

COMMENT

BOOKS FOR ME BUT NOT FOR THEE: HOW MODERN BOOK BANNING IN PUBLIC LIBRARIES WILL BROADLY DISENFRANCHISE FIRST AMENDMENT LIBERTIES*

ABSTRACT

Public libraries have long been a prominent institution of education and democracy throughout the country. Despite this, libraries across the United States have seen a sharp increase in censorship attempts through book banning. Many may impulsively believe that book banning is an issue that takes place, and therefore only has consequences, along partisan lines. However, this form of censorship has drastic and negative implications that transcend political values and predominantly harm the most vulnerable citizens in the nation. This Comment examines these profound impacts on individuals and communities across various social, political, and economic spectra. It does this not only by surveying the historical and legal framework that surrounds censorship, but also by analyzing the current Fifth Circuit case *Little v. Llano County*. It then provides insight into how a pro-censorship decision would likely undermine the First and Fourteenth Amendments, the rights and values of various minorities and religious groups, and democracy itself. It concludes that unconstitutional censorship creates a vicious cycle that ultimately undermines our societal, educational, and democratic institutions as a whole.

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TABLE OF CONTENTS

I.	INTRODUCTION.....	213
II.	MODERN BOOK BANNING.....	215
	A. <i>A Brief History of American Book Banning</i>	216
	B. <i>Little v. Llano County: A Case Study for Modern Book Banning</i>	218
	1. <i>Factual and Procedural Background</i>	219
	2. <i>Legal Arguments</i>	222
III.	HISTORICAL FIRST AMENDMENT CASE LAW AND ITS IMPLICATIONS ON <i>LITTLE</i>	224
	A. <i>Board of Education v. Pico as the Seminal Library Case</i>	225
	B. <i>Miller and the Obscenity Test</i>	228
IV.	THE POTENTIAL FOR A CHALLENGE UNDER THE FOURTEENTH AMENDMENT	231
	A. <i>A Challenge Under Equal Protection as It Currently Exists</i>	231
	B. <i>A Potential for Expanded Equal Protection Classifications</i>	233
V.	NEGATIVE IMPACTS FOLLOWING A DECISION IN FAVOR OF LLANO COUNTY.....	235
	A. <i>General Impact</i>	236
	B. <i>Impact on Existing Suspect Classes</i>	238
	C. <i>Impact on Children and the Socioeconomically Disadvantaged</i>	240
VI.	CONCLUSION	242

I. INTRODUCTION

“The public library is the last bastion of true democracy that we have in this country.”¹ Spoken by Jeffrey Wright, star of the 2018 film *The Public*, these words ring true from the hills of Hollywood to the most rural counties in the country. Growing up in Llano County, the public library became my first introduction to true freedom. At nine years old, I was first allowed to venture into the streets of my hometown alone to attend our local public library’s summer reading program. This physical freedom was nothing compared to the ability to peruse the thousands of books on the shelves that inspired my love of learning. This newfound passion carried me through twelve years in my small-town school district, four years at an incredible public university, and all the way up to writing this Comment as a first-generation law student.²

Our public libraries play a vital role as bastions of democracy for millions of Americans.³ They act as educational hubs that serve those across this nation’s diverse social, economic, religious, and political spectrum.⁴ Public libraries function as true equalizers and offer resources that bridge this country’s many societal gaps.⁵ Despite these benefits, this democratic institution is under fire. In the last half a decade, public libraries across the country have seen a sharp increase in book-banning attempts.⁶ In fact, the American Library Association (ALA) has reported over 1,200 challenges to remove books from public libraries in 2022, a number nearly

1. THE PUBLIC (Hammerstone Studios 2018).

2. In order to provide full context for this piece, I would like to disclose that the public library system has not only had a major impact on myself, but on multiple generations of my family. My mom has been a children’s librarian in Kingsland, Texas since 2011. My grandma has been a Llano Library patron since moving to Llano in 2002, and during that time has held the positions of Treasurer and President for the Friends of the Llano Library. She is also one of the seven plaintiffs in the *Little v. Llano County* case that inspired this Comment.

3. See Carsyn Fessenden, *The Library, Democracy, and You*, URB. LIBRS. COUNCIL, <https://www.urbanlibraries.org/blog/the-library-democracy-and-you> [https://perma.cc/4R7P-4JU4] (last visited Feb. 3, 2024).

4. See John B. Horrigan, *Who Uses Libraries and What They Do at Their Libraries*, PEW RSCH. CTR. (Sept. 15, 2015), <https://www.pewresearch.org/internet/2015/09/15/who-us-es-libraries-and-what-they-do-at-their-libraries/> [https://perma.cc/UXB3-GPV6].

5. See Scott Carlson, *Libraries Are the Great Equalizers*, CHRON. HIGHER EDUC., <https://www.chronicle.com/article/libraries-are-the-great-equalizers> [https://perma.cc/6UBF-373B] (last visited Feb. 3, 2024).

6. See Tracie D. Hall, *Attacks on Libraries Are Attacks on Democracy*, TIME (Sept. 20, 2023, 10:27 AM), <https://time.com/collection/time100-voices/6315724/banned-books-library-access/> [https://perma.cc/CTT7-EP76].

doubling the 729 reported challenges in 2021.⁷ While book banning poses a major issue across the United States, Texas leads the nation in book-banning attempts as of August of 2023.⁸

This Comment explores the issue of modern-day book banning through the lenses of both the First and Fourteenth Amendments. It concludes that state removal of books from public libraries is not only unconstitutional but has severe negative implications for various protected classes across the social and political spectrum.

Part II begins with a brief summary of the modern trend toward book banning. This summary initially discusses book-banning efforts generally throughout the twentieth century and then highlights the resurgence of censorship attempts appearing since 2020. Next, this part closely examines the current Fifth Circuit case *Little v. Llano County* as a case study to represent the larger national trend. It first recounts the factual and procedural backgrounds of the case, then the legal arguments made by both the plaintiffs and the defendants.

Part III surveys the existing First Amendment case law that is pertinent to this issue, while comparing and distinguishing the relevant elements of *Little*. This analysis will begin with the seminal First Amendment book-banning case *Board of Education v. Pico*. It will compare and contrast both the relevant facts and legal issues with *Little*. This includes how control of “optional reading” is greatly distinguishable from control of “curriculum and classroom,” how state action is treated as it intertwines with the creation of an advisory board of private citizens, and the protection of the rights of minors to meaningfully exercise their rights of free speech and expression, which includes the constitutional right to receive information and ideas in a variety of contexts. This part next explains the context of *Miller v. California* in First Amendment analysis and applies the *Miller* test to the facts of *Little*.

Part IV explores the possibility for a potential claim of unconstitutionality under the Fourteenth Amendment’s Equal Protection Clause. It first discusses the current understanding of Fourteenth Amendment law and the history of protected classes. Then, it explains how, under the existing framework, the success of an equal protection claim is unclear. Finally, it sets up a suggestion

7. Raymond Garcia, *American Library Association Reports Record Number of Demands to Censor Library Books and Materials in 2022*, AM. LIBR. ASS’N (Mar. 22, 2023), <https://www.ala.org/news/press-releases/2023/03/record-book-bans-2022> [<https://perma.cc/3LA9-8RF3>].

8. *Censorship by the Numbers*, AM. LIBR. ASS’N, <https://www.ala.org/bbooks/censors-hip-numbers> [<https://perma.cc/4NYA-EW94>] (last visited Oct. 20, 2024).

for the potential expansion of the constitutional “protected class framework” to protect against age discrimination or socioeconomic discrimination. This is further explored in Part V’s discussion on the negative implications that successful book banning may have on minors and the socioeconomically disadvantaged.

Part V discusses the negative implications that a decision in favor of book banning would have on various classes. This includes the “traditional,” social suspect classes of race, gender, and sexual orientation that are currently facing most book-banning attempts. However, it also discusses the negative effects that successful book banning could easily have on religious minorities who also enjoy suspect-class status. Finally, this part explores the greater societal effects that book banning has on children and the socioeconomically disadvantaged: two groups, which, while not enjoying a protected legal status, still have lowered political influence and will likely face disproportionate harm from successful book banning.

This Comment concludes that state-sponsored censorship in the form of book banning in public libraries is not only an infringement on First Amendment liberties across political lines but has profound and negative consequences past its First Amendment implications.

II. MODERN BOOK BANNING

Book banning has experienced a resurgence in the last half-decade.⁹ Modern book banning reflects the overarching trend of censorship efforts for written works over the history of the United States.¹⁰ This history reveals a common thread of promoting a greater sense of morality, whether in religious, social, or cultural sense.¹¹ Contemporary book banning has been revived and

9. *Id.*

10. Rebecca Boone, *Experts Say Attacks on Free Speech Are Rising Across the U.S.*, PBS (Mar. 15, 2023, 5:13 PM), <https://www.pbs.org/newshour/politics/experts-say-attacks-on-free-speech-are-rising-across-the-us> [<https://perma.cc/9V3R-ZQDT>]. Despite this Comment’s focus on the trend of censorship in written media, it is also important to note the broader trend toward censorship in the United States as a whole. Both the congressional ban on the social media application TikTok and the silencing, and even arrests, of pro-Palestinian student protestors at universities across the country exemplify this trend. *Fighting Campus Censorship: The ACLU Defends Pro-Palestinian Voices in Florida*, ACLU (Dec. 29, 2023), <https://www.aclu.org/news/free-speech/fighting-campus-censorship-the-aclu-defends-pro-palestinian-voices-in-florida> [<https://perma.cc/558F-RMX9>]; see Caitlin Yilek, *Why U.S. Officials Want to Ban TikTok*, CBS NEWS, <https://www.cbsnews.com/news/tiktok-ban-congress-reasons-why/> [<https://perma.cc/G8EJ-D3MU>] (last updated Apr. 24, 2024, 5:17 PM).

11. Jennifer Elaine Steele, *A History of Censorship in the United States*, J. INTELL. FREEDOM & PRIV., Spring/Summer 2020, at 6, 8–9, <https://journals.ala.org/index.php/jifp/article/view/7208/10293> [<https://perma.cc/LQ2R-AZZK>].

reinvigorated, in great part, by religious groups and the conservative right in a manner that closely reflects the emergence of the larger “culture wars” political movement that has since followed the 2016 election.¹² However, in response to book-banning attempts from the right, several states have seen movements coming from the left to remove religious literature, including the Bible, from public and school libraries.¹³ This part covers the history of censorship throughout the United States and how it has led to contemporary book-banning movements. Then, it discusses the current Fifth Circuit Court of Appeals case *Little v. Llano County* as a specific instance of modern book banning. This includes the factual background that led to the lawsuit, and the legal issues and arguments undertaken by each side.

A. *A Brief History of American Book Banning*

Historical relevance for book banning in the United States began as a religious backlash to the introduction of a more secular counter-culture in colonial America with “anti-Puritanical” works like Thomas Morton’s *New English Canaan*.¹⁴ Morton and his

12. Eesha Pendharkar, *Who’s Behind the Escalating Push to Ban Books? A New Report Has Answers*, EDUCATIONWEEK, <https://www.edweek.org/leadership/whos-behind-the-escalating-push-to-ban-books-a-new-report-has-answers/2022/09> [https://perma.cc/G4XW-CVMF] (last updated Sept. 28, 2022); Jonathan Allen & Hannah Beier, *How Christian Groups Helped Parents Pull Books from Some Pennsylvania School Libraries*, REUTERS (June 24, 2023, 4:26 PM), <https://www.reuters.com/world/us/how-christian-groups-helped-parents-pull-books-some-pennsylvania-school-2023-06-24/> [https://perma.cc/2R2F-4PRX]; see also Eric W. Dolan, *Study Provides Insight into How Culture War Issues Contributed to Trump’s Rise to Power*, PSYPOST (Mar. 20, 2023), <https://www.psypost.org/study-provides-insight-into-how-culture-war-issues-contributed-to-trumps-rise-to-power/> [https://perma.cc/4YMF-L6FC].

13. Kelsey Dallas, *The Bible Was Removed from Libraries in This Texas School District*, DESERETNEWS (Aug. 18, 2022, 4:00 PM), <https://www.deseret.com/faith/2022/8/18/23311833/why-bible-was-removed-from-libraries-texas-school-district> [https://perma.cc/8ETG-AM2V]; Sam Metz, *Utah District Bans Bible in Elementary and Middle Schools ‘Due to Vulgarly or Violence’*, AP NEWS (June 2, 2023, 5:26 PM), <https://apnews.com/article/book-ban-school-library-bible-fc025c8cf30e955aaf0b0ee1899608a> [https://perma.cc/4PEA-LV8F]; Jenny Brundin, *After a Colorado Springs School District Banned Several Books, One Parent Is Requesting They Pull the Bible, Too*, CPR NEWS (June 29, 2023, 1:05 PM), <https://www.cpr.org/2023/06/29/colorado-springs-school-district-book-bans-bible/> [https://perma.cc/5SVS-VNL9]; Alaijah Brown, *‘Nontheistic’ Nonprofit Calls for Bible Ban in Leon Schools, Citing Moms for Liberty Efforts*, TALLAHASSEE DEMOCRAT, <https://www.tallahassee.com/story/news/local/2023/07/18/leon-schools-told-to-ban-bible-after-banning-books-for-moms-for-liberty/70420067007/> [https://perma.cc/CZA3-MTAE] (last updated July 18, 2023, 2:51 PM).

14. Matthew Taub, *America’s First Banned Book Really Ticked Off the Plymouth Puritans*, ATLAS OBSCURA (Nov. 1, 2019), <https://www.atlasobscura.com/articles/americas-first-banned-book> [https://perma.cc/HNS9-UF6U]. While this was one of the earliest instances of religious book banning in the colonial United States, religious groups like the Puritans had been banning books, either by law or by fire, since the seventeenth century.

works were seen as a threat to the greater religious values held by the Puritans and their pious way of life.¹⁵ He consistently criticized the strict and suppressive policies of the colony and strove to integrate indigenous groups and their culture into the lives and culture of the Puritans.¹⁶ However, because the colony's leadership disagreed with these ideas, they refused to print Morton's work and likely destroyed any copies that had slipped past their printers.¹⁷ Morton arguably received a light sentence for his works and ideology, merely being exiled, imprisoned, and then exiled again.¹⁸ The prominence and power of religious leaders in the colonies, paired with the lack of any formal constitutional rights, meant that not only could authors of controversial books or pamphlets have their works burned or banned, but that the authors themselves could be banned as heretics.¹⁹

By the 1850s, religious controversies were temporarily replaced by concerns over abolition, leading to the Confederacy's prohibition of Stowe's *Uncle Tom's Cabin* in multiple states for expressing sentiments against slavery.²⁰ However, after the Civil War abolished slavery, the Comstock Act, which criminalized the possession or mailing of "obscene" or "immoral" texts, highlighted a new era of book banning for moral and religious motivations.²¹ This Act was drafted, in part, by Evangelical activist Anthony Comstock and enforced for the better part of a century.²² It gave government officials extensive discretion to search, seize, and

This included the requirement to obtain a license from a Puritan-regulated authority to print or sell books, and several orders to burn books deemed heretical or offensive. *Religious Book Bans: The History of Book Bans (Part 2)*, CARE HARDER, <https://www.careharder.com/blog/history-of-religious-book-bans> [<https://perma.cc/CFH2-LXNW>] (last visited Feb. 4, 2024).

15. Chris Klimek, *A Brief History of Banned Books in America*, SMITHSONIAN MAG. (Oct. 5, 2023), <https://www.smithsonianmag.com/history/a-brief-history-of-banned-books-in-america-180983011/> [<https://perma.cc/8T8K-KZB2>].

16. *Id.*

17. *Id.*

18. See Mindy Johnston, *Thomas Morton*, BRITANNICA, <https://www.britannica.com/biography/Thomas-Morton> [<https://perma.cc/GU4D-9RPG>] (last visited Feb. 4, 2024).

19. Erin Blakemore, *The History of Book Bans—and Their Changing Targets—in the U.S.*, NAT'L GEOGRAPHIC, <https://www.nationalgeographic.com/culture/article/history-of-book-bans-in-the-united-states> [<https://perma.cc/V8GU-MT4Z>] (last updated Sept. 20, 2024).

20. Amy Brady, *The History (and Present) of Banning Books in America*, LITERARY HUB (Sept. 22, 2016), <https://lithub.com/the-history-and-present-of-banning-books-in-america/> [<https://perma.cc/WA96-VGTK>].

21. Blakemore, *supra* note 19.

22. Jonathan Friedman & Amy Werbel, *The Comstock Law at 150: A Highly Relevant Cautionary Tale for Today*, HILL (Mar. 3, 2023, 2:00 PM), <https://thehill.com/opinion/education/3882873-the-comstock-law-at-150-a-highly-relevant-cautionary-tale-for-today/> [<https://perma.cc/5AF5-32MV>].

destroy citizen's private mail and other published materials, as well as "to fine and imprison writers and booksellers [for creating or distributing illicit works], as well as anyone found in possession of material deemed illicit."²³ This resulted in the burning of millions of published works and the arrest of over 3,000 individuals for writing or possessing works covering then controversial topics like sexuality, abortion, equality of the sexes, separation of church and state, and atheism.²⁴

Because we are no longer arresting authors and burning their works, it might seem reasonable to assume that book banning in our more socially relaxed contemporary democratic society would be negligible and mostly inconsequential. In the years leading up to 2020, the average American would have likely perceived the removal of books from schools, bookstores, and public libraries as an insignificant issue.²⁵ However, book banning has been a prevalent issue throughout the twentieth and twenty-first centuries and is seeing a great resurgence in the 2020s.²⁶

B. *Little v. Llano County: A Case Study for Modern Book Banning*

While there have been efforts to remove books throughout the country, this recent resurgence in banning attempts can be seen clearly in the case *Little v. Llano County*.²⁷ *Little* is currently pending in the Fifth Circuit Court of Appeals.²⁸ This case, which initially seemed to only affect the small population of roughly 20,000 people²⁹ in the central-Texas county, has gained national

23. *Id.*

24. *Id.* Notably, the censorship and imprisonment under the Comstock Act took place despite the country having a strong Constitution meant to protect fundamental rights to free speech and expression, and against forcing religious values, and unreasonable searches and seizures by the federal government. See U.S. CONST. amends. I, IV.

25. See generally *Voter Perceptions of Book Bans in the United States — September 2022*, EVERY LIBR. INST. (Sept. 2022), <https://www.everylibraryinstitute.org/bookbanpoll> [<https://perma.cc/TJ28-CNAM>] (reporting survey statistics on differences in belief regarding whether books should be banned based on factors including 2020 presidential election vote); *Banned in the USA: The Mounting Pressure to Censor*, PEN AM. (Sept. 1, 2023), <https://pen.org/report/book-bans-pressure-to-censor/> [<https://perma.cc/NQH7-6H5C>].

26. Brady, *supra* note 20.

27. See Klimek, *supra* note 15.

28. Andrew Albanese, *On Appeal, Llano County Seeks Book Ban Ruling that Would Upend Public Libraries*, PUBLISHERS WKLY. (Sept. 25, 2024), <https://www.publishersweekly.com/pw/by-topic/industry-news/libraries/article/96015-on-appeal-llano-county-seeks-book-ban-ruling-that-would-upend-public-libraries.html> [<https://perma.cc/CXK4-PXZE>].

29. *Quick Facts: Llano County, Texas*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/llanocountytexas> [<https://perma.cc/BL5R-K848>] (last visited Oct. 20, 2024) (population estimates as of July 1, 2023).

attention over the last two years.³⁰ It is a case that provides specific insight into the overall trend toward book banning and may have broad implications for First Amendment rights across the country, which is greatly concerning to civil rights groups, attorneys, publishers, and library patrons across the country.³¹ The following section will recount the factual and procedural background in order to highlight an example of a typical contemporary book-banning case.

1. *Factual and Procedural Background.* In 2021, Republican State Representative Matt Krause compiled a list of 850 books that contained materials that he believed “might make students feel discomfort, guilt, anguish, or any other form of psychological distress because of their race or sex.”³² This list, paired with Krause’s request for schools to report whether their libraries contained the books on the list, created concern within Texas’s educational system, as many saw this as an attempt to target books that could inform students on controversial but important issues like critical race theory and LGBTQ+ identity.³³ Krause’s list caught the attention of various activist groups who proceeded to reach out to public and school librarians across the state, demanding to know if the libraries were putting “pornography” on their shelves that could poison the minds of their children.³⁴

Shortly after the release of Krause’s list, several residents of Llano County were inspired to create an activist group to demand the removal of seventeen books that they deemed inappropriate from the Llano County Library System, which includes Llano Library, Kingsland Library, and Lakeshore Library.³⁵ In response to these

30. David Montgomery & Alexandra Alter, *Texas County Keeps Public Libraries Open Amid Book Ban Controversy*, N.Y. TIMES, <https://www.nytimes.com/2023/04/13/books/book-bans-libraries-texas-llano.html> [https://perma.cc/KJV5-U9N9] (last updated Apr. 13, 2023, 7:55 PM).

31. Alejandro Serrano, *Llano County Libraries Case Has Lawyers and Publishers Worried About Existing Legal Precedents*, TEX. TRIB. (June 19, 2023, 5:00 AM), <https://www.texastribune.org/2023/06/19/llano-county-books-legal/> [https://perma.cc/3H4S-F63U].

32. Bill Chappell, *A Texas Lawmaker Is Targeting 850 Books That He Says Could Make Students Feel Uneasy*, NPR (Oct. 28, 2021, 1:00 PM), <https://www.npr.org/2021/10/28/1050013664/texas-lawmaker-matt-krause-launches-inquiry-into-850-books> [https://perma.cc/LH8N-G83Q].

33. *Id.*

34. See Micheal Powell, *In Texas, a Battle Over What Can Be Taught, and What Books Can Be Read*, N.Y. TIMES, <https://www.nytimes.com/2021/12/10/us/texas-critical-race-theory-ban-books.html> [https://perma.cc/F3VN-GRUR] (last updated June 22, 2023).

35. Plaintiffs’ Rule 65 Motion for Preliminary Injunction at 2, 5–6, *Little v. Llano Cnty.*, No. 1:22-cv-00424-RP, 2023 WL 2731089 (W.D. Tex. May 9, 2022); TER Staff, *Texas County Must Reinstate 8 Books to Its Libraries According to an Appeals Court*, EDUCATOR’S

demands, Llano County closed its three libraries in December of 2021 to “inventory” all of the books in their library catalog.³⁶ After inventory procedures, the library’s director decided to remove the seventeen books from the shelves.³⁷ These books included those covering topics like LGBTQ+ issues, including Jazz Jennings’s *Being Jazz: My Life as a (Transgender) Teen* and Jonathan Evison’s *Lawn Boy*, as well as racial issues like Susan Campbell Bartoletti’s *They Called Themselves the KKK: The Birth of an American Terrorist Group*.³⁸ Another group of targeted books were children’s picture books deemed to have “pornographic nudity” including Maurice Sendak’s *In the Night Kitchen* and *I Need a New Butt!* by Dawn McMillan.³⁹ Coinciding with the removal of these print books, the library terminated its patrons’ access to a previously accessible electronic book (e-book) software, where over 17,000 e-books had previously been accessible.⁴⁰

In January of 2022, shortly after the removal of the print books and the termination of the e-book software, the county library system decided to replace the existing library board with a new “library advisory board.”⁴¹ This new board was mostly composed of the same activist group members who had initially proposed the book removals, and its purpose was to facilitate the filtering and approval of new books into the library system.⁴² Then, the advisory

ROOM (June 8, 2024), <https://theeducatorsroom.com/texas-county-must-reinstate-8-books-to-its-libraries-according-to-an-appeals-court/> [<https://perma.cc/RW34-MHUU>].

36. Plaintiffs’ Rule 65 Motion for Preliminary Injunction, *supra* note 35, at 7.

37. *Little v. Llano Cnty.*, 103 F.4th 1140, 1144 (5th Cir. 2024).

38. Brooke Park, *Residents Sue Llano County Officials, Library Director, Board Members to End Book Bans*, TEX. TRIB. (Apr. 25, 2022, 11:00 AM), <https://www.texastribune.org/2022/04/25/texas-public-library-bookbans-lawsuit-llano/> [<https://perma.cc/XW6K-HJP A>]; Montgomery & Alter, *supra* note 30; Asher Price, *Legal Costs in Texas Book Ban Fight Continue to Rise*, AXIOS AUSTIN (June 23, 2023), <https://www.axios.com/local/austin/2023/06/23/legal-cost-texas-book-ban> [<https://perma.cc/CC9C-7TTX>].

39. *Little*, 103 F.4th at 1144–45. Dawn McMillan’s *I Need a New Butt!* has come under fire for being “inappropriate” for small children because it refers to “butts in various colors, shapes and sizes,” including the main character’s own, which is, unfortunately, “crack[ed].” Victoria Bekiempis, *Mississippi Teacher Fired for Reading I Need a New Butt! to Children*, GUARDIAN (Mar. 13, 2022, 1:00 AM) <https://www.theguardian.com/us-news/2022/mar/12/i-need-a-new-butt-teacher-fired-mississippi> [<https://perma.cc/7TBD-SSA2>]. Maurice Sendak’s *In the Night Kitchen*’s controversy stems from the belief that the main character, a young boy, was meant to desensitize children to nudity, because he falls out of his pajamas at the beginning of the book. Angela Maycock, *Timeline Entry for 1985: In the Night Kitchen*, AM. LIBR. ASS’N: INTELL. FREEDOM BLOG (Sept. 4, 2012), <https://www.oif.ala.org/timeline-entry-for-1985-in-the-night-kitchen/> [<https://perma.cc/MDA8-FLAL>].

40. Plaintiffs’ Rule 65 Motion for Preliminary Injunction, *supra* note 35 at 7–8.

41. *Id.* at 8.

42. *Id.*

board closed its meetings to the public.⁴³ Following opposition to the deviation from standard-library procedure by some of the librarians, including the then-head-librarian of the Kingsland branch, several employees were let go for insubordination.⁴⁴

In March 2022, in response to the removal of the books from the library and the cancellation of the e-book software, a group of seven patrons of the Llano County Library System filed a suit against Llano County, its judge, commissioner, and the members of the new library advisory board.⁴⁵

On June 6th, 2024, the Fifth Circuit released a set of opinions partially affirming and partially modifying the U.S. District Court for the Western District of Texas's decision to grant plaintiffs' request for a temporary injunction.⁴⁶ This 2–1 decision consisted of three separate opinions authored by Judges Weiner, Southwick, and Duncan.⁴⁷ The majority ultimately decided that eight of the seventeen books in question must be returned “to the publicly visible and accessible shelves of the Llano County Libraries.”⁴⁸ The decision prompted multiple requests by judges and the defendants' counsel that the case be reheard en banc with additional oral arguments, and it is scheduled to take place in the latter half of September 2024.⁴⁹ Ultimately, while many of the books in question will (for now) remain on Llano County Library shelves, the en banc hearings and the likelihood of further post-injunction hearings leave the fate of the

43. *Id.* at 9.

44. *See, e.g.*, Nabil Remadna, *Llano County Librarian Loses Job After Not Removing Books*, KXAN, <https://www.kxan.com/news/local/hill-country/llano-county-librarian-loses-job-after-not-removing-books/> [<https://perma.cc/A2JZ-8Y4R>] (last updated Mar. 18, 2022, 2:25 PM). The “insubordination” that led to former head-librarian Suzette Baker's termination on March 9, 2022, included not hiding a book on critical race theory behind the library's circulation desk and vocally protesting decisions like a ban on ordering new books or accepting donations. Brooke Park, *Texas Librarians Face Harassment as They Navigate Book Bans*, KERANEWS (May 17, 2022, 9:43 AM), <https://www.keranews.org/education/2022-05-17/texas-librarians-face-harassment-as-they-navigate-book-bans> [<https://perma.cc/HZ8J-SDVC>]. Baker has since filed her own civil suit “against Llano County, its judge and commissioners, the library system's director, and four members of the county's Library Advisory Board.” Suzanne Freeman, *Fired Kingsland Librarian Files Civil Suit Against Llano County*, DAILY TRIB. (Mar. 5, 2024), <https://www.dailytrib.com/2024/03/05/fired-kingsland-librarian-files-civil-suit-against-llano-county/> [<https://perma.cc/99T9-3FHM>].

45. Serrano, *supra* note 31; Park, *supra* note 38.

46. *Little v. Llano Cnty.*, 103 F.4th 1140, 1157 (5th Cir. 2024); Ed Whelan, *Federal Judges as ‘Library Police,’* NAT. REV. (June 10, 2024, 11:32 AM), <https://www.nationalreview.com/bench-memos/federal-judges-as-library-police/> [<https://perma.cc/8GD3-W2NM>].

47. Whelan, *supra* note 46.

48. *Little*, 103 F.4th at 1157.

49. E-mail from Leila Green Little, lalubean@gmail.com, to undisclosed-recipients (July 6, 2024, 1:05 PM) (on file with author). The editing process for this Comment was completed before the hearings occurred.

books and the ultimate question of the legality of their removal under the First or Fourteenth Amendments deeply uncertain.⁵⁰

2. *Legal Arguments.* A large part of both the plaintiffs' and defendants' cases rely on the First Amendment.⁵¹ This includes a debate over the amount of discretion that public libraries hold over their content and collection decisions and thus, what constitutes "content and collection" decisions.⁵² Both sides also grapple with the distinction between public libraries and school libraries, which has only partially been described by the court, and currently leaves a lot of flexibility in interpretation.⁵³ Further, the plaintiffs raise the issues of whether the defendants had reason for removal beyond disagreeing with the subject matter.⁵⁴

The defendants claim that First Amendment protections are not applicable to public libraries, because the Supreme Court has recognized that public libraries should be given broad discretion over decisions regarding the library's content and collection.⁵⁵ They interpret this to mean that government officials, including the public figures in this case, have more constitutional authority to restrict speech and access to information under the First Amendment than usual.⁵⁶ Therefore, they can remove the books, which they contend are part of the collection of content available through the library to the public.⁵⁷

However, the plaintiffs disagree with the scope of this discretion on multiple fronts.⁵⁸ They contend that "this discretion is not absolute, and it applies only to materials' selection."⁵⁹ Firstly, they believe that previous interpretations in this area require that this discretion cannot be exercised merely because someone

50. *Little v. Llano County (23-50224)*, COURTLISTENER, <https://www.courtlistener.com/docket/67132921/little-v-llano-county/> [<https://perma.cc/E3WA-8EHW>] (last visited Feb. 4, 2024).

51. *Little v. Llano Cnty.*, No. 1:22-CV-424-RP, 2023 WL 2731089, at *5, *7 (W.D. Tex. Mar. 30, 2023), *aff'd as modified*, 103 F.4th 1140 (5th Cir. 2024), *reh'g en banc granted, vacated*, 106 F.4th 426 (5th Cir. 2024).

52. *Id.* at *7.

53. *Id.* at *7–9.

54. *Id.* at *5, *8.

55. *Id.* at *8–9; *see, e.g.*, *United States v. Am. Libr. Ass'n*, 539 U.S. 194, 200, 204 (2003) (plurality opinion) (stating, in a case regarding the Child Internet Protection Act's limitation on library funding to libraries who install software intended to block pornography on library computers, that "[t]o fulfill their traditional missions [of facilitating learning and cultural enrichment], public libraries must have broad discretion to decide what material to provide to their patrons").

56. *Little*, 2023 WL 2731089, at *8–9.

57. *Id.* at *8.

58. *Id.*

59. *Id.*

“simply . . . dislike[s] the ideas contained in these books.”⁶⁰ Thus, defendants, like the members of the activist group, cannot request the removal of the books in question because they believe that they are profane or contrary to their religious values.⁶¹ Furthermore, defendant state actors like the County or their librarians also cannot remove the books based on their own values, the values of the citizens that they represent, or the patrons that they serve.⁶²

Further, the plaintiffs distinguish between the discretion to remove books that had already been accepted into the library through standard procedure and the discretion to choose what enters the library during “their collection selection process.”⁶³ Libraries are required to follow a standard procedure for purchasing, replacing, and weeding books from their collections, commonly with the Continuous Review, Evaluation, and Weeding (CREW) method.⁶⁴ This procedure is enforced in all ALA-accredited libraries, and requires that certain guidelines are followed before books are removed from a library.⁶⁵ This criterion does not include whether the books are offensive to library staff or patrons.⁶⁶ Therefore, once a book is accepted into library circulation, it becomes very difficult to remove, especially for popular books or books in smaller libraries

60. *Id.*

61. *Id.* at *10.

62. *Id.* at *10–11.

63. *Id.* at *8.

64. *Selection Criteria*, AM. LIBR. ASS’N, <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/criteria> [<https://perma.cc/MMX5-4EC9>] (last updated Jan. 2018). While the ALA provides more flexibility to libraries and their individual librarians in the selection process, entities such as the Texas State Library and Archives Commission have made removing, and even replacing books from the library incredibly restrictive. *See id.* The ALA allows for libraries to create their own selection criteria for *adding* books into their library system. Specifically, the ALA states:

Selection policies should include specific criteria to guide professionals in purchasing items.” *Id.* “The criteria should be relevant to the library’s objectives: excellence (artistic, literary, visual, etc.), appropriateness to level of user, authoritative and varying perspectives on controversial issues, accessibility, and ability to stimulate further intellectual and social development.” *Id.* “Librarians should consider authenticity, public demand, general interest, content, and circumstances of use.” *Id.* “For libraries serving minors, librarians should consider age, social and emotional development, intellectual level, interest level, and reading level.

Id. In contrast, the CREW method creates heavy restrictions on when librarians may remove books. *See* JEANETTE LARSON, CREW: A WEEDING MANUAL FOR MODERN LIBRARIES 17 (2012). For example, juvenile fiction should not be weeded (removed) from the library’s collection unless it has not circulated in 2–3 years. *Id.* at 33. Nonfiction is typically not removed unless it is extremely outdated or there is another book in the system that adequately fills the information gap that would be created without the book. *Id.* at 34–35.

65. *See Selection Criteria*, *supra* note 64.

66. *Id.*

with less available resources.⁶⁷ This reasoning clashes with the argument that the broad discretion enjoyed by libraries extends to the weeding of books, and strengthens the idea that this broad discretion is limited to the acquisition of new resources and content for the library's collection. Because of this, the plaintiffs contend that the non-CREW-compliant weeding of the seventeen "inappropriate" books was intended to "prevent access to viewpoints and content to which they objected" and therefore, was beyond the scope of what the court's understanding of discretion allowed.⁶⁸

III. HISTORICAL FIRST AMENDMENT CASE LAW AND ITS IMPLICATIONS ON *LITTLE*

Throughout their arguments, both parties in *Little* refer to significant case law that supports the arguments discussed in Section II.B.⁶⁹ While Fourteenth Amendment concerns are raised in *Little*, the issues at the heart of the case directly relate to the First Amendment.⁷⁰ Constitutional law cases spanning back from the mid-twentieth century can help inform parties and observers on potential holdings on these issues from the Fifth Circuit, and potentially the Supreme Court.⁷¹ This part surveys some of the relevant case-law precedent that will almost certainly be discussed in book-banning litigation at large. It begins with arguably the most pertinent case on book banning in libraries: *Board of Education v. Pico*. It will first provide an overview of the facts and legal issues that helped determine the case outcome, as many of these issues are also salient to *Little*. Then, it will discuss how a modern court may or may not interpret the issues in *Little* in light of the various issues in *Pico*. This part will discuss book banning through the lens of obscenity and the *Miller* test and it will begin with a broad overview of the *Miller* test as it is described in *Miller v. California*. Then, it will apply the three prongs of the *Miller* test to the books in question in *Little*.

67. *Id.*

68. *Little*, 2023 WL 2731089, at *9–10.

69. *Id.* at *8–9.

70. *Id.* at *1, *7–9.

71. See generally *Precedent*, CORNELL L. SCH.: LEGAL INFO. INST., <https://www.law.cornell.edu/wex/precedent> [<https://perma.cc/469N-QHME>] (last updated Mar. 2024) (defining "precedent").

A. Board of Education v. Pico as the Seminal Library Case

Board of Education v. Pico stands as one of the most significant Supreme Court cases that addresses whether public school officials possess the authority to remove books from school libraries.⁷² In February of 1976, officials from the Island Trees School District made the controversial decision to remove eleven books from their high school and junior high libraries at the suggestion of some of their students' parents.⁷³ The officials were “unofficially direct[ed]” by these parents who had recently attended a conference about New York’s education legislation.⁷⁴ Their reasoning behind removal came from a perceived sense of moral obligation, as they believed that the books were “anti-American, anti-Christian, anti-Sem[i]tic, and just plain filthy.”⁷⁵

Shortly afterward, the Island Trees School Board established a book review committee comprised of their own school staff and parents of Island Tree students.⁷⁶ The committee was tasked with reading the listed books and determining whether they should remain removed from the libraries based on their “good taste, relevance, and appropriateness to age and grade level.”⁷⁷ After committee deliberation, the school board decided to return only two of the books back to its library shelves.⁷⁸ In response to the removal, Island Trees students brought claims that the removals denied them their First Amendment rights.⁷⁹

Specifically, the students alleged that the school board had “ordered the removal of the books from school libraries and proscribed their use in the curriculum because particular passages in the books offended their social, political and moral tastes and not because the books, taken as a whole, were lacking in educational

72. Bd. of Educ. v. Pico, 457 U.S. 853, 855–56 (1982) (plurality opinion).

73. *Id.* at 856–57.

74. *See id.* (explaining that this conference was sponsored by the politically conservative organization: Parents of New York United (PONYU)). The PONYU conference distributed a list of “objectionable” books to its attendees. *Id.* at 856. All eleven of the books removed from the school district’s libraries were included on this list. *Id.*

75. *Id.* at 857 (alteration in original) (quoting Bd. of Educ. v. Pico, 474 F. Supp. 387, 390 (E.D.N.Y. 1979)).

76. *Id.* at 857.

77. *Id.* (internal quotation marks omitted).

78. *See id.* at 858 (demonstrating that the committee ultimately decided to recommend that five of the eleven books be returned to the libraries). The committee recommended that two books be removed. *Id.* Three of the remaining books had no clear designation by the committee, and the last book was recommended to be available to students only with approval by their parents. *Id.* Ultimately, the School Board ignored these suggestions by the committee. *Id.*

79. *Id.* at 858–59.

value.”⁸⁰ They believed that the school board was acting out of an “impermissible desire to suppress ideas” rather than “a justifiable desire to remove books containing vulgarities and sexual explicitness.”⁸¹ Therefore, they did not have a legitimate interest that was strong enough to override the students’ abilities to access those books in their school library.⁸² The Supreme Court ultimately agreed with the students.⁸³

Notably, Justice Brennan began the majority’s legal reasoning with a disclaimer.⁸⁴ Brennan stated, “[w]e emphasize at the outset the limited nature of the substantive question presented by the case before us. Our precedents have long recognized certain constitutional limits upon the power of the State to control even the curriculum and the classroom.”⁸⁵ This is significant because the majority bolsters a large part of their opinion on their perceived difference between the required reading that comes with the “curriculum and classroom” and optional readings.⁸⁶ They note that the parents, in this case, do not seek for the Court “to impose limitations upon their school Board’s discretion to prescribe the curricula of [their] schools” but rather “*library* books, books that by their nature are optional rather than required reading.”⁸⁷

The Court reasons that, typically, local school boards have broad authority, when acting as state and local authorities, to make decisions on how they choose to direct their students.⁸⁸ This usually means that federal courts will allow a great amount of discretion to school boards before they intervene in each school’s daily operations.⁸⁹ This is significant because public libraries’ purpose for existing is materially different from school libraries.⁹⁰

80. *Id.*

81. *Id.* at 861, 871–72.

82. *Id.* at 860.

83. *Id.* at 866.

84. *Id.* at 861.

85. *Id.*

86. *Id.* at 861–62.

87. *Id.* at 862 (emphasis in original). Justice Brennan himself italicized the word “library” in the opinion. I find this notable, as he uses italics frequently throughout this paragraph of the opinion. Later in this paragraph, Justice Brennan also compares the “*acquisition*” of books to their “*removal*.” *Id.* (“Respondents have not sought to compel their school Board to add to the school library shelves any books that students desire to read. Rather, the only action challenged in this case is the *removal* from school libraries of books originally placed there by the school authorities, or without objection from them.”).

88. *Id.* at 863–64.

89. *Id.* at 864.

90. See MD. Ashikuzzaman, *The Difference Between Public Libraries and School Libraries*, LIS EDUC. NETWORK, <https://www.lisedunetwork.com/the-difference-between-public-libraries-and-school-libraries/> [https://perma.cc/956A-53VP] (last updated Dec. 17, 2023).

While it is true that public libraries do provide educational materials, and even educational programming for patrons, this does not make them schools: especially when considering removing materials from the libraries.⁹¹ In fact, the main comparison that the majority makes between school libraries and public libraries helps to support the notion of protected access to information in both. The Court states that “[a] school library, no less than any other public library, is ‘a place dedicated to quiet, to knowledge and to beauty.’”⁹² Thus, “students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding.”⁹³ In this way, free speech is not limited just to the ability to express ideas, but also to access information that informs one’s ability to express those ideas.⁹⁴

A court following this rationale in *Pico* should have a difficult time favoring the removal of the seventeen-questioned books in *Little*. With even a quick glance, there are clearly many similarities between *Pico* and *Little*. First, in both cases, the direction to remove the books from the shelves came primarily from parents with children who lived in the community.⁹⁵ Second, the parental groups in both cases have religious and moral motivations that inspired them to request the removal of the books.⁹⁶ Third, a short time after the requests were made in both cases, the governmental entity allowed for the creation of a group comprised of interested parties that would review controversial literature and advise the governmental entities on whether they should retain or remove the content from their library.⁹⁷ The key difference here, at least for the defendants, is the distinction between school libraries and public libraries.

However, this distinction should be irrelevant. The Court goes through great effort to distinguish a government entity’s control of optional reading and its control over curriculum and classroom.⁹⁸ In fact, the decision in *Pico* essentially hinges on this distinction. Justice Brennan makes it very clear that school administration, as agents of

91. *Id.*

92. *Pico*, 457 U.S. at 868 (quoting *Brown v. Louisiana*, 383 U.S. 131, 142 (1966) (opinion of Fortas, J.)).

93. *Id.* (quoting *Kevishian v. Bd. of Regents*, 385 U.S. 589 (1967)).

94. *Id.* at 868–69.

95. *See id.* at 856, 891; Plaintiffs’ Rule 65 Motion for Preliminary Injunction, *supra* note 35, at 6.

96. *Pico*, 457 U.S. at 857; Plaintiffs’ Rule 65 Motion for Preliminary Injunction, *supra* note 35, at 6.

97. *Pico*, 457 U.S. at 857; Plaintiffs’ Rule 65 Motion for Preliminary Injunction, *supra* note 35, at 3, 8.

98. *Pico*, 457 U.S. at 862.

the government, have the authority to control what material is taught to their students to advance their interest in education.⁹⁹ However, the optional readings that students choose to do in their free time are *not* linked to this interest.¹⁰⁰ The public library is optional. It is a place for students, and every other member of the public to choose to enter and choose which books, if any, they would like to check out and read. The public library does not give assigned reading homework. While libraries surely advance the compelling interest of educating the masses, they provide a broad array of options so that individuals may choose how they would like to be educated.¹⁰¹ Thus, government entities like librarians or commissioners do not have an interest that overrides the strong First Amendment liberties of their patrons.¹⁰²

B. *Miller and the Obscenity Test*

While not necessarily involved with materials in libraries, the *Miller* test still provides an important framework for determining whether the state can regulate certain speech without violating the First Amendment. In 1957, the Supreme Court decided in *Roth v. United States* that obscenity does not fall under the umbrella of constitutionally protected speech or press provided by the First Amendment.¹⁰³ However, once the Court deemed obscene materials unprotected, it was clear that they needed a more solid standard to explain what “obscenity” meant. While the “prurient interest” standard created in *Roth* could provide some instruction, the obscenity litigation that soon began to flood the Court clearly displayed that confusion still remained.¹⁰⁴ The legal world finally got its answer in the 1972 case *Miller v. California*.

99. *Id.* at 864.

100. *Id.* at 869.

101. See Ashikuzzaman, *supra* note 90.

102. I am hesitant to label the exact level of scrutiny that the Court uses to decide *Pico* (especially because they did not label it themselves). However, I believe they are utilizing strict scrutiny here. It is clear they used a traditional balancing test by weighing the interests of the school board to regulate student activity with the consistent and fundamental safeguards enjoyed by the students to exercise their First Amendment rights. *Pico*, 457 U.S. at 866. The Court categorizes these rights as “basic constitutional values” [that] are ‘directly and sharply implicated’ in the conflict between the students and school officials. *Id.* at 866. This seems to hint at the traditional strict scrutiny that courts apply in free speech cases. See David L. Hudson Jr., *Strict Scrutiny*, FREE SPEECH CTR., <https://firstamendment.mtsu.edu/article/strict-scrutiny/> [https://perma.cc/Z5ND-PY54] (last updated July 2, 2024).

103. *Roth v. United States*, 354 U.S. 476, 485 (1957).

104. *Jacobellis v. Ohio*, 378 U.S. 184, 191 (1964). Nearly a decade after *Roth*, the best the Court could provide was a plurality opinion with no agreed-upon rationale. While iconic, Justice Stewart’s “I know it when I see it,” did little to provide guidance in a pre-*Miller* world. See *id.* at 196–97 (Stewart, J., concurring).

Miller involved a mass mailing campaign that advertised “adult” materials.¹⁰⁵ In order to determine whether the pamphlets were considered obscene, the Court created the three-pronged “*Miller* test.” For a work to be considered obscene under this test, it must satisfy all three prongs of the test. The first prong, established in *Roth*, asks whether “‘the average person, applying contemporary community standards’ would find that the work, taken as a whole, appeals to the prurient interest.”¹⁰⁶ The second prong asks “whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law.”¹⁰⁷ Finally, the third prong of the test asks “whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.”¹⁰⁸

The reason *Miller* is raised here is to evaluate whether the books in *Little* are considered obscene by current legal standards. If they do meet the muster for obscenity, then there is a chance that they could be regulated by the state, regardless of the discretion discussion in Section III.A, because obscenity simply does not enjoy protection under the First Amendment. As discussed in Section II.B, there were several books identified by defendants as inappropriate for children.¹⁰⁹ These included those covering LGBTQ+ issues: *Being Jazz: My Life as a (Transgender) Teen* and *Lawn Boy*, as well as the children’s picture books with “pornographic nudity”: *In the Night Kitchen* and *I Need a New Butt*. *Lawn Boy* notably contains descriptions of nudity and genitalia alongside their LGBTQ+ themes.¹¹⁰ *In the Night Kitchen* and *I Need a New Butt* both contain partial nudity in their illustrations.¹¹¹

105. *Miller v. California*, 413 U.S. 15, 16 (1973).

106. *Id.* at 24.

107. *Id.*

108. *Id.*

109. *See supra* Section II.B.

110. The full extent of the sexual nature is largely up for debate. *See* Rachel Ulatowski, *Why Conservatives Are Manufacturing Controversy Over this Coming-of-Age Novel*, MARY SUE (Sept. 6, 2023, 10:35 AM), <https://www.themarysue.com/lawn-boy-book-controversy-explained/> [<https://perma.cc/YC84-4LE3>] (explaining the controversial passages in question are “not graphically portrayed at all and merely allude[] to ‘innocent experimentation’ between two boys of the same age”). *But see* Monica Chen, “*Lawn Boy*” IS Pedophilic. Here’s Why. (*Explicit*), SPRING MAG. (Jan. 28, 2022), <https://thespringmagazine.com/2022/01/28/lawn-boy-is-pedophilic-heres-why-explicit/> [<https://perma.cc/R8QY-ZHCV>] (detailing how various “disturbing passages” included in the novel are “pedophilic, exploitative and abusive . . . beyond the swear words and the sexual passages”).

111. *See supra* note 39.

However, depictions of nudity and genitalia do not, in and of themselves, constitute obscenity. When analyzing obscenity, the court still falls back on the aforementioned *Miller* test. The first issue is whether these books, taken as a whole, appeal to the prurient interest. This is clearly up for debate given that there are groups on both sides who are willing to argue about these books' offensiveness or lack thereof. The second prong evaluates the relevant state obscenity statute.¹¹² In Texas, obscenity includes, among other things, descriptions of "the male or female genitals in a state of sexual stimulation or arousal."¹¹³ By this definition, it seems like a book like *Lawn Boy* might not pass muster. However, obscenity in Texas is conjunctive and also requires the same third prong as the *Miller* test to fail in order for the work to be considered obscene.¹¹⁴ The third prong stands for the prospect that even if the first two prongs are satisfied, a work is still not considered obscene if it has serious literary, artistic, political, or scientific value.¹¹⁵ There is a strong argument that books like *Lawn Boy* contain serious literary, artistic, and political value. In such a tense political climate, books like *Lawn Boy* explore topics like race, class, and sexuality, and the experience of being a kid struggling to fit in a world with constant pressure to belong.¹¹⁶ The opportunity to explore these themes is a valuable literary contribution to a student (or anyone else) who may not have other outlets to learn these lessons.

112. Texas's relevant obscenity statute defines obscene material in a similar way to the *Miller* standard. The second prong, however, provides a little more guidance:

(1) "Obscene" means material or a performance that . . .

. . . .

(B) depicts or describes:

(i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or

(ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs.

TEX. PENAL CODE § 43.21.

113. *Id.*

114. *Id.*

115. *See Miller v. California*, 413 U.S. 15, 24 (1973).

116. *See Sarah Mack, Lawn Boy, Gender Queer Shouldn't Be Banned, They Should Be Celebrated*, FOREST SCOUT (Dec. 3, 2021), <https://theforestscout.com/34659/in-our-opinion/o-ban-or-not-to-ban-a-students-perspective/> [<https://perma.cc/AP5F-5PR5>].

IV. THE POTENTIAL FOR A CHALLENGE UNDER THE FOURTEENTH AMENDMENT

First Amendment violations are not the only constitutional issues that arise from censoring books. This part highlights the pitfalls that may also come with trying to combat book banning from the traditional understanding of the Fourteenth Amendment's Equal Protection Clause. It begins by explaining the current framework of the Fourteenth Amendment and demonstrating instances of case law that create the recognition of various groups as "protected classes." This includes classifications based on race, gender, and sexual orientation, as well as religion. However, by highlighting the ability of the Court to recognize new protected classes over time, this part will examine the merit behind arguments for the inclusion of additional protected classes. The discussed classes will include protection based on age and protection based on socioeconomic status. Finally, this part will examine how courts may react to book-banning attempts through the existing and potentially enhanced Fourteenth Amendment Equal Protection framework.

A. *A Challenge Under Equal Protection as It Currently Exists*

As it currently stands, the Court recognizes a right to equal protection of fundamental rights under the law.¹¹⁷ These rights stem from the Fourteenth Amendment of the Constitution, but also act to protect other rights provided in the Bill of Rights.¹¹⁸ Fundamentally, the Equal Protection Clause seeks to prohibit government entities from treating various groups differently.¹¹⁹ However, equal protection under the law doesn't apply to everyone *de facto*.¹²⁰ Rather, it requires that those seeking its protection belong to a particular protected class. These suspect classes are groups that are discriminated against based upon arbitrary classifications, including race, ethnicity, or national origin.¹²¹

Further, just because an individual belongs to any of these particular protected classes does not necessarily mean that they will receive the same level of protection from government

117. *Equal Protection*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/equal_protection [<https://perma.cc/2AM6-EJQ6>] (last updated Nov. 4, 2022).

118. *Id.*

119. *Id.*

120. *Id.*

121. *Suspect Classification*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/suspect_classification [<https://perma.cc/M485-A22U>] (last updated June 2024).

discrimination.¹²² The Supreme Court has provided various levels of scrutiny that apply to different groups.¹²³ Strict scrutiny is the highest level, and it is applied to laws that classify individuals based on suspect categories such as race or ethnicity. It requires the government to prove that they are following the most narrowly tailored policy possible to serve a compelling state interest.¹²⁴ Intermediate scrutiny applies to laws involving gender or legitimacy, and it requires that the government shows that the classification serves an important governmental interest. It provides slightly less protection than its strict scrutiny counterpart as the policy in question should be narrowly tailored, but does not necessarily have to be the solution with the narrowest possible means.¹²⁵ Rational basis scrutiny, the lowest level of protection, applies to all other classifications and merely requires that the government demonstrate that the policy in question has a rational connection to a policy that serves a legitimate state interest.¹²⁶

Here, the most clearly affected traditional suspect classes are arguably groups who would find representation in the challenged books. This includes racial minorities and members of the LGBTQ+ community. Racial groups would likely have the strongest initial claim given that courts have traditionally afforded them strict scrutiny protection. Similarly to *Pico*'s First Amendment censorship analysis previously discussed in Section III.A, the government has a high bar to clear when they want to enforce a policy that selectively targets books about one race, but not another. The Court in *Pico* seems to agree that promoting education can potentially be a compelling interest.¹²⁷ However, as discussed earlier, the Court seems to cede this more to compulsory and primarily educational facilities like schools, rather than optional and additionally social- and community-oriented facilities like the public library.¹²⁸ With this in mind, it seems unlikely that defendants in *Little* would be able to overcome strict scrutiny protection and remove books focused on racial content like *They Call Themselves the KKK* without showing a lack of narrow tailoring in the policy.

122. *Id.*

123. *Id.*

124. *Strict Scrutiny*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/strict_scrutiny [<https://perma.cc/W96K-FTY6>] (last updated Sept. 2024).

125. *Intermediate Scrutiny*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/intermediate_scrutiny [<https://perma.cc/5LDG-AMZ2>] (last visited June 2023).

126. *Rational Basis Test*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/rational_basis_test [<https://perma.cc/G8PP-TNC8>] (last updated Mar. 2024).

127. *Bd. of Educ. v. Pico*, 457 U.S. 853, 861, 864 (1982).

128. *Id.* at 861–62.

The argument for Fourteenth Amendment protections for LGBTQ+ identifying individuals is less compelling. Recent case law, including the 2015 case *Obergefell v. Hodges* has decided that the Fourteenth Amendment and its protections, at least in some instances, extend to same-sex couples.¹²⁹ However, because of this recency, the scope of these protections is still unknown. *Obergefell* says that it is unconstitutional to deny marital rights to same-sex couples, but a large part of its reasoning is dependent on an analysis of the significance of the institution of marriage.¹³⁰ Further, the Court's analysis consistently references "same-sex couples," which doesn't necessarily extend to the rights of LGBTQ+ individuals at large.¹³¹ While the Court has ruled that some instances of discrimination against transgender individuals are impermissible, this analysis is typically framed under Title VII of the Civil Rights Act, rather than under the Equal Protection Clause.¹³²

Even under the most expansive scenario, these protections seem limited, as the Court has only afforded rational basis scrutiny to LGBTQ+ individuals, meaning that sexual orientation is not considered a suspect class.¹³³ As discussed prior, even strict scrutiny protection would likely not provide Fourteenth Amendment protections to suspect classes when it comes to book banning. Therefore, it seems highly unlikely that the Court, as it interprets precedent today, would provide any sort of relief.

B. A Potential for Expanded Equal Protection Classifications

A related issue follows the preceding rationale: the expansion of protected-class status to groups who have not traditionally been afforded protection under the current Fourteenth Amendment framework. While, at first glance, this may seem impracticable, it is important to remember the history and context of the Fourteenth Amendment. Initially created in a set of three post-Civil War Reconstruction Era Amendments, alongside the Thirteenth and Fifteenth Amendments, the Fourteenth Amendment and its counterparts sought to promote equal rights

129. *Obergefell v. Hodges*, 576 U.S. 644, 675, 680–81 (2015).

130. *Id.* at 656–57.

131. *Id.* at 665.

132. *Bostock v. Clayton Cnty.*, 590 U.S. 644, 653–54 (2020).

133. See Jennifer R. Covais, *Baby, We Were Born This Way: The Case for Making Sexual Orientation a Suspect Classification Under the Equal Protection Clause of the Fourteenth Amendment*, 38 TOURO L. REV. 283, 286 (2022).

and protections to newly freed slaves.¹³⁴ While the text of the Amendment provides that the government shall not “deny to *any* person within [the United States] jurisdiction the equal protection of the laws,” it has been historically understood to be limited to applying the law to various groups differently.¹³⁵

As I will discuss in Section V.C, book banning is an issue that disproportionately affects groups that are not legally recognized as a suspect class, namely children and the socioeconomically disadvantaged. While these are not groups that are traditionally considered to warrant Fourteenth Amendment protection, and indeed may benefit more from legislative efforts, the lens of book banning provides an opportunity to consider expanding the scope of the Fourteenth Amendment. For over a century, legal scholars have considered and critiqued the socioeconomic implications of the Supreme Court’s application of the Fourteenth Amendment.¹³⁶ While case law like *Griffin v. Illinois* and *Douglas v. California* does acknowledge that the law should equally protect those of all socioeconomic backgrounds, this precedent is largely limited to criminal proceedings rather than social legislation.¹³⁷ In fact, Justice Harlan believed that the appropriate question was one of due process, rather than equal protection.¹³⁸ In his view, a generally applicable economic burden by the State was completely acceptable, and it was an overstep by the Court to utilize the Equal Protection Clause to justify their decision.¹³⁹ In many ways, this is understandable. Providing suspect class status based on socioeconomic standing is both troubling because of the potential for individuals to fluctuate in and out of various economic classes, and because it could easily hinder a state from enacting any policy that would have a negative financial impact on a class that would be hard to pinpoint any given time (taxation, employment, and investment, just to name a few). And on the flip side, opening the door to protection based on socioeconomic classification could

134. Eric Foner, *The Reconstruction Amendments: Official Documents as Social History*, GILDER LEHRMAN INST. AM. HIST., <https://www.gilderlehrman.org/history-resource/s/essays/reconstruction-amendments-official-documents-social-history> [https://perma.cc/W57N-BRJB] (last visited Apr. 25, 2024).

135. U.S. CONST. amend. XIV (emphasis added).

136. See Robert E. Cushman, *Social and Economic Interpretation of the Fourteenth Amendment*, 20 MICH. L. REV. 737, 741 (1922).

137. *Overview of Wealth-Based Distinctions and Equal Protection*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/amdt14-S1-8-12-1/ALDE_00000838/ [https://perma.cc/YN6D-QSU8] (last visited May 21, 2024).

138. *Id.*

139. *Id.*

create a flood of questions on the extent of protections that those who are economically advantaged were entitled to receive.

However, I believe these concerns are less warranted when considering how various communities, especially those who are disproportionately disadvantaged, can access public resources, including institutions like a public library and the resources found within them. By not providing protection to those who are more likely to depend on these resources, courts entrench these disadvantages that bleed into the more financially oriented policies.

Further, an expansion of the Fourteenth Amendment would likely benefit the same religious groups attempting to further these bans. Currently, the Supreme Court does afford strict-scrutiny protection based on religion.¹⁴⁰ However, this protection is derived from the First Amendment's religion clauses, rather than the Fourteenth Amendment's Due Process or Equal Protection clauses.¹⁴¹ Although many would argue that the First Amendment protections offer a strong shield against religious discrimination, the scope of these protections is still unclear. Case law like *Groff v. DeJoy* seems to suggest that the current Court is willing to expand the rights of religious individuals.¹⁴² However, this analysis, much like the aforementioned *Bostock*, was largely dependent on Title VII, rather than the First Amendment.¹⁴³ Furthermore, case law like *Employment Division v. Smith* suggests that religious liberties have their limitations, even under a First Amendment framework.¹⁴⁴ Given these limitations, the potential for an expanded scope of the Fourteenth Amendment may seem like a promising solution.

V. NEGATIVE IMPACTS FOLLOWING A DECISION IN FAVOR OF LLANO COUNTY

This part will discuss the policy implications of courts favoring a First Amendment framework that encourages book banning. This Part will somewhat focus on the negative impacts that censorship will have on racial minorities and those who identify as LGBTQ+. However, it will also discuss the effect that

140. See Hudson, *supra* note 102.

141. *First Amendment and Religion*, U.S. CTS., <https://www.uscourts.gov/educational-resources/educational-activities/first-amendment-and-religion#> [<https://perma.cc/V5HV-Z6L7>] (last visited May 21, 2024).

142. *Groff v. DeJoy*, 600 U.S. 447, 468, 473 (2023).

143. *Id.* at 473.

144. *Emp. Div. v. Smith*, 494 U.S. 872, 878–79 (1990).

newly emerging “retaliatory” book-banning attempts could have on the conservative and religious groups who initially instigated the resurgence in book banning. Through this, this part will demonstrate that when courts support book banning against one protected class, they support book banning against all protected classes, which creates an atmosphere that dangerously suppresses speech for all, and harms democratic institutions as a whole. Finally, this part will address the issue of the groups who will be most negatively impacted by book-banning attempts: children and the socioeconomically disadvantaged. It illustrates that these groups are further disadvantaged by book-banning efforts in counties like Llano that are already disadvantaged by a lowered ability to access information.¹⁴⁵

A. *General Impact*

In a recent interview with the National Coalition Against Censorship (NCAC), Steven Pico, the named defendant in *Pico*, stated that he believed “censorship was not simply a right-wing vs. left-wing issue,” but rather “offensive to the vast majority of Americans, offensive to Americans from the right, offensive to Americans from the center, and offensive to Americans from the left.”¹⁴⁶ Following *Pico*’s logic, book banning should not be a partisan issue, especially because of its broad range of short-term and long-term negative effects on society at large.¹⁴⁷ These effects are not only limited to librarians and library patrons, but also students, parents, teachers, and authors of all social and political backgrounds.¹⁴⁸ American Civil Liberties Union (ACLU) staff attorney Vera Eidelman argues that societies that accept book banning undermine free-thinking, as well as the basic principle of

145. *Llano County, TX*, DATAUSA, <https://datausa.io/profile/geo/llano-county-tx#> [https://perma.cc/2QLY-5EN4] (last visited Oct 23, 2024).

146. Debra Lau Whelan, *NCAC Talks to the Man Behind Pico v. Board of Ed*, NAT’L COAL. AGAINST CENSORSHIP (July 9, 2013), <https://ncac.org/news/blog/ncac-talks-to-the-man-behind-pico-v-board-of-ed> [https://perma.cc/AX5Q-GQV4]. When asked who tends to ban books, Pico stated:

Many diverse groups and individuals . . . advocate some form of censorship. That does not anger me so much as it scares me. I’ve encountered feminists who advocate censorship and religious groups advocating censorship, and African-Americans who raise objections to *The Adventures of Huckleberry Finn* and *Gone with the Wind*. This is a very complex issue.

Id.

147. Elizabeth Yuko, *What Is Book Banning, and How Does It Affect Society?*, READER’S DIG., <https://www.rd.com/article/book-banning/> [https://perma.cc/39L7-QC42] (last updated Sept. 23, 2024).

148. *Id.*

freedom and the notion of democratic representation.¹⁴⁹ When viewpoints that are available in public spaces like libraries are limited, then individuals who primarily utilize those spaces will be limited in what viewpoints they are allowed to consume, and therefore, to believe.¹⁵⁰ Limiting the availability of certain ideas and values hinders the marketplace of ideas, thereby hindering the ability for people to make informed democratic decisions.¹⁵¹

In this way, book banning undermines the very essence of democratic institutions because it stifles freedom of expression and access to diverse perspectives.¹⁵² It restricts individuals' right to seek and impart knowledge, which is essential for informed citizenship.¹⁵³ Censoring ideas deemed controversial or offensive by some inhibits open discourse and hinders the exchange of differing viewpoints that is crucial for a thriving democratic society.¹⁵⁴ Additionally, book banning fosters ignorance and narrow-mindedness, thereby depriving communities of opportunities for critical thinking and intellectual growth.¹⁵⁵ Ultimately, book banning cultivates a culture of censorship and conformity, eroding the essence of democracy built upon the foundational principles of free speech, tolerance, and the pursuit of truth.

149. *Id.* (quoting Eidelman, “[a] society in which book banning is acceptable is no longer a free society . . . [i]t is instead one in which the government tells the people what books to read—and therefore what ideas to encounter and, ultimately, what to think. It weakens education and prevents people from learning to think for themselves”).

150. See Ella Creamer, *‘Eating Away at Democracy’: Book Bans in US Public Schools Rise by a Third in a Year*, GUARDIAN (Sept. 22, 2023, 10:37 AM), <https://www.theguardian.com/books/2023/sep/22/democracy-book-bans-us-public-schools-rise> [<https://perma.cc/QGS6-FPCZ>].

151. The theory of the marketplace of ideas requires a variety of ideas to compete with each other in order for superior ideas to rise above all the others, much like how superior products beat out inferior products in a free market economy. Thus, by limiting ideas to only those sanctioned by the government, the marketplace is hindered. See David Schultz, *Marketplace of Ideas*, FREE SPEECH CTR., <https://firstamendment.mtsu.edu/article/marketplace-of-ideas/> [<https://perma.cc/L5D6-2DSZ>] (last updated July 9, 2024) (“The marketplace of ideas refers to the belief that the test of the truth or acceptance of ideas depends on their competition with one another and not on the opinion of a censor, whether one provided by the government or by some other authority.”). *Id.*

152. See Yuko, *supra* note 147.

153. Ashley Rogers Berner, *An Informed Citizenry*, DEMOCRACY PROJECT (Oct. 30, 2020), <https://hub.jhu.edu/2020/10/30/democracy-project-ashley-rogers-berner/> [<https://perma.cc/SYV2-NW8M>].

154. New York Times Editorial Board, *America Has a Free Speech Problem*, N.Y. TIMES (Mar. 18, 2022), <https://www.nytimes.com/2022/03/18/opinion/cancel-culture-free-speech-poll.html> [<https://perma.cc/7REM-K9K7>].

155. NCAC Staff, *Censorship Protects Ignorance Not Innocence*, NAT’L COAL. AGAINST CENSORSHIP (Sept. 1, 2000), <https://ncac.org/censorship-news-articles/censorship-protects-ignorance-not-innocence> [<https://perma.cc/P6LC-LMPG>].

B. Impact on Existing Suspect Classes

Just because censorship has a negative impact on society doesn't mean that there is not a heightened impact on individual social groups. These groups include racial minorities, members of the LGBTQ+ community, and perhaps surprisingly, members of the same religious communities who are advocating for book banning in cases like *Little*.¹⁵⁶

Firstly, book banning often disproportionately affects racial minorities.¹⁵⁷ It creates negative effects by exacerbating existing inequality and silencing already marginalized voices. Books by and about minorities are often targeted because they challenge dominant narratives and portray diverse experiences.¹⁵⁸ This censorship not only restricts access to literature that reflects the realities and struggles of minority communities but also perpetuates stereotypes and erases their contributions to literature and history. By denying individuals the opportunity to engage with these narratives, book banning reinforces systemic oppression and undermines efforts for social justice and equality.¹⁵⁹ Moreover, it sends a message that the perspectives and stories of minorities are not valued or worthy of being heard. This exclusion from the literary landscape further marginalizes minority communities, hindering their ability to assert their identities and advocate for change.¹⁶⁰ Ultimately, book banning serves to entrench racial inequality and deny minorities the agency to tell their own stories and challenge dominant narratives.

156. See *Book Bans: An Act of Policy Violence Promoting Anti-Blackness*, CRISIS (May 15, 2023), <https://naacp.org/articles/book-bans-act-policy-violence-promoting-anti-blackness> [https://perma.cc/Y28N-ZLNS]; Elizabeth Wolfe, *Book Bans Are Harming LGBTQ People, Advocates Say. This Online Library Is Fighting Back.*, CNN (Dec. 16, 2023, 1:00 PM), <https://www.cnn.com/2023/12/16/us/queer-liberation-library-combats-lgbtq-book-bans-rea/index.html> [https://perma.cc/NQD5-KUJY]; Feng Gang, *Religious Books Banned and Destroyed by the State*, BITTER WINTER (Dec. 23, 2018), <https://bitterwinter.org/religious-books-banned-and-destroyed-by-the-state/> [https://perma.cc/Y9VD-NHWT].

157. Sigy George, *Silenced Voices: Ripples of Book Ban*, INFO. MATTERS (Oct. 12, 2023), <https://informationmatters.org/2023/10/silenced-voices-ripples-of-book-ban/> [https://perma.cc/G9AE-LTWM].

158. Ishena Robinson, *Anti-CRT Mania and Book Bans Are the Latest Tactics to Halt Racial Justice*, LEGAL DEF. FUND, <https://www.naacpldf.org/critical-race-theory-banned-books/> [https://perma.cc/P8VH-2FKS] (last visited Feb. 1, 2024).

159. *Id.*

160. See George, *supra* note 157.

Furthermore, book banning poses a significant threat to the LGBTQ+ community by limiting access to literature that represents their identities, struggles, and triumphs.¹⁶¹ Many books featuring LGBTQ+ characters or themes are frequently targeted for censorship, thereby perpetuating stigma and erasing queer voices from public discourse.¹⁶² By denying individuals the opportunity to explore diverse perspectives and experiences, book banning fosters ignorance and intolerance, which impedes the acceptance and understanding of LGBTQ+ people.¹⁶³ It also sends a harmful message to LGBTQ+ individuals that their stories are deemed inappropriate or unworthy of acknowledgment, further marginalizing them in society.¹⁶⁴ Additionally, censorship of LGBTQ+ literature can have detrimental effects on mental health, especially for youth who may rely on such literature as a source of validation and support.¹⁶⁵ Ultimately, book banning contributes to the erasure of LGBTQ+ identities and narratives, undermining efforts for inclusivity, acceptance, and equality.

Somewhat ironically, many of the groups seeking to ban books that broaden representation for racial minorities or the LGBTQ+ community would also likely be harmed by increased censorship. Book banning also poses a threat to religious groups, including the large influx of evangelical Christian groups who are inciting so many book-banning efforts.¹⁶⁶ Many of the same “inappropriate” issues and themes that are targeted in these cases are also present in religious texts and literature: violence, sex and sexuality, and subversion of existing governmental powers.¹⁶⁷ Even outside of

161. Samantha Laine Perfas, *Who's Getting Hurt Most by Soaring LGBTQ Book Bans? Librarians Say Kids.*, HARV. GAZETTE (June 28, 2023), <https://news.harvard.edu/gazette/story/2023/06/lgbtq-book-challenges-are-on-the-rise-heres-why/> [<https://perma.cc/N85Q-JG2A>].

162. Wolfe, *supra* note 156.

163. See Aubree Miller, *Book Bans 'Promote Ignorance' Locally, Nationally*, COLLEGIAN (Dec. 1, 2023), <https://collegian.com/articles/news/2023/12/category-news-the-impact-of-book-bans-locally-and-nationally/> [<https://perma.cc/LN6A-MY6B>].

164. See *id.*

165. Rebecca Bauer, *Book Bans and Mental Health*, PRIDE & LESS PREJUDICE, <https://www.prideandlessprejudice.org/blog/book-bans-and-mental-health> [<https://perma.cc/QEY6-DH3H>] (last visited Feb. 1, 2024).

166. Paul Brandeis Raushenbush, *Book Bans Are a Religious Freedom Issue*, UNITE AGAINST BOOK BANS, <https://uniteagainstbookbans.org/book-bans-are-a-religious-freedom-issue/> [<https://perma.cc/Y6S5-3NUB>] (last visited Jan. 28, 2024); Eesha Pendharkar, *Why the Bible Is Getting Pulled Off School Bookshelves*, EDUCATIONWEEK (Dec. 15, 2022) <https://www.edweek.org/teaching-learning/why-the-bible-is-getting-pulled-off-school-bookshelves/2022/12> [<https://perma.cc/U93G-5429>].

167. Pendharkar, *supra* note 166. See *Yes. Jesus Was Subversive. Here Are 10 Overlooked Examples.*, CRAIGGREENFIELD (Apr. 18, 2016), <https://www.craiggreenfield.com/blog/2016/4/18/yes-jesus-was-subversive> [<https://perma.cc/S5KZ-FBBG>].

these contexts, religious books like the Bible can come under fire simply because of their religious nature.¹⁶⁸ This may come from a belief that separation of church and state should logically result in religious texts being unavailable in state-sponsored facilities, or from a more retaliatory belief that it is only fair for these books to be removed to mirror the removals of other books.¹⁶⁹ Either way, setting a legal precedent that books can be removed despite being unable to overcome an actual strict scrutiny standard could easily result in the removal of books for various groups of people regardless of their religion, race, sexuality, or political ideology.

C. Impact on Children and the Socioeconomically Disadvantaged

Not only are the identities discussed in the prior section disproportionately harmed by lowering representation, but politically underrepresented groups like children and the socioeconomically disadvantaged face disproportionate consequences.¹⁷⁰ Children already have limited political rights due to their legal status as minors.¹⁷¹ They lack the ability to vote, run for office, or otherwise participate fully in political processes. This minor status hampers their ability to influence policies and decisions that directly affect their lives and future.¹⁷² Despite this direct impact by governmental actions, children rarely have a significant role in influencing these outcomes. This exclusion from political participation further undermines democratic institutions for children that are already being eroded by issues like book banning. On top of this, people with a low socioeconomic status also often have less effective political

168. *Id.*

169. *Id.*; Olivia Summers, *WHAT? School Tells Little Christian Boy that His Christian Reading Material and Talking About the Bible Is BANNED from School Property Because of "Separation of Church and State,"* ACLJ (Dec. 13, 2022), <https://aclj.org/religious-liberty/what-school-tells-little-christian-boy-that-his-christian-reading-material-and-talking-about-the-bible-is-banned-from-school-property-because-of-separation-of-church-and-state> [https://perma.cc/9GY9-NM58].

170. See John Wall & Anandini Dar, *Children's Political Representation: The Right to Make a Difference*, 19 INT'L. J. CHILD.'S RTS. 595, 606 (2011); Mary O'Hara, *Poverty and Class: The Latest Themes to Enter the US Banned-Books Debate*, GUARDIAN (Oct. 21, 2014, 9:00 AM), <https://www.theguardian.com/society/2014/oct/21/us-adds-poverty-to-dangerous-reading-lists> [https://perma.cc/5NP8-CRGA]; George, *supra* note 157.

171. Jade Yeban, *What Are the Legal Rights of Children?*, FINDLAW (May 29, 2023), <https://www.findlaw.com/family/emancipation-of-minors/what-are-the-legal-rights-of-children.html> [https://perma.cc/NZ7S-3QNG].

172. *See id.*

rights.¹⁷³ This is largely because of systemic barriers that are intensified by economic hardships. This includes, but is not limited to, lack of resources or time to engage in civil or political systems. It may also result from feeling powerless or disenfranchised, which can lower political engagement.¹⁷⁴

Children of lower socioeconomic backgrounds are extremely at risk, in great part because of education-related challenges.¹⁷⁵ Many students from lower-income families, or who live in lower-income communities, already attend schools in underfunded school districts.¹⁷⁶ Here, they likely have high student-to-teacher ratios, as well as limited or outdated facilities and materials. Furthermore, an economically unstable home life often leads to decreased attendance and inadequate healthcare or nutrition.¹⁷⁷ All these factors can compound to make a student's education less effective.

However, public libraries can be effective in filling gaps in the educational system. Firstly, libraries provide access to a wide range of free educational resources, including books, digital materials, and databases, which enables students to pursue further education regardless of their financial circumstances.¹⁷⁸ Additionally, libraries often offer programs and services tailored to the needs of underserved communities, such as homework help, literacy programs, and computer skills workshops, helping to

173. Jennifer Shore, *How Social Policy Impacts Inequalities in Political Efficacy*, SOCIO. COMPASS, Mar. 2020, at 3, <https://compass.onlinelibrary.wiley.com/doi/10.1111/soc4.12784> [<https://perma.cc/V69N-E3WB>].

174. PEW RSCH. CTR., *THE POLITICS OF FINANCIAL INSECURITY* 1, 2–3 (2015), <https://www.pewresearch.org/politics/2015/01/08/the-politics-of-financial-insecurity-a-democratic-tilt-undercut-by-low-participation/> [<https://perma.cc/CZ4S-4V32>]; Shore, *supra* note 173, at 3–4.

175. *Education and Socioeconomic Status*, AM. PSYCH. ASS'N (2017), <https://www.apa.org/pi/ses/resources/publications/education> [<https://perma.cc/H6Q6-Z2LP>].

176. This is an incredibly important and widespread issue, especially in the state of Texas. As of early 2024, the majority of schools in Harris County ISD were underfunded, with spending gaps ranging from \$800 to over \$12,000 per student across the district. This is resulting in lower test scores and achievement rankings, which disparately affect Black and Hispanic students. Sarah Grunau, *Report: Nearly Every Harris County School District Is Underfunded*, HOUS. PUB. MEDIA (Feb. 7, 2024, 2:42 PM), <https://www.houstonpublicmedia.org/articles/education/2024/02/07/476839/report-nearly-every-harris-county-school-district-is-underfunded/> [<https://perma.cc/UWP2-8Y4K>].

177. Yuan-Ting Lo et al., *Health and Nutrition Economics: Diet Costs Are Associated with Diet Quality*, 18 ASIA PAC. J. CLINICAL NUTRITION 598, 600–01 (2009), <https://pubmed.ncbi.nlm.nih.gov/19965354/> [<https://perma.cc/5DG5-6KV9>]; Markus Klein et al., *Mapping Inequalities in School Attendance: The Relationship Between Dimensions of Socioeconomic Status and Forms of School Absence*, CHILD. & YOUTH SERVS. REV., Nov. 2020, at 1, 6.

178. Brittney Wilmore, *Beyond Books: How Libraries Across Southeast Texas Serve as Critical Spaces*, ABC 13 (Aug. 22, 2023), <https://abc13.com/free-library-resources-houston-american-association-rosenberg-galveston-county-libraries/13667743/> [<https://perma.cc/FG36-8UP6>].

bridge educational disparities.¹⁷⁹ For instance, their summer reading programs encourage students to read regularly, and help increase their reading skills before starting and while attending school.¹⁸⁰ Book banning limits the resources that are available to students, and may also make them feel ostracized, thereby discouraging them to attend the library at all.

VI. CONCLUSION

This examination of modern-day book banning through the lenses of the First and Fourteenth Amendments reveals concerns from both constitutional and societal perspectives. *Little* reflects a dangerous trend toward censorship that will likely have far-reaching consequences for education, expression, and fundamental principles of democracy. If the Fifth Circuit chooses to condone the censorship in the Llano County Library System, they risk lighting matches in the hands of people searching for books to burn across the country.

Caroline Puryear

179. *Id.*

180. Bonnie Terry, *6 Benefits of Summer Reading Programs*, SCHOLAR WITHIN (June 5, 2024), <https://scholarwithin.com/6-benefits-of-summer-reading-programs> [<https://perma.cc/3CVX-K6GN>].