

McCormick Foundation Civics Program

2010 First Amendment Summer Institute

Intellectual Freedom: Libraries as First Amendment Battlegrounds

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Overview:

- Warm-up
- Case Consideration and Analysis
- You Be the Judge
- Repeat

First Amendment:

“Congress shall make no law respecting an establishment of **religion**, or prohibiting the free exercise thereof; or abridging the freedom of **speech**, or of the **press**; or the right of the people peaceably to **assemble**, and to **petition** the Government for a redress of grievances.”

Warm-up:

- Discuss the ways in which the five freedoms of the First Amendment exercised in a library setting.
- How do libraries promote these First Amendment freedoms? (Bastions)
- How might these library functions lead to conflict? (Battlegrounds)

Bastions and Battlegrounds: Libraries as 1st Amendment Bastions

- Libraries serve the public and promote First Amendment freedoms in many ways.
 1. They are storehouses of ideas.
 2. They provide access to information needed for decision making.
 3. They disseminate ideas through books, periodicals, videos, the Internet, and more.
 4. They provide meeting space for groups.
 5. They sometimes serve as sites of sit-ins and protests.

- Accessing information in a publicly funded library is your First Amendment right.

Warm-up:

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- How might these library functions lead to conflict? (Battlegrounds)

Bastions and Battlegrounds: Libraries as 1st Amendment Battlefields

- Libraries strive to provide access to accurate information about myriad subjects to many diverse communities.
- Controversy is almost inevitable.
- Disputes sometimes arise when individuals or groups with opposing views feel that libraries are not serving their needs. They may disagree with information that the library disseminates.
- More heated confrontations may occur when public libraries provide information about controversial subjects, allow access to potentially objectionable information, or permit polarizing groups to use their facilities to meet.

Bastions and Battlegrounds:

LIBRARIES AND THE FIRST AMENDMENT

search

A Marketplace of Ideas

Challenging Ideas

Accessing Information

Considering the Children

Controversial Gatherings

Exhibit Information

Resources



THE FIRST AMENDMENT THRIVES...

...At your local library, where ideas are shared, information is accessed, and controversies may arise.

Find out how you can exercise your First Amendment freedoms at the library!

Warm-up:

● Central Questions?

1. Some books should be legally removed from a public library.

-Who should decide which books are included/ removed from a library's collection?

2. Libraries should censor the Internet to protect young people.

-Should school libraries have a right to block sites like Facebook and MySpace?

3. Certain books should be pulled from a school library's shelves.

-Does the First Amendment include the right to access the ideas communicated through books?

Warm-up:

- Central Questions? (continued)

4. All groups should be allowed to meet at the library.

- What makes a group controversial?

- What are some reasons a library may not want a controversial group to meet at their site?

Challenging Ideas: *Sund v. City of Wichita Falls* (2000)

At issue: Did the city council violate library patrons' First Amendment rights by allowing the controversial books to be removed by petitioning groups?

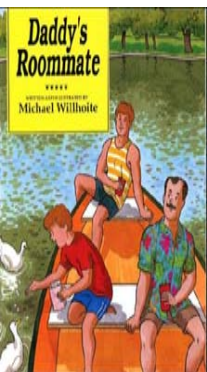
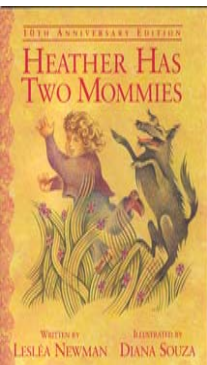
Key Facts:

● The city council of Wichita Falls, TX adopted a controversial resolution which stipulated that if 300 library card holders signed a petition requesting that a particular book be removed from the collection, the library had 24 hours upon submission of the petition to remove the offending literature.

● In 2000, a petition was submitted requesting the immediate removal of two books, *Heather Has Two Mommies* and *Daddy's Roommate*, whose subjects were families with homosexual parents. A group of outraged library patrons quickly filed suit.

Precedent:

● In late 2006, US District Court Judge Jerry Buchmeyer ruled against the City of Wichita Falls. He asserted that “not only does [the resolution's] language allow any special interest group to suppress library materials on the basis of their content, it actually facilitates an infinite number of content- and viewpoint-based speech restrictions.”



Challenging Ideas

At issue: Should it be legal to remove some books from the public library?

You Be the Judge:

- A card-holding public library patron who is atheist objects to the presence of the Bible, the Koran, and Torah in the library collection, considering it an unconstitutional endorsement of religion.
- She convinces her local chapter of the Freedom from Religion Foundation to demonstrate outside the library, calling for the removal of all books pertaining to religion.
- Tired of the continued protests, the library removes the three religious texts from the collection.



Accessing Information: Origins of Internet Filters

- *Communications Decency Act of 1996*: Congress criminalized “indecent” and “patently offensive” communication online, invalidated by the Supreme Court on First Amendment grounds one year later.
- Turn to mechanical filters relying on mechanical blocking of key words and phrases. Valuable information concerning health, sexuality, women’s rights, gay and lesbian issues blocked.
- Called “third-party rating,” and highly subjective.



Accessing Information:

Ashcroft v. ACLU (2004)

At issue: Does COPA's required restricted access for minors infringe upon the First Amendment rights of adults?

Key Facts:

- Acting to prevent minors from accessing pornography and other potentially harmful material online, Congress adopted the Child Online Protection Act in 1998. It required all companies who distributed material depicting nudity or sexual activity to abide by “community standards” and restrict minors from accessing their sites.
- Almost immediately the federal government was restricted from enforcing the new law by court order. Critics of the legislation said that “community standards” were too broad to apply across the entire country and the means of restricting access such as internet filters were too unreliable and often prevented access to protected speech.

Precedent:

- After enforcement of COPA was blocked twice by lower court rulings, the government appealed to the Supreme Court. In 2002, the Court ruled that “COPA's reliance on community standards to identify 'material that is harmful to minors' does not by itself render the statute substantially overbroad for purposes of the First Amendment.” It returned the case to a lower court that reheard the case and found again that COPA was unconstitutional.

Accessing Information: Children's Internet Protection Act (CIPA)

- Signed by President Clinton in 2000, requires schools and libraries receiving federal financial assistance for internet access to install filters on all computers used by adults as well as minors
- Must block “visual depictions” that are:
 - “obscene”
 - “child pornography”
 - “harmful to minors”
- Blocking decisions essentially relegated to private companies, expanding the scope of censorship
- Wealthy schools able to forgo federal aid, no so for middle and lower income schools



Accessing Information: Children's Internet Protection Act (continued)

- By 2005 an estimated 90% of K-12 school districts were using filters in accordance with CIPA
- In 2001 the ACLU and ALA challenged CIPA's library provisions, struck down by three-judge panel on First Amendment grounds
- Government appeal to Supreme Court resulted in reversal in plurality decision
 - Filtering no different than book selection
 - Government aid allows limits to scope of internet access
 - Librarians may disable filters upon request from an adult



Accessing Information: What Are the Limits?

- Deleting Online Predators Act (DOPA)
 - Passed House 410-15 on July 26, 2006;
Reintroduced on February 16, 2007
 - Requires blocking of MySpace, other social networking sites, blogs, and bulletin boards
- Protecting Children in the 21st Century Act
 - Similar to DOPA, but more expansive
 - Includes stiffer penalties for failure to report child pornography, requires the labeling of sexually-explicit material, and restricts the sale of children's personal information
 - Passed by the Senate on
May 22, 2008

Accessing Information: Deleting Online Predators Act

- Similar principles of CIPA applied to social networking sites
- “(Students) are posting very personal information: the names of their school, ...their friends, the stores they like to shop at, along with photos of themselves—it’s become a virtual catalog of children for child predators lurking on the internet.”
 - Bill sponsor Rep. Michael Fitzpatrick (R-PA)
- Specifically limits access to “commercial social networking websites and chat rooms”



Accessing Information: Deleting Online Predators Act (DOPA)

- Might impact instructional use of web blogs, class-constructed “wikis”, and Web.CT, a distance learning program also used for class forums
- Also affects an evolving communication network where non-participants emerge unprepared and are denied the right to participate in constitutionally protected discourse
- Filters that currently block access to social networking sites and others are often undermined by “proxies”

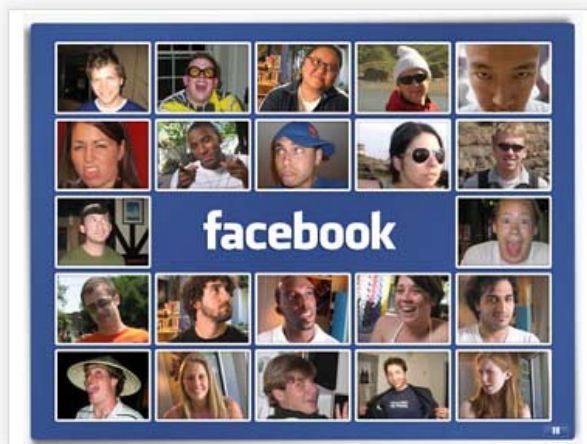


Accessing Information

At issue: Should Libraries Censor the Internet to Protect Young People?

You Be the Judge:

- A local high school installed filters on all computers in the building. They block student and staff access to web sites containing pornography, facilitating credit card payments, and social networking services.
- A student objects to his inability to access his favorite social networking site, Facebook, at school. He doesn't have Internet access at home, and his friends and family regularly communicate through the site.
- The principal defends the blocking of Facebook because Internet predators have used the site to lure minors into dangerous situations.



Considering the Children: *Board of Education v. Pico* (1982)

At issue: Did the Board of Education violate student's First Amendment rights to information by removing books from the school library?

Key Facts:

● Concerned that books in its library were “anti-American, anti-Christian, anti-Semitic, and just plain filthy,” the Island Trees (NY) Board of Education removed a number of books it found offensive—including Kurt Vonnegut’s *Slaughterhouse Five* and Langston Hughes’ *Best Short Stories of Negro Writers*.

● A group of students contended that the Board acted on personal opinion, not on the merit of the books, and sued the school district for violating their First Amendment rights.

Precedent:

● In a 5-4 ruling, the Supreme Court found that the Board of Education’s actions did indeed violate the student’s First Amendment rights. Justice Brennan speaking for the majority opined “local school boards may not remove books from school libraries simply because they dislike the ideas contained in those books.”

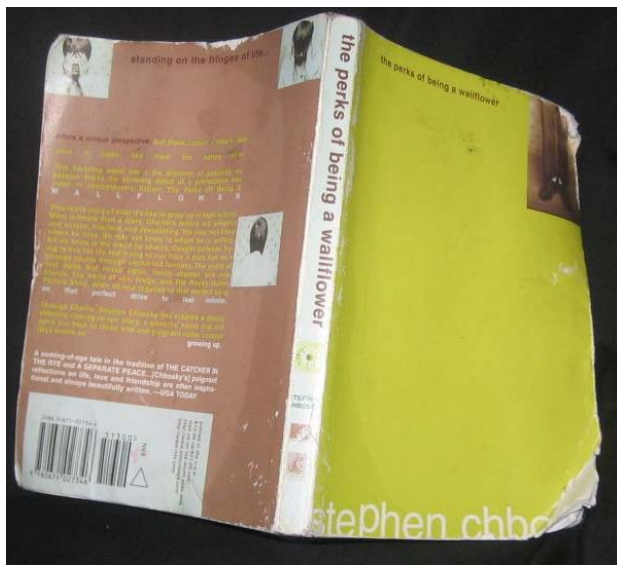


Considering the Children

At issue: Should Certain Books Be Pulled from a School Library's Shelves?

You Be the Judge:

- An angry parent convinces the local school board to remove the controversial title, *The Perks of Being a Wallflower*, from the library at the public high school.
- The work, written by Stephen Chbosky, is a coming of age story of a high school student that addresses topics such as drugs, homosexuality, and suicide, and also contains controversial and sexually explicit language.
- For these reasons, the parent and school board consider the book unsuited for high school students.



Controversial Groups: *Faith Center Church v. Glover* (2006)

At issue: Did the Contra Costa County Library infringe on the church members' First Amendment rights of assembly and religion?

Key Facts:

- In 2004, Pastor Hattie Hopkins of the evangelical Christian ministry Faith Center Church sought permission to hold a two-part public event at the Contra Costa Community Library in Antioch, California. The first portion was a two hour “Wordshop” discussion and the second a two-hour “Praise and Worship” service.
- The library declined the request on the basis of the library’s policy forbidding meetings that are “for religious purposes.” The library board contended that permitting the meeting would constitute a taxpayer subsidy of a particular religious exercise.
- Hopkins alleged that her First Amendment rights had been infringed upon and that the church was the victim of viewpoint discrimination.

Precedent:

- The 9th Circuit Court of Appeals in San Francisco ruled that the Contra Costa Public Library did not violate the First Amendment. The court affirmed the right of a group to be able to meet and discuss items of a religious nature, but that because the library had established its space as a “limited public forum,” it was within its rights to restrict the manner in which meetings were presented.

Controversial Groups

At issue: Should All Groups Be Allowed to Meet at the Library?

You Be the Judge:

- A local high school opens its library for outside groups to meet on evenings, weekends, and during the summer when school is not in session. Requests are rarely denied, subject to availability and the principal's discretion.
- Among the groups that have used the space are a local chapter of the Democratic Party, the NAACP's local affiliate, and a Bible study group.
- The city's small Ku Klux Klan membership seeks to use the space on a Saturday morning, but the principal rejects their request on grounds that their message conflicts with the school's commitment to diversity.



McCormick Freedom Project

Libraries as 1st Amendment Bastions and Battlegrounds

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Questions?

