

LEGAL UPDATE

ELECTION NEWS

MONTGOMERY COUNTY TEXAS

HIGHLIGHT CORNER



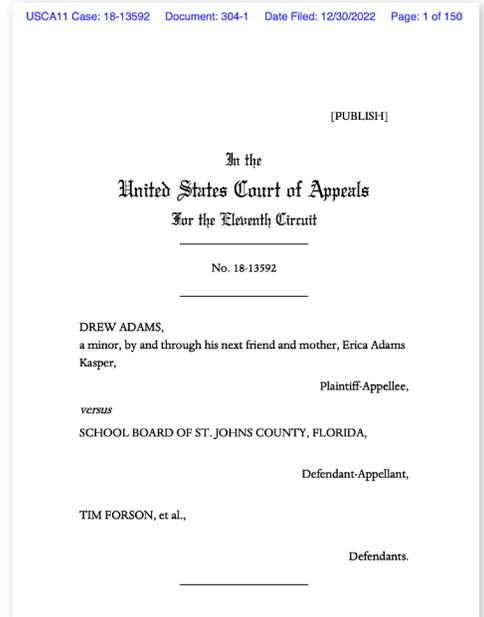
LEGAL UPDATE

The County Citizens Defending Freedom (CCDF-USA) Legal Team (CCDF-Legal) was hard at work in 2022! We closed the year with a lawsuit brewing out of Miami-Dade County Florida, and in Duval County Florida, schools were able to separate from the Jasmyn non-profit organization. Shifting to Texas, our CCDF-USA Education Teams out of Montgomery County and Collin County are carefully holding school boards and school districts accountable for their actions. CCDF-Legal is extremely proud to support CCDF-USA and all the accomplishments made in 2022.

As we rang in the New Year, so did our phones ... ring that is. What a great start to 2023, we are receiving reports and info from Denton, Nueces, Harris, Dallas County, Montgomery, Collin, Williamson, Polk, Brevard, and Miami-Dade counties! It must've been Jonathan Hulihan's thorough guidance and instruction during the CCDF-Legal training week.

In working alongside Miami-Dade County Citizens Defending Freedom (CCDF-Miami-Dade), and as they took a stand against transgender bathroom guidelines (additionally promoting American Flags in all classrooms), CCDF-Legal has started to navigate additional transgender issues in our schools. Our team is working to prepare some crucial information and scripting talking points for each CCDF-USA county.

Other counties in Florida are also upholding state statutes and working to protect students' privacy and safety in school bathrooms. Here is a case that was filed on 12/30/22 out of St. Johns County, Florida:



CCDF-Legal has provided a summary below of the 150-page case filed out of St. Johns County, Florida.

Adams v School Board of St. Johns County Summary

In a 7-4 decision, the 11th U.S. Circuit Court of Appeals in [Adams v. School Board of St. Johns County](#) ruled that the bathroom policy of a local Florida school district did not violate the Equal Protection Clause of the Fourteenth Amendment or Title IX, the latter of which prohibits discrimination on the basis of biological sex at schools that receive federal funds. Writing for the seven-judge majority, Judge Barbara Lagoa, once considered for a Supreme Court nomination during the Trump administration, noted “the overwhelming majority of dictionaries defining ‘sex’ on the basis of biology and reproductive function” that contextualize how the bathroom policy did “not

LEGAL UPDATE (CONT.)

depend in any way on how students act or identify.” The suit was brought by Drew Adams, a biological female who began transitioning in the eighth grade and sought to use the boys’ restroom on the basis of gender identity. Citing the Supreme Court’s 2020 decision in [Bostock v. Clayton](#)

 [County](#), which deemed the termination of gay or transgender employees solely based on sexual orientation to be unconstitutional under Title VII, Adams argued that the Bostock ruling carried over to Title IX to broaden the definition of “sex” to include gender identity. Using Bostock, Adams alleged that the bathroom policy of Allen D. Nease High School, which maintained sex-neutral bathrooms to accommodate transgender students, was still nevertheless discriminatory and burdensome.

However, as the 11th Circuit pointed out, the court in Bostock declined to address the issue of sex-segregated locker rooms and bathrooms, further rendering their ruling inapplicable in this case. Additionally, Judge Lagoa observed that Title IX not only assumes the “plain and ordinary” meaning of “sex” as based on biology accepted as commonplace in 1972, the year Title IX came into effect, but also legitimizes the longstanding tradition of separating sexes when it comes to the use of public bathrooms for purposes of ensuring the privacy and protection of students. On this latter point, the Court found that the bathroom policy, in mandating the maintenance of sex-separated bathrooms, met the “intermediate” standard of judicial review

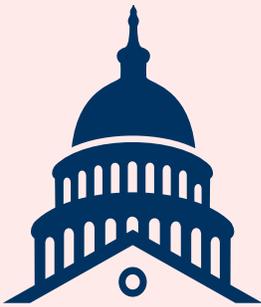
requiring the policy to 1) advance an important governmental objective; and 2) be substantially related to that objective. Since safeguarding students’ privacy is an important governmental objective, as Judge Lagoa writes, there was no equal protection violation to be found.

While some anticipate Adams will appeal to the Supreme Court, it is worth noting that the U.S. Supreme Court’s declined review of a similar suit in [Gloucester County School Board v. Grimm](#) may  influence whether or not the Court would be willing to hear the case should Adams petition for review.

Transgender News out of Texas:

[Texas Association of School Boards Pushes ‘Transgender’ Restroom Policies](#) 

ELECTION NEWS



LET YOUR VOICES BE HEARD!

Now is the time to start requesting meetings with your state representatives and/or establish relationships, as many are preparing for upcoming legislative sessions. Get out there and let your voices be heard!

Here is a tool that will allow you to identify election related legislation in all 50 states:

[BALLOTPEdia: Election administration legislation tracking](#) 

LOOKOUT FOR “NONPARTISAN” PROPAGANDA

Keep your ears and eyes open for “nonpartisan” organizations flooding our college campuses regarding voter registration. Many of these organizations are being well funded and are even using taxpayer funds!

[Biden and Activist Allies Push Taxpayer-Funded Voter Registration on College Campuses](#) 



**RISE UP AND
V★TE!**

MORE LEGAL NEWS

We have some good news coming out of Montgomery County Texas where the team was granted a Level 3 Appeal to the School Board. CCDF-Legal is assisting Montgomery County with Reconsideration of Instructional Resources regarding the book *The Perks of being a Wallflower*, by Stephen Chbosky. The hearing is scheduled for later this month.

Level 3 Appeal in the Matter of the Darla O'Guin's Request for Reconsideration of Instructional Resources

LEGAL

This notification serves as a timely formal appeal for Mrs. Darla O'Guin for a Level 3 hearing with the Conroe Independent School District (CISD) board of trustees to reconsider availability of material that is pervasively vulgar and educational unsuitable.

The issue for appeal at a Level 3 hearing is whether the CISD board of trustees approves and adopts the previous determinations to provide the book *The Perks of Being a Wallflower* for high school student general availability as self-selected instructional material. Mrs. O'Guin, State Representative Steve Toth, and Attorney Jonathan Hullivan,¹ who both attended the Level 2 hearing on behalf of O'Guin and respectfully disagree with the determination of the hearing officer due to the pervasively vulgar and educational unsuitability of the material.

Exclusive Authority of CISD Board of Trustees

The hearing officer's Level 2 determination is a professional and well-reasoned analysis, provides an accurate summation of the educational affirmative defense currently codified in Texas Penal Code Section 43.24(a)(2), and correctly portrayed the policy and procedural issues germane to this issue.

The key outstanding issue remains; however, whether CISD trustees find that *The Perks of Being a Wallflower* is pervasively vulgar or educationally unsuitable for children in the CISD community. In *Island Trees School District v. Pico*, 457 U.S. 853, (1982) the United States Supreme Court recognized school officials may remove school library books from shelves based on the material being pervasively vulgar or on grounds of educational unsuitability.

The reconsideration committee and Level 2 hearing officer provided a subjective review of *The Perks of Being a Wallflower* and made a determination that the material was not pervasively vulgar and is educationally suitable for CISD students. As elected official's representatives of the people, the CISD trustees "have the exclusive power and duty to govern and oversee the management of the public schools of the district," subject only to laws expressly delegating authority to TEA or the State Board of Education. Texas. Educ. Code § 11.151(b). As a result, unelected committees, appointed hearing officers, and even the CISD Superintendent does not have the legal authority to make the final decision on this matter. Consequently, ultimate responsibility with sole legal authority to make the final determination whether *The Perks of Being a Wallflower* is pervasively vulgar or educationally unsuitable falls on the CISD board of trustees. If this determination is made, the CISD may remove the material from the library shelves as a matter within their exclusive legal authority.

The Perks of Being a Wallflower Excerpts

To assist CISD trustees on the determination if the material is pervasively vulgar or educationally unsuitable, select excerpts that are thematic throughout are provided below. Although these excerpts are

¹ Attorney Hullivan has not established an attorney-client relationship with Mrs. O'Guin but has been authorized by her as representative for this issue. Attorney Hullivan is Deputy General Counsel and Texas Director of Legal Operations for County Citizens Defending Freedom-USA ("CCDF-USA"), a non-profit, non-partisan grassroots organization with affiliate chapters in Georgia, Florida and Texas. CCDF-USA has a significant public interest in this matter in the State of Texas.



HIGHLIGHT CORNER



WELCOME MS. STEPHANIE BONTELL

CCDF-Legal would like to introduce our newest Legal Assistant, Ms. Stephanie Bontell. Stephanie has worked alongside some top national Constitutional Attorneys, she has worked in the office of a U.S. Senator, and has participated in Medical Freedom Events and supports defending freedom. Please join us in welcoming Stephanie to CCDF-USA.

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COUNTY CITIZENS DEFENDING FREEDOM

★
★
★**THE BRIEFING**

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