Intellectual Freedom Fighters: Refighting a War Already Won

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Miller v. California (1973): More commonly talked about as the "Miller Test" for obscenity.

- All speech (and writing) is protected unless Congress identifies it as an unprotected category. The only unprotected categories are listed here, one of which is OBSCENITY.
- In order to be considered OBSCENE, a book must meet **ALL THREE** parts of the Miller test.
    a. Patently offensive sexual content (per state standards)
    b. Contemporary community standards finds it appeals *as a whole* to prurient interests (this could be per a local community standard)
    c. It lacks serious literary, artistic, political, or scientific value (per a national standard)
- NONE of the books in our collection meet all three prongs of the Miller Test for Obscenity. Some may meet Prong B, but that is not sufficient legal grounds to restrict access.
- Nothing can be considered obscene unless a court deems it to be obscene. I cannot decide, this board cannot decide, and this community cannot decide. Even if the majority of this community wanted certain books restricted, we could not legally do it unless they met all three prongs of the test.
- The attorney specifically recommended all attendees tell their boards that boards are being sued all across the country for moving and restricting access. And if you were to lose, the library District would likely be ordered to pay the petitioner's legal fees as well.

Board of Education, Island Trees Union Free School District No. 26 v. Pico, 457 U.S. 853 (1982)

Books Challenged: Down These Mean Streets, The Naked Ape, Slaughterhouse Five, and others

A local school board deemed a number of books "anti-American, anti-Christian, anti-Semitic, and just plain filthy" and directed their removal from junior high school and high school libraries. The Supreme Court ultimately remanded the case back to the District Court finding that there was a genuine issue of material fact that precluded summary judgment. Nevertheless, the Court articulated the view that although local school boards have broad discretion in the management of school affairs, this discretion must be exercised in a manner that comports with the First Amendment, that the **First Amendment rights of students may be directly implicated by the removal of books from the shelves** of a school library, and that **local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books**.

Counts v. Cedarville School District, 295 F.Supp.2d 996 (W.D. Ark. 2003)

Book Challenged: Harry Potter and the Sorcerer's Stone

A public school student's parent objected to the inclusion of this book in school libraries. **Thereafter, the school board voted to restrict access to the book, as well as the rest of the Harry Potter**

series, by shelving them out of view and requiring parental permission to check them out. The school board's reasoning was that the books encouraged disobedience and involved matters of witchcraft and the occult. The court found that there was no evidence that would have led the school board members to reasonably believe that the books would cause a disruption in the schools were student allowed to have unfettered access to them. Further, it is impermissible to restrict access to books on the basis of the ideas expressed therein. Consequently, **the school board's decision to restrict access to the Harry Potter books was found to violate the First Amendment**

Sund v. City of Wichita Falls, Texas, 121 F. Supp. 2d 530 (N.D. Texas, 2000)
Books Challenged: Heather Has Two Mommies and Daddy's Roommate

A group of local residents objected to the inclusion of these books, which depict children with gay and lesbian parents, in the children's section of the public library. In response, the City of Wichita Falls passed a resolution providing that residents could remove books from the children's section by gathering 300 signatures of library card holders; the resolution provided for no avenue of review or appeal. The District Court granted an injunction against the enforcement of the resolution on the grounds that **it violated the constitutional right to receive information, the City could not demonstrate that the restriction was necessary to achieve a compelling government interest, and that allowing 300 citizens to remove any books they find objectionable amounted to a heckler's veto.**

C.K.-W, et al v. Wentzville R-IV School District (2022)
Books Challenged: The Bluest Eye, Fun Home, All Boys Aren't Blue, Heavy, Lawn Boy, Gabi A Girl In Pieces, Modern Romance, and Invisible Girl

The school district implemented a policy by which its officials and employees removed eight critically acclaimed books because they disliked the ideas contained within. Their policy allows for removal upon challenge while the items are reviewed, which has been previously ruled as unconstitutional "prior restraint." Students sued, and because of the lawsuit the school district put 7 of the 8 books back in the library, so the court case was dismissed. If the school chooses to remove the books after review, the case will continue through the courts.

In VA, a person can bring action against specific books to have a court declare them obscene. In 2022, there were petitions to declare Gender Queer and A Court of Mist and Fury obscene. The VA court found each request "unconstitutional on its face" and dismissed them. A quote from that linked article: "We knew that the first amendment, as well as the obscenity laws, were on our side from the beginning, but too often politics and grandstanding seem to win out over legal arguments. We view this as a victory not just for Maia Kobabe and Sarah Maas but for all authors who face censorship," said Mary Rasenberger, CEO of the Authors Guild.