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What is the legal situation of book bans, and what are some associated problems?

The flow of information is integral in our society, allowing for the free spread of ideas and information between all members of society. This information always finds a way to distribute itself, historically through books, but recently over the internet. It connects the globe and allows the sharing of discoveries, problems, and viewpoints that would otherwise be difficult to share. Many problems and conflicts have arisen due to access to information or lack thereof, especially under more controlling governments. One can best see this truth in the current struggle of book bans in the United States.

Recently, a minority of voices in the United States have begun calling for the removal of free access to some books in school libraries, generally referred to as book bans. These challenges succeedare succeeding mainly due to their large volume and lack of strong opposition, even though they only have 30% public support (Meehan). It is important to note that while the federal government of the United States cannot ban specific books based on their content, smaller entities such as schools and districts can, leading to widespread discord across the nation (Bauld). There is no standard, with each district having its own rules and decisions. The one thing that could solve this strife is a Supreme Court decision, overruling all previous laws and precedent, although there has yet to be one that definitively and decisively decides specifically upon the matter of book bans. To fully understand the issue of book bans in our nation, it is important to know both the reasons for banning books, the objectives, and how the seemingly unconstitutional maneuvers have stood up in court.

Details of Banned Books

While many refer to the issue of book bans as a national issue, they are disproportionately prevalent in just a few states. Texas, Florida, Missouri, South Carolina, and Utah contain a large majority of nationwide book bans, with all the other states having almost none (Meehan). One can note that all the states with high numbers of book bans generally have right-leaning, conservative views. While this fact means little by itself, its meaning begins to come into focus when you look at the topics of the banned books. Large portions of the books discuss racial issues and LGBTQ+ topics (Bauld). These issues in particular are under heavy debate in our nation, with many strong, opposing viewpoints going against each other in an attempt to promote their beliefs. Therefore, it would make sense that some people would attempt to remove books from schools in hopes of limiting the opposing viewpoints that they are arguing against in order to promote theirs.

Another important note about many banned books is that the majority of them are Youth Adult books, intended for teenagers (Meehan). At this age, many teenagers are still formulating their personal beliefs, so influences and changes at this time have a larger impact on their lifetime beliefs than at other times of their lives. Limiting information at this age could substantially change how a person and their beliefs develop, so it makes sense that they mostly ban books aimed at this age group. Their aim is to promote their particular belief in a world of many competing beliefs or to restrict the other side, and they do this by limiting access to the related information in an important stage of their life.

Restricting mostly Youth Adult books discussing specific topics implies an intention to restrict the public's beliefs on those topics (Rehn). This intention is unconstitutional. The First

Amendment of the United States Constitution protects the right to free speech and expression, and this protection extends to students, authors, and their beliefs. In fact, the specific rights which book bans deal with belong to the students of the school (Rehn). Therefore, school boards cannot restrict access to specific books based on their content, if that content is political (Albanese). Doing so would violate the First Amendment rights of the students by restricting their freedom of expression and belief.

Legality of Book Bans

The legality of book bans in our nation has no national standard nor legal framework. Federal and state governments cannot ban books because of their contents due to the First Amendment, so it comes down to the school district level to create and implement systems for challenging and removing books from shelves (Bauld). No system is exactly the same, with different districts coming to different conclusions given the same book and conditions, a major reason for the national dissonance.

Currently, the closest thing to a national standard comes from the 1982 *Island Trees School District v. Pico* Supreme Court case. In the case, a group of high school students sued their school after the district removed a group of books that they had characterized as "anti-American, anti-Christian, anti-Semitic, and just plain filthy," claiming an infringement on their First Amendment rights ("United States"). With a 5-4 majority and leaving a full six different opinions, the court decided that school districts may not remove books due to their content or in an effort to force beliefs into an orthodox way of thinking, also noting that vulgarity is not valid as the exclusive reason for a book ban ("United States"). This stipulation responded to the original description of the banned books, and it stresses their decision that while vulgarity can be a

serious issue in a book, it pales in comparison to the First Amendment rights possibly violated by restricting viewpoint-representing books. The decision of *Pico* was a debatable one owing in part to the vagueness of the United States Constitution. Much of the book ban-legality debate focuses on the First Amendment, which is a single sentence with lots of room for interpretation. Additionally pertinent to the *Pico* decision, in the time of the Constitution's writing, public libraries did not exist, so the Constitution says nothing about both libraries and the books contained therein (Rehn). This restriction means that lots of constitutional debate on book bans comes from other clauses of the Constitution, creating cobbled-together arguments which could be much stronger with more pertinent text. With little in the Constitution off of which to base, both lawyers and judges must make assumptions that can change from person to person, further affecting their conclusions.

An important omission of the *Pico* ruling is that it left no legal framework such as the *Miller v. California* three-pronged obscenity test to definitively determine whether any given book meets those standards (Rehn). Thus, they left only their rather vague words for interpretation. Different people and areas interpret these words differently, adding to the state of discord and disagreement across the nation.

Lower courts have attempted to use the *Pico* decision to decide upon book ban-related cases before them. However,, although this task is more difficult due to the six opinions written by the justices, with four concurring and two dissenting ("United States"). While there is a possibility of simply focusing on the majority and minority opinions and ignoring the others, the fact that there are six different opinions in and of themselves itself, each differing at least slightly from the each other, means that it is harder to use this court case as a definitive method for future

decisions. Simply interpreting the majority opinion of *Pico* to determine outside cases is difficult, as it does not leave a lot of text for future implementation. When the courts that have attempted to do so, they have run into a problem. The majority opinion requires that courts consider the original motivations of a school board behind a book ban before determining its legality (Rehn). As the involved members are generally private citizens with non-public opinions and lives, this requirement stands as a problem with *Pico*'s majority opinion as a legal precedent.

Pico does mention the detail of the suppression of ideas and perspectives. In the majority opinion, Supreme Court Justice Brennan notes that a politically-motivated one-party school board banning books authored by or arguing for a rival party is as unconstitutional as an all-white school board banning books by or about black people (Rehn). This note comes into focus when looking from this case to the books banned in many southern states. Large amounts of the banned books deal with or have LGBTQ+ and BIPOC issues and authors, demographics under debate in our nation both now and for many years past (Bauld). Owing to the fact that the majority of book bans are recent, occurring in just the past two or three years, and *Pico*'s questionable usefulness, few have used this detail in arguments.

Justice Brennan also noted that school library books are extracurricular, with less exposure to the information contained therein, so schools should not regulate or restrict them as much (Rehn). While this note does not apply to books that teachers specifically choose for teaching those are few and far between compared to the vast number of books in a library. Considering everything, even though there was a Supreme Court case that directly dealt with the issue of book bans, a myriad of restrictions prevented it from being a truly effective case for future decisions and arbitration.

The restriction upon legislators combined with insufficient precedent makes for immense discord across the nation. Each school district, of which there are thousands, have their own methods for determining the suitability of any specific book, with few decisions shared. The little national precedent provides little text and no framework to help lower courts make decisions, and when the lower courts do create a new precedent, it is not nationwide as a Supreme Court case would be. Finally, the First Amendment means that the legislative branch of the government has little to say or do on this topic. All of these restrictions combine to form a giant mess of different opinions, protocols, and availability of books across the country.

Issues and Problems of Book Bans

Problems that which don't deal with the legal side of things arise when dealing with and implementing book bans for a host of reasons. One of these problems occurs for opponents of book ban during an investigation into the acceptability of a specific book. When a member of a community challenges a book in a library, the library sometimes pulls it from the shelves to provide time for further investigation. The result is that, even if the library eventually deems the book appropriate, the book remains off shelves during the investigation. This result is quite prevalent, accounting for about half of the banned books in an ALA study on book bans (Meehan).

A major problem for book ban proponents with the implementation of book bans is the issue of alternative access. Even if a successful challenge removes a book from the shelves of a school library, a student wishing to read it could acquire the book and its deemed inappropriate content from a host of other places, such as a community library, online library, or even from illegal online sources which are much more difficult for local

governments to control (Perry). Additionally, even if only one person obtains access to a book, they can then disseminate the ideas contained therein through word of mouth, a method which is much more difficult to regulate constitutionally (Rehn). With an ever-increasingly connected world, one could argue both ways using this detail. A potential argument could be that, due to the plentiful alternative means of access, book bans are acceptable because, even though they attempt to limit access to books, ideas, and perspectives, they are ineffective. At the same time, a counterargument could be that, because book bans are ineffective, they should not be allowed in the first place.

Another problem that occurs when implementing book bans is that they can invoke the Streisand Effect. Named after the American singer Barbra Streisand, this effect occurs when an attempt to limit the spread of information only spreads it further. An example of this effect happened when an Oklahoman teacher quit after punishment for posting a link to a Brooklyn Library program where one could obtain banned books (Kelly). With such a connected world, the effort to restrict access to books has a strong possibility to only spread them further. Because the issue of book bans is a current issue under debate in our nation, punishing those who argue one the other side could be harmful to the debate.

Another similar problem has arisen for librarians trying to fight against some book bans. Some have provided banned books to students, causing members of the community to accuse them of giving obscene material to students, usually calling the books pornographic, despite the fact that none of them meet the legal definitions for such (Bauld). These false accusations can be harmful tofor a community. Libraries are generally a central place for knowledge, so reducing trust in the people who have trained to run such places could cause undesirable effects for both

frequent users of the library and the community as a whole. Additionally, the effectiveness of book bans goes down dramatically if the librarians who manage the books are willing to distribute banned books.

An important point to consider when discussing book bans is that many books provide perspectives that young people could not easily acquire through other ways. With a problematic mental health crisis among teenagers in the United States, these perspectives can help people who are going through rough times, helping them feel less lonely ("Book Bans"). Already, the mental health issues of people in specific minorities, especially LGBTQ+ people, are, on average, worse than other people. LGBTQ+ people, on average, suffer 25% more from anxiety than non-LGBTQ+ people and depression 21% more (Marley). Restricting access to the books that which provide these perspectives could worsen this other major problem of our nation, as well as disrupt the national LGBTQ+ debate, another heated issue.

Conclusion

Although the issue of book bans is prevalent in just a few states, it truly is a nationwide issue. The potential of having any perspective, especially a controversial one, wiped out from books, the largest way to transfer information for centuries, is a major problem that deserves attention. Justice Brennan stressed one part in his *Pico* decision: the suppression of ideas is a much more concerning issue than simply restricting vulgar material ("United States"). However, looking at the themes and authors of commonly banned books, it appears that this belief has not held up well. Our nation should hope that it does, because even just the chance of having a nation without diversity is a scary possibility.

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