

# LEGAL CONCERNS WITH LIBRARIES

## *Collections & Meetings Spaces*



Texas City Attorneys Association  
Fall 2025 Conference, October 30, 2025

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## AGENDA

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1. **Municipal Libraries**
2. **Collections**
  - Legal & Constitutional Issues
3. **Meeting Spaces**
  - Public Forum Analysis
4. **Key Takeaways**



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## PART 1. MUNICIPAL LIBRARIES

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- **LGC § 315.005** – Authority to establish & manage free libraries
- **LGC Ch. 51** – Extends authority to Type B & C cities
- **Home-rule authority** – LGC § 51.072
- **Related provisions:**
  - LGC § 251.001(1) – Eminent domain for libraries
  - LGC § 252.022(a)(7)(E), (8) – Purchasing exemptions
  - “Municipal public library” defined – LGC § 326.003(3)

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## **Governance for City Libraries**

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- Texas State Library & Archives Commission (TSLAC)
- Texas Municipal Library Directors Association (TMLDA)
- Texas Library Association (TLA)
- American Library Association (ALA):
  - Library Bill of Rights
  - Freedom to Read Statement



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## **PART 2. LIBRARY COLLECTIONS**

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### **Policies & Local Procedures**

- Adopt written collection & weeding policy (TSLAC CREW Manual)
- Establish appeal/review process for collection concerns
- Apply content-neutral, objective criteria (selection, age appropriateness, condition)
- Maintain records of decisions for transparency
- Avoid viewpoint-based removals or restrictions

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## Tex. Penal Code § 43.24

- Harmful Materials to Minors
- S.B. 412 (89th Leg., R.S.): Effective Sept 1, 2025
- Repeals affirmative defense for librarians acting for educational/governmental purposes
- “Knowing” / “Reckless” mental-state elements still apply
- Prosecutorial discretion - risk of actual prosecution remains low
- Policy focus = preventing criminal liability, not content suppression

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## Book Removal Concerns

Does the decision involve...	Classrooms	School Libraries	Public Libraries
Factual inaccuracies or outdated material?	OK to remove	OK to remove	OK to remove
Sexually explicit or vulgar content?	OK to remove	OK to remove	OK to withhold from minors
Legitimate pedagogical concerns?	OK to remove	Less of a factor	Not a factor
Threats of lawsuits or retaliation?	Not sufficient by itself		
Interpreting a vaguely worded policy?	Likely unconstitutional		
Narrowly partisan or political considerations?	DANGER!*		
Suppressing ideological/religious viewpoints?	DANGER!*		

\*Legal Framework is changing on these issues

Decision Chart curated by Roger Horner for IMLA Presentation – “Ban This Session-The Legal Issues Involved in Banning Books” Oct. 19, 2025.

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# Library Collections

City of El Paso Public Library highlights banned books in new section



KVIA

EL PASO, Texas- The City of El Paso has teamed up with YWCA El Paso to bring banned and challenged books to every public library location.



List of *Banned Books* includes:

- To Kill a Mockingbird
- Catcher in the Rye
- Animal Farm

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# Library Collections



**★ THE TEXAS TRIBUNE**

## Llano County officials must offer library books they'd removed, judge orders

Local officials are appealing the order in a lawsuit that drew national attention. Seven library patrons say the book removals infringed their First Amendment rights.

BY ALEJANDRO SERRANO MARCH 31, 2023 12 PM CENTRAL

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## Constitutional Considerations

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- *Little v. Llano County*, 5th Cir. (May 23, 2025)
  - Overrules *Campbell v. St. Tammany Parish Sch. Bd.* (5th Cir. 1995)
  - No First Amendment right to demand specific books in public libraries
  - Library collection decisions may constitute government speech
  - Challenges shift to local process vs. federal litigation
  - Other claims may persist (Establishment, Equal Protection, Due Process)

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## Policy Implications

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- Maintain transparent public appeal process
- Use objective criteria (accuracy, condition, age appropriateness)
- Avoid content or viewpoint motivations
- Reference ALA/TLA best practices
- Coordinate with City Attorney before policy changes

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## First Amendment to US Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.



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## Fourteenth Amendment

**Applies the Bill of Rights to States (& local gov'ts)**

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



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## Types of Speech

### ■ Government Speech

When the Government speaks, it's not barred by the First Amendment from determining the content of what it says

### ■ Private Speech

*Central Hudson v. Public Service Comn (US 1980)*

*44 Liquormart v. Rhode Island (US 1996)*

- *Commercial*: Some protection but less
- *Non-Commercial*: More protection (*Political & Religious* highest)

### ■ Unprotected Speech

e.g., Child Pornography, Defamation, Incitement to Lawless Action, Solicitation to Commit Crimes, Perjury, Blackmail, False Commercial Speech

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## Gov't Speech: U.S. Supreme Court

### Government Speech Doctrine

- "When government speaks, it is not barred by the Free Speech Clause from determining the content of what it says."
- *Translation*: Just because the gov't says, "Say No to Drugs!" it doesn't have to say, "Hey, Check Out Drugs; They're Pretty Cool!"
- Is the topic traditionally associated with governments?
- Will the public think it's the government speaking?
- How actively has the government controlled the speech?

*Walker v. Texas Dvn, Sons of Confederate Veterans (US 2015)*

*Pleasant Grove City v. Sumnum (US 2009)* 16

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## Government Speech

- **Equal Protection:** Can't discriminate based on race
- **Establishment Clause:** Can't endorse religion
- **Political Process:** Don't like what city says, vote out
- **Balance Optional:** Not required to state both sides
- **Example:**
  - *License Plates:* State of Texas can deny Confederate Flags being placed on license plates because license plates are government speech.



*Walker v. Sons of Confederate Veterans (US 2015)*

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## PART 3. MEETING SPACES

### *Constitutional Consideration*

- Equal treatment for religious & non-religious groups:
  - *Good News Club v. Milford*, 533 U.S. 98 (2001)
  - *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993)
  - *Widmar v. Vincent*, 454 U.S. 263 (1981)
  - *Concerned Women for Am. v. Lafayette County*, 883 F.2d 32 (5th Cir. 1989)
- Political Events & Tex. Elec. Code § 255.003 / TEC Op. No. 552 (2020) – renting space ≠ political advertising

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## Types of Public Forums

- **Traditional Public Forum**
  - e.g., Streets, Parks, Sidewalks
  
- **Limited (Designated) Public Forum**
  - e.g., City Meeting Hall Room
  
- **Non-Traditional Public Forum**
  - e.g., Jails, Courthouse Lobby, Schools, Military Bases



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## Facility Use Policies



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 21, 2018

**V. Conclusion**

The District should welcome churches who want to rent its facilities after school and on weekends, not discriminate against some of them based on their beliefs about marriage. In fact, the Constitution and state law require the District to provide churches with equal access to facilities it opens to community organizations. The District should reject the calls of its trustees to alter the facility use policies, and maintain its longstanding, cooperative relationship with churches in the community.


*VIA E-MAIL*

Dr. Paul Cruz  
Office of the Superintendent  
Austin Independent School District  
1111 West Sixth Street  
Austin, Texas 78703

Re: Renting Austin ISD Facilities to Churches

Dear Dr. Cruz:

We are aware of media reports that suggest Austin Independent School District (the "District") may change its facilities use policy to prevent certain churches from renting its facilities after school and on weekends.<sup>1</sup> We caution you to reconsider these changes and be respectful of the religious liberty protections afforded churches under the Constitution and Texas law.

Very truly yours,  
  
 Jeffrey C. Mateer  
 First Assistant Attorney General

Cc: Joe Champion, Pastor, Celebration Church

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## Facility Use Policies

- Define standards of conduct for patrons
- Apply consistent rental or reservation terms
- Distinguish suggestions vs. rules
- Restrict solicitation & fundraising on premises



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## PART 4. KEY TAKEAWAYS

- Understand your community & stakeholders
- Expect local pressure on collections & events
- Prepare with clear, lawful policies & procedures
- Train staff on S.B. 412 & Llano County implications
- Promote transparency & civility in public dialogue



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