### Ban =/= Regulation

#### Regulations are distinct from bans.

California Court of Appeals 12 "Appeal from an order of the Superior Court of Orange County." Court of Appeal o f the State of California. 29 February 2012. <https://www.courts.ca.gov/opinions/revpub/G043909.PDF>. [Premier]

We disagree with the City that in using the words “regulate” and “restrict” in section 11362.768, the Legislature intended to authorize local governments to ban medical marijuana dispensaries that are otherwise lawful “pursuant to this article” (§ 11362.768, subd. (b)), i.e., lawful under California medical marijuana law as enacted in the CUA and MMPA. The Legislature did not use the words “ban” or “prohibit.” The City relies on the dictionary meanings of “regulate,” “regulation,” and “restriction,” all of which, as one would expect according to the ordinary meaning of those words, import at most only “controlling by rule or restriction” or “A limitation or qualification.” (Black‟s Law Dict. (8th ed. 2004) pp. 1311, 1341.) The ordinary meaning of these phrases suggest something less than a total ban or prohibition against activities contemplated by the Legislature. Notably, the City omits from its discussion any definition of “ban,” which means “to prohibit, esp[ecially] by legal means.” (Webster‟s, supra, at p. 169). We conclude the Legislature‟s decision not to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768 was not accidental.10

Read in context with section 11362.775 and with the purpose of California‟s medical marijuana statutory program, the words “regulate” and “restrict” do not bear the City‟s conclusion that the terms authorize a “Complete Ban” at the municipal level. The City relies on dicta from inapposite cases stating generally that “„[r]egulation means the prohibition of something‟” and “Prohibition does not, therefore, establish a per se excess of regulatory power.” (Personal Watercraft Coalition v. Marin County Bd. of Supervisors (2002) 100 Cal.App.4th 129, 150 [county ban on personal watercraft upheld, where not contrary to state law]; cf., e.g., California Veterinary Medical Assn. v. City of West Hollywood (2007) 152 Cal.App.4th 536, 557-562 [upholding city prohibition against routine cat declawing, absent any discernible, contrary state intention].) But none of these cases involved the scenario here, where a local entity has attempted to ban as a per se nuisance activities the Legislature expressly exempted from nuisance abatement

### Ban = Enforcement

#### A ban requires future prohibition from acquiring LAWs, not just removing them.

Carnes and Wilson 09 Edward Earl Carnes, Charles R. Wilson. "AMERICAN CIVIL LIBERTIES UNION OF FLORIDA, INCORPORATED, Miami-Dade County Student Government Association, Plaintiffs-Appellees, v. MIAMI-DADE COUNTY SCHOOL BOARD, Rudolph F. Crew, Defendants-Appellants." United States Court of Appeals, Eleventh Circuit. 5 February 2009. <https://www.courtlistener.com/opinion/78271/american-civ-liberties-union-v-miami-dade-county/>. [Premier]

The overwrought rhetoric about book banning has no place here. Book banning takes place where a government or its officials forbid or prohibit others from having a book. That is what "ban" means. See Webster's New Twentieth Century Dictionary 144-45 (1976) (defining "ban" as "to prohibit" or "to forbid"); see also Black's Law Dictionary 154 (8th ed.2004) (defining "ban" as "[t]o prohibit, esp[ecially] by legal means"). The term does not apply where a school district, through its authorized school board, decides not to continue possessing the book on its own library shelves. The School Board is the entity that has the ultimate authority to decide what books will be purchased and kept on the shelves of the schools in the district. See, e.g., Fla. Stat. § 1001.32(2) (providing that "district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law"); see also id. § 1006.28(1)(d) (assigning to district school boards the duty to "[e]stablish and maintain a program of school library media services for all public schools in the district"). The School Board could have decided not to purchase and shelve Vamos a Cuba in the first place. See Pico, 457 U.S. at 871, 102 S. Ct. at 2810 ("As noted earlier, nothing in our decision today affects in any way the discretion of a local school board to choose books to add to the libraries of their schools."). Unless deciding not to purchase a book is an act of banning it, and no rational person would suggest it is, removing a book from one's own shelves is not book banning either.[15]

In an attempt to defend the district court's and its own use of the "banning" rhetoric, while at the same time dismissing our disagreement with it as "largely semantical," the dissenting opinion quotes the same dictionary definition of "ban" that we have but attempts to contort that definition to fit the facts of this case. See Dissenting Op. at 1250. The dissent asserts that by removing the book from its own school library shelves the Board did "prohibit, by legal means, public school libraries from carrying Vamos a Cuba." Id. at 1250. That assertion ignores the fact that the Board, and the Board alone, \*1219 has the responsibility and authority under Florida law to decide what books are to be on the shelves of the school libraries in its district. See supra at 1218. The school libraries are under the control of the Board and their employees are employees or agents of the Board. See id. When viewed in that light, as it must be, the dissent's insistence that the Board has banned the book amounts to arguing that when an entity decides to remove a book from its own library shelves it has banned itself from having that book there. The dissent openly asserts as much. See Dissenting Op. at 1250 n. 8 ("When a school board decides to remove a book from the school libraries within its district, it indeed has banned itself from having that book on its library shelves."). The dissent does not explain how removing a book from one's own library shelves is any more banning it than deciding not to shelve the book to begin with would be. Taken to its logical end, the dissent's view is that everyone who does not purchase a book to begin with has banned himself or herself from having the book. As the dissent sees things, there is a whole lot of banning going on.

There is, after all, a difference between banning and "removing." The word "remove" means "to move from a place or position; take away or off." Random House Unabridged Dictionary 1630 (2d ed.1993); see also Black's Law Dictionary 1322 (8th ed.2004) (defining removal as "[t]he transfer or moving of a ... thing from one location, position, or residence to another"). That is what the Board did with the book; it did not forbid or prohibit anyone from publishing, selling, distributing, or possessing the book. Nor is it accurate to say, as the dissent does, that the Board "prohibited even the voluntary consideration of the book in schools." Dissenting Op. at 1250. There is not one whit of evidence in the record to suggest that the Board prohibited anyone from considering the book anytime or anywhere. Any student or teacher was free to consider the book. The Board simply decided to remove the book from the library shelves of the schools in its district.

The dissenting opinion argues that "our own Circuit's usage of the word" ban can be found in Virgil v. School Board of Columbia County, 862 F.2d 1517, 1525 (11th Cir.1989), and Searcey v. Harris, 888 F.2d 1314, 1318, 1322 (11th Cir.1989). See Dissenting Op. at 1250. The part of the Virgil opinion the dissent relies on is not the basis of the decision, and it cites — "cf." — only to the opinion of a district court in Maine. See Virgil, 862 F.2d at 1525. The Virgil decision, which upheld a school board's removal of some literary texts from the school curriculum, did not establish anything about the definition of banning. Nothing in Virgil suggests that a school board's decision to remove books from its library shelves necessarily constitutes "banning."[16]See id. As for the \*1220 Searcey case, neither its facts nor its use of the word "ban" had anything to do with a book's removal from a school's library shelves or removal of a book from anywhere. Nor are we persuaded by the fact that other courts in other jurisdictions may have from time to time used the word loosely or incorrectly. See Dissenting Op. at 1251.

If the matter is to be resolved by looking at how the actions that the Board took in this case have been described by other courts in other opinions, we would think that the best place to look is in the Supreme Court decision from which we are drawing our legal standard. We are assuming that the Pico plurality's legal standard applies. See supra at 1204. In that case, as in this one, a school board ordered that some books be taken off the library shelves of the schools in its district. If that action amounted to banning those books, one would think that at least one of the seven separate opinions that the Supreme Court issued in the Pico case would have said so. None did.

Instead, the one thing that every one of the justices agreed on in Pico is that a school board's action in removing a book from school library shelves is more accurately described as removing the book instead of as banning it. In describing what the board did the Pico plurality opinion used "removal" or a derivative of that word forty-eight times. 457 U.S. at 856-75, 102 S.Ct. at 2802-12. It did not use the word "ban" or any derivative of it once. See id., 102 S.Ct. at 2802-12. Justice Blackmun's partial concurrence in the plurality opinion and concurrence in the judgment used some form of the word "removal" six times to describe the board's action. Id. at 877-82, 102 S. Ct. at 2813-16. It did not use any form of the word "ban," not even once. See id., 102 S.Ct. at 2813-16. Justice White's opinion, which concurred in the judgment, four times described what the board did as removing the book. Id. at 883, 102 S. Ct. at 2816. It did not once describe the action as banning the book. See id., 102 S.Ct. at 2816. Chief Justice Burger's dissenting opinion, joined by Justices Powell, Rehnquist, and O'Connor, seventeen times described the board's action as removing books. Id. at 889-93, 102 S. Ct. at 2820-21. It never described what the board did as banning books. See id., 102 S.Ct. at 2820-21. Justice Powell's dissenting opinion referred to removing books three times. Id. at 894-97, 102 S. Ct. at 2822-23. It never referred to banning books. See id., 102 S.Ct. at 2822-23. Justice Rehnquist's dissenting opinion, joined by Chief Justice Burger and Justice Powell, on twenty-eight occasions described what the board did as removing books. Id. at 906-19, 102 S. Ct. at 2828-34. It never described what had happened as banning books. See id., 102 S.Ct. at 2828-34. Justice O'Connor's five-sentence dissenting opinion used the word "remove" once. Id. at 921, 102 S. Ct. at 2835. It did not use the word "ban." See id. at 921, 102 S. Ct. at 2835. One hundred and seven times the Pico Court's various opinions described the action of the school board in taking books off library shelves. See generally id. at 855-921, 102 S. Ct. at 2802-35. Every one of those hundred and seven times the Supreme Court called the board's action what it was — removing the books. See generally id., 102 S.Ct. at 2802-35. Never once did any member of the Pico Court take the position, which our dissenting colleague does, that a school board's action in taking a book off library shelves amounts to banning the book. See generally id., 102 S.Ct. at 2802-35.

### Total Ban

#### A ban is categorical – the aff is a restriction.

Crighton et al. 17 Breen Creighton, Graduate School of Business and Law, RMIT University, Catrina Denvir, Director, Ulster Legal Innovation Centre, Ulster University, and Shae McCrystal, The University of Sydney School of Law, University of Sydney. "Defining Industrial Action." Federal Law Review, 2017. https://pure.ulster.ac.uk/ws/portalfiles/portal/85889667/Defining\_Industrial\_Action.pdf

There has been some confusion as to the meaning of a ‘ban’ for purposes of para (b). This is surprising in light of the fact that, as noted earlier, the concept of a ban has been a significant part of the federal system of industrial regulation for many years.

The confusion to which the use of ‘bans’ in s 19(1)(b) has given rise is illustrated by the decision of the Supreme Court of Victoria in Energy Australia Yallourn Pty Ltd v CFMEU (Energy Australia). 40 In that case the CFMEU had notified the employer that it proposed to impose ‘bans limiting the output of individual generators’ at a power station operated by Energy Australia to 240 megawatts at prescribed times of the day. The bans had been approved by a relevant protected industrial action ballot, but in considering the employer’s application for an injunction on the basis that the proposed action was not a ‘ban’ within the meaning of s 19(1), and therefore not protected industrial action, Hollingworth J agreed with the employer’s contention that ‘the word “ban” contemplates a prohibition on work, rather than a prescription to perform work in a certain way or to achieve a certain result’.41 Her Honour derived support for this conclusion from the terms of s 19(1) which ‘draws a distinction between the concept of a ban, and the concept of performing work differently from the usual manner’, the latter being a component of s 19(1)(a). 42 It followed, in Her Honour’s opinion, that the proposed industrial action was not protected under the FW Act, and she issued an interim injunction to restrain the CFMEU from committing the tort of inducing breach of contract.

Three months later, in FWC proceedings relating to the same dispute, a Full Bench dismissed an appeal by Energy Australia against a refusal by Bissett C to issue a s 418 order to restrain the allegedly unprotected imposition of the ban on power generation.43 In the course of their decision the Full Bench observed:

To achieve the limitations on output the nature of the action would be that work the operators would normally do or is part of their normal duties will not be done. They will not operate the generators in the usual manner to that normally expected of them or as may be directed. The Commissioner was not in error, in our opinion, in the manner in which she dealt with the meaning to be ascribed to the words in the notice and, in that context, the use of the word bans.44

In reaching this conclusion the Full Bench distinguished the decision of Jessup J in Williams v CFMEU45 on the grounds that in that case the Court had been dealing with the term ‘ban, limitation or restriction’ as used in former s 36 of the BCII Act. In the course of his opinion in that case, Jessup J cited with approval observations by Kirby J in Re Metal Trades Award 1952; Commonwealth Steel Co Ltd v Federated Ironworkers’ Association of Australia to the effect that the term ‘ban’ refers to ‘a total prohibition of all of the work described’ and that the words ‘limitation or restriction’ were intended to ‘catch any lesser interference’.46 Jessup J went on to add that the concept of a ban ‘involves a prohibition which is absolute or categorical, and not merely a matter of inclination or preference’. 47