

# Florida Court Rules School Officials Cannot be Shielded from Testimony in Book Banning Case

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In another important victory for book censorship litigation in Florida, Selendy Gay PLLC defeated the School Board of Escambia County's motion for a protective order, in which it claimed that the school officials who voted to remove the children's book, *And Tango Makes Three* ("*Tango*"), from public school libraries could not be made to testify in depositions about their conduct.

The U.S. District judge rejected the School Board's request to shield its members and the current and former district superintendent from testifying in the case, which asserts violations of First Amendment rights on behalf of the authors of *Tango* and an elementary school student who wishes to read the book but cannot due to its removal from her district's public school library collection. The School Board had argued that it was entitled to a protective order, claiming that the officials did not have testimony relevant to the Plaintiffs' allegations, are high level officials protected by the apex doctrine, and are protected by Florida's Sunshine Law. The School Board also attempted to assert a claim of legislative privilege on behalf of its individual members.

The Court agreed with Selendy Gay's arguments, finding that: the school officials' individual motives for removing *Tango* were highly relevant—concluding that such evidence is at "the factual heart" of Plaintiffs' case; that the school officials each have their own unique, relevant knowledge which makes the apex doctrine inapplicable to them whether they are high ranking or not; and that the Sunshine Law does not provide protection from deposition testimony. Left open in the Court's decision is whether legislative privilege applies, which may be the subject of further briefing. This ruling is helpful precedent for other book censorship litigations against school board members, superintendents, and other district and local officials who are accused of censoring books based on personal animus.

This ruling follows another [recent victory](#) in which the Court concluded that Selendy Gay sufficiently alleged First Amendment claims against the School Board of Escambia County to survive a motion to dismiss, and that the Author and Student Plaintiffs have standing to bring claims. In that ruling, the Court also concluded that Florida's "Don't Say Gay" law does not apply to school library books, which is the first decision to that effect.

The team at Selendy Gay is led by partners Faith Gay and Lauren Zimmerman and includes associates Masha Simonova, Alexandra Butler, and Ashley Ulrich, as well as law clerk Bradley Posdal. The team at Kenny Nachwalter, P.A., co-counsel in the matter, is led by Anna Neill.

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- Public Interest and Pro Bono