
Fifth Circuit Holds That Government Speech Doctrine Applies to Public Library Book Removals, Creating Circuit Split With Eighth Circuit

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On May 23, 2025, in *Little v. Llano County*, an *en banc* U.S. Court of Appeals for the Fifth Circuit dismissed First Amendment claims challenging a Llano County, Texas public library's decision to remove 17 books due to complaints about their contents, and reversed a preliminary injunction requiring that certain of those books be reshelfed. The Fifth Circuit rejected plaintiffs' arguments that the removal violated their First Amendment right to receive information and held that a public library's collection, curation, and presentment of third-party materials is protected "government speech" that is not subject to First Amendment challenge. In so holding, the Fifth Circuit overturned an earlier Fifth Circuit decision to the contrary and created a split with the Eighth Circuit, which held in *GLBT Youth in Iowa Schools Task Force v. Reynolds* that an Iowa statute requiring that books in public school libraries be "age-appropriate" did *not* implicate the government speech doctrine. In *Little*, the Fifth Circuit explicitly declined to follow *Reynolds* and found instead that the government engaged in its own "expressive activity" when removing the library books.

The creation of the circuit split is likely to result in an application for Supreme Court review.

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