Misc. 542 (NY Sup Ct 1949)

²³ 193 Cal. 54 (1924).

intercourse, and extreme violence. Under the classification system proposed to this Board, the Bible could not be shelved in the children's section.

2. Legal Risks.

If the Library votes "yes" to reclassify and relocate books and materials, then the Library and its board members should be prepared to be sued in federal court. Board members could be sued in both their official and individual capacities. Even if the Library has insurance to cover such claims, an insurance company could decline coverage if it determined that Board members had acted intentionally in violation of the law.

Hard financial costs include defense costs, win or lose. Losing defendants may also be required to pay monetary damages, as well as the claimants' attorneys' fees, expenses, and costs. Attorneys' fees and expenses on both sides in a civil rights case can easily run into the hundreds of thousands of dollars. Punitive damages may be assessed against individual defendants, such as Library board members, if they acted with intentional or reckless indifference to the protected federal rights of the claimants. Claimants need not prove actual malice to qualify for a punitive damages award.

Recommendations:

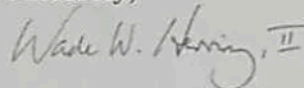
1. Stay focused on the Library's mission to serve *everyone*.
2. Remember that the Director and her staff are responsible for the day-to-day operations of the Library, not the Board.
3. Allow the professionals and staff members to make decisions about the content and placement of the book collection.
4. Do not make decisions about books on the content and viewpoint of their ideas and opinions.
5. If you act contrary to this advice, be prepared to be sued in your individual and official capacities in federal court and to lose. Costs would include not only defense costs, but also damages, punitive damages, and the claimants' attorneys' fees and expenses.

Conclusion: Protect American Freedoms.

American freedom allows parents to make their own decisions for their children.
American freedom allows access to ideas of all kinds.

In June of 1953, President Eisenhower, a Republican and the former Supreme Commander of the Allied Expeditionary Force in Europe during World War II, warned the nation: "Don't join the book burners. Don't think you are going to conceal faults by concealing evidence that they ever existed." Seventy-one years later, President Eisenhower's words still ring true.

Sincerely,



Wade W. Herring, II
WWH/gf

cc: Mary Lin Maner via email only: mlmaner@columbiacountyga.gov
Julie Walker via email only: jwalker@georgialibraries.org