

NO. G064332

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE**

MAE M., ET AL.,
Plaintiffs-Appellants,

v.

JOSEPH KOMROSKY, ET AL.,
Defendants-Respondents.

Appeal from an Order of the Superior Court, Riverside County
The Honorable Eric Keen, Case No. CVS2306224

**AMICUS CURIAE BRIEF OF PENGUIN RANDOM HOUSE LLC,
ET AL. IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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Other Authorities

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<i>Banned in the USA: The Mounting Pressure to Censor</i> , PEN AMERICA, https://pen.org/report/book-bans-pressure-to-censor/	23
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<i>Book Bans in the United History: History Says it all</i> , Nikhita Mudium, UAB INSTITUTE FOR HUMAN RIGHTS BLOG (Jan. 12, 2023), https://sites.uab.edu/humanrights/2023/01/12/book-bans-in-the-united-states-history-says-it-all/	21
<i>Court Lifts Ban on ‘Ulysses’ Here</i> , THE NEW YORK TIMES (Dec. 7, 1933), https://archive.nytimes.com/www.nytimes.com/books/00/01/09/specials/joyce-court.html	22
Elizabeth A. McNeil, et. al., “ <i>Going After Something Else</i> ”: <i>Sapphire on the Evolution from PUSH to Precious and The Kid</i> , 37, No. 2 Johns Hopkins Univ. Pres 357 (2014), https://doi.org/10.1353/cal.2014.0073	19

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<i>Memo on School Book Bans from PEN America</i> , Kasey Meehan & Sabrina Baêta, PEN AMERICA, https://pen.org/memo-on-school-book-bans-2023-2024-school-year/	23
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Protect Our Kids, <i>What is Comprehensive Sexuality Education</i> , YouTube (July 27, 2020), https://www.youtube.com/watch?v=5eU0gydb8Gc&t=261s	9
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Temecula Valley school board adopts textbooks that include Harvey Milk after warnings from Newsom, ABC7 (July 22, 2023), <https://abc7.com/temecula-valley-books-harvey-milk-gay-rights/13533779/> 9

Temecula Valley Unified School District, *July 18, 2023, 6:00 PM – Open Session – TVUSD Governing Board Meeting*, YouTube (July 18, 2023), https://www.youtube.com/watch?v=NN-Z_IcswqM&t=11756s 8

The Bluest Eye, Penguin Random House, <https://www.penguinrandomhouse.com/books/117662/the-bluest-eye-by-toni-morrison/> 20

Two Boys Kissing by David Levithan – Review, The Little Contemporary Corner (Oct. 30, 2017), <https://thelittlecontemporarycorner.com/2017/10/30/two-boys-kissing-by-david-levithan-review> 18

Two Boys Kissing, Penguin Random House, <https://www.penguinrandomhouse.com/books/217499/two-boys-kissing-by-david-levithan/> 17

Utah parent wants Bible removed from schools: ‘It’s pornographic’, Brooke Kato, NEW YORK POST (Mar. 23, 2023), <https://nypost.com/2023/03/23/utah-parentwants-bible-removed-from-schools-its-pornographic/> 17

Why the Bible is Getting Pulled Off School Bookshelves, Eesha Pendharkar, EDUCATION WEEK (Dec. 15, 2022), <https://www.edweek.org/teaching-learning/why-the-bible-is-getting-pulled-offschool-bookshelves/2022/12> 22

Wiersma (@jen4tvusd), Instagram (Oct. 29, 2022), <https://www.instagram.com/p/CkUZc61JGCD/?hl=en> 9

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INTRODUCTION

Books play a central role in educating young Americans. They teach us history. They introduce us to new perspectives. They help us better understand ourselves and our neighbors. Censorship strips students of their autonomy, sidelines professional educators, and silences authors' voices. Removing books violates the very core of our First Amendment: the freedom to think for oneself.

Temecula Valley Unified School District (“School District”) officials have attacked or sought the removal of books in several ways.

First, the School District Board (“School Board”) trustees passed Resolution 21 in December 2022, which contains sweeping language that would censor teaching about the history of racism, slavery, segregation, and the civil rights movement.¹

Second, School Board members and trustees have personally characterized books as objectionable and expressed intent to censor. For example, during a July 18, 2023 School Board meeting, then-School Board president Joseph Komrosky listed 16 books that parents should investigate and request to be removed from the School District’s libraries.² Former School Board trustee Danny Gonzalez asked whether “we can agree on some content that we just absolutely would not allow and proposed actions like “flag[ging] books that may be potentially having material that . . . would be objectionable” and “man[ning]” a committee to determine which books to censor.”³

¹ See Board of Trustees of the Temecula Valley Unified School District, Resolution No. 2022-23/21 (Dec. 13, 2022).

² See Temecula Valley Unified School District, *July 18, 2023, 6:00 PM – Open Session – TVUSD Governing Board Meeting*, YouTube (July 18, 2023), https://www.youtube.com/watch?v=NN-Z_IcswqM&t=11756s.

³ *Id.*

Third, School Board members and trustees have campaigned in support of book bans based on personal animus against groups that have been historically marginalized. During her campaign, School Board trustee Jennifer Wiersma lauded a parent who removed a book “with some gay elements” from a School District school.⁴ Komrosky’s campaign website embedded a video that disparages books with LGBTQ+ themes.⁵ In the video, he claimed that educational materials that include LGBTQ+ themes aim to “destroy the nuclear family as the indispensable support of a healthy society.”⁶

Fourth, the School District changed longstanding practices to align with the subjective viewpoints of School Board officials, usurping the role of educators in meeting the academic and intellectual needs of students, stripping parents of agency in deciding what materials their children can engage with, and robbing students of their autonomy and freedom of expression. The School Board’s desire to impose their ideological viewpoints on Temecula’s students led to months-long delay in adopting history and social science curricula and instructional materials for grades 1-5.⁷

When government authorities place ideas off-limits, they transform schools from laboratories of democracy to centers for indoctrination. For the

⁴ See Wiersma (@jen4tvusd), Instagram (Oct. 29, 2022), <https://www.instagram.com/p/CkUZc61JGCD/?hl=en>.

⁵ See Protect Our Kids, *What is Comprehensive Sexuality Education*, YouTube (July 27, 2020), <https://www.youtube.com/watch?v=5eU0gydb8Gc&t=261s>.

⁶ *Id.*

⁷ See *Temecula school board president calls Harvey Milk ‘pedophile’ before book banning vote*, Tom Wait & Matthew Rodriguez, CBS NEWS (June 5, 2023), <https://www.cbsnews.com/losangeles/news/temecula-school-board-president-calls-harvey-milk-pedophile-before-book-banning-vote/>; see also *Temecula Valley school board adopts textbooks that include Harvey Milk after warnings from Newsom*, ABC7 (July 22, 2023), <https://abc7.com/temecula-valley-books-harvey-milk-gay-rights/13533779/>.

foregoing reasons, Plaintiff's Motion for a Preliminary Injunction should be granted.

ARGUMENT

I. Books play a central role in educating young Americans.

Publishers create books for all readers and recognizes that not all books are for all readers at every time in their life. Trained educators and librarians are entrusted by school districts to determine what materials will advance the educational and intellectual development of young Americans, in collaboration with students and their caregivers.

Creating libraries with books filled with a broad array of information and ideas about life, culture, politics, religion, and the human experience provides rich resources for students. It is vital to a democratic nation founded on principles of pluralism and democratic self-governance that educators remain free to use their expertise. Empowered educators curate the bookshelves of their libraries with a full spectrum of ideas, free from micromanagement by government actors not trained in education or library science.

“The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603 (1967) (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)). “The classroom is peculiarly the ‘marketplace of ideas.’” *Id.* “Public schools fulfill the vital role of teaching students the basic skills necessary to function in our society, and of ‘inculcating fundamental values necessary to the maintenance of a democratic political system.’” *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 913–14 (1982) (quoting *Ambach v. Norwick*, 441 U.S. 68, 77 (1979)).

As the Supreme Court observed, “[t]he Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which

discovers truth ‘out of a multitude of tongues, (rather) than through any kind of authoritative selection.’” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512 (1969).

A government that shuts down alternate voices is one that has no confidence that its own message can compete in the marketplace of ideas. Declaring some literature out of bounds enforces government orthodoxy of thought. It leaves students unprepared to respond to intellectual challenges, renders them devoid of critical thinking skills, and ill-prepared for life beyond school. As John Stuart Mill recognized, the individual must be free to explore whether the majoritarian consensus is “properly applicable to his own circumstances and character.” John Stuart Mill, *On Liberty and Other Essays*, at 65 (John Gray ed. 1991). “Our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this ... often disputatious society.” *Tinker*, 393 U.S. at 508-509. “The advancement and diffusion of knowledge... is the only guardian of true liberty.” James Madison to George Thomson, National Archives (June 30, 1825).

Schools are not Constitutional no-fly zones. Local school boards may not remove books from school libraries 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.” *Pico*, 457 U.S. at 854 (quoting *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943)). “First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker*, 393 U.S. at 506. “Local school boards have broad discretion in the management of school affairs, but such discretion must be exercised in a manner that comports with the transcendent imperatives of the First

Amendment.” *Pico*, 457 U.S. at 853. “Such rights may be directly and sharply implicated by the removal of books from the shelves of a school library,” which particularly reflect “regime of voluntary inquiry.” *Id.* at 853-869.

Schools are havens for self-exploration, self-actualization, and the development of the beliefs that will define one’s own conscience. The right to receive ideas is a necessary predicate to the *recipient’s* meaningful exercise of his own rights of speech, press, and political freedom. *See Pico*, 475 U.S. at 853. Books allow individuals to engage in a “self-directed exploration,” sampling ideas and exposing themselves to a wide array of lived experiences. *See* Marc Jonathan Blitz, *Constitutional Safeguards for Silent Experiments in Living: Libraries, the Right to Read, and A First Amendment Theory for an Unaccompanied Right to Receive Information*, 74 UMKC L. Rev. 799, 861 (2006). A school library, no less than any other public library, is “a place dedicated to quiet, to knowledge, and to beauty.” *Brown v. Louisiana*, 383 U.S. 131, 142 (1966) (opinion of Fortas, J.). “Students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding... The school library is the principal locus of such freedom.” *Pico*, 457 U.S. at 868–69. “A student can literally explore the unknown, and discover areas of interest and thought not covered by the prescribed curriculum.... Th[e] student learns that a library is a place to test or expand upon ideas presented to him, in or out of the classroom.” *Id.* at 869.

It cannot be ignored that many banned books nationwide are coming-of-age stories, memoirs, and other personal accounts of individual experience and self-discovery. Most are told from marginalized perspectives, in voices not commonly heard. For many young people who feel like outsiders or underdogs in one way or another, books can provide a much-needed dose of validation, solace in the knowledge that they are not alone, that others share their experiences and feelings of alienation.

In attempting to remove these books from circulation, states and districts limit the range and diversity of experiences accessible to the readers who, arguably, need them the most. Accounts of individuals coming to terms with family trauma, sexual and gender self-discovery, their status as undocumented immigrants, or their own changing adolescent bodies are no longer on the shelves. Children are left with only the stories that fall outside their lived experiences, within the School District's imposed normative experiences.

The youth of today will be the leaders of tomorrow. Ready or not, when they assume that role, they will not have the luxury of avoiding discussion of difficult issues. Our society is better served by offering young adults the opportunity to develop their independent critical thinking skills by engaging in a free marketplace of ideas. Book banning censors authors' speech at the cost of the children's and teenagers' comprehension of their world, including many who are of or close to voting age. It is an attack on democracy itself.

Amici do not ask anyone to read – or buy – books that they do not want to. Parents will always have a say in the books their children read. However, this freedom does not take away the freedom of other parents, students, and entire communities to read widely and think for themselves.

II. The Targeted Works Convey Important Ideas and Information

A review of the challenged titles list in the School District reveals many books of profound value to students. They include memoirs, coming-of-age stories, and other highly personal accounts of lived experience from varied perspectives, also help members of the community to understand themselves. Like teachers, authors of books written for children and young adults know their audience. They are deeply invested in speaking to young people through their written works.

The list of books attacked by the School District includes books that have been on library shelves for years (decades, even) and are consistently circulated in schools across the country. Among them are *Speak* by Laurie Halse Anderson, *Looking for Alaska* by John Green, *The Kite Runner* by Khaled Hosseini, *Two Boys Kissing* by David Levithan, *Push* by Sapphire, and *The Bluest Eye* by Nobel Prize Winner Toni Morrison.

Speak by Laurie Halse Anderson

Melinda Sordino, the main character in *Speak*, is a freshman in high school who is sexually assaulted by a senior at a party.⁸ She is ostracized because she immediately calls the police to the scene of the party, but her shock renders her unable to speak, resulting in the arrest of several of her peers for underage drinking.⁹ The story follows her fall into depression and journey of healing, as she finds the courage to reclaim the narrative and find her voice to “speak” up for herself.¹⁰ The novel is a fictionalized telling of Halse Anderson’s personal experience of being sexually assaulted at the age of thirteen.¹¹

In writing *Speak*, Halse Anderson broke 25 years of silence. Finding her voice and expressing her actual experience allowed other children, families, and sexual assault survivors to find theirs. *See Penguin Random House v. Robbins*, Case No. 4:23cv0478 (S.D. Iowa 2023), Decl. of Pl. Laurie Halse Anderson 4 (Dec. 8, 2023). She writes not only to help survivors find solace and understanding as they unpack their trauma, but to implore parents to get over their squeamishness about discussing human sexuality to create a safe and nurturing environment for their children. *Id.* She believes that only when victims feel safer to speak up after a sexual assault, and the judicial system is

⁸ *See Speak*, Macmillan Publishers, <https://us.macmillan.com/books/9780312674397/speak>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

prepared to consistently prosecute and punish rapists, will the need for books like *Speak* disappear. *Id.*

Speak's literary value has been recognized across the country.¹² *Speak* was adapted to a motion picture in 2004 and illustrated into *Speak: The Graphic Novel* in 2019.¹³ Halse Anderson has been recognized several times for her illustrious career and distinguished body of work.¹⁴

***Looking for Alaska* by John Green**

Looking for Alaska follows Miles Halter, a teenage boy obsessed with the last words of famous people who has decided to go to boarding school for his junior year of high school.¹⁵ The book chronicles his new experiences and blossoming friendships, counting down to the premature death of his friend Alaska Young—ultimately exploring how Miles and his friends process their grief for Alaska and celebrate her life. *See Penguin Random House v. Robbins*, Case No. 4:23cv0478 (S.D. Iowa 2023), Decl. of Pl. John Michael Green 3 (Dec. 11, 2023). It is a partially fictionalized account of Green's own time at boarding school.

Looking for Alaska expresses Green's viewpoints on loss, grief, and intimacy. To the extent there is sexuality depicted in *Looking for Alaska*, it is there because he wanted to draw a contrast between physical intimacy and emotional intimacy. *Id.* He believes it is important for young people to learn not to conflate the two. *Id.* In his experience, Green has found teenagers to be critically engaged and thoughtful readers – they don't read *Looking for Alaska* to be titillated. Many adolescents are experiencing death and loss for the first

¹² *Id.*

¹³ *Id.*

¹⁴ Halse Anderson has been awarded the Margaret A. Edwards Award by the ALA. She was honored as the 2023 Astrid Lindgren Memorial Award Laureate, the most prestigious children's literature award in the world.

¹⁵ *See Looking for Alaska*, Penguin Random House, <https://www.penguinrandomhouse.com/books/292717/looking-for-alaska-by-john-green>.

time in their lives. *Id.* If *Looking for Alaska* is not available to them, they won't have access to a book that can help them through a difficult time and process their grief. *Id.*

Looking for Alaska has won many awards and has been widely recognized as one of the best young adult novels of all time.¹⁶

***The Kite Runner* by Khaled Hosseini**

The Kite Runner tells the story of Amir, a Pashtun boy and son of a wealthy businessman, and Hassan, a Hazara boy and son of Amir's dad's servant, who reside in Wazir Akbar Khan, an affluent part of Kabul, Afghanistan. It is set in the backdrop of turbulent events, from the fall of Afghanistan's monarchy through the Soviet invasion, the exodus of refugees to Pakistan and the United States, and the rise of the Taliban regime. The boys' relationship, which rides the rollercoaster of surrounding social norms and political events, explores themes of friendship, prejudice, betrayal, guilt, redemption, and father-son bonds. "The purpose of a novel is precisely to talk about things that people don't want to talk about, to create a debate rather than to sweep unpleasant truths under a rug," Hosseini has said.¹⁷ An Afghan immigrant himself, he has stated that "he is fascinated with the time when a young person has one foot in childhood and another in adulthood: 'that age of 12 or so, when the foundations of the world as the child has thus far known it are beginning to crack, and the world is revealing itself to be more nuanced, more complicated, more messy, more troubling [than they imagined].'"¹⁸

¹⁶ *Looking for Alaska* won the Michael L. Printz Award and was a *Los Angeles Times* Book Prize Finalist. *Looking for Alaska* was named a "Great American Read" by PBS Learning Media, one of NPR's "100 Best-Ever Teen Novels," and one of TIME magazine's "Best YA Books of All Time."

¹⁷ See Pamela Constable, *Quiet goodwill In a Homeland The Writer Knows Too Well*, WASHINGTON POST (Sept. 20, 2009), <https://www.washingtonpost.com/wp-dyn/content/article/2009/09/19/AR2009091901528.html>.

¹⁸ See Jill Martin Wrenn, *Khaled Hosseini on parenthood and political asylum*, CNN (June 24, 2013), <https://www.cnn.com/2013/06/24/living/hosseini-mountains-echoed-refugee>.

The Kite Runner was widely recognized and critically acclaimed.¹⁹ It was adapted into an award-winning motion picture.²⁰ *The Kite Runner: Graphic Novel* was named in the “Great Graphic Novels for Teens” by the Young Adult Library Services Association. Hosseini has been lauded for his literary and humanitarian work in raising awareness and aiding Afghan refugees.²¹

***Two Boys Kissing* by David Levithan**

Inspired by true events, *Two Boys Kissing* follows three sets of people who identify as LGBTQ+, narrated by a Greek Chorus of the generation of gay men lost to AIDS, who participate in a kissing marathon.²² It follows Henry and Craig, two 17-year-old boys who set out to break a Guinness World Record for kissing and used to be a couple. It also follows Peter and Neil, who are a couple, and Avery and Ryan, who have just met.²³ As Henry and Craig grow increasingly dehydrated and sleep-deprived while locking lips, they become a focal point in the lives of other boys, their friends, and families dealing with universal questions of love, identity, and belonging.²⁴ *Two Boys*

¹⁹ *The Kite Runner* received the South African Boeke Prize, the ALA’s Alex Award, and the Borders Original Voices Award. *The Kite Runner* was named the *San Francisco Chronicle*’s “Best Book of the Year”, *Entertainment Weekly*’s “Best Book” of 2003, and was voted the Reading Group Book of the Year for 2006 and 2007.

²⁰ The Kite Runner motion picture was nominated for an Academy Award, a Golden Globe, and a BAFTA.

²¹ Hosseini was awarded the Great Immigrant Award from the Carnegie Corporation of New York and the John Steinbeck Award from San Jose University for his literary achievement and humanitarian work.

²² See *Two Boys Kissing*, Penguin Random House, <https://www.penguinrandomhouse.com/books/217499/two-boys-kissing-by-david-levithan/>.

²³ *Id.*

²⁴ *Id.*

Kissing connects the history of the AIDS epidemic with the present day as a memorial to a lost generation and a celebration of equality.²⁵

Levithan has stated that he wants to provide positive role models and mentors for this generation's members of the LGBTQ+ community, stating "one of the most piercing realizations that came to me while writing the book was the realization that my gay generation was robbed of so many role models, so many mentors [due to the AIDS epidemic]... I have to believe that they'd want my generation to take up the slack. So that's what I'm trying to do. And the resulting message is very simple: be who you are."²⁶

Two Boys Kissing has been critically acclaimed and won many awards.²⁷ Levithan won the Margaret A. Edwards Award for his distinguished career as a writer.

Push by Sapphire

Push follows the life of Claireece Previous Jones, an obese, illiterate 16-year-old girl who goes by "Precious" and lives in Harlem with her abusive mother Mary.²⁸ She is pregnant with her second child – her first child, who has down syndrome and lives with her grandmother, and her second child are

²⁵ See *Two Boys Kissing* by David Levithan – Review, The Little Contemporary Corner (Oct. 30, 2017), <https://thelittlecontemporarycorner.com/2017/10/30/two-boys-kissing-by-david-levithan-review>.

²⁶ See *Interview with David Levithan about Two Boys Kissing, longlisted for the National Book Award*, NEW SCHOOL (Oct. 14, 2013), <https://writing.newschool.org/qa-david-levithan-author-two-boys-kissing/>.

²⁷ *Two Boys Kissing* won the Lambda Literary Award and was longlisted for the National Book Award for Young People's Literature. It was named a "Stonewall Honor Book," one of ALA's "Best Books for Young Adults," the "Children's Book of the Year" by the Children's Book Committee at Bank Street college, and a "Young Adult Book of the Year" by the New Atlantic Independent Booksellers Association, among other honors.

²⁸ *Push (Revised)*, Penguin Random House, <https://www.penguinrandomhouse.com/books/677181/push-revised-by-sapphire/>.

both a product of her sexually abusive father.²⁹ Precious is transformed by a teacher who gives her access to great literature, such as Alice Walker, Audre Lorde, and Langston Hughes.³⁰ She begins to find her own voice and to escape her dire circumstances, moving to a halfway home and joining an HIV-positive support group.³¹ As the book progresses and Precious learns to read and write, the dialect of the novel remains the same, but her narrative style changes to show her progress.³²

Sapphire has stated that a major focus of her art has been her determination to reconnect a segment of humanity that has been cast off and made invisible to the mainstream of human life.³³ In her words, “I have brought into the public gaze women who have been marginalized by sexual abuse, poverty, and their blackness. Through art I have sought to center them in the world.”³⁴

Push has won many awards and is critically acclaimed.³⁵ *Push* was adapted into the award-winning motion picture *Precious*.³⁶

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ See Elizabeth A. McNeil, et. al., “Going After Something Else”: *Sapphire on the Evolution from PUSH to Precious and The Kid*, 37, No. 2 Johns Hopkins Univ. Pres 357 (2014), <https://doi.org/10.1353/cal.2014.0073>.

³⁴ *Id.*

³⁵ *Push* was nominated for an NAACP Image Award for Outstanding Literary Work of Fiction. *Push* won the Book-of-the-Month Club’s “Stephen Crane Award for First Fiction”, the ALA’s Black Caucus’ “First Novelist Award”, and Great Britain’s “Mind Book of the Year Award”. *Push* was also named by the *Village Voice* and *Time Out New York* as one of the “Top Ten Books of 1996”.

³⁶ *Precious* won Academy Awards, BAFTAs, Golden Globes, NAACP Image Awards, Satellite Awards, and SAG Awards, and garnered numerous prestigious nominations.

The Bluest Eye by Toni Morrison

The Bluest Eye tells the story of Pecola, a young Black girl who grew up following the Great Depression.³⁷ It chronicles her developing an inferiority complex due to being regarded as “ugly” due to her dark skin and mannerisms, fueling her desire for the “blue eyes” she equates with “whiteness.”³⁸ Narrated partly in third-person and partly from the point of view of Claudia MacTeer, the daughter of Pecola’s temporary foster parents, the novel explores themes of Black girlhood, “Dick and Jane” textbooks, internalized racism, religion, conformity with media in a hegemonic society, violence, and shame.³⁹

Morrison has stated that she wrote *The Bluest Eye* because she wanted to remind readers “how hurtful racism is” and to highlight the internalized lack of self-esteem of people who are “apologetic about the fact that their skin [is] so dark.”⁴⁰ Morrison “wanted to speak on behalf of those who didn't catch that [they were beautiful] right away. [She] was deeply concerned about the feelings of ugliness.”⁴¹ Pecola, the main character, wishes for blue eyes as a way to escape the oppression that results from her having dark skin – through Pecola's characterization, Morrison sought to demonstrate the negative impact racism can have on one's self-confidence and worth.⁴² Morrison commented on her motivations to write the novel, saying, “I felt compelled to write this mostly because in the 1960s, black male authors published powerful,

³⁷ *The Bluest Eye*, Penguin Random House, <https://www.penguinrandomhouse.com/books/117662/the-bluest-eye-by-toni-morrison/>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *National Visionary Leadership Project, Toni Morrison Talks About Her Motivation For Writing*, YouTube (Dec. 4, 2008), https://www.youtube.com/watch?v=_8Zgu2hrs2k&list=PLCwE4GdJdVRK12Fft8rw0wXQXxMqUJBsH.

⁴¹ *Id.*

⁴² *Id.*

aggressive, revolutionary fiction or nonfiction, and they had positive racially uplifting rhetoric with them that were stimulating and I thought they would skip over something and thought no one would remember that it wasn't always beautiful.”⁴³

Morrison is one of the most celebrated and recognized writers in literary history.⁴⁴

III. Book Bans Have a Long and Destructive History with a Chilling Effect on Speech

Any decision by a government authority to limit access to books should be viewed through the lens of the history of book bans, which encompass both restrictions and removals of texts. Temecula Valley Unified School District’s book banning may be part of a recent trend, but the roots of book bans go back decades.

The United States has a disquieting history of banning books to quell dissent and prevent their citizens from accessing “dangerous” ideas. During the Civil War, the Confederacy banned Harriet Beecher Stowe’s *Uncle Tom’s Cabin*.⁴⁵ In 1885, a public school in Concord, Massachusetts banned *The*

⁴³ *Id.*

⁴⁴ Toni Morrison has won the Pulitzer Prize for Fiction, the Nobel Prize for Literature, and the Presidential Medal of Freedom. She has also been awarded the American Book Award, the National Humanities Medal, the Norman Mailer Prize for Lifetime Achievement, the Library of Congress Creative Achievement Award for Fiction, and the National Book Foundation’s Medal of Distinguished Contribution to American Letters, among others. She is an inductee of the National Women’s Hall of Fame and has been appointed as a Commander of the Arts and Letters and as “Officier de la Légion d’Honneur” by the government of France.

⁴⁵ *Book Bans in the United History: History Says it all*, Nikhita Mudium, UAB INSTITUTE FOR HUMAN RIGHTS BLOG (Jan. 12, 2023), <https://sites.uab.edu/humanrights/2023/01/12/book-bans-in-the-united-states-history-says-it-all/>.

Adventures of Huckleberry Finn.⁴⁶ The library deemed the book “suited only for the slums.”⁴⁷ By 1907, other public libraries followed, insisting that the protagonist was a poor role model for impressionable youth.⁴⁸ During the Great Depression, many local municipalities tried to ban popular books, such as John Steinbeck’s *The Grapes of Wrath*, in fear of ideas they considered too dangerous for the public.⁴⁹ James Joyce’s *Ulysses* was banned by U.S. customs officials in the 1930s for its alleged “impure and lustful thoughts,” but the ban was vacated by a federal court.⁵⁰

Canonical works have been—and continue to be—common targets of challenges and censors. *To Kill a Mockingbird* was listed as the seventh most challenged book as recently as 2020, with *Of Mice and Men* following in eighth place.⁵¹ *The Adventures of Huckleberry Finn* was thirty-third on the list of the most challenged books from 2010-2019.⁵² Even the Bible has been challenged, based on parents’ complaints about “pornographic” content.”⁵³ PEN

⁴⁶ *BANNED: Adventures of Huckleberry Finn*, AMERICAN EXPERIENCE (Sept. 2017), <https://www.pbs.org/wgbh/americanexperience/features/banned-adventures-huckleberry-finn/>; see *Bannings and Burnings in History*, Freedom to Read (May 25, 2023), <https://www.freedomtoread.ca/resources/bannings-and-burnings-in-history/> [hereinafter “*Bannings and Burnings in History*”].

⁴⁷ *Id.*

⁴⁸ *Bannings and Burnings in History*, *supra* note 50.

⁴⁹ See *Banning The Grapes of Wrath in 1939 California*, Livia Gershon, JSTOR DAILY (Mar. 27, 2022).

⁵⁰ See *Court Lifts Ban on ‘Ulysses’ Here*, THE NEW YORK TIMES (Dec. 7, 1933), <https://archive.nytimes.com/www.nytimes.com/books/00/01/09/specials/joyce-court.html>.

⁵¹ See *Banned and Challenged Books*, ALA OFFICE FOR INTELLECTUAL FREEDOM (last visited May 31, 2023), <https://www.ala.org/advocacy/bbooks/frequentlychallengedbooks/top10/archive>.

⁵² *Id.*

⁵³ See *Why the Bible is Getting Pulled Off School Bookshelves*, Eesha Pendharkar, EDUCATION WEEK (Dec. 15, 2022), <https://www.edweek.org/teaching-learning/why-the-bible-is-getting-pulled-off-school-bookshelves/2022/12>; see also *Utah parent wants Bible removed from schools: ‘It’s pornographic’*, Brooke Kato,

America’s most recent *Memo on School Book Bans* finds over 10,000 instances of book bans in the 2023-2024 school year – “more than double the last school year.”⁵⁴ PEN America’s book report chronicling book bans in the 2022-23 school year recorded 3,362 instances of bans, a 33% increase over the 2021-22 school year.⁵⁵

This rising fervor is evident in laws passed by state legislatures across the country. Florida, Texas, Iowa, Idaho, and Utah, among others, have enacted a myriad of laws that restrict the First Amendment rights of students, parents, educators, and authors. *See* Fla. H.B. 1069 (2023), Tex. H.B. 900 (2023), Iowa S.F. 496 (2023), Idaho H.B. 710 (2024), Utah H.B. 29 (2024), Tenn. H.B. 782 (2023). Some laws restrict educators’ ability to discuss topics related to race, gender, and sexual orientation. *See* Fla. H.B. 1557 (2022), Fla. H.B. 7 (2022), Fla. H.B. 1069 (2023). Others restrict educators and students from establishing or participating in programs based on their content, such as diversity, equity, and inclusion measures. *See* Tex. S.B. 17 (2023), Fla. S.B. 266 (2023). At least nine states have passed laws that restrict dissemination of “sensitive instructional materials” and may impose criminal penalties for violations, leading to widespread preemptive book removals.⁵⁶

The present book banning crisis echoes the hysteria surrounding the moral panics of the 1960s. It evokes the Supreme Court’s decision in *Bantam Books v. Sullivan*, which overturned a Rhode Island commission that coerced publishers into removing “objectionable” works from circulation. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70–71 (1963). Ten years later, the Court

NEW YORK POST (Mar. 23, 2023), <https://nypost.com/2023/03/23/utah-parentwants-bible-removed-from-schools-its-pornographic/>.

⁵⁴ *See Memo on School Book Bans from PEN America*, Kasey Meehan & Sabrina Baêta, PEN AMERICA, <https://pen.org/memo-on-school-book-bans-2023-2024-school-year/>.

⁵⁵ *See Banned in the USA: The Mounting Pressure to Censor*, PEN AMERICA, <https://pen.org/report/book-bans-pressure-to-censor/>.

⁵⁶ *See Id.*

promulgated the definitive *Miller* test for obscenity, holding that material must be viewed in its full context and that consideration must be given to the literary, artistic, political, or scientific value within it. *Miller v. California*, 413 U.S. 15, 24 (1973).

Courts have long recognized the importance of understanding how challenging material functions within a work to produce literary meaning and value. Traditionally, courts have deferred to writers in determining the meaning and value of artistic expression that precedes *Miller*. In *United States v. One Book Called Ulysses*, Judge Woolsey expressed deference to James Joyce’s authorial intent and artistry.⁵⁷ “To convey by words an effect which obviously lends itself more appropriately to a graphic technique ... [explains] Joyce’s sincerity and his honest effort to show exactly how the minds of his characters operate.” *Id.* In *Cohen v. California*, the Supreme Court articulated the importance of understanding layered meaning that may not be readily apparent at first blush, holding that:

[O]ne man’s vulgarity is another’s lyric. [I]t is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual... . [M]uch linguistic expression serves a dual communicative function: it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well.

Cohen v. California, 403 U.S. 15, 25-26 (1971). Writers count on robust First Amendment freedoms and the value that our culture places on free expression when expressing new ideas. Writers who fear censorship may shy away from innovation and exploration of challenging topics, subjects, and ideas.

⁵⁷ See *U.S. v. One Book Called “Ulysses,”* 5 F.Supp. 182, 183 (S.D.N.Y. 1933), *aff’d sub nom., U.S. v. One Book Entitled Ulysses by James Joyce*, 72 F.2d 705 (2d Cir. 1934) (describing Joyce’s technique as an attempt “to show how the screen of consciousness with its ever-shifting kaleidoscopic impressions carries ... not only what is in the focus of each man’s observation of the actual things about him, but also in a penumbral zone residua of past impressions.”)

Book bans chill literary development and lead to self-censorship among both authors and publishers. Authors will become overly cautious in their creative process to avoid being labeled “offensive” so they can retain their ability to be read by young Americans who rely on schools and libraries for access to books.

Book bans eschew the First Amendment by reducing books to binaries: “explicit” or “clean,” “controversial” or “mainstream.” They toss out deference to professional educators who apply their training and experience to match books to readers by considering both in full.

CONCLUSION

The First Amendment is not concerned with the motivations of book-banners and their censorship. When books are banned due to their ideas, the Constitutional rights of student, parents, educators, authors, and publishers are all violated.

When faced with the removal of books from library shelves, courts have consistently applied heightened scrutiny to bans motivated by government disapproval of the views and themes in the books. In hindsight, these decisions have been validated: books that once seemed dangerous and destabilizing to the prevailing political, moral, or cultural consensus are now considered part of the canon and celebrated. It is the censorship, not the idea, which poses the existential threat to our democracy.

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**CERTIFICATE OF COMPLIANCE PURSUANT TO CALIFORNIA
RULE OF COURT 8.204(c)**

Pursuant to California Rule of Court 8.204(c), and in reliance on the word count feature of the Microsoft Word computer program used, I certify that the attached Respondents' Brief contains 5,252 words, including footnotes and excluding those materials not to be counted under Rule 8.204(c)(3).

Respectfully submitted,

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