

December 22, 2023

Nadine Farid Johnson  
 Managing Director, Washington, D.C.  
 Pen America Washington, D.C.  
 1100 13<sup>th</sup> Street NW, Suite 800  
 Washington, D.C. 20005

Dear Ms. Farid Johnson:

The René Núñez Political Action Caucus seeks joining PEN America and Random House as *Amicus* filers in the lawsuit against Florida's Escambia County School District and its School Board. As the political action caucus of the National Association for Chicana and Chicano Studies (NACCS), our principles as a national association correspond to those of the PEN American Center lawsuit, and we would be honored to join in this legal struggle. We realize your lawsuit (Case No. 3:23-cv-10385) includes, in addition to the PEN American Center, several individual plaintiffs as well as Penguin Random House LLC. We want to contribute our experience with similar legal struggles to your suit, along with our expertise as educators whose emphasis is education by and about the Chicana and Chicano community.

The NACCS Board, and Chair Dr. Deena Gonzalez, have approved our proposal to PEN America.

As members of NACCS and its René Núñez Political Action Caucus, we are extremely concerned about book banning in its previous iterations and the current manifestations. In that context, we highly commend PEN America for your strong advocacy regarding freedom of expression, championship of the First and the Fourteenth Amendments in the U.S. Constitution, and extensive struggles against discrimination in all of its insidious forms. We applaud the current lawsuit, filed May 17, 2023, by PEN American Center and Random House, et. al., against Florida's Escambia County School District and the Escambia County School Board due to their recent and ongoing book banning campaign and actions.

### **Many Passages in PEN American Center's Lawsuit Resonate with Our Academic Content**

Many passages in the PEN American Center lawsuit resonate deeply with the academic content in the classes we teach in Chicana and Chicano Studies in colleges and universities throughout the Southwest and the U.S., and with a rapidly developing inclusion of such textbooks and other curricula in K-12.

Section "H" of your PEN American Center "Complaint" is entitled: "H. Defendants Disproportionately Target Books by Minority and LGBTQ Authors or Books Addressing Themes Involving Race and LGBTQ Identity." This title is followed immediately by paragraph 136: "The removal efforts of the School District and the School Board have been focused disproportionately on minority and LGBTQ authors and/or books that pursue themes related to minority or LGBTQ identity."

We appreciate the information presented in the lawsuit, including in paragraph 137: “Of the 10 Removed Books by the School Board, 6 have authors who are non-white and/or identify as LGBTQ, while 9 address themes relating to race or LGBTQ identity, or feature prominent non-white and/or LGBTQ characters.” Further, paragraph 197 reads regarding targeted books: “approximately 40% have authors who are non-white and/or identify as LGBTQ, while approximately 60% address themes relating to race or LGBTQ identity” (pages 45-46).

In seeking to join your lawsuit, NACCS offers our experience in legally disputing this type of discrimination and exclusion. NACCS has a successful history of involvement as Amici filers in cases similar to PEN America’s current battle, and we bring to this struggle our commitment to the free expression of ideas.

### **A Previous Successful NACCS Amicus Brief: 1992 Amendment 2 in Colorado**

The targeted ban of books by and/or about racial and ethnic minorities, including LBGTQ communities within these groups, is comparable to a legal struggle that NACCS was involved in during the 1990s. For example, in 1992 Colorado regrettably passed the anti-GLB rights (not noted as GLBTQIA at the time) Amendment 2. The proposed state law read as follows:

Shall there be an amendment to Article II of the Colorado Constitution to prohibit the state of Colorado and any of its political subdivisions from adopting or enforcing any law or policy which provides that homosexual, lesbian, or bisexual orientation, conduct, or relationships constitutes or entitles a person to claim any minority or protected status, quota preferences, or discrimination? ([Colorado Amendment 2, No Protected Status for Sexual Orientation Initiative \(1992\) - Ballotpedia](#))

NACCS participated in the opposition to that proposed law through an *amicus curiae* filed jointly by six major education associations (seven with the NEA affiliate, CEA):

National Education Association, and its affiliate Colorado Education Association (CEA);  
American Federation of Teachers, AFL-CIO;  
American Association of University Professors (AAUP);  
Association for Supervision and Curriculum Development;  
Council of the Great City Schools;  
National Association for Chicana and Chicano Studies.

These six groups shared a common special relationship with education, whether K-12 or higher education. Two groups, NACCS and AAUP, emphasized higher education because, as Amendment 2 states, the reach of the proposed law was to all Colorado state “branches or departments, [and] its agencies, political subdivisions, municipalities or school districts.”

Each of the *amici* was provided one paragraph, of roughly equal length, to introduce their associations at the beginning of the brief, and to join at length the arguments against Amendment 2. The NACCS passage reads as follows:

The National Association for Chicana and Chicano Studies (“NACCS”), with a membership of approximately 2,000, is the oldest and largest organization bringing

together Chicana and Chicano academics, students, and community members from across the nation and across disciplinary lines. NACCS confronts and challenges structures of inequality based on race, class, gender, and sexuality. As an organization historically concerned with the quality of life of all Chicanas and Chicanos, NACCS asserts that discrimination against any members of the community is discrimination against all. As an academic community with firsthand experience of discrimination and prejudice in society and throughout education, NACCS strongly believes that academic development and freedom depend on a climate of mutual respect and acceptance of diversity.

Of special note regarding NACCS' standing for serving as an *amicus* was the second sentence, "NACCS confronts and challenges structures of inequality based on race, class, gender, and sexuality." It noted the association's inherent opposition to Amendment 2.

The success and growth in Colorado following the defeat of Amendment 2 is demonstrated in two telling developments. First, the Governor of Colorado, Jared Polis, was noted in 2021 as "the first openly gay man in the United States to be elected governor." He was elected in 2018 (*Polis*, 1st openly gay governor elected). He is married to Marlon Reis, and they have adopted two children.

Second, in 2019, the Colorado Legislature passed a legislative bill, HB19-1192, mandating Multicultural Studies (MCS) in K-12, which requires both cultural infusion in K-12 curricula and a graduation requirement class in MCS. The preamble paragraph for HB19-1192, "Inclusion of American Minorities in Teaching Civil Government," reads in part:

Concerning the inclusion of matters relating to American minorities in the teaching of social contributions in civil government in public schools, and, in connection therewith, establishing the history, culture, social contributions, and civil government in education commission to make recommendations to include the history, culture, and social contributions of American Indians, Latinos, African Americans, and Asian Americans, the lesbian, gay, bisexual, and transgender individuals within these minority groups... and the intersectionality of significant social and cultural features within these communities (Colorado HB19-1192).

Colorado's election of Governor Jared Polis and the GLBT inclusion in the Multicultural Studies bill demonstrate a growth of social consciousness in Colorado since Amendment 2. The state is now in favor of GLBT rights. In the 1990s, the efforts by many people and groups, including significantly by NACCS, therefore assisted both the GLBT community in particular and Colorado in general in their social evolution and progress.

The effort by Florida's Escambia County School District and its School Board to ban books which "have been focused disproportionately on minority and LGBTQ authors and/or books that pursue themes related to minority or LGBTQ identity" would essentially lead to banning the entirety of the Colorado State Legislature's HB19-1192 legislative bill. No doubt it would be a direct attack against the groups involved by taking away the rights guaranteed to them by the First Amendment and Fourteenth Amendment. Their citizenship rights would be breached and certainly reduced to almost nil.

## **A Second Successful NACCS Amicus Brief: HB 2281 in 2010 and Banning Mexican American Studies and Major Books in Tucson, Arizona**

NACCS also successfully joined as *amici* in a 2012 case in Arizona. This case was similar to your current PEN America and Random House lawsuit against the Escambia district. In 2007, the Tucson Unified School District established a Mexican-American Studies program in the public schools, especially emphasizing that “in the face of a standard curriculum focused on European and white American history and culture, ethnic studies programs are designed to be culturally relevant—to help students see themselves in the curriculum and make them see why education is important for them” (*JSTOR Daily*, Livia Gershon, July 22, 2017). However, as a *JSTOR* article explains, by 2010 “State Superintendent of Public Instruction Tom Horne authored a ban on ethnic studies, HB 2281, following a controversy over the Chicano, or Mexican-American, studies program in the Tucson public schools.” This bill, House Bill 2281, was approved by the Arizona State Legislature in 2010, signed by the Governor Jan Brewer and was “effective from and after December 31, 2010,” as the Bill states. It was designed to provide the following (large capital letters in original text):

- A. A SCHOOL DISTRICT OR CHARTER SCHOOL IN THIS STATE SHALL NOT INCLUDE IN ITS PROGRAM OF INSTRUCTION ANY COURSES OR CLASSES THAT INCLUDE ANY OF THE FOLLOWING:
1. PROMOTE THE OVERTHROW OF THE UNITED STATES GOVERNMENT.
  2. PROMOTE RESENTMENT TOWARD A RACE OR CLASS OF PEOPLE.
  3. ARE DESIGNED PRIMARILY FOR PUPILS OF A PARTICULAR ETHNIC GROUP.
  4. ADVOCATE ETHNIC SOLIDARITY INSTEAD OF THE TREATMENT OF PUPILS AS INDIVIDUALS.

Alongside the banning of the entire program of Mexican-American Studies in the Tucson School District came the banning of the books that had been at the core of the curriculum for the program. For example, an article written at the time, “10 Banned Books From Arizona's Mexican American Studies Program,” cited the 10 most well-known books relevant to Mexican-American Studies of the 84 banned books from Arizona’s MAS program. The list of these 10 banned books included such foundational works as Rudolfo Anaya’s novel, *Bless Me, Última*; Sandra Cisneros’ *Woman Hollering Creek and Other Stories*; Carmen Tafolla’s *Curandera*; and Gloria Anzaldua’s *Borderlands: La Frontera*. Another major book banned was Rudolfo Acuña’s *Occupied America: A History of Chicanos*, 2004 edition.

These banned books, and many other works on the expanded list of 84, are seminal to Mexican-American Studies, and this action against them violated the history, culture, and contributions of our larger community. Of special concern is the implicit banning of additional curricula materials included in the Tucson case such as Mexican and Mexican American art, including posters of Chicana/o civil rights leaders like César Chávez, Dolores Huerta, and others.

NACCS believes that of special consideration for the PEN American Center and Penguin Random House et. al. lawsuit is the filing, in 2012, of the *NACCS Amici Curiae Brief*. Our Brief was filed in the U.S. District for the District of Arizona and is entitled *ACOSTA et. al. Plaintiffs, vs. John Huppenthal, Superintendent of Instruction et. al., Defendants* (Case No. CV-10-623-TUC-AWT). The “Interest of *Amici Curiae*” stated:

The National Association for Chicana and Chicano Studies (NACCS) is a nonprofit, nonpartisan educational and research organization with more than 700 members dedicated to promoting the study of Mexican-origin populations and communities in the United States.... [NACCS] includes members from research centers, universities, four-year colleges, community colleges, and secondary public schools from across the States, including Arizona. NACCS includes members who teach in Chicana and Chicano programs in other countries as well, including Mexico, Spain, England, and elsewhere.

This 2010 legal brief was “joined in filing... by 26 organizations representing thousands of members... that share our commitment to the promotion of rigorous social scientific and humanities research, scholarship, and teaching of Mexican-American or Chicana/o Studies and Ethnic Studies” including in “secondary public schools.” NACCS has proven itself via thousands of research articles and hundreds of books in circulation and housed in public, college, and university libraries.

As a result of the main lawsuit against Arizona’s HB 2281 that banned the Mexican-American Studies program, the state statute was subsequently found to be illegal in that it violated the students’ U.S. Constitutional rights during a seven-year ban from 2010-2017: “‘An Arizona law banning ethnic studies violated students’ constitutional rights,’ a federal judge said Tuesday. His ruling made clear that the state showed discriminatory intent when it essentially shut down a Mexican-American studies program at Tucson Unified School District. ‘Both enactment and enforcement were motivated by racial animus,’ federal Judge A. Wallace Tashima said in the ruling” (NPR, “Federal Judge Finds Racism Behind Arizona Law Banning Ethnic Studies,” August 22, 2017). The PEN American Center and NACCS must always defend the First and Fourteenth Amendments of the U.S. Constitution and file a lawsuit or *Amicus Brief* when it is necessary.

### **NACCS Supports Pen America**

We make this offer of filing an Amicus brief to demonstrate our support for PEN America’s current lawsuit against Florida Escambia School District and School Board. Please let us know at your earliest convenience how we may be of service in this extremely significant case. Thank you for your consideration.

Sincerely,

Dr. Raoul Contreras, Chair, René Núñez Political Action Caucus, NACCS

Dr. Reynaldo Macias, Executive Committee, René Núñez Political Action Caucus  
Dr. Luis Torres, Executive Committee, René Núñez Political Action Caucus  
Dr. Manuel Hernandez, Executive Committee, René Núñez Political Action Caucus

**Attachments:**

1. NACCS Press Release: “National Association of Chicana and Chicano Studies Statement on Legislative Actions Recognition and Solidarity with National Right to Learn Day,” May 3, 2023
2. “NACCS Declaration Against Compulsory Ignorance Laws and in Favor of the Right to Learn,” May 5, 2023