

# HOW FREE IS FLORIDA?

## Florida's Banning of over 500 Books is Not Freedom

Central to the concept of freedom is the liberty to choose what we and our children read. Florida's book bans, by their very nature, are an infringement upon these principles of freedom, liberty, and personal autonomy. Book bans deny Floridians' and their children's ability to make choices about what to read. Library books are never mandatory but optional. Therefore, removing choices should never be considered "freedom".

Adding to the concern and alarm over freedom of reading are provisions of recent laws in Florida that allow books and instructional materials to be immediately removed from a district's schools and made unavailable upon simple objection of a parent or any resident without due process. The regulations do not provide for a process where baseless objections can first be contested. Moreover, objections may take months to process even where complaints are eventually proven groundless. The generality of these provisions allows for flagrant abuse and widespread censorship by both principled individuals and bad-faith actors leading to a potentially serious restriction of our constitutional rights.

### Book Banning Violates First Amendment Rights and Title IX

- Over 565 books have been removed from Florida school libraries during the 2021-2022 school year (from the *Charger Bulletin*, Lindsay Giovannone, April 4, 2023).
- One Florida school district removed Toni Morrison's *Beloved*; another removed Margaret Atwood's *The Handmaid's Tale* (from *The New York Times*, "Florida at Center of Debate as School Book Bans Surge Nationally" by Patricia Mazzei, Elizabeth A. Harris and Alexandra Alter, 4/22/23); and a Vero Beach, Florida High School removed a version of *The Diary of Anne Frank* (from the *Herald Tribune*); yet another Florida Public School District banned the Bible.
- Florida Public School teachers and librarians can face up to 5 years in prison if found guilty of a third-degree felony if challenged books remain on school library shelves in violation of the new Florida laws (from *The New York Times*, "Florida at Center of Debate as School Book Bans Surge Nationally" by Patricia Mazzei, Elizabeth A. Harris and Alexandra Alter, 4/22/23).

**Florida ranks second, behind Texas, as the state with the highest number of book removals, [according to a report](#)** released from the free-speech organization PEN America, which tracked book bans in schools from July 1 to Dec. 31 of 2022. In the name of "freedom" DeSantis and the Florida legislature have enabled 21 Florida school districts to remove 566 books during the 2021-2022 school year (and countless more during the current school year) from the shelves of libraries in our state public schools. Removing choices from students is not freedom. These are not textbooks that students are mandated to read, but rather books that would have been available to students should they want to read them during their free time. What about the rights of parents who want their children to be exposed to different ideas and classics?

A new law, (HB 1069) signed by Gov. Ron DeSantis on May 24, 2023, includes a requirement that any books, objected to for containing pornographic material or describes as having "sexual conduct," be removed within five days of an objection and remain unavailable to students until the objection is

resolved. Anyone can object, provided the individual resides in that school district. It does not matter if that person has a child attending the school.

### Fighting back with the First Amendment

PEN America, a not-for-profit corporation, protecting free speech and journalism, filed a Federal lawsuit against the Escambia County School District, in Florida, for violating the First Amendment by removing or restricting access to more than 150 Library books. Banning public school library books is unconstitutional as it violates the first amendment right to free speech as set forth in Justice Brennan's plurality US Supreme Court opinion of *Island Trees School District v. Pico*, 457 US 853 (1982), which is the only US Supreme Court case to address banning books in public schools.

This author happened to work on one of the many *amicus curiae* briefs supporting Petitioner Steven Pico's objection to the banning of books from a school library. Although this was a plurality opinion, it should be considered the law of the land, and Florida's recent book banning from libraries, based on any one individual's objection to the book, violates students' First Amendment rights. We need to take a closer look at the *Pico* decision to understand how we can fight back (although the current US Supreme Court does not respect its own precedent; *Dobbs v. Jackson*).

Justice William J. Brennan Jr. wrote a three-Justice plurality opinion (with two other justices concurring in varying degrees) holding the First Amendment imposes limits on school boards' authority to remove library books and that students have a right to receive information.

"A school library, no less than any other public library, is a place dedicated 'to quiet, to knowledge, and to beauty'," Brennan wrote, quoting an earlier high-court decision. "**We hold that local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books**" (emphasis added).

What is important in the *Pico* case and its limited progeny, is to examine the intention of those who are removing books from library bookshelves. If it is to stifle ideas, to allow books in a school library that adhere to only a partisan or political manner of thinking, then that is unconstitutional. As stated in Justice Brennan's opinion:

"In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. . . [S]chool officials cannot suppress 'expressions of feeling with which they do not wish to contend.'" 393 U.S. at [393 U. S. 511](#) (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (CA5 1966)). Students' First Amendment rights are denied when school boards ban books, motivated by their politics.

It is uncontroverted that school boards throughout Florida are motivated by politics, and it is being driven by DeSantis' rhetoric, using catch words such as "indoctrination" and "freedom." DeSantis is taking several pages out of George Orwell's *1984*, and engaging in "doublespeak" where concepts mean the opposite of what the speaker intends.

Justice Brennan also stated: "**Local school boards may not remove books from school libraries simply because they dislike the ideas contained in those books and seek by their removal to 'prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'**" (emphasis added) *West Virginia Board of Education v. Barnette*, 319 U. S. 624, at 642 as cited in *Pico*. He makes a distinction between the school library and the classroom.

One woman in Miami-Dade County challenged "The Hill We Climb" a poem by Amanda Gorman. Ms. Gorman is the youngest inaugural poet laureate in U.S. history, and read her poem at President Biden's Inauguration. The book was banned after a parent complained that the book should be removed from

the elementary school library in a K-8 school. The parent has since admitted to not being a reader and only read parts of Gorman's material, yet her challenge still stands! (according to USA Today, May 30, 2023) Amanda Gorman responded via Twitter: "We must fight back. . . So they ban my book from young readers, confuse me with [Oprah Winfrey], fail to specify what parts of my poetry they object to, refuse to read any reviews, and offer no alternatives," (from the Washington Post, by Maham Javaid and Dan Rozenweig, 5/24/23).

These are not conservative opinions dictating conservative measures, but rather reactionary opinions causing us to lose the freedoms fought and won almost a century ago. In a 1943 US Supreme Court case, West Virginia Board of Education v. Barnette, [319 U. S. 624, 637](#) (1943), the Supreme Court upheld a student's constitutional right not to salute the flag in a public school, reasoning: "**That [school boards] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes**" (emphasis added).

This is not the first issue of book banning in Miami-Dade County. In fact, a 2009 Florida District Court Case, ACLU of Florida, Inc. v. Miami-Dade County School Board, 439 F. Supp. 2d 1242 (2009) addressed this issue as well. Although the District Court applied the Pico plurality standard of considering motive in determining whether the removal of a book, Vamos a Cuba, violated the First Amendment, the Florida District Court held the removal was not unconstitutional. The Court held that the removal was motivated by the book's inaccuracies concerning life in Cuba and not by a desire to promote political orthodoxy. At least the Florida District Court attempted to apply the First Amendment and examined the school board's motivation in removing the book whereas today, unabashedly, books are being banned without consideration as to the First Amendment or students' rights as long as the American-born white Christian heterosexual students' "freedoms" are protected—and utterly disregarding the rights of the immigrant, of color, and/or LGBTQ+ students.

As Justice Brennan pointed out in Pico: ". . . [J]ust as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members. . . "

In West Virginia Board of Education v. Barnette, 319 U. S. 624, at 642 the US Supreme Court stated: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion. . . . If there are any circumstances which permit an exception, they do not now occur to us". This doctrine was reaffirmed in later cases involving education. For example, Keyishian v. Board of Regents, at [385 U. S. 603](#), noted that "the First Amendment . . . does not tolerate laws that cast a pall of orthodoxy over the classroom" (*citation omitted*).

**Here in 2023 in Florida, school library book bans are intentionally political—removing books about slavery, systemic racism, LGBTQ relationships, diversity, equity, and inclusion and consistent with Ron DeSantis' platform—exactly what the Justices in Pico wanted to prevent.**

A new Florida law "requires every book in a school's possession to be posted on an online database and vetted by 'media specialists' to ensure it's 'free of pornography.' State guidance urges schools to 'err on the side of caution' on what they approve. In two large school districts, which contain the cities of Bradenton and Jacksonville, administrators ordered the removal or concealment of tens of thousands of

books in their schools; students returned from their winter break to find bookshelves empty or covered with paper” (from [The Week](#), “Censoring Ideas and Rewriting history,” June 2, 2023).

In March 2023, from the State Attorney’s Office building, DeSantis insisted there are no book bans in Florida, and that it is “a nasty hoax” that Florida laws require book bans. He claimed that he is simply “fighting woke leftists” who are “trying to pollute and sexualize our children”-- exactly the political orthodox motivation from which the [Pico](#) Plurality of Justices attempted to protect American students.

### **Fighting back with Title IX**

In Texas, a new legal argument was raised. While most book bans are challenged on First Amendment grounds, the American Civil Liberties Union of Texas has filed a complaint with the U.S. Education Department’s Office for Civil Rights, asserting that a Texas school district violated Title IX’s prohibition of discrimination based on sex when it removed 130 books from library shelves— “at least three-quarters of which featured LGBTQ themes or characters. The Biden Administration has interpreted Title IX to include discrimination based on sexual orientation and gender identity.” ACLU attorney Chloe Kempf told *The Washington Post* that the removals “send a message to the entire community that LGBTQ identities are inherently obscene, worthy of stigmatization, and uniquely deprive LGBTQ students of the opportunity to read books that reflect their own experiences” (from “Does Banning Books Violate the First Amendment”, New Jersey State Bar Foundation, 2/15/23).

Parental involvement has always been encouraged in education and parents have a right to decide what their child is reading and learning and should discuss it at home. They do NOT have a right to dictate their personal choices to other parents and students.

We need to look at how other states are combating book bans from public school libraries by self-deputized political and moral activists and band together against public school library book bans here in Florida.