

Central Arkansas Library System

Board of Directors Meeting

May 25, 2023, at noon

Hybrid Meeting: Darragh Center & Zoom Video Call

Board members in attendance were Stacey McAdoo, Ryan Davis, Sybil Jordan Hampton, Brandon Grice, Bob Brown, Luke Underwood, Alexis Sims, Audrey Evans, Dustin McDaniel, and Esperanza Massana-Crane. Andy Gill, Madhav Shroff, and Jennifer Jamison were absent.

Staff in attendance were Nate Coulter, Lisa Donovan, Tameka Lee, Eliza Borné, Jo Spencer, Lance Ivy, Carol Coffey, Chris Ketterman, Pamela Bandy, Joe Hudak, Katie Adams, Tyler Compton, Hannah Saulters, Nathan Smith, Dre Thornton, Leslie Blanchard, Ellen Samples, Amanda Orgel, Mark Christ, Aalesha Cartner, Kelli Marks, Glenn Whaley, and Courtney Jones.

Also in attendance was Joe Flaherty with the Arkansas Democrat Gazette, John Adams with Fuqua Campbell, P.A., Josie Lenora with KUAR, Andrew DeMillo with the Associated Press, Tyler Kingkade with NBC Universal, Emma Allen and Richard Newman with KATV, Tess Virbin with the Arkansas Advocate, Brian Chilson with the Arkansas Times, Crystal Gates, Stephanie Gibson-Branton, and a group of approximately 45 individuals from the community.

Action Items

1. Approval of Minutes

McAdoo asked the Board to approve the April Minutes as presented.

Hampton moved to approve the April Minutes as presented. Sims seconded the motion, and it was approved unanimously.

2. Approval of April Financials

Grice reported that as of April 30, 2023, CALS assets totaled \$109,051,196.34 with a net loss of \$126,208.33. He said tax collections were up 12.7% year-over-year. He said the increase was likely due to the usual high level of collections in April and that another collection was expected for May.

Davis moved to file the April Financials for audit. Hampton seconded the motion, and it was approved unanimously.

3. Policy for Public Comments at Board Meeting

McAdoo said that a draft of a public comments policy for CALS board meetings had been circulated to the board via email. She said that a group of board members including herself, Evans, and Underwood had looked at similar policies from libraries around the country when crafting the draft. Sims asked whether the provision stating that the board's

general practice would be to not respond immediately to public comments applied to asking clarifying questions. Evans said she thought that asking questions would be different from making a statement. Sims asked if the CALS Code of Conduct would be posted with the policy on the website since the code is referenced in the draft. McAdoo said that the Code of Conduct was already posted on the website and could also be added to the policy page.

Davis moved to adopt the Rules for Public Comments at board meetings as written. Evans seconded the motion, and it was approved unanimously.

4. Public Comments

McAdoo said there were three individuals who requested to address the board with public comments.

Luke McCoy, a Sherwood resident, asked the board to vote against authorizing the proposed litigation relating to Act 372.

Angela Hunter, a Little Rock resident, asked the board to vote for authorizing the proposed litigation relating to Act 372.

Brock Thompson, a Little Rock resident, passed on his request to speak.

5. Authorization of Litigation Regarding Act 372

McAdoo asked John Adams, a lawyer with Fuqua Campbell, P.A. and CALS's legal counsel, to explain the principal provisions of the litigation for which CALS sought board approval. Adams said that while the draft complaint was not yet complete, the board received a memo detailing the provisions of the complaint in advance of the meeting. He highlighted two main provisions of Act 372 that litigation, if approved, would address: the criminal statute introduced by Section 1 and the challenge process imposed by Section 5.

Adams said that the new Class A misdemeanor introduced by Section 1 of Act 372 involving the language of "furnishing materials harmful to minors" was similar to a previous provision found to be unconstitutionally overbroad by an Arkansas federal judge in 2004. He added that the Arkansas Supreme Court had definitively interpreted the meaning of "minor" in that context to be all minors, not distinguishing between older minors and younger minors. He said that CALS's proposed litigation would ask the courts to rule on whether Section 1 of Act 372 similarly infringed on forms of speech protected by the First Amendment. Adams also highlighted the materials challenge process in Section 5 of Act 372. He said that litigation would ask the courts to give legal clarification to the term "appropriateness" in relation to minors, as well as ask for judicial input on whether the section violated due process by leaving the "ultimate" decision of a book's "appropriateness" to local city boards and quorum courts without requiring records detailing the reasoning of their decision to guarantee due process.

Adams said that sixteen additional parties were interested in joining the litigation: the Fayetteville Public Library; the Eureka Springs Carnegie Public Library; individual librarians Nate Coulter, director of CALS, and Adam Webb, director of the Garland County Public

Library; two groups advocating for libraries in the state, the Arkansas Library Association and Advocates for All Arkansas Libraries; two independent bookstores, Wordsworth Books in Little Rock and Pearl's Books in Fayetteville; various non-profit associations including the American Booksellers Association, the Association of American Publishers, the Authors Guild, the Comic Book Legal Defense Fund, and the Freedom to Read Foundation; Olivia Farrell, a CALS patron; Hayden Kirby, a seventeen-year-old CALS patron represented by her mother, Jennie Kirby; and other potential plaintiffs.

McAdoo opened the floor for questions for Adams and discussion among board members. Davis asked if individual libraries would use the legal definition of obscenity to decide which materials would be placed in the areas inaccessible to minors that would need to be created in compliance with Act 372. Adams said that Act 372 only used language stating that materials "inappropriate" for minors would go into the restricted areas, with no standardized guidance on the definition of "inappropriate." Davis asked if unelected individuals from outside of the CALS service area could challenge books in CALS's collection under Act 372. Adams said that they could. Sims pointed out that if the committee of library employees voted to keep the challenged materials in the main collection, the decision could be appealed to an elected body. She also asked for clarification on whether Act 372 stated books would be relocated or removed from libraries, adding that if relocated, parents could check out materials for their children from the area inaccessible to minors. Adams responded that books would be removed from the main collection and relocated to segregated spaces inaccessible to minors, not removed entirely from the library. He added that libraries do not currently have areas inaccessible to minors and that he believed librarians were at criminal risk for books not relocated to such areas. Coulter underscored the staffing and storage burdens placed on libraries by the creation of such spaces.

Sims expressed concerns about not having the draft complaint available to review and asked whether funds for potential litigation could be better directed elsewhere. She asked the board to consider the library's role in potential litigations and shared concerns regarding how the board's authorization of a lawsuit would impact patrons, highlighting parents who send their children to CALS locations after school and are unable to monitor the materials "made available" to them. Sims also expressed concern that an article with a fundraising link for litigation expenses titled "Fighting Act 372" had been posted on the CALS website before litigation had been approved by the board. McDaniel agreed with Sims's concern, stating that it was important not to use the CALS platform for political purposes and suggesting a change to the language. [The CALS website article was subsequently revised in consideration of board members Sims and McDaniel's concerns.]

Brown said that he thought judicial review was necessary to give staff guidance on the definition of "harmful to minors" relating to the criminal statute introduced in Act 372. He said that asking the courts for guidance in areas where no legal standard exists is common practice, adding that the courts had not yet decided whether the legal test for obscenity also applied to "harmful to minors." Sims asked Adams how the role of contemporary community standards informed the definition of "harmful to minors." Adams replied that the term "applying contemporary community standards" was one of the three prongs of the Miller Test for obscenity under the Constitution, the other two prongs being that the work is "patently offensive" and lacking in

“literary, artistic, political, or scientific value.” Sims asked how the community of reference was decided. Adams replied that, in CALS’s case, the community of reference may potentially be Pulaski County or the state of Arkansas.

McDaniel said that while the CALS board was not elected, the current board members were appointed and legally installed to fill a lawful role to serve patrons and library staff, which included taking necessary steps to comply with the law and protect younger patrons. He said that while he believed litigation was a last option, he thought authorizing CALS to ask the courts for clarity was a responsible action on behalf of CALS staff since the law as written did not clearly state what staff needed to do to avoid criminal charges. He added that litigation was not intended to be disrespectful or challenging to the legislature’s authority or intent, but rather a preemptive effort to seek clear direction from the courts so compliance with the law could be clarified before any risk of criminal filing arose. Massana-Crane agreed with McDaniel’s opinion that authorizing litigation was intended to ask questions and clarify compliance with the law. She also asked Adams how misdemeanor charges would be determined and applied under Act 372. Adams replied that the proposed suit would ask the court to make a determination ahead of any criminal filing regarding what was necessary for compliance to avoid misdemeanor charges.

Sims asked whether litigation would challenge Act 372 in its entirety or only Sections 1 and 5. Adams replied that only Sections 1 and 5 would be challenged. Sims asked if the wording of the resolution could be adjusted to clarify that only Sections 1 and 5 were to be challenged. Adams replied that the resolution could be amended. [The resolution was amended to specify the challenge authorized is exclusively to Sections 1 and 5 of Act 372.] Sims also asked whether the resolution and memo could be approved in accordance with the CALS bylaws since it was sent to the board a few days before the meeting. Coulter said that the provisions of the resolution were identical to the information precisely described by Adams at the April board meeting and the written memo distributed to the board prior to the May meeting. He said that a resolution was needed in order to give the courts time to process the complaint so CALS could receive compliance guidance as quickly as possible, hopefully before the law went into effect on August 1. When a community member spoke out of turn to ask if the bylaws were being violated, Coulter said he was unaware of such a bylaw, and Sims agreed that the bylaws did not specify a timeline for materials related to action items. She clarified that her question arose out of consideration of Robert’s Rules of Order.

Brown moved to approve the resolution to file a lawsuit in the United States District Court seeking a judicial determination of the constitutionality of certain provisions of Act 372 of 2023. Hampton seconded the motion, and it was approved with board members McAdoo, Davis, Evans, Underwood, McDaniel, and Grice in favor, and board member Sims opposed. Massana-Crane abstained, citing her employment by the state of Arkansas.

Information Items

1. Director’s Report

Coulter highlighted a few items from his written report:

- *Summer Programs for Kids at CALS:* Coulter asked Ellen Samples, CALS Youth Services Coordinator, and Tyler Compton, Count UP Program Coordinator, to share updates about summer programming and math tutoring. Samples reported that starting this summer, CALS's system-wide summer reading program would be rebranded from Summer Reading Club to Summer @ CALS. She said reasons for the change included highlighting CALS's commitment to holistic summer learning along with reading, and making it clearer that summer programming was for patrons of all ages, not just children. Samples said that the theme for Summer @ CALS 2023 was All Together Now, with a focus on aspects of community and kindness. She offered promotional materials to the board members to share with their social circles. Compton reported that over the past year, the Count UP program had grown from an average of fifty students a semester to ninety-eight students the previous semester. She said the program added ten new volunteer tutors, along with twenty current volunteers and four paid part-time tutors. She shared that since the program began in the fall of 2020, tutors had logged over 2,300 hours of instruction, and many students were back on track with their peers thanks to tutor instruction.
- *Galleries & Bookstore at Library Square Closing:* Coulter asked Ivy to share updates regarding the closure of the Galleries & Bookstore at Library Square. Ivy said the Galleries & Bookstore would close at the end of May and the first floor of Roberts Library would transition to a temporary public service space during the upcoming Main Library renovation. He said that staff were scheduled to begin tearing down the current setup and would eventually move equipment from Main for the temporary "Mini Main" library space, adding that it was the first step toward closing Main Library for the renovation.
- *Williams Library Remodel Update:* Coulter said that CALS was in agreement with LRSD to allow some Williams Library staff to use a few classrooms at Dunbar Middle School to continue serving the afterschool student population while the library closed for renovation. Sims asked if library staff would continue programming and some book checkouts while in the school space. Ivy replied that programs and meal service would continue, as well as some computer usage, and that they would discuss bringing books for checkout. He added that the contract for the contractors for the Williams Library remodel was almost complete and would ask the board for approval soon.

2. Move to Adjourn

Davis moved to adjourn the meeting, and Grice seconded. McAdoo called the meeting adjourned at 1:14 p.m.



President

Secretary