

**IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
AT FRANKLIN**

STATE OF TENNESSEE ex rel. JOHN)	
CIORRA, et al.,)	
)	
Petitioners,)	
)	
VS.)	CASE NO. 23CV-52777
)	
WILLIAMSON COUNTY BOARD OF)	
EDUCATION,)	
)	
Respondent.)	

MEMORANDUM, ORDER, & WRIT OF MANDAMUS

This matter came before the Court upon Respondent's *Motion to Dismiss or in the Alternative for Judgment on the Pleadings*, its accompanying *Memorandum of Law in Support*, and *Petitioners' Response in Opposition to Respondent's Motion to Dismiss or in the Alternative for Judgment on the Pleadings*. After reviewing the pleadings, the motions, the additional briefs, and the arguments of counsel, the Court finds as hereinafter stated:

BACKGROUND

Effective March 24, 2022, amended effective May 17, 2023, and amended effective July 1, 2024, the Tennessee General Assembly enacted the Age-Appropriate Materials Act of 2022 (the "Act"). It has been codified as Tenn. Code Ann. § 49-6-3803. See Tenn. Code Ann. § 49-6-3803. The Act requires each local school board to adopt procedures to develop school library collections, to review those collections periodically, and to put in place a procedure to receive and evaluate complaints regarding those

collections. *Id.* Additionally, the Act requires local school boards to evaluate and remove from school libraries material not age-appropriate for the students who have access to those materials. *Id.* The most recent amendment to the Act further defined the types of materials that are not age-appropriate for the students who have access to them. *Id.*

Petitioners are the parents of children who attend, or who are eligible to attend various Williamson County public schools established and governed by the Williamson County Board of Education. Respondent is the Williamson County Board of Education (the "Board").

At a meeting of the Williamson County School Board on June 19, 2023, the Board addressed objections to five (5) books: 1) *Perks of Being a Wallflower*, 2) *Where the Crawdads Sing*, 3) *Speak*, 4) *The Field Guide to the North American Teenager*, and 5) *Extremely Loud and Incredibly Close*. *Pet'rs' Verified Pet. for Writ of Mandamus and Writ of Cert* at ¶ 29. The Board voted to retain the challenged books in the Williamson County Schools libraries. In making its decision, the Board relied on reports from two review committees to retain the books in the schools' libraries. *See Transcript and Record of the Williamson County School Board Meeting on June 19, 2023*, at 4-8 and 10-18. The first committee reported:

Without having clear guidance on how to determine the "level" of objectionable content or age appropriateness that would dictate the removal of a book from the library per State law, the committee recommendation is that all four books—*Speak*, *Perks of Being a Wallflower*, *The Field Guide to the North American Teenager*, and *Where the Crawdads Sing*—should not be removed from our high school libraries.

Id. at 6 (emphasis added). The second committee reported:

Even though we did not receive the guidance expected from the Tennessee Textbook and Instructional Materials Quality Commission on how to determine the "level" of objectionable content or age appropriateness of

materials that might dictate the removal of a book from the library per state law and recognizing the professional duties and expertise of our school librarians and procedures in place for parent communication regarding student library use, the committee recommendation is that the book *Extremely Loud & Incredibly Close* by Jonathan Safran Foer remain in our high school library. The committee unanimously recommends the book remain in the high school library; however, we have conflicting recommendations about availability. Four committee members recommend it remain available for all high school students while one committee member recommends it only be available to students ages 16 and older.

Id. at 14 (emphasis added). At one point during the decision-making process, one Board member, Mr. Galbreath, stated “Right now I can’t -- I -- I read these books. I think -- I think there is -- in my estimation, ***I think there is objectionable content that is inappropriate for minors. We don’t have a standard by which we can do that.***” *Id.* at 91:18-22 (emphasis added). Another Board member, Mr. Haugh, then went on to say, “***And I agree there is some content that would not be appropriate for every student.***” *Id.* at 93:25-94:1 (emphasis added). Despite these statements, both members of the school board voted in favor of retaining these books in the schools. The Board ultimately decided to retain all five (5) of these books in the Williamson County Schools’ libraries by a vote of eight in favor, two against, and one abstention. *Id.* at 109:25-110:1.

PROCEDURAL HISTORY

On August 18, 2023, Petitioners filed a Verified Petition for Writ of Mandamus and Writ of Certiorari. *See Pet’rs’ Verified Pet. for Writ of Mandamus and Writ of Cert.* In relevant part, the Petitioners’ argued “The Board has likewise failed to perform its statutorily required duty to determine whether the five (5) books about which parents, or other stakeholders, have complained are ‘appropriate for the age and maturity levels of the students who may access the materials.’” *Id.* at ¶ 42. Thus, among other reliefs, they sought a Writ of Mandamus from the Court “directing that [Respondent] adopt the

procedures specified in Section 49-6-3803(b)(1) and (3), that it determine whether the five (5) books at issue are appropriate for the age and maturity levels of the students who may access the materials, and that the Board thereafter return the writ.” *Id.* at ¶ 43.

On August 24, 2023, the Board filed its Motion to Dismiss Petition for Writ of Mandamus and its accompanying Memorandum. *See Resp’t’s Mot. to Dismiss Writ of Mandamus; see also Mem. of Law in Supp. of Resp’t’s Mot. to Dismiss Writ of Mandamus.*

On September 25, 2023, Petitioners filed their First Amended Verified Petition for Writ of Mandamus, Writ of Certiorari, and Declaratory Judgment and their Response in Opposition to Respondent’s Motion to Dismiss Petition for Writ of Mandamus. *See Pet’rs’ First Am. Verified Pet. for Writ of Mandamus and Writ of Cert., and Declaratory J.; see also Pet’rs’ Resp. in Opp’n to Resp’t’s Mot. to Dismiss Pet. for Writ of Mandamus.*

On September 26, 2023, an Agreed Order was filed, striking the Board’s Motion to Dismiss without prejudice. *See Agreed Order (September 26, 2023).*

On October 13, 2023, the Board filed its Motion to Dismiss First Amended Verified Petition for Writ of Mandamus and its accompanying Memorandum. *See Resp’t’s Mot. to Dismiss Pet’rs’ First Am. Verified Pet. for Writ of Mandamus and Writ of Cert., and Declaratory J.; see also Mem. of Law in Supp. of Resp’t’s Mot. to Dismiss Pet’rs’ First Am. Verified Pet. for Writ of Mandamus and Writ of Cert., and Declaratory J.*

On October 23, 2023, Petitioners filed their Motion for Peremptory Writ of Certiorari and Memorandum of Law in Support. *See Pet’rs’ Mot. for Peremptory Writ of Cert. and Mem. of Law in Supp. Thereof.* In this Motion, the Petitioners requested the Court “to direct the Board to file within sixty (60) days a transcript of the proceedings conducted by and before the Board on June 19, 2023.” *Id.* at ¶ 6.

On November 6, 2023, Petitioners filed their Response in Opposition to Respondent's Motion to Dismiss First Amended Verified Petition. *See Pet'rs' Resp. in Opp'n to Resp't's Mot. to Dismiss First Am. Verified Pet.*

On January 24, 2024, the Court entered an Order denying the Board's Motion to Dismiss. *See Mem. and Order on Mot. to Dismiss* (January 24, 2024). Also on January 24, 2024, the Court issued a Writ of Certiorari, that ordered Respondent to file the transcript requested by Petitioners. *See Writ of Cert.* (January 24, 2024).

On February 8, 2024, Respondent filed its Answer to First Amended Verified Petition for Writ of Mandamus and Declaratory J. *See Resp't's Answer to First Am. Verified Pet. for Writ of Mandamus and Writ of Cert., and Declaratory J.*

On February 8, 2024, the Board filed its Motion to Apply for Interlocutory Appeal and its accompanying Memorandum of Law in Support. *See Resp't's Mot. to Apply for Interlocutory Appeal; see also Mem. of Law in Supp. of Resp't's Mot. to Apply for Interlocutory Appeal.* In its appeal, the Board sought to have the Court of Appeals certify the following questions:

1. Whether each Petitioner has standing to pursue a writ of mandamus to require the WCBOE to make certain decisions and adopt certain policies that Petitioners claim is required by the Age-Appropriate Materials Act;
2. Whether each Petitioner has standing to seek review of the WCBOE's June 19, 2023, vote pursuant to the Age-Appropriate Materials Act through a writ of certiorari;
3. Whether each Petitioner has standing to seek a declaration as to whether the actions of the WCBOE regarding adoption of its library book review policy and its decision on June 19, 2023, comply with the Age-Appropriate Materials Act.

Resp't's Mot. to Apply for Interlocutory Appeal at 1-2.

On February 29, 2024, Petitioners filed their Response in Opposition to Respondent's Motion for Permission to Apply for Interlocutory Appeal. See *Pet'rs' Resp. in Opp'n to Resp't's Mot. to Apply for Interlocutory Appeal*.

On March 21, 2024, this Court granted the Board's Motion for Interlocutory Appeal. See *Order Granting Resp't's Mot. to Apply for Interlocutory Appeal* (March 21, 2024).

On June 12, 2024, the Tennessee Court of Appeals denied the Board's Motion. See *NOTICE - Case Dispositional Decision – TRAP 9 Denied* (June 10, 2024).

On July 2, 2024, the Board filed its Motion to Dismiss or in the Alternative for Judgment on the Pleadings and its accompanying Memorandum of Law in Support. See *Resp't's Mot. to Dismiss or in the Alternative for J. on the Pleadings*; see also *Resp't's Mem. Of Law in Supp. of Mot. to Dismiss or in the Alternative for J. on the Pleadings*. In its Memorandum, the Board first argues that since the Act was amended and the Board was required to update its policy to comply with the new amendment, the Petitioners' claims are now moot because there is no longer any controversy due to the fact that the Board's amended policy has cured any defects. *Resp't's Mem. Of Law in Supp. of Mot. to Dismiss or in the Alternative for J. on the Pleadings* at 5-6. The Board next argues that if the Court requires the Board to reassess the five (5) books at issue through a Writ of Mandamus, then the Court should also find that the amendment to the Act that added the seven (7) categories which defined age appropriate materials is a substantial change that cannot be applied retroactively. Thus, it is the Board's position its former policy should be utilized instead of its revised policy that satisfies the amended statute. *Id.* at 6-10. However, the Board then argues that a Writ of Mandamus is not appropriate because the

Board's new policy that satisfies the amended statute allows a form of "adequate alternative remedy." *Id.* at 10-11.

On July 15, 2024, Petitioners filed their Response in Opposition to Respondent's Motion to Dismiss or in the Alternative for Judgment on the Pleadings. See *Pet'rs' Resp. in Opp'n to Resp't's Mot. to Dismiss or in the Alternative for J. on the Pleadings*. The Petitioners conceded that the Board's revised policy now complies with the amended statute.

On July 20, 2024, the Court filed an Order continuing the remaining claims indefinitely until the Court ruled on Respondent's July 2, 2024, *Motion to Dismiss or in the alternative Judgment on the Pleadings*. See *Order* (July 20, 2024).

STANDARD OF REVIEW

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. Tenn. R. Civ. P. 12.03. "[A] motion for judgment on the pleadings is 'in effect a motion to dismiss for failure to state a claim upon which relief can be granted.'" *King v Betts*, 354 S.W.3d 691, 709 (Tenn. 2011) (citations omitted). Therefore, in assessing the legal sufficiency of a complaint on a motion for judgment on the pleadings, the Court must construe it in the plaintiff's favor and take all factual allegations in the Complaint as true and give the plaintiff the benefit of all inferences that can be reasonably drawn from the pleaded facts. *Mortg. Elec. Registration Sys., Inc. v. Ditto*, 488 S.W.3d 265 (Tenn. 2015). Items which are included with the pleadings under Tennessee Rule of Civil Procedure 10.03 are included within the ambit of the Courts consideration of motions that challenge the legal sufficiency of the Complaint. *Bartley v. Nunley*, 2020 WL 5110302, at *7 (Tenn. Ct. App. 2020); *cf. Pagliara*

v. Moses, 605 S.W.3d 619, 625 (Tenn. Ct. App. 2020) (“Tennessee Rule of Civil Procedure 10.03 provides that all exhibits attached to the complaint are to be considered part of the pleading . . .”). However, courts “are not required to accept as true assertions that are merely legal arguments or ‘legal conclusions’ couched as facts.” *Id.* at 626 (quoting *Webb v. Nashville Area Habitat for Hum., Inc.*, 346 S.W.3d 422, 427 (Tenn. 2011)). Judgment on the pleadings is appropriate when no material issue of fact exists and the party making the motion is entitled to judgment as a matter of law. *Davis v. City of Memphis Fire Dept.*, 940 F.Supp. 2d. 786 (W.D. Tenn. 2013).

The Court has the authority to issue a Writ of Mandamus pursuant to Tenn. Code Ann. § 29-25-101. The Tennessee Supreme Court has stated that “[a] writ of mandamus is an extraordinary remedy that may be issued where a right has been clearly established and ‘there is no other plain, adequate, and complete method of obtaining the relief to which one is entitled.’” *Cherokee Country Club, Inc. v. City of Knoxville*, 152 S.W.3d 466, 479 (Tenn. 2004) (quoting *Meighan v. U.S. Sprint Communications Co.*, 942 S.W.2d 476, 479 (Tenn.1997)). The Tennessee Supreme Court has found that a Writ of Mandamus “is proper to challenge an ordinance as not properly adopted.” *Id.* (citing *State ex rel. Poteat v. Bowman*, 491 S.W.2d 77, 80 (Tenn.1973)). Further, the Tennessee Supreme Court has noted the following regarding the court’s power to issue a Writ of Mandamus against a school board:

We know of no exception to the rule that the court will not, by mandamus, disturb the decisions and actions of the boards and officers having discretionary powers, except where they act in an arbitrary and oppressive manner, or act beyond their jurisdiction, or where they refuse to assume a jurisdiction which the law devolves upon them.

State v. Bd. of Educ. of Blount Cnty., 122 Tenn. 161, 121 S.W. 499, 500 (1909) (internal citations omitted).

An issue becomes moot “if an event occurring after the commencement of the case extinguishes the legal controversy attached to the issue, or otherwise prevents the prevailing party from receiving meaningful relief in the event of a favorable judgment.” *City of Memphis v. Hargett*, 414 S.W.3d 88, 96 (Tenn. 2013) (internal citations omitted). Thus, “[a] moot case is one that has lost its justiciability because it no longer involves a present, ongoing controversy.” *Allen v. Lee*, No. M202000918COAR3CV, 2021 WL 2948775, at *2 (Tenn. Ct. App. July 14, 2021) (quoting *Alliance for Native Am. Indian Rights in Tenn., Inc. v. Nicely*, 182 S.W.3d 333, 338 (Tenn. Ct. App. 2005)).

The nuances of retroactivity have been clearly defined in Tennessee case law:

The courts of this State have long held that, despite the prohibition against retrospective laws contained in Article I, Section 20 of the Tennessee Constitution, “not every retrospective law ... is objectionable in a Constitutional sense.” Rather, our courts have held that the constitutional provision mandates “only that no retrospective law which impairs the obligation of contracts, or divests or impairs vested rights, shall be made. **Therefore, the retrospective application of a law that is procedural or remedial in nature is not prohibited unless application of that law would impair a contract obligation or a vested right.** A procedural statute is one that “defines the ... proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right.” **A remedial statute is one that “provides the means by which a cause of action may be effectuated, wrongs addressed, and relief obtained.”**

The retrospective application of “substantive legal changes” that “take away or impair vested rights acquired under existing laws or create a new obligation, impose a new duty, or attach a new disability in respect of transactions or considerations already passed[]” is constitutionally impermissible, however. “Statutes are presumed to operate prospectively unless the legislature clearly indicates otherwise.”

Commissioners of Powell-Clinch Util. Dist. v. Util. Mgmt. Rev. Bd., 427 S.W.3d 375, 383–84 (Tenn. Ct. App. 2013) (internal citations omitted) (emphasis added).

ANALYSIS

Writ of Mandamus

At the June 19, 2023, meeting, the Board made a determination regarding whether the five (5) books at issue, *Perks of Being a Wallflower*, *Where the Crawdads Sing*, *Speak*, *The Field Guide to the North American Teenager*, and *Extremely Loud and Incredibly Close*, were appropriate for the age and maturity levels of the students who may access the materials. The two reports the Board relied on stated:

Without having clear guidance on how to determine the “level” of objectionable content or age appropriateness that would dictate the removal of a book from the library per State law...

Even though we did not receive the guidance expected from the Tennessee Textbook and Instructional Materials Quality Commission on how to determine the “level” of objectionable content or age appropriateness of materials that might dictate the removal of a book from the library per state law and recognizing the professional duties and expertise of our school librarians and procedures in place for parent communication regarding student library use...

Transcript and Record of the Williamson County School Board Meeting on June 19, 2023

at 6 and 14. Additionally, during the meeting two board members, who voted in favor of keeping the books, made the following statements:

Right now I can't -- I -- I read these books. I think -- I think there is -- in my estimation, I think there is objectionable content that is inappropriate for minors. We don't have a standard by which we can do that.

And I agree there is some content that would not be appropriate for every student.

Id. at 91:18-22 and 93:25-94:1. Despite these statements listed above, the Board argues that it did not “fail[] to make the required determination” regarding the five (5) texts at issue.” *Resp’t’s Answer to First Am. Verified Pet. for Writ of Mandamus and Writ of Cert., and Declaratory J.* at ¶ 44.

As noted *supra*, a Writ of Mandamus is only appropriate in a situation like the one at present if the Board: 1) "**act[ed] in an arbitrary and oppressive manner,**" 2) "act[ed] beyond their jurisdiction," or 3) if the Board "**refuse[d] to assume a jurisdiction which the law devolves upon them.**" See *Bd. of Educ. of Blount Cnty.*, 121 S.W. at 500 (emphasis added). The notes from the reports upon which the Board relied on in making its determination and the Board members' statements from the meeting, noted *supra*, leads this Court to conclude that the Board's conduct was a combination of being both arbitrary and oppressive and refusing to assume a jurisdiction which the law devolves upon them. The decisions were arbitrary and oppressive because the committees stated that they had no standard on which to make their decision and the members found that these texts were inappropriate, and yet, they still voted in favor of allowing the books to stay in the schools. It is also clear that the Board was refusing to assume the jurisdiction which the law devolves upon them because it had not created a policy as required by Tenn. Code Ann. § 49-6-3803 at that time, a fact which Mr. Galbreath admitted during the meeting.

The Court also rejects the Board's argument that the Petitioners have a form of adequate relief due to its amended policy. The Court finds no reason for Petitioners to dismiss their lawsuit and then lodge a new objection to the same books pursuant to the Board's revised policy. As established above, a Writ of Mandamus is appropriate because the Board's conduct was a combination of being both arbitrary and oppressive and refusing to assume a jurisdiction which the law devolves upon it.

Thus, the Court has authority under Tenn. Code Ann. § 29-25-101 to issue a Writ of Mandamus in this case. See *Bd. of Educ. of Blount Cnty.*, 121 S.W. at 500; see also Tenn. Code Ann. § 29-25-101; see also Tenn. Code Ann. § 49-6-3803.

Mootness

As stated above, the Court finds that the issue is still ongoing because the Board has not made a determination as whether to the five (5) books at issue are appropriate for the age and maturity levels of the students who may access them in the way that Tennessee law requires it to do. Therefore, the case is not moot because the controversy still “involves a present, ongoing controversy,” even after the amendment to the statute. See *Allen v. Lee*, 2021 WL 2948775, at *2.

Retroactivity

Assuming *arguendo* that retroactivity is a potential issue in this case, the Court finds that the amendments at issue to Tenn. Code Ann. § 49-6-3803 are remedial changes, not substantive changes. The Board argues the following section is a substantive change:

- (b) For purposes of this section, a material that:
 - (1) In whole or in part contains nudity, or descriptions or depictions of sexual excitement, sexual conduct, excess violence, or sadomasochistic abuse, as those terms are defined in § 39-17-901, is not appropriate for the age or maturity level of a student in any of the grades kindergarten through twelve (K-12) and must not be maintained in a school's library collection; or
 - (2) Is patently offensive, as defined in § 39-17-901, or appeals to the prurient interest, as defined in § 39-17-901, is not appropriate for the age or maturity level of a student in any of the grades kindergarten through twelve (K-12) and must not be maintained in a school's library collection.

Tenn. Code Ann. § 49-6-3803. The Court disagrees. The addition of this definitional language does not “take away or impair vested rights acquired under existing laws or create a new obligation, impose a new duty, or attach a new disability in respect of

transactions or considerations already passed.” See *Commissioners of Powell-Clinch Util. Dist.*, 427 S.W.3d at 383-384. Instead, the newly added definitional language “provides the means by which a cause of action may be effectuated, wrongs addressed, and relief obtained.” See *Id.*

Since the Court finds that applying the amended effective July 1, 2024, Tenn. Code Ann. § 49-6-3803 would not cause an issue involving retroactivity, the Court also finds that the Board’s current Policy 4.403 that satisfies the amended statute is the appropriate policy that should be applied to the five (5) texts at issue. Additionally, the Board’s current Policy 4.403 is applicable to the five (5) texts at issue because the texts are still currently in Board’s schools.

CONCLUSIONS

In reviewing the Board’s Motion for Judgement on the Pleadings, the Court hereby **GRANTS** Petitioners’ Writ of Mandamus and **DISMISSES** all other claims in this matter.

WRIT OF MANDAMUS

Accordingly, this Court hereby **ORDERS, ADJUDGES, AND DECREES**, as follows:

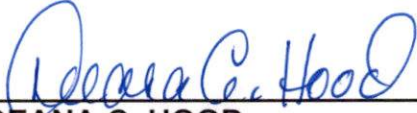
1. Respondent shall comply with Tenn. Code Ann. § 49-6-3803, and, thus, shall determine whether the five (5) books at issue, *Perks of Being a Wallflower*, *Where the Crawdads Sing*, *Speak*, *The Field Guide to the North American Teenager*, and *Extremely Loud and Incredibly Close*, are appropriate for the age and maturity levels of the students who may access the materials.
2. Respondent shall apply its current Policy 4.403, which complies with the amended effective July 1, 2024, Tenn. Code Ann. § 49-6-3803, in making the

determination of whether the five (5) texts at issue comply with Tenn. Code Ann. § 49-6-3803.

3. This Writ is returnable by Respondent to this Court upon satisfaction of the acts mandated herein.

IT IS SO ORDERED.

ENTERED this the 13th day of October, 2024.



DEANA C. HOOD,
Circuit Judge and Chancellor
21st Judicial District, Div. II

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Order was mailed, postage prepaid, and/or emailed, and/or faxed, to:

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This the 14th day of October, 2024.


CLERK