



Northern
California



The Freedom
to Read



Freedom to Read Foundation
FREE PEOPLE READ FREELY

April 7, 2025

VIA ELECTRONIC MAIL

Board of Supervisors
County of Fresno
2281 Tulare St., Room 301
Fresno, CA 93721
Email: ClerkBOS@fresnocountyca.gov

Re: Unlawful Censorship of Books in Fresno County Libraries, Resolution No. 23-377,
Violates California Freedom to Read Act, Exposing County to Legal Challenge

Dear Board of Supervisors:

The First Amendment Coalition, the ACLU of Northern California, the Freedom to Read Foundation, and PEN America write to renew their opposition to Resolution No. 23-377, which purportedly “Establish[ed] a ‘Parents Matter’ Approach to Reviewing Age-Inappropriate Children’s Books in Fresno County Libraries” (the “Resolution”). The undersigned first expressed opposition to the Resolution in the attached letters, dated November 6 and November 27, 2023, on the ground that the Resolution unlawfully censored the public’s right to access library books and materials protected by the First Amendment of the United States Constitution and the Liberty of Speech Clause of the California Constitution. We write now to demand that the Board rescind the Resolution given that it violates California’s recently enacted Freedom to Read Act (Assembly Bill 1825), codified at Education Code section 19802. Failure to rescind the Resolution will result in immediate exposure to legal challenge.

With respect to free speech protections, the Resolution remains unconstitutional for the same reasons expressed in our November 2023 letters. It is fatally overbroad, vague, and ambiguous. Indeed, the Resolution is so broad as to permit the Community Parent and Guardian Review Committee (“Committee”) to determine that *any* book is unacceptable for youth for *any* reason. This lack of definite or objective standards means that censors can exercise unbridled discretion and invade the rights of young people and their families. (*See Board of Education v. Pico* (1982) 457 U.S. 853, 867–68 [recognizing that “the right to receive ideas is a necessary predicate to the recipient’s meaningful exercise of his own rights of speech, press, and political freedom”]; *Erznoznik v. City of Jacksonville* (1975) 422 U.S. 205, 209 [“[W]hen the government, acting as censor, undertakes selectively to shield the public from some kinds of speech on the ground that they are more offensive than others, the First Amendment strictly limits its power.”].)

It is, however, unnecessary to revisit all of these constitutional concerns because the Resolution clearly violates the Freedom to Read Act, which became effective in January of this year. Pursuant to the Act, a “governing board or body of a public library, or any body or commission designated to review the procurement, retention, or circulation of, or access to, library materials, **shall not** proscribe or prohibit the circulation or procurement of, or access to, any library materials in a public library because of the topic addressed by the materials or because of the views, ideas, or opinions contained in those materials.” (Educ. Code, § 19802(b)(1) [emphasis added].)

The Freedom to Read Act further mandates: “Library materials in public libraries shall not be excluded, and access to library materials shall not be limited, solely on the bases” of, *inter alia*, the “gender identity” or “sexual orientation” of “a subject of the library materials, an author of the library materials, the source of the library materials, or the perceived or intended audience for the library materials,” or that “[t]he library materials may include sexual content, unless that content qualifies as obscene under United States Supreme Court precedent.” (Educ. Code, § 19802, subd. (b)(2)(A).) It also ensures that “[a] person’s right to use a public library and its resources shall not be denied or abridged solely because of personal characteristics, age, background, or views.” (*Id.*, § 19802, subd. (c).)

The Resolution runs headlong into the Freedom to Read Act’s provisions because it limits procurement and circulation of all materials that may have a “sexual” or “gender-identity” component, regardless of whether those materials would be deemed “obscene” under the test articulated by the U.S. Supreme Court in *Miller v. California* (1973) 413 U.S. 15 and its progeny. The Resolution thus also dramatically restricts, and potentially eliminates, minors’ rights to access a vast array of protected material in violation of the Act’s clear mandates.

Even former Supervisor Steve Brandau,¹ who introduced and spearheaded the Resolution, has effectively conceded that the Resolution cannot stand under the Freedom to Read Act. After the legislation was enacted, Brandau told media that the state had “taken the decision out of our hands.”² With respect to defending the Resolution in court, Brandau said “I’m not going to be

¹ Fresno County voters ousted incumbent Brandau in the November 2024 election, shortly after AB 1825 passed, and elected Supervisor Garry Bredefeld. See Pablo Orihuela, *Fresno County’s new supervisors take their first votes and double down on campaign promises*, FresnoLand (Jan. 7, 2025), <https://fresnoland.org/2025/01/07/fresno-countys-newest-supervisors-recommit-on-campaign-promises/>.

² Marek Warszawski, *Now that library committees are illegal, Fresno County should scrap the whole thing*, Fresno Bee (Oct. 2, 2024, 6:00 AM), <https://www.fresnobee.com/opinion/opn-columns-blogs/marek-warszawski/article293337494.html>.

wasting taxpayer money chasing a windmill. If there's a path to victory, I need to hear about that, and I think we're going to hear about that at our next board meeting."³

A spokesperson for the County also said at the time that staff were "carefully reviewing the new legislation before making any recommendations to the Board of Supervisors about the future of the Community Parent and Guardian Review Committee."⁴ Yet, based on the undersigned's review of the Board's meeting minutes since the Freedom to Read Act was enacted, County staff have not presented—and the Board has not considered—any proposals through which the County could legally implement the Resolution.⁵

Together, these facts suggest that the County has failed to identify any legal path forward for implementation of the Resolution due to its clear violation of the Freedom to Read Act. Accordingly, the County should rescind the Resolution to avoid wasting time and taxpayer funds defending a meritless position in litigation under the Freedom to Read Act.

The County's exposure to such litigation is imminent. On February 26, 2025, a coalition of three Huntington Beach residents and the non-profit Alianza TransLatinx filed a lawsuit against city leaders for enacting a censorship scheme within the Huntington Beach Library System that is substantively identical to Fresno County's Resolution and directly violates the Freedom to Read Act and the California Constitution.⁶ The undersigned attorneys at First Amendment Coalition and ACLU of Northern California represent the plaintiffs who are challenging Huntington Beach's library censorship. The County's Resolution is subject to the same claims as those levied against Huntington Beach.

³ Nic Garcia, *State law on banning books would invalidate Fresno County ordinance*, ABC30 Central CA (Oct. 15, 2024), <https://abc30.com/post/state-law-banning-books-would-invalidate-fresno-ordinance/15429593/>.

⁴ Warszawski, *supra* note 2.

⁵ Undersigned's review of records produced in response to a public records request further indicates that, even before the Freedom to Read Act was enacted, the County was struggling to select Committee members despite accepting applications for the position. See *Community Parent and Guardian Review Committee*, County of Fresno Board of Supervisors, <https://bosbcc.fresnocountyca.gov/Committees/CommitteeDetails/?committeeId=203> (last visited Apr. 7, 2025) (linking to County's application page for prospective committee members but listing all positions on the committee as vacant); Rob Parson, *Applications open for Fresno County's 'community standards' library book review committee*, FresnoLand (Mar. 27, 2024), <https://fresnoland.org/2024/03/27/library-book-review-committee/>. This fact suggests that the Resolution is faltering for practical reasons, as well as the legal ones.

⁶ A copy of the petition and complaint against Huntington Beach is available here: <https://firstamendmentcoalition.org/wp-content/uploads/2025/02/Alianza-TransLatinx-v-City-of-Huntington-Beach-Complaint.pdf>.

In sum, Fresno County's Resolution No. 23-377 violates constitutional protections under federal and state law, as well as California's Freedom to Read Act. We therefore ask that the County rescind the Resolution. Please confirm in writing no later than April 22, 2025, that the County intends to comply with this request.

Sincerely,

s/ Annie Cappetta

Legal Fellow
First Amendment Coalition
acappetta@firstamendmentcoalition.org

s/ Chessie Thacher

Senior Staff Attorney
Democracy & Civic Engagement Program
ACLU Foundation of Northern California
cthacher@aclunc.org

s/ David Loy

Legal Director
First Amendment Coalition
dloy@firstamendmentcoalition.org

s/ Allison Lee

Managing Director, Los Angeles
PEN America
alee@pen.org

s/ Deborah Caldwell-Stone

Executive Director
The Freedom to Read Foundation
dstone@ala.org

cc: Supervisor Brian Pacheco (District1@fresnocountyca.gov)
Supervisor Garry Bredefeld (District2@fresnocountyca.gov)
Supervisor Luis Chavez (District3@fresnocountyca.gov)
Supervisor Ernest Buddy Mendes (District4@fresnocountyca.gov)
Supervisor Nathan Magsig (District5@fresnocountyca.gov)