United States Supreme Court, BOARD OF EDUCATION v. PICO(1982), No. 80-2043, Argued: March 2, 1982Decided: June 25, 1982

(https://www.law.cornell.edu/supremecourt/text/457/853)

The below is my own personal notes after reading the referenced case above. I am not a lawyer nor have I sought legal advice on the below; but, I have taken the time to read this case in its entirety since it is being used to convince the public that removing books that have sexually explicit content is somehow a violation of students First Amendment Rights. I included things have helped me see this case as being focused on protecting our students from being censored from ideals and partisan opinions. This case does not address the rights of students, minors, to have sexually explicit material in their school libraries. *** side note: None of these books were sexually explicit. Some did contain reference to sex and some did have obscenity and vulgarness; but none contained explicit sex scenes depicted such as we are seeing in the literature contested today. Do not read this as a summary of this case. These are opinion statements of the judges that I believe are important to note. If you don't have time to read it in its entirety, please jump down to the very last section (2: Dissent).

Background of this case:

The school board was concerned about certain books in the district's libraries. A committee of parents and employees formed committees and reviewed the books in question. They recommended some be removed from the library and some stay. The school board disagreed with the committee and called for all but 1 of 9 books in question to be removed from the library.

Soon after, a group of students / parents that felt these books should remain in the libraries took the school board to court. The District Court ruled in favor of the school board and said it was within their scope to remove these books for the reasons they stated.

The School Board's reasons for requiring these books to be removed were inconsistent and lacked detail.

- The words by school board members to describe the books were "anti-American, anti-Christian, anti-Sem[i]tic, and just plain filthy,"
- School Board Members Ahrens, Fasulo, Hughes, Melchers, Michaels, and Nessim made statements along the lines of "representing the basic *values* of the community in [their] actions."
    - For instance, Ahrens stated: "I am basically a conservative in my general philosophy and feel that the community I represent as a school board member shares that philosophy. . . . I feel that it is my duty to apply my conservative principles to the decision making process in which I am involved as a board member and [457 U.S. 853, 873] I have done so with regard to . . . curriculum formation and content and other educational matters."
    - "We are representing the community which first elected us and re-elected us and our actions have reflected its intrinsic values and desires." Id., at 27.
- The above statements showed value-based decisions rather than basing decisions on the content being appropriate for school environment.

The Court of Appeals then reversed the judgement from the District Court largely in part because of the above bullet points. The below bullet point is important to note though in how they viewed the court deciding this case:

- One of the 3 court of appeals judges "viewed the case as turning on the contested factual issue of whether petitioners' removal decision was **motivated by a justifiable desire** to remove books containing vulgarities and **sexual explicitness**, or rather by an impermissible desire to suppress ideas.

Supreme Court Ruling (Judgement and Dissent Statements):

Next, the case was heard by the Supreme Court. There were 9 judges who heard the case. Five of the Nine judges agreed on the final judgement (which reversed the District Courts ruling), stated below in (1. Judgment). This part of the opinion is the basis for many school boards EFLOCAL policy that is used for current book challenge committees. Four of the 9 judges, including the Chief Judge Burger of this trial, did not agree with this final judgement. Their dissent statements are in (2. Dissent) below.

1. **Judgement:** The below is used currently in many EFLOCAL school board policies for book challenges:
    a. School Boards "rightly possess significant discretion to determine the content of their school libraries. But that discretion may not be exercised in a narrowly partisan or political manner."
    b. "Respondents implicitly concede that an unconstitutional motivation would not be demonstrated if it were shown that petitioners had decided to remove the books at issue because those books were pervasively vulgar. Tr. of Oral Arg. 36. And again, respondents concede that if it were demonstrated that the removal decision was based solely upon the "educational suitability" of the books in question, then their removal would be "perfectly permissible." Id., at 53. In other words, in respondents' view such motivations, if decisive of petitioners' actions, would not carry the danger of an official suppression of ideas, and thus would not violate respondents' First Amendment rights."
    c. "In brief, we hold that local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." (West Virginia Board of Education v. Barnette, 319 U.S., at 642)
2. **Dissent:** The 4 judges that did not agree with the judgement issued the following statements. These statements are applicable when we are evaluating some of the content in which we see challenged today.
    a. This judgment does NOT constitute a new "law" and if it were to become a law it would mean the court would be close to being a "super censor" of the school board: "a plurality of the Court, in a lavish expansion going beyond any prior holding under the First Amendment, expresses its view that a school board's decision concerning what books are to be in the school library is subject to federal-court review. Were this to become the law, this Court would come perilously close to becoming a "super censor" of school board library decisions."

b. ***Pervasively Vulgar: "But why must the vulgarity be "pervasive" to be offensive? Vulgarity might be concentrated in a single poem or a single chapter or a single page, yet still be inappropriate. Or a school board might reasonably conclude that even "random" vulgarity is inappropriate for teenage school students. A school board might also reasonably conclude that the school board's retention of such books gives those volumes an implicit endorsement. Cf. FCC v. Pacifica Foundation, 438 U.S. 726 (1978).***

c. Educationally Appropriate: "Educational suitability," however, is a standardless phrase. This conclusion will undoubtedly be drawn in many - if not most - instances because of the decisionmaker's content-based judgment that the ideas contained in the book or the idea expressed from the author's method of communication are inappropriate for teenage pupils.

d. No restraints are being placed on students since they can still utilize public libraries to access books: "Here, however, no restraints of any kind are placed on the students. They are free to read the books in question, which are available at public libraries and bookstores; they are free to discuss them in the classroom or elsewhere. Despite this absence of any direct external control on the students' ability to express themselves, the plurality suggests that there is a new First Amendment "entitlement" to have access to particular books in a school library."

e. School Board's discretion, in quoting James Madison: "We all agree with Madison, of course, that knowledge is necessary for effective government. Madison's view, however, does not establish a right to have particular books retained on the school library shelves if the school board decides that they are inappropriate or irrelevant to the school's mission."

f. The government / school is not required to be the one to provide a specific spectrum on knowledge: "The government does not "contract the spectrum of available knowledge." Griswold v. Connecticut, 381 U.S. 479, 482 (1965), cited ante, at 866, by choosing not to retain certain books on the school library shelf; it simply chooses not to be the conduit for that particular information."