



June 19, 2012

VIA FACSIMILE (801-402-5249) AND U.S. MAIL

Dr. Bryan Bowles, Superintendent  
Davis School District  
45 East State Street  
Farmington, UT 84025

*Re: The ACLU's Letter Regarding "In Our Mothers' House"*

Dear Dr. Bowles:

It has come to our attention that the American Civil Liberties Union ("ACLU") contacted you in regard to the Davis School District's decision to make the book *"In Our Mothers' House"* available in elementary school libraries only with parental permission. We write in support of the District's commonsense conclusion that parents should decide whether their young children have access to information regarding homosexual conduct and to correct various misrepresentations concerning the law in this area.

Contrary to the ACLU's allegations, Supreme Court precedent supports the District's decision to require parental consent before providing young students with materials that touch upon human sexuality. The Supreme Court has, for instance, consistently recognized that local school districts have broad powers over the operation of public schools. *See, e.g., Edwards v. Aguillard*, 482 U.S. 478, 583 (1987) ("State and local school boards are generally afforded considerable discretion in operating public schools."). Given their expertise in curricular matters, federal courts accordingly grant local school districts considerable discretion in determining "[t]o what extent, and at what points in the curriculum" any subject is appropriate. *See, e.g., Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 300 (1963).

It is certainly true that elementary students possess First Amendments rights. But these rights must be "applied in light of the special characteristics of the school environment." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969). One of the "characteristics" of elementary schools is the presence of young children who are not mentally or emotionally prepared to deal with topics involving human sexuality. Another prime consideration is the District's inability to determine if individual students should access such information. Parents have the "fundamental right" to "direct the upbringing and education of children under their control." *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) (quotation omitted). The District is therefore right to leave such decisions to them. *See Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (recognizing that it is "established beyond debate" that parents have the "primarily role . . . in the upbringing of their children").

The leading case in this area of the law is the Supreme Court's plurality opinion in *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982). *Pico* addressed a school board's removal of books from "high school and junior high school libraries" and therefore does not directly apply to the primary school context. *Id.* at 856. It is also factually distinguishable in that the District did not remove "In Our Mothers' House" from school libraries, but simply placed the book behind the counter. Nonetheless, even at the secondary-school level where students are more independent and mature, the *Pico* Court recognized that "school boards have broad discretion in the management of school affairs." *Id.* at 864.

The exclusion of library books in *Pico* was constitutionally problematic because (1) the school board acted based on a disagreement with the books' message and (2) this disagreement was a *decisive* factor in the books' removal. 457 U.S. at 871. Neither of these factors is present in this case. The District's decision to limit access to *In Our Mothers' House* was not based on the book's viewpoint but on its "educational suitability" for young children, a rationale for exclusion specifically approved by the *Pico* Court. *Id.* at 872. And the reasonableness of this decision is confirmed by the curriculum committee's recommendation to place the book behind the counter and require parental permission to check it out. *See id.* at 874. Because it is impossible to demonstrate that *In Our Mothers' House's* viewpoint played a decisive role in that restriction, *Pico* supports the District's actions here.

This conclusion is not compromised by the other two cases the ACLU cites. *Parents, Families, and Friends of Lesbians and Gays, Inc. v. Camdenton R-III School District*, No. 2:11-CV-04212, 2012 WL 510877, at \*1 (W.D. Mo. Feb. 15, 2012), is a poorly reasoned decision in which a district court invalidated the use of internet filters to prevent students from accessing pornographic material.\* This erroneous holding was based on the court's conclusion that the filtering system discriminated on the basis of viewpoint. *See id.* at \*10. No such conclusion is possible here because the District's restriction of access to *In Our Mothers' House* was based on its educational suitability for elementary students.

Furthermore, the facts of *Case v. Unified School District No. 233*, 908 F. Supp. 864, 875-76 (D. Kan. 1995), are very similar to *Pico* in that a decisive factor in the school board's decision to remove a library book—at the secondary level—was hostility towards the book's viewpoint. Because the District restricted access to "In Our Mothers' House" based solely on its educational suitability for young children and followed the appropriate review procedure, *Case's* holding simply does not apply. *See id.* at 876.

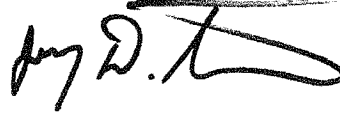
It is our hope that the District will continue to act in the best educational interests of its youngest students and not concede to the ACLU's unreasonable demands. If you should have any questions regarding this matter, please do not hesitate to contact us. We

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\* The district court in *Camdenton* failed to consider the argument that internet access formed part of the school's curriculum, as well as the school district's compelling interest in preventing students from accessing pornography. In addition, the Camdenton School District, erroneously in our view, failed to appeal this highly-questionable ruling.

would be happy to speak with you or your counsel and offer any assistance we could provide.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremy D. Tedesco". The signature is stylized with a large, sweeping flourish at the end.

Jeremy Tedesco  
Legal Counsel

J. Matthew Sharp  
Litigation Staff Counsel



# FAX

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**TO:** Dr. Bryan Bowles  
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