

CHALLENGING BANNED BOOKS: AN ANALYSIS OF BANNING BOOKS BASED ON RACE, SEXUAL ORIENTATION, AND SEXUAL IDENTITY IN APPALACHIA

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The First Amendment protects the censorship of speech based on its content. However, there are exceptions to those protections including express incitement, defamation, and obscenity. This article examines the effects of banning books based on race, sexuality, and gender identity, focusing on the Appalachian region. First, it discusses the books being challenged nationwide and in Appalachia, and how many of those feature themes involving race, sexual orientation, and gender identity. It focuses on books featuring each of these themes that are most often challenged in Appalachia. Then, the Article looks at the social impacts reading challenged books has on young people. Next, it looks at the current law governing speech censorship in books, such as

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the First Amendment and previous Supreme Court decisions, and applies it to two different commonly banned books.

Next, the Article looks at several examples of proposed legislation in Appalachia aiming to make it easier to challenge and ban books in the State. Finally, this Article provides proposed solutions for how to challenge such legislation, including examples from other States. It applies these solutions to two commonly banned books. It shows that if these books are looked at as a whole and the purpose of these books are taken into account, people would realize that they are not explicit in nature. They provide stories from minority points of view and educate students on the perspectives of people of different races, sexualities, and gender identities.

INTRODUCTION

When I was young, growing up in West Virginia, I felt very disconnected from the rest of the world. West Virginia was rarely discussed in any of the books I read or the movies I watched. Instead, I would watch shows about a group of kids growing up in New York City or read a book about a plucky redhead solving crimes all over the country. I didn't see myself in any of those characters. And while the books were enjoyable, I always wanted to be able to read about a young girl growing up in West Virginia as I did, and not the West Virginia that I had seen portrayed in the past.

I have been very fortunate to find characters in other books that I have related to for different reasons. When I was in high school, I began having depressive thoughts. I was 16, and I didn't want to admit it was depression, but I did want to understand my own brain and what was happening to me without the stigma of therapy. No one in my immediate family had been diagnosed with depression before, so they struggled to help me. They associated depressive thoughts with suicidal thoughts, so that became their primary focus: making sure I didn't think about killing myself. Through all these discussions, I feared what thoughts my brain would conjure up. Then I read *Thirteen Reasons Why* by Jay Asher, and I truly saw the difference between being depressed and being suicidal. Through that book, I learned that you can be one and not the other and that it is okay that I did have depressive thoughts. Other people had them, too, and there was nothing wrong with me. There was also nothing wrong with seeking help.

I chose to research the banning of books in Appalachia because no one should be kept from speaking their truth or seeking their own truth in the books they read. I am fortunate to read a book and easily slip myself into the lead character of the straight, white female. Many

readers are not so lucky. They struggle to find books that feature characters with the same skin color or sexual orientation as them. As for a young adult who is learning about their own sexual identity or going through a unique experience based on their race, it is important to have literature accessible to them that gives them someone to relate to and allows them to navigate their own feelings without feeling alone in that journey.

Our country is currently experiencing a surge of challenges to ban books in public libraries.¹ The Office of Intellectual Freedom (OIF) has reported 695 attempts to censor library materials and documented challenges to 1,915 unique titles from January 1, 2023 to August 31, 2023.² That is a 20% increase from the same reporting period in 2022.³ Of the books being banned during this period, 30% include characters of color or discuss race and racism, and 26% include LGBTQ+ characters or themes.⁴

This paper explores the types of books being banned in the country, focusing on the Appalachian region. The first section will focus on the books being banned in Appalachia. It will focus on several books that have been banned in the region: *The Glass Castle* by Jeanette Walls, *The Hate U Give* by Angie Thomas, and *Flamer* by Mike Curato. The following section will focus on the social impact of banning books in schools and libraries. There is limited research in this area, but the studies will focus on the behavioral impacts of these banned books on young people. The next section will discuss how books are banned in the country from a legal standpoint. It will focus on censorship and the First Amendment and highlight the existing case law on the subject. The next section will focus on current legislation related to the banning of books that have been proposed in Appalachia and what it means for the region. The paper will end with ways that current banned books legislation is being challenged and how to challenge that same legislation in Appalachia.

1. *Book Ban Data*, AM. LIBR. ASS'N (Mar. 20, 2023), <https://www.ala.org/advocacy/bbooks/book-ban-data>.

2. *Id.*

3. *Id.*

4. Kasey Meehan & Jonathan Friedman, *Banned in the USA: State Laws Supercharge Book Suppression in Schools*, PEN AMERICA (Apr. 20, 2023), <https://pen.org/report/banned-in-the-usa-state-laws-supercharge-book-suppression-in-schools/> (stating that 26%, or sixty-eight books, include transgender characters, which is 8% of all banned books).

I. BOOKS BEING BANNED IN APPALACHIA

Before discussing banned and challenged books in Appalachia, we must first define what a banned book is and what a challenged book is. A banned book is “a book banned by ‘private individuals, government officials, or organizations’ due to its ‘content, ideas, or themes.’”⁵ Challenged books, on the other hand, are books “that people have attempted to take out of libraries or school curricula.”⁶ Books being challenged or banned is not new to the world. The first banned book in the United States was Thomas Morton’s *New English Canaan*, which criticized Puritan culture.⁷ That occurred in 1637.⁸ Since then, the list has continued to grow, including books such as *Winnie-the-Pooh*, *Brave New World*, and the *Harry Potter* series.⁹

Challenging and banning books is also not new to Appalachia. In the book *Banned in the U.S.A.*, Herbert Foerstel details a book-banning incident that occurred in Kentucky over two decades ago.¹⁰ A sixteen-year-old high school student brought home William Faulkner’s *As I Lay Dying*, a book on reincarnation.¹¹ His mother read the book and did not like that her son was reading a book about other religious perspectives.¹² She complained to the school board and allowed the school to assign her child *Moby Dick* instead.¹³ She did not feel that this was enough; she wanted to “protect” other students from Faulkner’s ‘dangerous’ novel,” so she brought her concerns to a school board member.¹⁴ He brought her concerns to a school board meeting, pushing that “opposing religious ideas should not be taught in the classroom and that Faulkner’s novel needed to be removed from the curriculum.”¹⁵ He then had the board read aloud sentences from a

5. Leah Boone, *OPINION: Banned Books are Critical to Society*, APPALACHIAN (Mar. 9, 2023), <https://theappalachianonline.com/opinion-banned-books-are-critical-to-society/> (citing *The First Amendment Encyclopedia*, FREE SPEECH CTR. AT MIDDLE TENN. STATE UNIV., <https://firstamendment.mtsu.edu/encyclopedia/> (last visited Mar. 18, 2024)).

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. HERBERT N. FOERSTEL, *BANNED IN THE U.S.A.: A REFERENCE GUIDE TO BOOK CENSORSHIP IN SCHOOLS AND PUBLIC LIBRARIES* 31-33 (2d ed. 2002).

11. Tess Cadman, “*But... I Love That Book!*”: *Banned Literature and Its Implications*, 2 LECTERN 1, 2 (2022) (citing FOERSTEL, *supra* note 10).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

highlighted copy, sentences that referred to God, abortion, and curse words.¹⁶ The board decided to ban the book from the school's library and course curricula.¹⁷ According to the school board's attorney, "none of the board members had read the book, though few said they had thumbed through it," and he "estimated that the school board's discussion of Faulkner's book lasted about five minutes."¹⁸ It took the school board five minutes to look at some sentences from a novel without context to decide that children should not learn about any other religious perspectives in school.¹⁹

Since this incident, the number of banned books has continued to increase annually.²⁰ In 2022, forty-one unique titles have been challenged in Tennessee, 167 in North Carolina, eight in West Virginia, seventy in Kentucky, norty-nine in Georgia, and 182 in Virginia.²¹ Some of the top banned books in the Appalachian states include *Gender Queer: A Memoir*, *Flamer*, *The Hate U Give*, *Looking for Alaska*, and *A Court of Mist and Fury*.²² Three of these five books involve main characters of color, sexual orientation, and gender identity.

The Hate U Give by Angie Thomas is about a sixteen-year-old African American girl named Starr Carter who lives in a predominantly Black community while attending a suburban white private school.²³ One night, she is leaving a party with her childhood friend, Khalil, when they are pulled over by a police officer.²⁴ Starr watches as the police officer murders Khalil.²⁵ The rest of the novel details how Starr navigates both of her communities, the police, and her own feelings as Khalil's story spreads online, and she is the only witness to what happened.²⁶ School districts that have challenged *The Hate U Give* state that they do so because of the profanity and violence contained in the book and that it promotes an "anti-police message" and an "indoctrination of a social agenda."²⁷ Meanwhile, while fictitious, what happened to Starr and Khalil has been happening all

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. Meehan & Friedman, *supra* note 4.

21. *Censorship by the Numbers*, AM. LIBR. ASS'N (Apr. 20, 2023), <https://www.ala.org/advocacy/bbooks/by-the-numbers>.

22. *Id.*

23. ANGIE THOMAS, *THE HATE U GIVE* 20 (2017).

24. *Id.* at 19.

25. *Id.* at 23.

26. *Id.*

27. Ron Titus, *Banned Books 2023 – The Hate U Give*, MARSHALL UNIV. LIBR. (June 23, 2023), <https://www.marshall.edu/library/bannedbooks/the-hate-u-give/>.

over the country.²⁸ It is all over the news and the internet, if it is not happening in these kids' lives.²⁹ In defense of the book, students and parents have stated that there are "very few issues about Black struggle in the curriculum outside of slavery" and that the book "opens the door to conversations about racism" and "illustrates the urban/suburban divide."³⁰

Flamer by Mike Curato is a semi-autobiographical graphic novel about a fourteen-year-old boy named Aiden who goes to a boy scouts summer camp with his troop in 1995 and struggles at the camp with bullying, puberty, self-love, and sexuality as he prepares to start high school.³¹ He discusses issues he faces at home, including his parents fighting a lot, serving as an emotional crutch for his mother and a shield for his siblings, and being called a "faggot," among other bullying he suffered during middle school for being slightly chubby and Asian.³² He also starts developing feelings for a boy at camp, and he describes how scary this is, as he had never thought of himself as gay before, and does not know what that could mean for his friendships, his bullies (both past and present), and his family.³³ The rest of the book navigates his journey of self-growth, his fear of the future and starting high school, and his thoughts about ending his life.³⁴ School districts banning *Flamer* claim it contains "obscene" material.³⁵ It is true that in Aiden's struggle to accept his sexual identity, there are some sexually charged scenes, such as seeing his

28. See *Mapping Police Violence*, CAMPAIGN ZERO, (Apr. 10, 2024), <https://mappingpoliceviolence.org/>.

29. See Abby Vansickle & Weihua Li, *Police Hurt Thousands of Teens Every Year. A Striking Number Are Black Girls.*, THE MARSHALL PROJECT, (Nov. 2, 2021), <https://www.themarshallproject.org/2021/11/02/police-hurt-thousands-of-teens-every-year-a-striking-number-are-black-girls>; Marc Schindler & Jeremy Kittredge, *A Crisis Within a Crisis: Police Killings of Black Emerging Adults*, BROOKINGS INSTITUTION, (Dec. 2, 2020), <https://www.brookings.edu/articles/a-crisis-within-a-crisis-police-killings-of-black-emerging-adults/>; Alia Chughtai, *Know Their Names Black People Killed by the Police in the US*, AL JAZEERA, <https://interactive.aljazeera.com/aje/2020/know-their-names/index.html>.

30. Titus, *supra* note 27.

31. MIKE CURATO, *FLAMER* *passim* (2020).

32. *Id.*

33. *Id.*

34. *Id.* Aiden does not really think about harming himself or ending his life until the end of the book, after kissing his male crush on the cheek and temporarily losing him as a friend. The story focuses on the isolation he feels, and at no point in the book does he harm himself.

35. Jackie DelPilar, *Rutherford County Library Board Bans Four Books Centered on LGBTQ Topics*, FOX 17 NEWS (Aug. 30, 2023), <https://fox17.com/news/local/rutherford-county-library-board-bans-four-books-centered-on-lgbtq-topics>.

crush in the shower and a discussion about masturbation.³⁶ However, these scenes are not even slightly pornographic—artwork included.³⁷ Firstly, the artwork is either censored or fades to black; nothing remotely inappropriate is drawn.³⁸ Secondly, while some scenes are sexually charged, they are not sexual. There is no sex depicted in the book, nor any other sexual acts. The language the characters use when describing their changing bodies is the same language most fourteen-year-old boys use. According to the author, this book's purpose is to help young boys like himself, like Aiden, so they know they are not alone, even if they can't see each other.³⁹ In an interview with PEN America, Curato stated, "This is a book about telling someone that regardless of how someone may disagree with who you are as a person, you still deserve to be here. There is a place for you, and no one has the right to take that away."⁴⁰ Ultimately, this is a book about suicide prevention, especially regarding young people coming to terms with their sexuality; it is not pornography.⁴¹

Gender Queer by Maia Kobabe is currently the most banned book in the United States.⁴² *Gender Queer* is an illustrated book about Kobabe's own journey from adolescence to adulthood and grappling with coming out and being nonbinary.⁴³ While this book contains hundreds of illustrations from start to finish, many of the challengers focus on one illustration in their cries to remove the book from school libraries: an illustration depicting a 14-year-old Kobabe fantasizing about an older man touching the penis of a seemingly younger man or boy.⁴⁴ This same illustration was inspired by an ancient Greek pottery cup that contains an erotic sketch of "a courting scene" and is on display at a museum in Oxford, England.⁴⁵ One parent complains that a pedophilia scene is not appropriate to make available to high schoolers and that it has no role to play in any person who is of a nonconforming gender identity.⁴⁶ However, Kobabe chose to include

36. Lindsey T., *I'm With The Banned: Flamer*, RICHLAND LIBR. BLOG (June 27, 2023), <https://www.richlandlibrary.com/blog/2023-06-16/im-banned-flamer>.

37. *Id.*

38. *Id.*

39. Lisa Tolin, *Banned in the USA Spotlight: Mike Curato*, PEN AMERICA (Apr. 25, 2023), <https://pen.org/mike-curato-flamer-interview/>.

40. *Id.*

41. *Id.*

42. Meehan & Friedman, *supra* note 4.

43. Matt Leviates, *Author of 'Gender Queer,' One of the Most-Banned Books in U.S., Addresses Controversy*, NBC NEWS (Dec. 19, 2021), <https://www.nbcnews.com/nbc-out/out-life-and-style/author-gender-queer-one-banned-books-us-addresses-controversy-rcna8991>.

44. *Id.*

45. *Id.*

46. *Id.*

that illustration because they wanted to give an honest account of their experience outside of cisgender and heterosexual norms, and having a book like this one “would have been not only appropriate, but so, so necessary.”⁴⁷ Kobabe even stated that the majority of reader feedback they have received has been centered around how much it helped them understand themselves or helped a loved one understand them more.⁴⁸

II. SOCIAL IMPACT OF BANNING BOOKS

Reading books that feature topics regarding race, sexual identity, or gender orientation is critical for a child’s growth, development, and sense of self.⁴⁹ While it is true that reading books on such topics can bring up difficult and complex discussions that do not bring about easy answers, they do raise topics that many young people are faced with every day, whether personally or online.⁵⁰

Despite the growth of challenged and banned books in America, there is very little social science research into the behavioral impact of reading some of these challenged and banned books. The most common reasons purported for banning books is due to “edgy,” violent, sexual, or occult content.⁵¹ Christopher Ferguson conducted a study in 2014 to investigate the relationship between banned books and outcomes related to civic behaviors, internalizing and externalizing mental health problems, school grade point average (GPA), and violent and nonviolent crime.⁵²

Reading banned books was positively associated with civic and volunteering behaviors.⁵³ A potential reason for this is “reading challenging books can be ‘eye opening’ and move individuals to help others once they understand the difficulties some others may face.”⁵⁴ Research also suggests that reading books can promote ethical

47. *Id.*

48. *Id.*

49. Boone, *supra* note 5.

50. Alyssa D. Niccolini, *Precocious Knowledge: Using Banned Books to Engage in a Youth Lens*, 104 ENG. J. 22, 27 (2015).

51. Christopher J. Ferguson, *Is Reading “Banned” Books Associated with Behavior Problems in Young Readers? The Influence of Controversial Young Adult Books on the Psychological Well-Being of Adolescents*, 8 PSYCH. AESTHETICS, CREATIVITY, & ARTS 354, 354 (2014).

52. *Id.* (discussing a test in which Ferguson assessed a sample of 282 students aged 12–18. His control variables were child age and gender, parent and peer influences, neurotic and antisocial personality traits, and general reading for pleasure and required reading for school).

53. *Id.* at 359.

54. *Id.*

development, so this may extend to “edgy” literature as well.⁵⁵ “The opportunity to expose oneself to and consider ethical dilemmas may foster higher-level thinking about these issues and promote more civic mindedness, even if the material itself is dark.”⁵⁶ Reading “edgy” material, especially with adult guidance, may provide teachable moments and allow for difficult conversations between parents and children.⁵⁷ Banning these books would remove these teachable opportunities.⁵⁸ Reading banned books did not predict nonviolent or violent crime or contribute to school GPA.⁵⁹ These results, taken together, show that reading banned books could actually be positive overall.⁶⁰

However, reading banned books was associated with greater degrees of mental health symptoms, both internalized and externalized.⁶¹ This relationship was nonlinear, and for the vast majority of participants, reading banned books was not related to mental health symptoms.⁶² A small percentage of the sample was high in both reading banned books and mental health symptoms.⁶³ Based on this study, it is impossible to identify the causal relationship.⁶⁴ Thus, it could be possible that those participants with higher levels of mental health symptoms seek out books they can relate to, books that feature mental health issues, and other mature themes that may be going on in their lives.⁶⁵ Further research in the area would need to be conducted.⁶⁶ Given the results for civic behavior and the lack of results in violent and nonviolent crimes and school GPA, “it could be argued that efforts to restrict banned books from the majority of youth are misguided.”⁶⁷

III. LEGAL ANALYSIS OF BANNING BOOKS

A. *First Amendment Jurisprudence*

55. *Id.*

56. *Id.* at 359–60.

57. *Id.* at 360.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. Courtney Suciu, *Are Banned Books Good for You?*, PROQUEST (Sept. 25, 2018), <https://about.proquest.com/en/blog/2018/are-banned-books-good-for-you/>.

Another name for banning books is censorship, which is governed by the First Amendment.⁶⁸ The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech.”⁶⁹ This text has led to decades of scholarly debate as to its meaning.⁷⁰ The First Amendment does not “define ‘speech,’ ‘the freedom of speech,’ or any relationship that may exist between the two premises.”⁷¹ Courts and scholars struggle with defining when speech may be limited and to what degree because of the vagueness and potential breadth of “the freedom of speech.”⁷² First Amendment jurisprudence has two categories: content-based restrictions and content-neutral restrictions.⁷³ Content-neutral restrictions do not seek to restrict speech based on its substance, while content-based restrictions do.⁷⁴

For content-neutral restrictions to speech, the Supreme Court applies the intermediate scrutiny test.⁷⁵ The intermediate scrutiny test “requires the judges to consider the degree of the restriction, ‘the substantiality of the government interests’ that the restriction serves, and ‘whether [the government’s] interests could be served by means that would be less intrusive on activity protected by the First Amendment.’”⁷⁶ It is the government’s burden to justify the restriction, and the greater the restriction’s interference with free speech, the greater that burden is.⁷⁷

Content-based restrictions are presumably invalid under the Constitution.⁷⁸ However, “the Court has carved out ‘areas of nonprotection’ that capture specific classes of speech that it finds do not sufficiently advance the First Amendment or its underlying purposes,” that can be limited.⁷⁹ “These areas of nonprotection [are] ‘express incitement, false statements of fact, obscenity, commercial

68. Erica Goldberg, *When are Book Bans Unconstitutional? A First Amendment Scholar Explains*, VA. MERCURY (Apr. 20, 2022), <https://www.virginiamercury.com/2022/04/20/when-are-book-bans-unconstitutional-a-first-amendment-scholar-explains/>.

69. U.S. CONST. amend. I.

70. Marisa Shearer, *Banning Books or Banning BIPOC?*, 117 NW. U. L. REV. 24, 30 (2022).

71. *Id.*

72. *Id.* at 31.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* (citing Geoffrey R. Stone, *Content Regulation and the First Amend.*, 25 WM. & MARY L. REV. 189, 190 (1983) (quoting *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 70 (1981))).

77. *Id.*

78. *Id.*

79. *Id.* at 31–32 (quoting Stone, *supra* note 76, at 194).

speech, fighting words, and child pornography.”⁸⁰ Three of these areas are important regarding book banning: “express incitement, false statements of fact, and obscenity.”⁸¹ For express incitement, states are permitted to “prohibit advocating for force or the violation of laws, but only ‘where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.’”⁸² False statements of fact that damage a person’s reputation, legally referred to as defamation, are restricted to where a “private [person] can demonstrate negligent falsity, and where public figures and officials can show proof of actual malice.”⁸³ Finally, speech is deemed obscene if the content of the speech meets all of the following criteria: (a) “the average person, applying contemporary community standards’ would find that the work, taken as a whole, appeals to the ‘prurient interest,’” (b) it “depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law,” and (c) “the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.”⁸⁴

B. Supreme Court Jurisprudence

The Supreme Court has not ruled on the constitutionality of banning books.⁸⁵ The only case the Supreme Court has heard that addresses book bans under the First Amendment was *Board of Education v. Pico* in 1982.⁸⁶ *Pico* addressed the proposed removal of nine books in the Island Trees Union Free School District in New York.⁸⁷ The issue in *Pico* was “whether the First Amendment limited local school boards in exercising their discretion to remove high school and middle school library books.”⁸⁸ Before addressing the primary issue, the Court first discussed “whether the First Amendment imposed any limitations on a school board’s discretion to remove library books” and the breadth of those limitations over the school board’s discretion.⁸⁹ The Court recognized “that ‘the discretion of the

80. *Id.* at 32 (quoting Stone, *supra* note 76, at 194–95 (citations omitted)).

81. *Id.* (quoting Stone, *supra* note 76, at 194–95).

82. *Id.* (quoting *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969)).

83. *Id.* (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964); *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 155 (1967)).

84. *Id.* (citing *Miller v. California*, 413 U.S. 15, 24 (1973) (quoting *Kois v. Wisconsin*, 408 U.S. 229, 230 (1972))).

85. *Id.*

86. *Id.* at 32–33; *see Bd. of Educ. v. Pico*, 457 U.S. 853, 854 (1982).

87. Jensen Rehn, *Battlegrounds for Banned Books: The First Amendment and Public School Libraries*, 98 NOTRE DAME L. REV. 1405, 1417 (2023).

88. Shearer, *supra* note 70, at 33; *see Pico*, 457 U.S. at 855–56.

89. Shearer, *supra* note 70, at 34; *see Pico*, 457 U.S. at 864–69.

States and local school boards in matters of education must be exercised in a manner that comports with the transcendent imperatives of the First Amendment.”⁹⁰ In its plurality opinion, the Court held that “the rights and protections granted by the First Amendment extend to students,” granting them “the right to send and receive ideas in the school setting.”⁹¹

When addressing the breadth of the restrictions imposed on school boards’ discretion by the First Amendment, the Court found that “the First Amendment’s prohibition against the suppression of ideas bars local school boards from intentionally exercising their discretion ‘in a narrowly partisan or political manner.’”⁹² “[T]he Court held 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.”’”⁹³ Ultimately, the Court in *Pico*, in its plurality, found that the facts in this case presented a genuine issue of material fact of whether the Board exceeded those limitations, so the grant of summary judgment to the Board was improper.⁹⁴

Since *Pico*, circuit courts across the country have struggled to apply the Court’s plurality opinion, highlighting the problems with the *Pico* opinion.⁹⁵ One is from an evidentiary perspective.⁹⁶ A case in the Fifth Circuit dealt with a school board’s decision to remove the book *Voodoo & Hoodoo* from a public school library.⁹⁷ The district court had granted summary judgment to the school board, but the appellate court remanded it.⁹⁸ It used Justice Brennan’s plurality opinion in *Pico* as a guide, finding that lower courts must consider the motivation behind a school board’s decision to ban a book.⁹⁹ In this case, the appellate court found that evidence of the school board’s motivation behind the removal to be lacking, so the court could not “conclude as a matter of law that a genuine issue of material fact does not exist as to whether the motivating factor behind the School Board’s decision to remove *Voodoo & Hoodoo* was one that violated the students’ First Amendment right freely to access ideas and receive

90. Shearer, *supra* note 70, at 34 (quoting *Pico*, 457 U.S. at 864).

91. Shearer, *supra* note 70, at 34; *see Pico*, 457 U.S. at 866–67.

92. Shearer, *supra* note 70, at 34 (quoting *Pico*, 457 U.S. at 870).

93. Shearer, *supra* note 70, at 34 (citing *Pico*, 457 U.S. at 872 (quoting W. Va. Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943))).

94. Shearer, *supra* note 70, at 34–35; *see Pico*, 457 U.S. at 872.

95. Rehn, *supra* note 87, at 1423.

96. *Id.* at 1424.

97. *Id.*

98. *Id.*

99. *Id.*

information.”¹⁰⁰ The evidentiary deficiency in this case is likely common for parties in other cases.¹⁰¹ While the Fifth Circuit chose to remain within the bounds set by *Pico*, other circuits have chosen to supplement it.¹⁰²

For example, in *ACLU of Florida v. Miami-Dade County School Board*, the Eleventh Circuit examined the motivation for removing a children’s book about Cuba.¹⁰³ Some parents and school board members wanted to remove the book because they felt it inaccurately portrayed life in Cuba, stating that it was the same as life in the United States.¹⁰⁴ False statements of fact are a justifiable reason to remove a book, but this could also just be a pretext for political reasons to remove the book.¹⁰⁵ In its evaluation, the Eleventh Circuit noted that it lacked a binding precedent because “*Pico* is a non-decision so far as precedent is concerned. It establishes no standard.”¹⁰⁶ The Court ultimately found that “[u]nder the *Pico* standard we are applying, the Board did not act based on unconstitutional motive.”¹⁰⁷ While the court may have stated “[u]nder the *Pico* standard,” the majority opinion was unclear on where it actually applied the *Pico* standard.¹⁰⁸ Based on this decision, concerns about “factual inaccuracy” would allow the removal of books based on minor inaccuracies in a book.¹⁰⁹ Minor inaccuracies that may be purposeful not to misinform but to make the book politics-neutral or because of the age group the book is written for.¹¹⁰

C. Applying the First Amendment Standards and Supreme Court Precedent to *The Hate U Give* and *Flamer*

In this section, I will be applying the First Amendment exceptions and the Supreme Court’s *Pico* plurality opinion stated above to *The Hate U Give* and *Flamer*. While the *Pico* plurality has been applied in

100. *Id.* (quoting *Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184, 191 (5th Cir. 1995)).

101. *Id.*

102. *Id.* at 1424–25.

103. *Id.* at 1425.

104. *Id.*

105. *Id.*

106. *Id.* (quoting *Am. C.L. Union of Fla. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1200 (11th Cir. 2009)).

107. Rehn, *supra* note 87, at 1425 (quoting *Am. C.L. Union of Fla.*, 557 F.3d at 1207).

108. *Id.*

109. *Id.*

110. *Id.* at 1426.

different ways in different circuits, I will be using the test stated in the *Pico* case paired with my own knowledge from reading both books.

1. The Hate U Give

As stated previously, *The Hate U Give* is typically banned based on its use of profanity, drug use, and violence contained in the book; because it promotes an “anti-police message;” and because some believe it to be an “indoctrination of a social agenda.”¹¹¹ Banning a book based on its attitudes toward police or its social message would be a content-based restriction, which is barred by the First Amendment. However, when banning books based on their violent content, proponents assert that the book is an express incitement of violence, which is an area of nonprotection under the First Amendment.¹¹² To fall under this area of nonprotection, the speech must “qualify as advocacy to incite or produce *imminent* lawlessness that is ‘likely to incite or produce such action.’”¹¹³ To be imminent, it must be “an immediate call for lawless action—the mere abstract teaching . . . of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action.”¹¹⁴ Finally, inciting speech must also be directed at a specific person or group and actually call for lawless action.¹¹⁵

Without reading the book in its entirety, one may think that *The Hate U Give* meets these criteria. In the book, Starr does speak at a riot in her community against the police and ends up throwing a canister of tear gas at the police before it can go off near her and her friends.¹¹⁶ The book also includes several instances of gang violence, such as Starr’s memories of her other childhood friend being murdered by a gang in a drive-by shooting when they were 10, and a gang leader throwing a Molotov cocktail into Starr’s family’s store while Starr and her friends were in there to punish Starr for “dry snitching” on the news.¹¹⁷ However, Angie Thomas does not call for her readers to perform lawless actions, nor does she support any of

111. See Titus, *supra* note 27.

112. Shearer, *supra* note 70, at 36.

113. *Id.* (quoting *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969)).

114. *Id.* (quoting *Brandenburg*, 395 U.S. at 448).

115. *Id.* at 36–37.

116. Thomas, *supra* note 23, at 411–13.

117. *Id.* at 428–29, 419. In this book, “dry snitching” refers to a person who goes on TV and snitches on a person or group’s illegal actions without technically naming the person or group but providing enough context that anyone with any knowledge of the area or situation would know exactly who they were referring to.

the gang's activities in the book. In fact, later in the book, after the riot starts to become violent, Starr and her friends flee and go to hide out in her father's store, which is not being looted by other people because it is a Black-owned business.¹¹⁸ Starr describes how scary these riots are throughout the book—as both community members and business owners—and while she understands and agrees with her community's frustrations, she even states that she does not think looting businesses or violence is the proper solution.¹¹⁹ She does support the act of protesting, which is not a lawless action; it is protected under the First Amendment.¹²⁰ Furthermore, even if one argued that there was a call to lawless action in this book, such a call to action both lacks immediacy and a specific targeted group for such an action. At no point in the book does Angie Thomas call for a person to get off their couch after reading the book and attack their local police department or loot a business. Nor does she target a specific police department or business. Ultimately, *The Hate U Give* does not fall under the express incitement area of non-protection, and the First Amendment applies.

As stated previously, *Pico* held that “local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek their removal to ‘prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.’”¹²¹ In a school district in South Carolina, a police union called for the book to be removed from the local high school’s summer reading list because it promotes a distrust of police.¹²² In a school district in Pennsylvania, an online group pushed for the book to be removed from the ninth-grade curriculum because it promotes an “anti-police” message.¹²³ Firstly, *The Hate U Give* is not anti-police—it is anti-police brutality. The book even highlights that there are good cops out there through Starr’s uncle, who is a cop.¹²⁴ Regardless of this distinction, anti-police and pro-police are both political messages and matters of opinion based on the speech’s content. Therefore, a ban on these bases goes directly against the *Pico* opinion, and would be unconstitutional under the First Amendment.

118. *Id.* at 416.

119. *Id.*

120. *Id.*

121. See Shearer, *supra* note 70, at 34.

122. Niki McGloster, *South Carolina Police Want Angie Thomas’ ‘The Hate U Give’ Removed From High School Reading Lists*, ESSENCE (Oct. 23, 2020), <https://www.essence.com/entertainment/sc-police-angie-thomas-hate-u-give-removed-high-school/>.

123. Titus, *supra* note 27.

124. Thomas, *supra* note 23.

2. Flamer

As stated previously, *Flamer* is typically banned because proponents claim it contains “obscene material.”¹²⁵ Banning speech based on sexual material is content-based and thus barred by the First Amendment. However, sexual material can fall under “obscene” material, which is an area of nonprotection under the First Amendment.¹²⁶ Obscenity has a three-factor test: (a) “the average person, applying contemporary community standards, would find [the content] appealing to the ‘prurient interest,’” (b) the content “depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law,” and (c) “taken as a whole, [the content] lacks serious literary, artistic, political, or scientific value.”¹²⁷ Material that appeals to prurient interest is defined as “material having a tendency to excite lustful thoughts,” and a prurient interest itself is defined as “a shameful or morbid interest in nudity, sex, or excretion.”¹²⁸

Flamer fails to meet both the first and third prongs of the test, but further analysis would need to be conducted for the second prong. Regarding the first prong, there is nothing in *Flamer* that excites lustful thoughts or exhibits a shameful interest in nudity, sex, or excretion. None of the artwork shows anything sexual or inappropriate. The closest parts of the book that could apply to this prong are the shower scenes and the scene where Aiden enters a tent one evening that several of the boys are hanging out in and immediately leaves when he finds out they are going to have a masturbation competition.¹²⁹ Once again, nothing in those scenes excites lustful thoughts, nor was that the purpose of the scenes. Their purpose was to highlight Aiden’s struggles with fitting in with the other boys, coming to terms with his sexuality, and ultimately preventing suicide in young, queer people.¹³⁰ An analysis under the second prong of the obscenity test would be state-specific, so further analysis would need to be done.¹³¹ However, given the way the book is told from the perspective of a fourteen-year-old and accurately describes any sexual material in the same way that a fourteen-year-old boy would describe it, I fail to see how that could be “patently

125. See DelPilar, *supra* note 35.

126. See Shearer, *supra* note 70, at 32.

127. See *id.*

128. Roth v. United States, 354 U.S. 476, 487 n.20 (1957).

129. CURATO, *supra* note 31.

130. Tolin, *supra* note 39.

131. See *supra* note 84 and accompanying text.

offensive.” Finally, for the third prong, *Flamer* does not lack literary value. Mike Curato has received an outpouring of support from fans of the book, stating that it has helped them feel less alone, whether they are open about their sexuality or not.¹³² This book also ends with a message of hope: no matter how lonely life may seem at fourteen, hang in there and keep living because it gets better—it is a book about suicide prevention.¹³³

Assuming that *Flamer* fails to meet any of the obscenity factors, the First Amendment governs, and the *Pico* standard must be applied. In Tennessee, the Rutherford County Library Board pulled *Flamer* from its shelves, citing compliance with Tennessee’s obscenity laws.¹³⁴ Those supporting the book’s removal claimed that “early exposure to children about sex also ‘leads to early sexual intercourse, sex, addictions and sexual aggressions.’”¹³⁵ Meanwhile, supporters were armed with a signed petition with over 1,000 names opposing library censorship to ensure that anyone in the community can access library materials that represent the entire community.¹³⁶ A school board in Georgia voted 6–1 to uphold the decision to remove *Flamer* from a high school’s library.¹³⁷ Those supporting the ban called it “pornographic,” and the board voted that “sexuality isn’t a topic high school students should be reading about on the taxpayer’s dime.”¹³⁸ Once again, the reasons given in Tennessee and Georgia are based on politics, religion, and opinion.¹³⁹ All three of those reasons are barred by the *Pico* plurality and, therefore, unconstitutional.

IV. CURRENT LITIGATION IN APPALACHIA ON BANNING BOOKS

This section details the current legislation that has been brought or is being brought in Appalachian states to ban books in public schools. The legislation listed below includes just a few methods that

132. Tolin, *supra* note 39.

133. *Id.*

134. Scott Broden, *Library Supporters Upset by Board Pulling 4 Books Say They’re Fighting Against Censorship*, DAILY NEWS J. (Aug. 29, 2023), <https://www.dnj.com/story/news/2023/08/29/library-board-pulls-4-books-deemed-inappropriate-for-children-rutherford-county-murfreesboro-tn/70706871007/>.

135. *Id.*

136. *Id.*

137. Rob DiRienzo, *Marietta School Board Upholds Decision to Ban Book Titled ‘Flamer’*, FOX 5 ATLANTA (Nov. 16, 2023, 6:21 PM), <https://www.fox5atlanta.com/news/marietta-school-board-upholds-decision-to-ban-book-titled-flamer>.

138. *Id.*

139. Unfortunately, sexuality is commonly debated in politics and can be seen as politically charged. Many people who are against homosexuality are so because of their religious beliefs.

each State is currently taking in an effort to ban books in public schools based on their content.

In Tennessee, SB 1059 was introduced at the beginning of 2023 in the House by Representative Susan Lynn and Senator Joey Hensley.¹⁴⁰ This bill opens book publishers and distributors to criminal prosecution if they knowingly send “obscene materials” to public schools.¹⁴¹ It went into effect July 1, 2023.¹⁴² The crime is a Class E felony with a minimum of a \$10,000 fine and one to six years in prison.¹⁴³ This comes after Senator Hensley proposed a similar bill in 2022, prohibiting any library from making “obscene materials or materials harmful to minors” available to students in school libraries, as well as removing the legal exception that protects librarians and other school personnel from being charged with a criminal offense from the presence of such materials in libraries.¹⁴⁴

On its face, SB 1059 does not seem like its purpose is to ban books, but based on the language, the statute intends to intimidate publishers and distributors so they will not disperse any books they may think could get labeled as obscene by the State of Tennessee.¹⁴⁵ Therefore, the legislature can censor the books accessible to students in their school libraries statewide rather than county-by-county, allowing them to regulate the materials students can access.¹⁴⁶ Their goal is that the fear of punishment will deter publishers and distributors from sending materials that contain topics that are typically found to be obscene, like books with main characters of race and books involving topics such as sexual orientation and gender identity.¹⁴⁷

In Kentucky, Senator Howell filed Senate Bill 5 in early 2023, requiring districts to create a process for parents to request banning certain books, materials, programs, and school events to make it

140. Angele Latham, *‘Wild West’ of Book Bans: New Legislation, Complaints Lead to Increasing Debates*, TENNESSEAN (May 15, 2023, 5:08 AM), <https://www.tennessean.com/story/news/politics/2023/05/15/wild-west-of-book-bans-new-legislation-complaints-lead-to-increasing-debates/70200690007/>.

141. *Id.* Tennessee defines obscene using the same definition as the federal government: “[I]f the average person finds the material to be ‘patently offensive’ in sexual conduct, ‘appeals to the prurient interest;’ or that it overall lacks literary, artistic, political or scientific value.” Zoe Lewis, *Tennessee Law Takes Another Step Toward Censoring Books in Schools*, WKMS (May 10, 2023, 5:40 PM), <https://www.wkms.org/term/news-0/2023-05-10/tennessee-law-takes-another-step-toward-censoring-books-in-schools>.

142. Latham, *supra* note 140.

143. *Id.*

144. *Id.*

145. Lewis, *supra* note 141.

146. See S.B. 1059, 113th Gen. Assemb., Reg. Sess., (Tenn. 2023).

147. Lewis, *supra* note 141.

easier for parents to challenge school materials.¹⁴⁸ Howell even stated that parents “need to be able to have a voice when those items are in conflict with their families’ values and beliefs.”¹⁴⁹ While the bill was in the House of Representatives, Representative Calloway tried to add amendments to the bill from House Bill 173, which was a bill that attempted to target LGBTQ-inclusive school policies.¹⁵⁰

This bill is much clearer in how it affects the challenging and banning of books than the Tennessee bill. Those who support the bill claim that they are protecting children and a parent’s right to decide what their child reads, but in doing so, they are attacking a student’s First Amendment right to access ideas.¹⁵¹ Many children face difficult situations at a young age, and censoring them from material that may discuss the situations that the child is already going through severs a lifeline for that student.¹⁵²

In West Virginia, Senator Azinger sponsored Senate Bill 252 in January 2023, “[that] would prohibit obscene and sexually explicit materials in or within 2,500 feet of the state’s schools.”¹⁵³ It expands West Virginia’s definition of “obscene matter” to also prohibit “displays. . . [of] any transvestite and/or transgender exposure, performances or display to any minor.”¹⁵⁴ School personnel who

148. Jess Clark & Divya Karthikeyan, *‘Book Banning’ Bill Passes Kentucky Senate*, LOUISVILLE PUB. MEDIA (Feb. 24, 2023), <https://www.lpm.org/news/2023-02-24/book-banning-bill-passes-kentucky-senate> (stating material “harmful to minors” means it “contains the exposure in an obscene manner, of the unclothed or apparently unclothed human male or female genitals, pubic area, or buttocks or the female breast, or visual depictions of sexual acts or simulations of sexual acts, or explicit written descriptions of sexual acts;” “taken as a whole, appeal[s] to the prurient interest in sex;” and “is patently offensive to prevailing standards regarding what is suitable for minors”).

149. *Id.*

150. Jess Clark & Ryland Barton, *Bill Targeting ‘Obscene’ Books in Schools Clears Kentucky Legislature*, LOUISVILLE PUB. MEDIA (Mar. 15, 2023), <https://www.wkyufm.org/news/2023-03-16/bill-targeting-obscene-books-in-schools-clears-kentucky-legislature> (quoting Rep. Calloway, “We’re talking about our kids. We’re talking about protecting their innocence. We’re talking about making sure that our kids’ minds are not being perverted, and that our kids are not being indoctrinated”).

151. See Clark & Karthikeyan, *supra* note 148; Clark & Barton, *supra* note 150.

152. See Clark & Karthikeyan, *supra* note 148 (claiming a book providing a graphic description of child sexual abuse at the hands of the characters father may be helpful for children going through similar abusive situations).

153. Jo Yurcaba, *Under West Virginia Bills, Exposing Minors to Transgender People Could be a Crime*, NBC NEWS (Jan. 20, 2023, 6:31 PM), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/west-virginia-bills-exposing-minors-transgender-people-crime-rcna66742>.

154. Chase Campbell, *Sen. Mike Azinger Says Legislation to Prohibit Obscene Matter in Schools will Also Effect Public Libraries: “That’s Also the Intent.”*, WTAP

violate SB 252 could be charged with a misdemeanor.¹⁵⁵ At the same time, Senator Azinger sponsored SB 278, which would “bar children from being present for obscene performances or displays.”¹⁵⁶

Like the others, this bill is also being purported as an attempt to protect children, but it is much more evident that the goal is to erase LGBTQ people from the public.¹⁵⁷ Because this bill not only includes prohibiting obscene materials from schools but also within 2,500 feet of schools, it must be assumed that this bill also intends to prohibit these books from public libraries.¹⁵⁸ In Wood County, where Senator Azinger is from, every public library is within 2,500 feet of a public school.¹⁵⁹ Not only would this bill prohibit what students have access to, but it would also prohibit what everyone in that county has access to. Given the clear intent of the bill, there is also evidence that the goal is to prohibit the content of these books and not to protect students.

V. HOW TO CHALLENGE THAT LEGISLATION

This section focuses on what individuals can do in their communities to challenge this legislation and fight against banning books in their public schools and libraries. While there are obvious solutions, such as voting for legislators that support students’ access to information, this section focuses on actions that can be taken to specifically support challenging banned books beyond those measures.

The first measure, and perhaps one that could be financially difficult and time-consuming, would be challenging book banning in federal court under the First Amendment. Bringing these issues up in federal court and ultimately petitioning the Supreme Court to take them on could force the Supreme Court to create a binding standard on determining when a ban is content-based versus content-neutral.

NEWS (Jan. 31, 2023, 10:09 AM), <https://www.wtap.com/2023/01/31/sen-mike-azinger-says-legislation-prohibit-obscene-matter-schools-will-also-affect-public-libraries-thats-also-intent/>. The current definition for “obscene matter” includes the following criteria: “(1) An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest; (2) An average person, applying community standards, would find depicts or describes, in a patently offensive way, sexually explicit conduct; and (3) A reasonable person would find, taken as a whole, lacks serious literary, artistic, political or scientific value.” *Id.*

155. Yurcaba, *supra* note 153 (asserting the misdemeanor can carry a fine up to \$500 and/or up to one year in prison).

156. *Id.* (claiming that people who violate this bill could also be charged with a misdemeanor, a fine up to \$1,000, and/or jail time).

157. *Id.*

158. Campbell, *supra* note 154.

159. *Id.*

For example, in *PEN America v. Escambia County School District*, a lawsuit was filed in May 2023 by PEN America, Penguin Random House, and a group of authors, along with parents and students in Escambia County, Florida.¹⁶⁰ The plaintiffs challenged the removal of books from school libraries on the basis that it violates their rights to free speech under the First Amendment and their rights under the Equal Protection Clause of the Constitution.¹⁶¹ Under the First Amendment, the suit claims Escambia County's removals are content-based, as the removals are "based on ideological objections to their contents or disagreement with their messages or themes."¹⁶² This also violates the Equal Protection Clause because "the books targeted for removal disproportionately addressed themes and messages related to race or LGBTQ+ identity."¹⁶³ This lawsuit is the first of its kind and will hopefully give authority that other organizations or groups of people can use in other states to file suit in their own states.

A second measure, on a much more local scale than the previous, would be requesting that school boards create a book review committee that would decide whether to remove a challenged book or not after reading the book in its entirety and not just select passages.¹⁶⁴ Noah Holloway lays out a framework in which the attendees of school board meetings, or if that sample is too small in certain communities, then parents in the community, elect a mix of faculty members and parents to serve on the committee to eliminate a biasing influence from the school board.¹⁶⁵ Once on the committee, members will review challenged books in their entirety and have the "authority to bind the actions of the board with their recommendations."¹⁶⁶

Holloway also includes a set of specific inquiries that committee members should follow when conducting their review of a book to assist with their evaluation under the judicial standard discussed in the *Pico* plurality while also addressing the concerns raised about removing books for content-neutral reasons.¹⁶⁷ These inquiries would also help with the evidentiary problem that has occurred in post-*Pico* cases, allowing schools to provide evidence that they did not violate

160. *PEN Am. v. Escambia Cnty. Sch. Dist.*, PEN AM. (Jan. 31, 2024), <https://pen.org/pen-america-v-escambia-county/>.

161. *Id.*

162. *Id.*

163. *Id.*

164. Noah T. Holloway, *Incombustible Ideas: Evaluating the Impact of Federal Court Opinions Regarding Book Banning in Public-School Libraries*, 11 IND. J. L. & SOC. EQUAL. 265, 289 (2023).

165. *Id.* at 289–90.

166. *Id.* at 290.

167. *Id.*

the First Amendment.¹⁶⁸ The proposed inquiries include the following: (1) “Does the challenged material contain graphic images depicting obscenity, including, but not limited to, nudity, sexual intercourse, sexual violence, or other sexual activity[?],” (2) “Does the challenged material contain text explicitly depicting sexual activity that is so prurient and improper as to render the material, when considered as a whole, unsuitable for library retention[?],” (3) “Does the challenged material contain graphic images depicting violence[?],” (4) “Does the challenged material contain text explicitly depicting violence that is so abhorrent and shocking as to render the material, when considered as a whole, unsuitable for library retention[?],” (5) “Does the text expressly advocate for the reader to commit acts of violence[?],” (6) “Does the challenged material contain easily verifiable factual inaccuracies[?],” (7) “Does the challenged work, when viewed as a whole, contain lewdness or vulgarity that is so abhorrent and shocking that it renders the entire work unsuitable for library retention[?],” (8) “Does the school library in which the challenged work is available primarily serve younger students, such as kindergarten, elementary, or middle school students[?],” (9) “Does the challenged work advocate for the adoption of immoral values that are blatantly inconsistent with the educational objectives of the school[?],” (10) “Does the objectionable aspect of the challenged work blatantly outweigh any educational, societal, economic, scientific, personal, cultural, or academic value that the work may have when viewed as a whole[?],” and (11) “Is the work being objected to for a reason unrelated to political ideology, nationalism, or religious views?”¹⁶⁹

Question 6 could use an additional question to determine if any factual inaccuracies that may be in the book are based on the target age group. It could be difficult for the book review committee to know what motivated the book ban in regards to Question 11, especially if those seeking to ban the books based on political ideology, nationalism, or religious views hide those motivations behind First Amendment areas of nonprotection such as obscenity or express incitement. Additionally, as these inquiries are discussed in a committee meeting, other people in the community should be allowed to address their own views or concerns for the committee members to reflect on and address.

While this process would be burdensome to both the members of the committee and the school board’s resources, it would greatly help schools protect students’ free speech right to access information while

168. *Id.*

169. *Id.* at 290–91.

still giving parents an avenue to challenge books.¹⁷⁰ Public schools already have a burden to protect the First Amendment in schools.¹⁷¹ For example, public universities and colleges have a specific framework of inquiry in place to determine whether faculty may be punished for their speech under the First Amendment.¹⁷² Putting a system in place within local schools that conducts an unbiased, in-depth evaluation of challenged books will help to ensure that books are not being removed based on their content.

However, this proposal would also face challenges. The banned books in question typically focus on race, sexuality, and gender identity, all targeting minority groups.¹⁷³ If the members of the book review committee are elected by members of the community, then a majority looking to ban books based on race, sexual orientation, and gender identity may fill the committee with members who support those bans. To better ensure that the committee is not controlled by a majority looking to push their own agenda and silence minority voices in the community, a member could be appointed by the school's faculty rather than by an election. While the same issue could still persist, if the book in question was brought into schools by the faculty, then they are more likely to nominate a community member that does not have a personal bias against the challenged books. The committee should also be required to have open meetings to discuss the removal of a book, where notice is given by the school to parents in the community at least a month in advance to allow parents time to read the books should they choose to attend the meeting to make sure their voices are heard. Finally, there should be students appointed to the committee—or even elected by their peers—so that students have a voice about what they can and cannot read. Next, I am going to apply the inquiries posed by Holloway to both *The Hate U Give* and *Flamer* to test their effectiveness and see if any additional inquiries should be added.

The Hate U Give does not have any nudity, sexual intercourse, sexual violence, or other sexual activity.¹⁷⁴ Question 2 does not apply because there is no sexual activity; therefore, it is not possible for it to be so prurient or improper as to render the material unsuitable for libraries. The material does contain violence, as it details both Khalil and Natasha's murders as witnessed by Starr and gang violence performed by the Kings, most notably when King throws a Molotov

170. *Id.* at 291–92.

171. *Id.*

172. *Id.*

173. Meehan & Friedman, *supra* note 4.

174. THOMAS, *supra* note 23. The book does reference sexual situations a couple of times: Starr gets upset with her boyfriend over having a condom and the two discuss having sex, but they decide not to have sex.

cocktail into the store while Starr and her friends are inside.¹⁷⁵ However, when reading the book in its entirety, the violence is neither so shocking nor abhorrent as to render the material unsuitable for libraries. The violence depicted is not overly gory or unique as to shock readers, especially since such violence is commonly discussed both online and in the news.¹⁷⁶ The book also does not expressly advocate for the reader to commit acts of violence; quite the opposite, actually, as Starr speaks out against police brutality, gang violence, looting, and other acts of violence during riots.¹⁷⁷ *The Hate U Give* does not contain any factual inaccuracies. The book has some profanity, but nothing so vulgar or lewd as to render the entire book unsuitable for libraries. While question 8 is specific to the school in question, *The Hate U Give* is a young adult novel and, as such, should only be found in high school libraries, not elementary or middle schools. The book does not advocate for immoral views.¹⁷⁸ Those who seek to ban it argue that it pushes an “anti-police” agenda.¹⁷⁹ However, this is not the case.¹⁸⁰ It supports an anti-police brutality message, which most people can agree with.¹⁸¹ Angie Thomas takes care to illustrate through Starr’s uncle that not all police officers are bad.¹⁸² Even if one argued that it does push an immoral agenda, that objectionable aspect could and should be outweighed by the work’s educational, societal, and cultural value when viewed as a whole. Reading the book as a white person truly allowed me to learn more about how I can support Black people against police brutality and just how devastating the police’s actions and the following riots are to communities. The book could also open a dialogue for young people to discuss police brutality and racism in a safe space for students. These are current issues in this country that students are experiencing and hearing about.¹⁸³ They should be able to read a book that helps them understand and learn about these issues. Finally, Question 11 would be specific to those seeking to ban the book, but being “anti-police” versus “pro-

175. *Id.* at 419.

176. See Jannik Lindner, *Violence in Media Statistics and Trends in 2024*, GITNUX, (Dec. 24, 2023), <https://gitnux.org/violence-in-media-statistics/>. Notably, this article references statistics stating that 75% of news broadcasts feature at least one act of aggression and less than 10% of parents use technology to restrict children’s access to violent content. It does not cite to any effects reading about violent acts in books has on youth.

177. Thomas, *supra* note 23.

178. See *supra* text accompanying notes 123-24.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. See *supra* text accompanying note 29.

police" is considered a political issue, so it is possible that those seeking to ban it are motivated by their own political ideology.

Next, analyzing *Flamer*, the closest thing it has to nudity, sexual intercourse, sexual violence, or sexual activity is mentions of the boys in the shower, mentions of masturbation, and mentions of boners.¹⁸⁴ However, as previously discussed, this material is not so prurient and improper as to render the book unsuitable for libraries. None of the artwork depicts any nudity or sexual situations, and no actual sexual acts are described. There is no violence mentioned in this book—only a knife that Aiden brings with him when he walks to the church as he is contemplating ending his life.¹⁸⁵ However, he does not use the knife or describe any sort of fantasy where he uses the knife. He also does not advocate for the reader to commit any act of violence. In fact, this book is about preventing suicide in young kids struggling with their sexuality.¹⁸⁶ This book also does not contain verifiable factual inaccuracies. Nor does it contain any lewdness or vulgarity. The book targets a young teen audience, so it should not be in elementary school libraries, only middle school and high school libraries. Those supporting the removal of the book may argue that homosexuality is an immoral value and that value is promoted by this book, but that is both false and does not align with the primary educational objectives of any school. Any potential objections to this book are greatly outweighed by its educational, societal, and personal value, as the book teaches acceptance and reminds kids struggling with their sexuality that they are not alone. Finally, this book could be objected to because of religious views and political ideology, given that sexuality is heavily discussed in both respects.

CONCLUSION

By banning books that do not conform to a white, heterosexual idea of what "normal" is, schools are alienating every person who does not fall into that narrow category of "normal." There are many young people in this country and in Appalachia who cannot afford to buy books from stores and can only read books in school or by borrowing them from their school library.¹⁸⁷ If those young people go into their library and cannot find any books with characters that look like them or stories about experiences they are currently navigating and trying

184. CURATO, *supra* note 31.

185. *Id.* at 304–06.

186. Tolin, *supra* note 39.

187. See Denise Adkins, *U.S. Students, Poverty, and School Libraries: What Results of the 2009 Programme for International Student Assessment Tell Us*, 17 SCH. LIBRARY RSCH. 1 (2014).

to understand and deal with, then it will be more difficult for them to develop their sense of self and become comfortable with who they are.

Furthermore, banning books based on their content violates a student's First Amendment right to access information. Legislatures all over the Appalachian region are proposing bills that seek to keep "obscene materials" out of school libraries. However, "obscene materials" is really just code for books that do not conform to their morals and beliefs; it is entirely content-based. The people challenging these books typically do not even read the entire book, only snippets. It is important that we address these book challenges by bringing them to court, pushing our local public school boards to give holistic reviews of the books being challenged, according to the *Pico* plurality, and helping national organizations like ALA and PEN America to combat book bans across the nation by supplying them with information about what is going on in local communities and signing their letters and petitions to help other communities. No one is advocating for making adult books available to elementary kids, but using a singular sexual scene as a smokescreen to ban books based on race, sexual orientation, or gender identity from high school libraries is not protecting children; it is hurting them to save adults from difficult conversations about topics that do not align with their own personal beliefs.