



FIRST FOCUS

MAKING CHILDREN & FAMILIES THE PRIORITY

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**Submitted for the Record by
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**House Committee on Oversight and Reform
Subcommittee on Civil Rights and Civil Liberties**

Free Speech Under Attack: Book Bans and Academic Censorship

April 12, 2022

On behalf of First Focus Campaign for Children, I would like to thank Chairman Jamie Raskin, Ranking Member Nancy Mace, and members of the subcommittee for holding this very important hearing about free speech and book bans and ask for our statement be including in the official record.

There is no doubt that the role parents play in the protection and well-being of children is vital. Consequently, the organization that I work for, First Focus Campaign for Children (FFCC), support and have supported numerous pieces of legislation that respect and support the critically important role of parents, including the Child Tax Credit, Family First Prevention Services Act, Family and Medical Insurance Leave Act, the Homeless Children and Youth Act, Healthy Families Act, Trauma-Informed Care for Children and Families Act, Family-Based Care Services Act, Preventing Maternal Deaths Act, and others that encourage parental involvement in schools and in preventing the separation of migrant or asylum-seeking children from their parents and families.

However, far too often, even when the policy debate is about children, the discussion ignores that children also have fundamental rights and that government has a role in promoting the health, education, safety, and well-being of children. There is no doubt that children need the support and protection *of* parents and government. But children also need protection *from* actions by parents and government when their health, education, safety, and well-being are threatened.

So first, we want to applaud the subcommittee for including the voices of young people on the first panel in the hearing about an issue in which they should have voice, which is the censorship and the banning of books.

In a study by PEN America entitled “Banned in the USA,” the non-profit organization found that between July 2021 and March 2022, there were 1,586 book bans implemented in 86 school districts across 26 states. PEN American documents how many of these book bans are politically motivated and disproportionately target issues related to race and social justice, LGBTQ issues, health care (mental health and sexuality), and history, including “biographies of Rosa Parks, Martin Luther King,

Jr., Ruby Bridges, Duke Ellington, Katherine Johnson, Neil deGrasse Tyson, Cesar Chavez, Sonia Sotomayor, Nelson Mandela, and Malala Yousafzai.”¹

Furthermore, according to PEN America’s Jonathan Friedman, “Challenges to books, specifically books by non-white male authors, are happening at the highest rates we’ve ever seen. What is happening in this country in terms of banning books in schools is unparalleled in its frequency, intensity and success.”²

In Texas, where I grew up and attended public school, State Rep. Matt Krause sent a letter to the Texas Education Agency with an accompanying list of 850 books that he objects to with a request that every school library in the state identify whether they have those books, but it goes every further. It also asks for information on books related to topics such as human sexuality, HIV/AIDS, sexually transmitted diseases, or “contain material that might make students feel discomfort, guilt, anguish, or any other form of psychological stress because of their race or sex or convey that a student, by virtue of their race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.”³

It is ridiculous to ask teachers, librarians, and school administrators to identify books that “might make students feel discomfort, guilt, anguish, or any other form of psychological stress” for countless reasons. What about the negative impact on students caused by censorship and book bans? Ask former Texas students and they will tell you how embarrassing and discomfoting it can be to find out, in college and as adults, basic truths about American and Texas history. And yet, Rep. Krause wants to add 850 books to the list of censored materials, including:

- *This Is Your Time* by Ruby Bridges
- *The Lottery* by Shirley Jackson
- *Protect and Defend* by Richard North Patterson
- *Teen Legal Rights* by David L. Hudson, Jr.
- *The Year They Burned the Books* by Nancy Garden
- *We the Students: Supreme Court Cases for and About Students* by Jaime Raskin

Yes, even Chairman Raskin’s book, which provides a balanced review of the major Supreme Court decisions that impact young people (something many would undoubtedly find of great interest), is on the Texas legislator’s hit list. It is alarming that the Texas state representative is pushing to limit the knowledge of Texas students to ruling by the U.S. Supreme Court on issues of importance to students.

Unfortunately, school districts across Texas have taken up countless hours reviewing this enormous list of books at an immense cost – funding and time taken from the actual education of Texas’s children – in an unprecedented effort to encourage the censorship and banning of books across the

¹ PEN America. (2022, Apr.). *Banned in the USA: Rising School Book Bans Threaten Free Expression and Students’ First Amendment Rights*. Retrieved from <https://pen.org/banned-in-the-usa/>.

² Gabbatt, A. (2022, Apr. 7). ‘Unparalleled in intensity’ – 1,500 book bans in US school districts. Retrieved from The Guardian: <https://www.theguardian.com/us-news/2022/apr/07/book-bans-pen-america-school-districts>.

³ Ellis, D. (2021, Nov. 5). *All 850 Books Texas Lawmaker Matt Krause Wants to Ban: An Analysis*. Retrieved from Book Riot: <https://bookriot.com/texas-book-ban-list/>.

state. According to an analysis of Rep. Krause’s list by Book Riot’s Danika Ellis, 85 percent of the books are on topics related to LGBTQ issues, race or racism, and health or sex education.⁴

These are disturbing trends in a free country where open expression and tolerance are values most Americans embrace. In fact, according to a recent poll by Hart Research Associates and North Star Opinion Research for the American Library Association, the vast majority of American adults oppose banning books from school libraries. Those polled expressed strong support for the idea that parents can set rules for their own children, but that they do not have the right to decide for *all* parents and children what books are available or banned.⁵

In a Feb. 2022 poll by CBS News and YouGov, voters overwhelmingly rejected book bans over issues of history or race. Specifically, voters opposed censoring books for: criticizing U.S. history (17-83%); political ideas you disagree with (15-85%); depicting slavery (13-87%); and, discussing race (13-87%).⁶ And yet, states and school boards across the country are doing that very thing in the name of “parental rights.”

Obviously, the concerns and thoughts of parents and adults are very important. Nobody disputes that. Parents and teachers in schools have always worked together. We must continue to ensure that our kids get a truthful, honest, accurate understanding of history, including the good and bad. Instead of people trying to politicize education and trying to tell teachers and librarians to engage in censorship and book banning, we should focus on what matters.

When it comes to education, what matters and what is in the best interests of students is that we ensure they have the knowledge, skills, and ability to think carefully, critically, and creatively to meet the challenges in an ever-changing world so they can thrive and succeed individually and as future decision-makers in our democracy. For kids, their needs, concerns, and best interests should always be at the forefront. We should also never forget that the primary purposes of education are to improve the learning and knowledge of students for their own success but also to create a better-informed citizenry to protect and enhance our democracy.

To achieve these goals, kids need to be exposed to a spectrum of thought and experience, be challenged to understand and reflect upon a diversity of perspectives and viewpoints, be challenged with a first-class curriculum to prepare them for the real world, and learn the truth about our history – both the good and bad. Kids also need to find their place in the world and find materials that reflect themselves, while simultaneously being offered a window to the world beyond.

Book bans and censorship do not fulfill such goals and purposes. While educational materials must be age-appropriate, schools must be places for discovery, growth, understanding, and truth.

Although it is a good sign that the public clearly opposes censorship and book bans related to issues such as history, race, and racism, incidents of book bans rose dramatically in 2021 and the first quarter of 2022. Under the guise of “parental rights,” politicians are seeking to tap into the fear that

⁴ *Ibid.*

⁵ American Library Association. (2022, Mar.). *Voters Oppose Book Bans in Libraries*. Retrieved from <https://www.ala.org/advocacy/voters-oppose-book-bans-libraries>.

⁶ Backus, F., & Salvanto, A. (2022, Feb. 22). *Big majorities reject book bans - CBS News poll*. Retrieved from CBS News: <https://www.cbsnews.com/news/book-bans-opinion-poll-2022-02-22/>.

some parents have about wanting to protect their kids from “uncomfortable” topics. But they are interfering with the rights of parents who want their children to have access to such materials and to the rights of children themselves.

As Supreme Court Justice Robert H. Jackson wrote in *West Virginia State Board of Education v. Barnette* (1943), “The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials....”

Justice Jackson added, “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in matters of politics, nationalism, religion, or other matters of opinion or force citizens to confess by word their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.”

An overwhelming majority of the public are opposed to book bans based on the issues of history and race, but even if they were in favor of such bans (as may be the case in certain communities), the fundamental rights of children must not be ignored or dismissed.

Rights cannot be abridged. As such, efforts to censor or ban books must be respectful of and not violate the fundamental educational rights of children, the freedom of speech guaranteed under the First Amendment of the Constitution, and underlying tenets of what is important in public education for a democracy.

Some may argue that all matters related to children are under the purview of either parents or of school boards (and both have much discretion and say in matters related to curriculum), but such arguments tragically fail to recognize that children also have fundamental rights guaranteed by the Constitution that have been affirmed by the Supreme Court in a number of decisions. Moreover, a robust democracy demands knowledge, understanding, and free expression by teachers and students alike.

As Justice Abe Fortas wrote in *Tinker v. Des Moines Independent Community School District* (1969), “Students in school as well as out of school are ‘persons’ under our Constitution. They are possessed of fundamental rights which the State must respect.... In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate.... [S]chool officials cannot suppress ‘expressions of feeling with which they do not wish to contend.’”

Justice Fortas adds, “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

So yes, children in our nation also have fundamental Constitutional rights that include access to ideas that, as Justice William J. Brennan, Jr., explains in *Island Trees Union Free School District v. Pico* (1982), “prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.”

Again, schools have enormous discretion with respect to school curriculum, but as Justice Brennan explains, that “discretion may not be exercised in a narrowly partisan or political manner. If a Democratic school board, motivated by party affiliation, ordered the removal of all books written by or in favor of Republicans, few would doubt that the order violated the constitutional rights of the students denied access to those books. The same conclusion would surely apply if an all-white

school board, motivated by racial animus, decided to remove all books authored by blacks or advocating racial equality and integration. Our Constitution does not permit the official suppression of *ideas*.”

In his dissent, Justice William H. Rehnquist agreed by saying, “I can cheerfully concede all of this, but as in so many other cases the extreme examples are seldom the ones that arise in the real world of constitutional litigation.”

And yet, that is exactly what is happening today. In a growing number of communities this past year, majority school boards are disproportionately targeting books by Black and LGBTQ authors and on issues related to civil rights.⁷

The majority opinion in *Island Trees Union Free School District v. Pico* (1982) is instructive here. As Justice Brennan wrote, “...school officials may not remove books for the *purpose* of restricting access to the political ideas or social perspectives discussed in them, when that action is motivated simply by the officials’ disapproval of the ideas involved. It does not seem radical to suggest that state action calculated to suppress novel ideas or concepts is fundamentally antithetical to the values of the First Amendment.”

The future of our democracy demands the same. In 1775, John Adams wrote a letter to his wife, Abigail Adams, and said this about the importance of education: “It should be your care, therefore, and mine, to elevate the minds of our children and exalt their courage; to accelerate and animate their industry and activity; to excite in them an habitual contempt of meanness, abhorrence of injustice and inhumanity, and an ambition to excel in every capacity, faculty, and virtue. If we suffer their minds to grovel and creep in infancy, they will grovel all their lives.”⁸

The importance of students receiving and learning about the truth and a variety of ideas and viewpoints (even if there is some discomfort) is critical. Kids need to learn about truth in science, both the good and bad in human history, and be exposed to the world beyond the schoolhouse doors through books and literature in order to truly be educated and fully participate in our democracy.

As James Madison wrote, “Knowledge will forever govern ignorance; And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”⁹

And as Justice Fortas wrote in *Epperson v. Arkansas* (1968), “[Courts] apply the First Amendment’s mandate in our educational system where essential to safeguard the fundamental values of freedom of speech and inquiry and of belief.”

Those fundamental rights must be protected.

⁷ Chavez, N. (2022, Apr. 4). *Books about LGBTQ and Black people were among the most challenged books in 2021*. Retrieved from CNN: <https://www.cnn.com/2022/04/04/us/american-library-association-most-challenged-books/index.html>.

⁸ Adams, J. (1775, Oct. 29). *John Adams to Abigail Adams, 29 October 1775*. Retrieved from National Archives: <https://founders.archives.gov/documents/Adams/04-01-02-0209>.

⁹ Madison, J. (1822, Aug. 4). *James Madison to W. T. Barry, August 4, 1822*. Retrieved from Library of Congress: https://www.loc.gov/resource/mjm.20_0155_0159/.

As Nobel prize winning poet Gabriela Mistral said, “Many things we need can wait. The child cannot. Now is the time his or her bones are formed, his or her mind developed. To them, we cannot say tomorrow, their name is today.”