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To cite this article: Richard S. Price (2021) Navigating a doctrinal grey area: Free speech, the right to read, and schools, *First Amendment Studies*, 55:2, 79-101, DOI: [10.1080/21689725.2021.1979419](https://doi.org/10.1080/21689725.2021.1979419)

To link to this article: <https://doi.org/10.1080/21689725.2021.1979419>



Published online: 06 Oct 2021.



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ARTICLE



Navigating a doctrinal grey area: Free speech, the right to read, and schools

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ABSTRACT

Every year thousands of people challenge the contents of libraries and school curriculum. The exact number of these complaints is impossible to measure and most are likely verbal in nature and handled informally. Some, however, explode into public view. This article explores two battles in New Jersey over *Fun Home: A Family Tragicomic* by Alison Bechdel. In a dispute that began via email, emerged publicly through several local board of education hearings, spread to a neighboring school, and then traveled to the courts, the *Fun Home* dispute illustrates the conflict at play in the joints between free speech, parental rights, and public authority.

ARTICLE HISTORY

Received 29 June 2021
Accepted 3 September 2021

KEYWORDS

Book challenge; censorship;
school library; curriculum;
LGBTQ

Libraries, schools, and free speech

The application of free speech principles to books in schools and libraries is a doctrinal grey zone at best. Advocates of a strong freedom to read claim that the First Amendment requires not only the right to speak but the right to acquire information.¹ The American Library Association (ALA) articulated this principle in the Library Bill of Rights: material “should be provided for the interest, information, and enlightenment of all people of the community” and “[l]ibraries should provide materials and information presenting all points of view on current and historical issues” regardless of doctrine or partisanship.² The ALA, with book publishers, expanded upon this point in the 1953 Freedom to Read Statement where they argued that the “fundamental premise of democracy” is “that the ordinary individual, by exercising critical judgment, will select the good and reject the bad. We trust Americans to recognize propaganda and misinformation, and to make their own decisions about what they read and believe.”³ Written at the height of restrictive McCarthyism, the Freedom to Read Statement was part of a profession positioning itself as a defender of intellectual freedom.⁴ Where the ALA statements were pitched towards the librarian profession, the National Council of Teachers of English (NCTE) presented a similar argument in the Students’ Right to Read Statement. In essence, the NCTE argued, “[o]ne of the foundations of a democratic society is the individual’s right to read, and also the individual’s right to freely choose what they would like to read” because it frees the reader “from the bonds of chance” and keeps “students in touch with the reality of the world outside the classroom.”⁵

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The ALA's statements were a direct assault on the censorship regime that existed in the first half of the twentieth century. Obscenity law allowed publishers and booksellers to be charged with obscenity for anything that depicted, even in mild terms, sex or other controversial themes in print.⁶ Building on a half century of legal contestation,⁷ the Supreme Court (SCOTUS) strengthened protection for sexualized speech dramatically. In *Miller v. California*, SCOTUS limited obscenity to work that, taken as a whole and judged by an average person applying contemporary community standards, "appeals to the prurient interest" in sex, that describes sexual conduct "in a patently offensive way," and that "lacks serious literary, artistic, political, or scientific value."⁸ While SCOTUS refused to definitively foreclose prosecutions of books without images, the emphasis on hard core pornography in *Miller* suggested that novels were no longer seriously open to threat.⁹ It is fair to say that no commenter would recognize a world where the publication or sale of James Joyce's *Ulysses* is a criminal offense, such an attempt today would be laughed out of court.¹⁰

Miller, of course, did not alter the underlying social dynamics of censorship. Ultimately obscenity law was driven by a fundamental skepticism of the mass public and a faith that the organs of government must purge illegitimate materials from the public market to protect moral decency. As Charles Keating, leader of Citizens for Decent Literature in the 1960s, said "[t]he masses just aren't competent to determine what should be on the racks."¹¹ This conservative impulse did not disappear with *Miller*, it simply shifted institutional locations. Prevented from excluding objectionable works of literature from the world altogether, opponents moved towards using challenges to the content of library shelves and school curriculum as a second-best alternative. "Book challenges are requests by members of the public to remove, relocate, or restrict books from or within institutions."¹² The trend in book challenges tend to "reflect trends in social tensions over time."¹³ After all, "debates about education have long acted as a proxy for arguments about whose values will shape the nation's future."¹⁴ When a person¹⁵ objects to a book, whether in a library or classroom, the formal process typically begins with a written complaint that triggers institutional review and a final decision to retain, restrict, relocate, or remove a book.

The goal of the book challenger is to make it more difficult to find the objectionable books. This is not censorship because to challengers "censorship meant a full denial of access to the materials in question" and even removing a book from a library or school does not prevent access in the modern world.¹⁶ Emily Knox, who has done some of the most significant work on book challenges, found this linked to a vision of childhood innocence and indoctrination where students are "passive agents in the classrooms" who "accept ideas without question."¹⁷ As educational institutions libraries and schools "are seen as spaces that must be controlled, since they contain texts that can change one's moral character."¹⁸ Public institutions have a fundamental duty to provide a morally clean space and any disagreement "with the challengers' assessment of a particular book means that one is unconcerned with children's innocence."¹⁹ Thus, book challengers seek to occupy a similar political space that obscenity law once provided but they are forced to articulate a narrower set of goals. Where once groups like Citizens for Decent Literature sought to purge bookstores and newsstands of dangerous material to prevent all access, today book challengers have to settle for purging such material from libraries and schools. Their goals, however, are the same in that they seek to preserve a moral citizenry.

While the professional stance of librarians is to resist all challenges in defense of a broad right to read, the constitutional status of this right is less than solid. In *Board of Education v. Pico*,²⁰ SCOTUS gave some limited support to this right. There, Justice William Brennan concluded that a “right to receive ideas follows ineluctably from the sender’s First Amendment right to send them” and “[m]ore importantly, the right to receive ideas is a necessary predicate to the recipient’s meaningful exercise of his own rights.” A decision by a school board to remove books, thus, implicated the First Amendment and would be unconstitutional if they “intended by their removal decision to deny [students] access to ideas with which [the board] disagreed, and if this intent was the decisive factor in [the board’s] decision.” If a decision to remove a book was based on its pervasive vulgarity or educational unsuitability, however, it would likely be constitutional.²¹ Brennan’s opinion delivered a significant victory to proponents of a right to read but it was limited in two important ways. First, the exceptions to the doctrine, specifically the educational suitability argument, are broad and amorphous enough to provide cover for pretextual removals. Second, Brennan only had a plurality of the Court behind him and thus did not create binding precedent.²² The precedential value of *Pico* is unclear and contested.²³

Brennan’s opinion in *Pico* built upon the student speech doctrine. In *Tinker v. Des Moines*, SCOTUS held that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”²⁴ Just a few years after *Pico*, in *Hazelwood v. Kuhlmeier*, SCOTUS carved a large exception out of *Tinker*: schools have largely unlimited power to censor student’s speech in school-sponsored activities.²⁵ SCOTUS stressed, in particular, the role that the school must have in determining curriculum.²⁶ While a school’s discretion over removal of books from its libraries may be constrained in some way, they appear to have unlimited discretion over the content of their curriculum. Catherine Ross concluded that “*Hazelwood* almost always functions as the equivalent of a ‘get out of jail free’ card for administrators.”²⁷ Thus, a removal of an assigned reading in an English class would appear to be justifiable even if admittedly done because of disagreement with the ideas expressed.²⁸

Having sketched out the contours of free speech, libraries, and schools, one last element is key: parental rights. Challengers develop and deploy a parental rights narrative as one means of countering the ideological power of a free speech right to access to literature. However, the doctrine of parental rights lacks precision and clarity. In the 1920s, SCOTUS invalidated state attempts to limit the teaching of a foreign language and a prohibition on private education by invoking a form of parental rights analysis.²⁹ In *Troxel v. Granville* (2000), a SCOTUS plurality invalidated a statute allowing third parties to petition for child visitation because it insufficiently protected a parent’s right to direct their child’s upbringing.³⁰ Similar to the role of free speech in removal of books, SCOTUS has not developed the doctrine around parental rights clearly. Lower courts have consistently rejected parental rights claims in curricular decisions. For example, when parents asserted a constitutional right to exempt their children from any lesson that even mentioned homosexuality, the First Circuit held that parents do not have constitutional right to dictate the content of a public school’s curriculum.³¹

Book challengers, thus, engage in political activity in a constitutional grey area. They deploy a discourse wrapped around parental and community rights to a decent society, as they understand it, to defeat a counternarrative centered on intellectual freedom and free

speech. Their goal is to restrict or remove literature that they perceive as presenting a danger to children and, by extension, to the community as a whole. Through an examination of challenger discourse in two New Jersey disputes over *Fun Home*, I seek to add to existing research by understanding how challengers conceive of their community in homogenous terms and their attempt to deploy state power to remove objectionable content threatening to that community. Defenders of access have multiple strategies to resist challenges. In one controversy, the school itself defended access as part of its pedagogical duty, in essence deploying the broad discretion it has over curriculum in defense of intellectual freedom. In the second controversy, however, the school was the challenger and defenders had to deploy external pressure to defend access to *Fun Home*.

Research overview

In *Fun Home*, Alison Bechdel presents her memoir in graphic novel form. Bechdel charts her childhood through early twenties depicting her awakening lesbianism amid a complex relationship with her father. *Fun Home* includes a handful of panels with nudity, masturbation, and oral sex.³² Two controversies emerged in New Jersey over the presence of *Fun Home* in the schools. As the two controversies included different institutional environments, curriculum versus library, and occurred close in time and in the same area, they provide a useful context to study how challenges are made and responded to. I utilized freedom of information (FOI) requests to obtain various emails from challengers. As requests for emails can be complex, I was required to limit my requests to certain time periods and recipients/senders. While it is likely that this missed some degree of communications, the scope of material delivered encompassed a wide number of participants in both controversies across the relevant time periods. Of course, any face-to-face meetings will not be reflected in this record. Where appropriate, I also utilize other forms of public records such as board of education records and court filings. All materials relied upon in this article are available for public use.³³

As the focus is on how challengers contest literature and defenders respond, the key issue is the discourses deployed by relevant actors in each case study. Unless challengers hold a place of public responsibility, I feel that identification serves no useful purpose, especially as names alone give no reliable characteristics of the challengers. Thus, the analysis that follows refers to commenters only by their initials with the date of the email and I utilize gender neutral pronouns. The only participants identified by name hold elected office (legislators, board of education members), positions of public trust and management (superintendents, principals), or filed a lawsuit and thus entered a public arena. Finally, I replicate challenger language as written and do not make elitist assumptions about correct grammar or spelling.³⁴

A brief timeline is necessary as the analysis that follows will mix the two disputes to illustrate common themes and arguments. Watchung Hills Regional High School (Watchung Hills or WHRHS) adopted a new twelfth grade English curriculum in November 2017 that included *Fun Home*, a decision made after lengthy review and aimed to broaden the diversity of curricular materials. The book was first used with 75 senior students the following semester. In May 2018, two parents raised concerns about the book and this spread to discussion in social media.³⁵ Large groups attended school board meetings on 5 and 18 of June and sent numerous emails voicing their

concern at roughly the same time. Watchung Hills decided to conduct a review of its curriculum over the summer with a recommendation, on September 6, 2018, that *Fun Home* be retained but that it become one of three options for students to choose from. This settled the dispute officially but in May 2019 a group led by Daniel Gallic, a parent who had been involved in the initial controversy, filed suit against the school alleging that distribution of *Fun Home* amounted to the provision of obscene materials to minors. This suit was dismissed by the New Jersey Superior Court on June 10, 2019.

At North Hunterdon Regional High School (North Hunterdon or NHRHS),³⁶ the dispute began with an email on February 1, 2019³⁷ from Principal Greg Cottrell to his school's librarian complaining about *Fun Home* and requesting a response. On February 1, Cottrell issued a directive ordering the removal of *Fun Home* from the open shelves and that it be placed behind the librarian's desk requiring parental permission to check out. On February 14, Superintendent Jeffrey Bender supported this order when it was questioned by the librarian. Starting on February 15, North Hunterdon began to receive letters of concern from national, state, and local library and anti-censorship groups. On February 19, Cottrell rescinded his removal order and allowed the book to return to the open shelves.

Framing the challenge

A key issue in book challenges is understanding the challenger's discourse around their action. The core of the arguments against *Fun Home* focused on the sexually explicit images. The first complaint in Watchung Hills³⁸ noted that "[t]here are at least five pages where there are images displaying nudity and/or sexual activity."³⁹ North Hunterdon Principal Greg Cottrell echoed this claim arguing that "*Fun Home* was purchased for the library without a review of the images that it contains. It has been brought to my attention that the book contains graphics images of sexual situations," citing a single page of the book, page 214, where Bechdel depicts oral sex.⁴⁰ Many challengers noted that inclusion of such images in an English class is illogical "while the school's firewall prevents students from accessing sites that show such images."⁴¹ When Cottrell ordered the book removed in North Hunterdon, he argued that the school has "an obligation to ensure that the children who attend our school do not access adult content that they are not emotionally or developmentally prepared to encounter."⁴² Cottrell clarified that this was not about the theme of the book: "the additional scrutiny that we are placing on *Fun Home* is a result of the sexually explicit graphic content. It is not related to the LGBTQ themes within the book. There are 170 books in the library that fall within LGBTQ topic listings."⁴³ One Watchung Hills challenger similarly stressed that this "is NOT an LGTBQ issue. ... This is a pornography issue" with pornography defined as "printed or visual material containing the explicit description or display of sexual organs or activity, intended to stimulate erotic rather than aesthetic or emotional feelings."⁴⁴ The challenger, however, never thought to explain how *Fun Home* fit this definition, in particular the intent requirement. Instead, it was just obvious to all: "Anyone reviewing the book within the first 10 minutes, clearly realizes that this is not age appropriate for high school aged children."⁴⁵

Defining the issue as one of pornography allowed challengers to avoid claims that they are fringe activists bent on enforcing an out-of-date conservative morality because no rational person would support giving porn to children. One challenger argued that “[i]t is as if our tax dollars were spent on requiring children to read *Hustler* magazine.”⁴⁶ By equating *Fun Home* to *Hustler*, the challenger transformed *Fun Home* from a contested piece of literature into unredeemable smut. Cottrell reassured his superintendent that “we are one of the only schools in the area that has the book. . . . It certainly is not a literary masterpiece that is on the shelf of every library.”⁴⁷ Faced with professional judgments about the literary merit of *Fun Home*, Cottrell sought to reframe it as “not a literary masterpiece” because an unspecified number of schools did not carry it. Many challengers expressed concern about the effect of such pornographic images. For example, one warned that “[o]nce you see these graphic sexual images you can’t unsee them. The damage is done and you have done a tremendous disservice to them.”⁴⁸ While others left the supposed harm of such images implicit, this challenger argued that the school was “normalizing oral sex to high school aged teens and really grooming them for this activity as normal and expected” and “[a]llowing this book in high school is promoting this activity to our youth visually and as a means of deriving pleasure per the suggestive text that accompanies these images, suggestive of porn or defined as porn.”⁴⁹ They further argued that this will embarrass gay teens, endanger women by encouraging voyeurism, and lead to more sexually transmitted diseases from experimentation with unsafe sex. Superintendent Jeffrey Bender noted that, having seen a single image from *Fun Home*, “it appears to me that the district could be accused of debauching the morals of minors if we were to allow free access to this material.”⁵⁰

While the dominant theme of the challenges focused on the graphic images argument, some Watchung Hills challengers spoke more broadly, suggesting that representation of queer stories was a serious concern. One complained that “[t]o force all children to read something that doesn’t reflect values of a household, could be a violation of religious beliefs, . . . morals and ethical values. Our children are reminded everyday about diversity, inclusivity and LGBTQ rights. . . . We don’t need this.”⁵¹ This challenger rejects the notion that inclusion of queer voices is even necessary because students already are bombarded by diversity. One suggested that educators were incapable of teaching queer content: “it’s hard for me to imagine an english teacher having the expertise, wisdom, and life experience to accompany a class through a discussion of topics such as gender identity.”⁵² Other challengers sought to link this dispute to a broader set of claims about political orthodoxy. Inclusion of *Fun Home* represented “over-the-top political correctness that is threatening to bring ruin to the school curriculum.”⁵³ Another challenger expanded upon this political correctness trope to the silencing of certain voices,

[T]here is also a movement in play in the high school where students who are conservative are hushed, shamed, or bullied on a regular basis. This book further suppresses those students who wish to live within their value system and express their views as everyone else has a right to do. . . . Where are your inclusion books to represent all philosophies and viewpoints, especially when they choose a road of traditional values, chastity, following rules, morals, and citizenship.⁵⁴

These arguments suggest that it was not simply the few graphic images in *Fun Home* that are the problem but that the representation of queer voices as part of the curriculum is an assault on traditional values and conservative political beliefs. Continuing in this trend,

one challenger complained that “[b]ooks of this nature normalize dysfunction, trauma and sexuality within the teen years” and may even subtly pressure students to engage in similar behavior to feel normal.⁵⁵ This speaks to the themes of *Fun Home* rather than solely the images used to express those themes.

Parental rights arguments played a lesser role in Watchung Hills than I would typically expect. One complained that while the school argued that *Fun Home* helps prepare students for the real world after high school, that “blatantly disregards what their parents might feel on the subject.”⁵⁶ Another expressly linked their status as parent and taxpayer: “I don’t allow pornography in my home, yet indirectly, my tax dollars will expose children to it.”⁵⁷ The restriction of *Fun Home* to parental permission in North Hunterdon was an implicit recognition of the parental rights claim. Parental rights claims, however, may have been less appealing because the school had an established policy allowing students to opt-out of reading books they objected to and being assigned an alternative.⁵⁸ The focus, thus, shifted to attacking the opt-out as itself a form of marginalization of traditional values. The generic form message warned that “[w]e are also very concerned with the idea of an ‘opt-out’ option in fear that the children are then being separated from the class.”⁵⁹ This fear of separation, because students would have to leave to avoid the classroom discussion, was supplemented in most of the messages with more dire consequences of an opt-out. A significant worry across many challengers was a concern for stigma. For example, one predicted that students will be “ostracized for refusing to read the book in front of all their classmates.”⁶⁰ One challenger who described themselves as an educator stated that “I know from first-hand that sending a student out of the room usually denotes a negative connotation.”⁶¹ The act of leaving a class when *Fun Home* would be discussed has the effect of marking students as outsiders in their community. One expanded on this theme by worrying that opt-out “would generate dissension, isolation and division among students and families”⁶² by publicly marking them as disagreeing on this issue. Others worried that students “may be viewed . . . as a ‘hater’”⁶³ of their fellow students; this challenger expressly noted that their child had friends in the LGBTQ community and did not want to force that decision on them. Finally, one warned that an opt-out would be insufficient to protect students from the harm of the images because “a student would have to review the text before opting out.”⁶⁴ In this framing, the student, rather than the parent, is the one opting out of an assignment and they would be required to make an informed choice by viewing the images because only then would they know that the material was unacceptable. The only acceptable arrangement, thus, is to eliminate the book completely. One challenger offered a compromise where *Fun Home* could be used but only where “ALL parents have provided permission” in the class, even a single refusal would require removal.⁶⁵

Challengers stressed that removal is necessary to represent the values of the community. Challengers often assert that the majority is with them: “Although there may be some parents who are OK with this, I believe the majority would feel that this book clearly crosses over the line of acceptable literature.”⁶⁶ In Watchung Hills, challengers deployed some empirical evidence to support this assertion. For example, in reference to a board of education meeting, a challenger noted that there “was a wonderful turn out of parents that got a change to speak out against the book 4 to 1. This demonstrates that parents are concerned and are willing to come out in unity.”⁶⁷ The possibility that this might have been an unrepresentative sample was never addressed and the challenger

ignored the fact that their own count demonstrates a lack of unity over this issue as 20% did support the book. Instead, unity exists when a majority speaks because the majority is the community. Later in the controversy a petition calling for removal of *Fun Home* circulated and “I believe the 650 signatures to the petition is the best indicator of our community’s beliefs and values. . . . This external community view differs from the internal view of the Education Committee that” approved *Fun Home*. “It’s clear the reason [other] options were rejected has nothing to do with our community’s values”⁶⁸ Given the supposed strength of community opposition, which these challengers assert as representative of the whole community, it could only be a nefarious reason that led to the retention of *Fun Home*. This failure to adhere to the community’s will represents a failure of democracy itself.

As schools are funded by the taxes of a community, challengers argue, they have a fundamental duty to represent the values of that community. Given that *Fun Home* is essentially pornography that damages children, any presence of the book is unacceptable and must be removed. The school has a duty to choose books that elevate a child’s mind.⁶⁹ “Surely we *can do* better for our children.”⁷⁰ One challenger wrote that “[t]here are so many other good inspiring books to choose from which could include uplifting adult themed novels that support all students with characters without suicide and graphic sexual images for underage children.”⁷¹ None of the challengers suggested alternatives just that they had to exist somewhere. If the school persisted in its decision to pollute children’s moral purity with such graphic images (or just queer stories), then violence may result:

Parents, students, and community members are so upset over the extremely indecent pictures, it makes me think in light of recent violent tragedies in their schools in our country that something bad may happen in our schools as a result of individuals so upset and unaccepting of the images to do something violent to make their point, which could be alleviated and prevented, by not choosing this book for the curriculum.⁷²

Challengers in both schools began in the same place: the graphic images in *Fun Home*. In North Hunterdon, that was sufficient because Cottrell possessed the power necessary to enforce his criticism. The challengers in Watchung Hills, however, had to go further to support their request. By developing arguments around not only the images but the broader nature of queer representation and the dangers of excluding the real majority of the community, they grounded their arguments in “a particular sense of fear that American society is rapidly changing and it is up to the challengers and our shared institutions to protect children from some of the less desirable aspects of these changes.”⁷³ This need to protect children was flatly inconsistent with a right to read, a right that must give way to community needs.

Mobilizing a defense

Fun Home was not adopted lightly in Watchung Hills. The school adopted a new English curriculum in November 2017 after extensive consideration and chose *Fun Home* as particularly well suited to the diversity and educational goals of the curriculum. When called upon to defend this choice, Superintendent Elizabeth Jewett noted that the book is a challenging read that “is noteworthy for its presentation of characters who themselves

engage with literature on a particularly sophisticated level” and how it “demonstrates an application of academic knowledge for the purpose of enriching self-awareness and self-understanding.”⁷⁴ Decision makers, of course, knew that the book would bring controversy because of a few images of nudity and sexuality but “[t]humbing through the novel and pointing to an image or two misses the context in which these images are presented. We endeavor to create readers who can analyze and evaluate an image – whether presented visually or rendered in prose – and who can view this image in context.”⁷⁵ While this may be the school’s goal, challengers tend to focus narrowly on certain objectionable content as seen in both cases here where only one, five, or at most seven pages of two hundred and thirty-two were referenced by challengers.

Watchung Hills took these complaints seriously, as most schools do. At the first board hearing where this issue was raised, the board president stressed that the board understood the objections but that policy already provided for notice as to the content of the curriculum and allowed objectors an alternative selection and that graphic novels are part of the broader curriculum that increases in maturity as students age.⁷⁶ Two weeks later, in a shift that appears to take seriously challengers concerns with an opt-out removing students from the classroom, the superintendent noted that multiple conversations within the school had the “resounding theme and priority that has been vocalized consistently in all conversations and feedback is ensuring an inclusive curriculum for ALL students” and thus the English department would consider changes that would meet those needs.⁷⁷

The education committee selected 19 books to review that met specific criteria: “1 Complex, fully-realized LGBTQ characters; 2. Stylistic complexity (promotes emotional as well as intellectual engagement); 3. Relevance of themes to students’ lives and to grade 12 English curriculum.”⁷⁸ Importantly, the committee decided to keep *Fun Home* as part of the curriculum and refused to consider the play⁷⁹ version “because of the richness of the inner life of its central figure portrays – and because of the stylistic complexity and rich intertextual design of the novel.”⁸⁰ The committee added two additional novels⁸¹ and students would choose a first and second option from the three with an explicit discussion of how students will be informed of the books and a policy reiterating that “[i]f parent says ‘My child will not read this book,’ we will honor that.”⁸² This compromise answered the challengers’ concerns completely while maintaining the school’s curriculum goals. The new novels represented similar themes around queer youth in complex family dynamics but were prose rather than graphic novels, ensuring that no student would see the objectionable images if they did not want to. And now the objecting students would still be in class and not subject to any supposed stigma.

In North Hunterdon, things worked out differently because Principal Cottrell as challenger issued his directive restricting access to the librarian directly. Unlike Watchung Hills, there was no internal unity and the librarian was required to defend access alone. The librarian responded initially with a set of extended concerns highlighting problematic aspects of the order. Of key importance was the lack of process in how this was handled “including administrators requesting removal before having read the book, sending a lead teacher to request removal of the book, claiming falsely that a parent had objected to the book, and making judgments about the entirety of the work based on a single page.”⁸³ This echoed, in part, the defense put forward in Watchung Hills, that a work must be understood as a whole but the complaint about process was new. The district had challenge

policies in place that were not followed here, in fact the librarian accused Cottrell of fabricating a complaint to justify his objection and the discovery that this was a lie.⁸⁴ The librarian warned that allowing this type of unilateral removal outside of established policy would “enable current and future administrators to bypass board policies and remove library materials from general circulation at will based on personal objections.” As the librarian’s response rejected the uninformed conclusion that a single page of *Fun Home* made it pornography, the removal could only be based upon Cottrell’s personal objections. Such removals based on personal objections abridged “students’ civil liberties, as expressed in the First Amendment and supported by the ALA Bill of Rights and NCTE Students’ Right to Read,” documents that the librarian provided to Cottrell nearly two weeks earlier.⁸⁵ The librarian closed with an expression of concern for the harm done to queer students: “The unique and excessive burden that the new requirement for a permission slip places on LGBTQ students, who may not be in a position to obtain parent permission, thereby barring their access to a milestone work in LGBTQ literature” and noting various accolades won by *Fun Home*. By marshalling the professional and legal support for a right to read, the librarian sought to undermine the unilateral decision and then closed with a suggestion that parental rights may be harmful to a subsection of students who are not in a safe position.

Over the first two weeks, this controversy was internal. A principal objected and faced some resistance from his school’s librarian. Having limited power, the librarian sought to strengthen the defense by deploying the assistance of anti-censorship groups who submitted a number of letters objecting to the removal.⁸⁶ The two most significant letters came from the ALA’s Office of Intellectual Freedom (OIF) and the National Coalition Against Censorship (NCAC).⁸⁷ As organizations with significant national presence, they sought to bring public exposure of the removal and pressure on the school. Both framed the issue as an invasion of students’ rights, stressing that the removal occurred outside of policy; adhering to policy is crucial because “written . . . reconsideration policies prevent anyone from subjectively blocking all students from accessing materials simply because he or she does not like them or fears public controversy.”⁸⁸ Similarly, removal of the book “before review by a board-sanctioned reconsideration committee to determine its educational suitability does not comport with First Amendment imperatives and is constitutionally suspect.”⁸⁹ In suggesting that the issue was constitutionally suspect, NCAC implied that legal action could result, an implication that it reinforced by noting that a federal court had found a district liable for restricting *Harry Potter* to parental permission in a similar manner.⁹⁰ NCAC echoed the librarian in stressing the harm to queer students because the restriction “further stigmatizes and marginalizes LGBTQ youth and fosters an atmosphere of intolerance”⁹¹ and then it was noted that New Jersey had enacted, only a few weeks earlier, a law requiring LGBTQ curriculum content.⁹² To dispel the pornography claims NCAC noted that “*Booklist* has recommended *Fun Home* for young adult readers, noting that the ‘the very few incidental sex scenes’ are ‘non-prurient.’”⁹³ By quoting the argument that *Fun Home* was non-prurient, NCAC subtly invoked the requirements of obscenity law against the claim that the single page made it pornography. Group support likely led to Cottrell’s decision to reverse his order only a few days after receiving these letters. He never explained what led to this change and stated only that “I have reconsidered the restrictions placed on *Fun Home* and the process taken to reach those restrictions” and directing that it be returned to the shelf with a note that “[t]here may be a committee established to review the book in the future.”⁹⁴

The interest group support would prove crucial in one further development in North Hunterdon. The Board of Education, on March 19, just a month after *Fun Home* was returned to the shelf, altered school policy, apparently without significant discussion.⁹⁵ In an 87-page document proposing changes to 16 policies, Policy 2530 on media (i.e., library) resource materials was removed completely and replaced with a new shorter policy. The new policy omitted a section on the objectives of library selection⁹⁶ and kept only standards for selection. These standards generally tracked with the original policy but, as Patricia Mastricolo⁹⁷ noted, it left out two criteria: that the material “[b]e relevant to today’s world” and that materials “[p]rovide a stimulus to creativity.”⁹⁸ Mastricolo opined that both omissions were dangerous in discouraging creative education that embraces modern issues, such as queer identity in *Fun Home*. The most significant change, however, was that where the original policy provided that “the responsibility for media selection materials is delegated to the certificated library/media personnel” the revised policy stated that the “Superintendent shall be responsible for the selection and maintenance of all resource materials” and that the “Superintendent will evaluate the continuing effectiveness and utility of resource materials and recommend to the Board the removal of those materials that no longer meet the standards” in 2530.⁹⁹ The policy did note that any removal of items would be treated in the same manner as a public complaint, meaning a committee review that was denied *Fun Home*.

Professional groups again raised concerns. Most significantly, NCAC noted that the original policy “played a significant role in safeguarding . . . students’ right to a broad and censorship-free education by entrusting trained librarians with book selection” and now the district “vests absolute authority in the sole person of the Superintendent to select and remove books without a review of their educational merits.” This change, NCAC warned, would create the perception that decisions “will be made on [the superintendent’s] personal opinion, rather than pedagogical goals. That perception is further supported by the fact that these amendments immediately followed your effort to remove *Fun Home* based on opinion about a single page, rather than a review of the book as a whole.”¹⁰⁰ Thus, the *Fun Home* episode suggested a nefarious motive for the removal of professional authority and replacing it with an official motivated by personal rather than pedagogical concerns. The New Jersey Association of School Librarians echoed similar themes around respect for the professional expertise of librarians and noted that an informal survey of its members found no other similar policy in the state.¹⁰¹ The local county library association suggested that the district was attempting to erect a system of official orthodoxy: “By ‘protecting’ your administration and yourselves from the mere possibility of discourse, you are robbing your students of the opportunity to learn new ideas and to build empathy based on the stories and experiences of others.”¹⁰²

This onslaught of criticism caught some board members off-guard. After a local resident sent a message of vigorous opposition to the policy changes,¹⁰³ one board member wrote to the superintendent’s office asking for an explanation because she did not see any proposed policy changes on the next agenda and seemed to not realize that the complaint was about changes already adopted.¹⁰⁴ Perhaps exhausted from one public controversy over censorship already, Board President Rob Kirchberger delivered a statement before the April 30, board meeting.¹⁰⁵ Kirchberger denied any nefarious motive in the changes, arguing that the changes had been recommended by a policy development company the district hired to review its policies and make sure they were

within the norm for New Jersey schools. He stated that the revisions “were not intended to place sole authority for selecting or removing resource materials in the hands of the Superintendent” but acknowledged that the various professional organizations had raised legitimate concerns that the role of the librarian was not specified and that he met with the school librarians “to discuss further policy revisions to address concerns raised over the past several weeks” and promised that the language would be clarified in the future to answer these objections.¹⁰⁶

Fun Home defenders were forced to adopt different strategies. In North Hunterdon, the librarian first focused on professional expertise combined with the need to respect established school policies. Faced with a principal and superintendent intent on disregarding both policies and professional judgments, the key strategy turned to calling for the help of external interest groups to amplify both the professional concerns but also bring a risk of public exposure and the specter of litigation. In Watchung Hills, the professional competence of the school lined up behind a defense of the students’ right to read. Having invested time and resources into the selection and training of staff for use of *Fun Home*, the school was not willing to remove it and stressed that existing policy already provided challengers most of what they demanded. Watchung Hills took the extra step to expand the curriculum to include two additional novels. This compromise managed to keep the integrity of the curriculum intact while also answering the concerns about students who opt-out of *Fun Home* being removed from the classroom environment. While Watchung Hills may have hoped that this would end the controversy, some challengers continued to press their case in a new venue: court.

Fun Home goes to court

When we think of lawsuits over book controversies, we think of challenges like *Pico* where the school removed the book(s) in question and students sued the school seeking to reverse that decision. As Watchung Hills retained the book, this type of lawsuit was not necessary. Certainly, the decision to retain a book does not implicate the First Amendment and *Hazelwood* provided a broad degree of deference to curricular decisions. Lawsuits against decisions to retain have occurred, however. One prominent example was *Parker v. Hurley*.¹⁰⁷ In *Parker*, two sets of parents demanded that the school remove or restrict access to various books depicting same-sex couples and that their children be removed from any instruction on the topic. When the school refused, the parents sued articulating a hybrid violation of parental rights and free exercise of religion. The First Circuit concluded that parents did not have a constitutional right to dictate curriculum and upheld the school’s decision. A similar challenge attacking the decision to retain *Fun Home*, thus, would appear to be futile. Disgruntled challengers¹⁰⁸ in Watchung Hills, however, turned to a different theory: the state’s obscenity law.

Led by Daniel Gallic,¹⁰⁹ whose son was in the first class to read *Fun Home*, a small group sued Watchung Hills. Gallic’s suit alleged that his son “suffered damages as a result of [being] required to read the book including emotional, psychological and other damages.”¹¹⁰ While this would seem to be the basis for a personal injury claim, Gallic’s theory of the case turned upon New Jersey’s law governing obscenity for minors.¹¹¹ Gallic correctly noted that “a person who knowingly sells, distributes, rents or exhibits to

a person under 18 years of age obscene material is guilty of a crime of the third degree.”¹¹² The key issue, however, is the definition of obscenity for this purpose. Gallic cites only part of the following definition:

“Obscene material” means any description, narrative account, display, depiction of a specified anatomical area or specified sexual activity contained in, or consisting of, a picture or other representation . . . which by means of posing, composition, format or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the area or activity.¹¹³

Gallic’s claim left off all the italicized text. This omission tracks with the discourse found in the Watchung Hills challenges. Gallic assumed that because *Fun Home* contained images of oral sex and masturbation that it obviously falls within the statute. This reiterates the challenges made via email that such images are pornography and too dangerous to provide to immature minds. Gallic apparently considered the issue so obvious that there was no need to address the second key element of the statute he sought to enforce: the prurient interest requirement. Gallic made the classic error of obscenity law by assuming that depictions of sex inherently are obscene. One of the few clear, foundational statements of obscenity law, however, is that “sex and obscenity are not synonymous.”¹¹⁴ As obscenity law has not been kind in the past half-century to attempts to criminalize literature, ignoring the requirement presented a serious problem for Gallic’s claim.

Gallic relied principally on an expert report from Judith A. Reisman, a communications Ph.D. employed by Liberty University School of Law and a specialist in campaigning against queer identity and rights. In 30 pages, the report never addressed the actual requirement that *Fun Home* be prurient to even plausibly fall within the New Jersey statute. Reisman’s report instead focuses an extended amount of attention on an argument that Watchung Hills was running some type of illegal psychological experiment on its students because it referred to its initial use of *Fun Home* as a “pilot study.”¹¹⁵ Reisman’s report presents *Fun Home* as part of “A Hidden Agenda in Text Readability Targeting Ages 8–9”¹¹⁶ making the leap that it is part of a shift in young adult literature towards realism in sexuality and that cartoons can be pornography used to “groom” children.¹¹⁷ Never once does Reisman’s report actually address the legal requirements for obscenity under New Jersey law. Instead, it reads as a political attack on the representation of queer identity. While many of the Watchung Hills challengers sought to avoid direct advocacy of the erasure of queer people from school, Reisman advocates it: “Nor should the [school] be permitted to offer other GLBTQUI+ or similar sexualized books to captive children as [the school and school board] are herein documented as irrational ideologues indifferently exposing school children to obscenity and pornography.”¹¹⁸ Exclusion of *Fun Home* alone was insufficient, all representations of queer identity had to be expunged as well because they are inherently sexualized and ideological.

When Watchung Hills argued¹¹⁹ that Gallic simply ignored the terms of the statute being invoked the plaintiffs again failed to provide any substantive argument. Instead, Gallic declared that “there is no legitimate basis to include a book on a mandatory reading list with obscene pictures when so many alternatives exist.”¹²⁰ Instead of actually addressing the requirements of obscenity law, Gallic cited to both *Hazelwood* and *Pico* for

unclear reasons as both would lend support to Watchung Hills having vast discretion over its curricular decisions, including the decision to retain a novel. This failure to actually address the constitutional requirements of obscenity was not missed by the Superior Court which noted that “plaintiffs did not analyze whether *Fun Home* meets the definition of ‘concentrate prurient interest’” under the statute.¹²¹ Ultimately, however, this failure did not matter to the suit because Watchung Hills noted a far more fundamental problem: Gallic was attempting to use civil courts to enforce criminal law. Gallic’s response oddly denied this argument forcefully before stating that the suit was brought to stop Watchung Hills “from violating the criminal statutes of New Jersey” and that irreparable harm would be inflicted from the “failure to enjoin . . . efforts to commit a criminal act.”¹²² As this was a clear admission that the civil suit was an attempt to circumvent the criminal justice system, presumably because no responsible prosecutor would file charges in this case, the Superior Court dismissed noting that the “prosecution of complaints based on alleged violations of the state obscenity laws must be tried in” criminal and not civil court.¹²³

Discussion

The *Fun Home* controversies illustrate a number of interesting dynamics that fit into and expand upon existing book challenge literature. The findings on challenger discourse tracks the established literature, specifically Emily Knox’s work, quite closely. At a fundamental level the challengers in these schools embraced the idea of childhood innocence that has driven a generation of conservative advocates. Preserving that innocence cannot be the job of the parents alone because there are too many avenues through which corruption can reach students. Knox found that challengers often invoke notions of moral decline and “argue that public institutions are essential partners in stemming the moral decline of society within a local community.”¹²⁴ The *Fun Home* challengers, especially in Watchung Hills, articulated an understanding of public institutions that included a requirement that they represent the dominant morals of the community. And by dominant morality, they clearly understood their moral choices as being the only legitimate ones, they represented the whole community. Thus “[t]he external community view differs from the internal view” of elite members of the school and “[i]t’s clear the reason [other] options were rejected has nothing to do with our community’s values.”¹²⁵ Schools must be understood as a representation of that community and seek to instill in children the virtue of the (presumed) majority. The North Hunterdon Superintendent echoed this idea when he noted that providing access to *Fun Home* could be seen as debauching the morals of minors. The fact that challengers could present no evidence that their views were dominant did not matter, they cannot conceive of anyone rationally disagreeing with them and public institutions have a duty to assist parents in the development of such virtue. This all serves to confirm and add evidence to Knox’s findings about challenger discourse.

The two controversies explored here also add to that literature. First, the challenger discourse engages with law in interesting ways that reflect the lingering effects of earlier decades of obscenity law. In making their arguments, the challengers all contested the very definition of obscenity by implicitly rejecting the standards set by SCOTUS in *Miller v. California*. As the primary narrative of challengers in both schools was to

focus only on a small number of images, they rejected that the work as a whole mattered. Any bit of nudity, or depictions of sex, made the matter pornography and pornography was inherently obscene and unsuitable. Literary merit could not matter because the images alone were sufficient to be dangerous pornography. And, anyway, other books had strong literary merit and thus could easily replace this book resulting only in the loss of the obscene content. To be certain, few if any of the initial challengers would know the details of obscenity law but their clear and consistent gravitation to themes that reject that constitutional standard suggests the degree to which *Miller* is still contested by forces in society. When the challenge moved into court, however, there is no reason to believe the litigants were unaware of the requirements of obscenity law. No lawyer would fail to address the constitutional standard if the goal was to win. The goal, however, was to continue the political contestation of the nature of obscenity as a means of seeking to purge *Fun Home* from the curriculum. The litigants refused to acknowledge that obscenity law mattered because it was fundamentally misguided: any legal rule that allowed such objectionable images to reach children was clearly incorrect.

The second major addition to the literature turns upon institutional response and tactics of defenders of challenged literature. Public institutions naturally rely on law to guide how they behave. Yet, in the context of literature, curriculum, and libraries the law provides unclear guidance. It is an example of a doctrinal grey area where discretion to act is unclear and easily contested. In Watchung Hills, removal of *Fun Home* likely would have been constitutional. After all, the curriculum a school delivers is by definition school-sponsored speech and *Hazelwood*, not to mention *Pico*, suggests that the school could have removed the book without any constitutional violation. North Hunterdon would be in a different constitutional doctrine but one that is hopelessly confused by the fact that *Pico* was a plurality decision that SCOTUS has never clearly resolved and that the opinion itself is vague on what kind of removal would be allowed. As NCAC warned the school, a federal court had invalidated a parental permission restriction on *Harry Potter* in school libraries but what it failed to note is that the school board there admitted that it was restricted because the series was viewed as promoting Wiccan beliefs and if *Harry Potter* promoted Christianity then it would have been left on the open shelves.¹²⁶ Similarly, in the other two most prominent victories for the right to read, federal courts struck down attempts to remove or restrict access to books with queer characters or families solely because the relevant actors disagreed with the presence of such themes in schools or libraries.¹²⁷ Had North Hunterdon decided to continue its restriction on *Fun Home*, any legal standard would turn upon the declaration in *Pico* that schools may be able to remove educationally unsuitable books. This phrase was never defined, unfortunately, and to a significant degree the challengers and defenders of *Fun Home* offered various methods of measuring this concept of suitability. In support of restriction, North Hunterdon could have argued that visual depictions of nudity, masturbation, and oral sex were all unsuitable for a high school population ranging as young as 14. While this is open to contestation, it is a strong position to defend the restriction in a doctrine that provides a degree of discretion to the school. Where courts have invalidated such restrictions, the decision relied upon evidence of an unambiguous rationale of personal disagreement with the message of the book. The emails in North Hunterdon never expose such a bias against queer voices and Cottrell even notes the number of books

embracing queer inclusive perspectives the library has on the shelf. Absent other evidence, a consistent focus on the images of the book likely would have stood up to an attack under *Pico*.

In these disputes, the defenders of *Fun Home* occupied different institutional positions. In Watchung Hills, the school committed itself institutionally to the support of access. As an action of the school as a whole, through its curriculum, the adoption of *Fun Home* committed the school to its defense in a way that would be different if the book had only been adopted by a single teacher. In North Hunterdon, however, the librarian was faced with a unified administration with the power to force the removal over any objections. The librarian, thus, sought to deploy outside professional assistance as a means of bringing pressure on the administration. Despite their different institutional positions, both sets of defenders offered similar arguments and they ultimately were all about the educational suitability of *Fun Home*. The defenders all admitted, to some degree, that parts of the book were difficult but argued that a book cannot be judged by pieces in isolation. In this they echo the nature of obscenity law: the work must be judged as a whole with attention to its literary and artistic merit. Watchung Hills, thus, stressed the complexity of the graphic novel and its unusually dense intertextuality as a reason to retain the book. Similarly, the librarian at North Hunterdon and the outside allies noted the overwhelmingly positive critical evaluation of the book. By doing so they not only push back against the arguments of challengers, but also establish a firmer legal ground upon which to establish a decision to retain.

In evaluating book challenges schools must decide how to navigate the doctrinal grey area. In North Hunterdon this manifested initially in an assertion of unilateral power to remove anything that the administration deemed objectionable. It felt no need to justify itself legally, the single image was enough to justify removal. Only after strong external pressure came down on it, with subtle threats of litigation, did the school back down perhaps because it had no one to please as the school never received a complaint about the inclusion of *Fun Home* in the library. In contrast, Watchung Hills sought to deploy the broad curricular discretion to justify the inclusion of *Fun Home*. It acknowledged that the book was always likely to engender criticism but that challengers had to remember to read the work as a whole and see the total value. Despite defending the choice, the school did compromise by the inclusion of two additional options. This answered the concern about students who opted out being excluded from the classroom while maintaining the pedagogical integrity of the assignment. Despite this accommodation, some of the challengers demonstrated that compromise was impossible by filing suit against the school. While the law clearly favored Watchung Hills, these litigants sought to send a message to the general public, likely hoping to force a stronger policy change.

While it is tempting for critics of challengers to dismiss them as out of touch cranks, the *Fun Home* controversies demonstrate that challengers are often engaged in sophisticated political maneuvering. Challenger discourse illustrates an alternative understanding of obscenity law and the responsibility of public institutions. Where the ALA and other entities stress the provision of information to empower individuals to develop their own thoughts and identity, challengers articulate a vision of the state as guide to that development or, at least, as assistant to the parental guidance of moral development. Children cannot be trusted to direct their own future, even seniors on the verge of graduating, and the school has a public responsibility to carefully curate the information

that reaches them. In the *Fun Home* controversies this was primarily focused on a rule against graphic images but challengers across the country frequently expand that to include certain kinds of language or actions to representations of entire groups of people. The study of challenger discourse, then, exposes the ways in which we continue to contest public institutions and the nature of American identity more broadly. And by considering how those public institutions respond, we can better understand the difficulty of navigating a complex doctrinal grey area.

This grey area will certainly become even more important as the battle over critical race theory (CRT) continues. Beginning in 2020 and picking up speed in 2021, conservatives have sought to deploy CRT as a danger to American society and numerous legislatures, boards of education, and university regents have adopted a variety of rules to limit the teaching of CRT.¹²⁸ The anti-CRT attacks will force schools to navigate not only parental and internal institutional pressure but also the pressure from governing institutions, such as legislatures, above them. Additionally, this seems to have inspired a series of broad book challenges. The ALA reports the top ten most challenged books every year and the list in 2020 differed dramatically from 2019 where LGBTQ inclusive books dominated. In 2020, in contrast, eight of the ten had themes of race and inequality that were attacked as being divisive in nature.¹²⁹ As yet another panic around education, the anti-CRT movement will require schools to decide what kind of educational institution they are, or want to be, while navigating the doctrinal grey area explored here.

Notes

1. Bechdel, *Fun Home*.
2. American Library Association, *Library Bill of Rights*, Art. I, II.
3. American Library Association, *Freedom to Read Statement*.
4. Robbins, *Censorship and the American Library*.
5. National Council of Teachers of English, *Students' Right to Read Statement*.
6. Boyer, *Purity in Print*.
7. Fix, "The Evolution of Obscenity Standards in the Common Law World."
8. *Miller v. California*, 413U.S. 15, 24 (1973).
9. On the same day that SCOTUS decided *Miller*, it decided *Kaplan v. California*, 413U.S. 115 (1973) upholding an obscenity conviction based on a book without images of any kind. While SCOTUS was unwilling to state definitively that words alone cannot be obscene, there has never been a successful prosecution again of a book without images.
10. Birmingham, *The Most Dangerous Book*. Perhaps the closest any jurisdiction has gotten to punishing something akin to literature was the attempt in Florida to have 2 Live Crew's album *As Nasty as They Wanna Be* declared obscene. The Eleventh Circuit Court of Appeals, however, rejected this attempt. *Luke Records Inc. v. Navarro*, 960 F.2d 134 (11th Cir. 1992).
11. Strub, *Perversion for Profit*, 103.
12. Knox, *Book Banning in 21st-Century America*, 3.
13. Jenkins, "Book Challenges, Challenging Books, and Young Readers."
14. Hartman, *A War for the Soul of America*, 200.
15. Generally public libraries only require that a challenger be a patron of the library. Schools have varying policies. Some limit challenges to parents or guardians of students, others allow any resident of the district to file challenges. In practice, challenges within schools almost always come from parents regardless of official policies. Rarely challenges are initiated by officials within the institution, such as principals, teachers, or even librarians themselves.
16. Knox, "The Books Will Still Be in the Library," 748.

17. Knox, “Indoctrination and Common Sense Interpretation of Texts,” 14, 18.
18. Knox, “The Challengers of West Bend,” 203.
19. Knox, *Book Banning in 21st-Century America*, 83.
20. Board of Educ. v. Pico, 457U.S. 853 (1982).
21. Pico, 457U.S. at 867, 871. It is worth noting that Brennan did not conclude that these were actual exceptions to the right to read, only that the claimants in Pico conceded that they would be. Generally lower courts have understood these to be recognized exceptions to the right.
22. Two justices joined Brennan’s opinion in full and another offered a different version of a First Amendment right to read. The fifth vote in favor of the students came from Justice Byron White who limited his concerns to a procedural issue only and did not offer an opinion on the First Amendment.
23. In *United States v. American Library Association*, 539U.S. 194 (2003), a plurality upheld a restriction on federal funds requiring internet filters in public libraries without mentioning *Pico*. See *ACLU of Fla. v. Miami-Dad County Sch. Bd.*, 557F.3d 1177 (11th Cir., 2009) (discussing the contested status of *Pico* before ultimately deciding to “assume” Brennan’s opinion controlled).
24. *Tinker v. Des Moines*, 393U.S. 503, 506 (1969).
25. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484U.S. 260 (1988).
26. Brennan’s opinion in *Pico* seemed to suggest agreement, or the possibility of agreement, with this point: the school board “might well defend their claim of absolute discretion in matters of *curriculum* by reliance upon their duty to inculcate community values.” *Pico*, 457U.S. at 869.
27. Ross, *Lessons in Censorship*, 52.
28. There is debate about whether viewpoint discrimination is allowed in *Hazelwood* cases. The First Circuit Court of Appeals allowed viewpoint discrimination in school sponsored speech of a teacher. See, *Ward v. Hickey*, 996F.2d 448 (1st Cir. 1993). Other Circuits have suggested that viewpoint discrimination violates *Hazelwood*. See, *Planned Parenthood of Southern Nevada, Inc. v. Clark County School Dist.*, 941F.2d 817 (9th Cir. 1991); *Searcey v. Harris*, 888F.2d 1314 (11th Cir. 1989). The status of this question remains unclear.
29. *Meyer v. Nebraska*, 262U.S. 390 (1923); *Pierce v. Society of the Sisters*, 268U.S. 510 (1925).
30. *Troxel v. Granville*, 530U.S. 57 (2000).
31. *Parker v. Hurley*, 514F.3d 87 (1st Cir., 2008); see also, *Mozert v. Hawkins County Bd. of Education*, 827F.2d 1058 (6th Cir., 1987); DeFattore, *What Johnny Shouldn’t Read*.
32. For the curious, and those not afraid of spoilers, Vox published an outline of the book with the controversial panels. Abad-Santos and Nelson, “Duke’s Fun Home Controversy.”
33. The data relied upon in this article is available at <https://adventuresincensorship.com/publications-data>
34. See Lovell, *This is Not Civil Rights*, 28.
35. Makin, “Fun Home, graphic novel, has Watchung Hills parents at odds.”
36. While a commentator at Comic Book Legal Defense Fund noted that this involved both North Hunterdon and Voorhees High School my FOI request returned records primarily from North Hunterdon only. It is possible that the other school’s officials participated through means not subject to a FOI request, such as a verbal command, or that my FOI request was too limited or misunderstood by the responding official. Regardless, I have simplified presentation to focus on that school. Masticolo, “Two New Jersey High Schools Restrict *Fun Home*.”
37. This email references a meeting held either on 31 January or 1 February where the concerns were first voiced. This email is the first official record I possess.
38. A number of emails included the same form letter complaint. As my interest is in challenger discourse, I focus on communications that either added to this statement or presented their own argument independently. This form message read as follows: “Thank you for allowing us to voice our concerns at the last board meeting on June 5th. To reiterate, we are concerned with the explicit graphic images showing nudity, oral sex and masturbation in

the book ‘Fun Home: A Family Tragicomic’ by Alison Bechdel, which is currently included in the 12th grade English curriculum for next year. We are also very concerned with the idea of an ‘opt-out’ option in fear that the children are then being separated from the class. We are offended by the sexually explicit images in this book and ask for your support in replacing this book with another book that will meet the intended educational goals without such offensive images.” T.C. WHRHS 6/19/19.

39. S.D. WHRHS 5/18/18. Later Watchung Hills challenges would expand this number to seven pages.
40. Cottrell NHRHS 2/1/29.
41. R.K. WHRHS 6/5/18.
42. Cottrell directive memo NHRHS 2/7/19.
43. Cottrell NHRHS 2/14/19.
44. D.D. WHRHS 6/12/18.
45. Ibid.
46. M.S. WHRHS 6/6/18.
47. Cottrell NHRHS 2/15/19.
48. M.M-M. WHRHS 6/18/18.
49. Ibid.
50. Bender NHRHS 2/14/19.
51. S.L. WHRHS 6/2/18.
52. M.S.P. WHRHS 6/6/18. It is unclear why this challenger invoked gender identity rather than sexual orientation, the thematic focus of *Fun Home*. Perhaps it was caused by the prevalence of trans narratives in the broader public.
53. See note 46 above.
54. See note 48 above.
55. A.L. WHRHS 6/9/18.
56. Ibid.
57. See note 51 above.
58. Another reason may be that few of the challengers were parents in the relevant class. When this controversy started the book was used with 75 seniors. Only one of the challengers in my data specifically mentioned being a parent of a child in that class. Others stated that they were “parents” without clarification of their student being in the class, though some referenced having younger children in Watchung Hills. Most, however, left their status vague, suggesting they were residents of the community. It seems reasonable to assume that residents would not invoke parental rights claims as often as parents with children in a class.
59. T.C. WHRHS 6/19/18.
60. See note 55 above.
61. M.N. WHRHS 6/14/18.
62. H.O. WHRHS 6/8/18.
63. K.C. WHRHS 6/12/18.
64. See note 48 above.
65. K.C. WHRHS 6/12/18.
66. D.S. WHRHS 6/15/18.
67. A.L. WHRHS 6/9/18.
68. M.B. WHRHS 9/13/18.
69. Knox, *Book Banning in 21st-Century America*, 93–118.
70. M.W. WHRHS 6/20/18.
71. See note 55 above.
72. M.M-M. WHRHS 6/18/18.
73. Knox, *Book Banning in 21st-Century America*, 122.
74. Jewett Comments, WHRHS, 5/5/18, 1.
75. Jewett Comments, WHRHS, 5/5/18, 2.
76. Statement of Peter Fallon, WHRHS Board of Education Minutes, 6/5/18, 7935–7939.

77. Statement of Superintendent Elizabeth Jewett, WHRHS Board of Education Minutes, 6/19/18, 7945.
78. Education Committee Report, WHRHS 9/6/18.
79. A musical stage production was developed, beginning off-Broadway productions in 2013. The Broadway production won numerous Tony Awards in 2015 for the Broadway production.
80. Education Committee Report, WHRHS 9/6/18.
81. The new novels were LaCour, *We Are Okay*, and Iweala, *Speak No Evil*.
82. See note 80 above.
83. M.H. NHRHS 2/11/19.
84. My FOI request asked for all book challenges filed with the district for the 2018–19 school year. The district noted no responsive records existed so no one had ever issued a formal complaint against *Fun Home*.
85. See note 83 above.
86. I have to infer the librarian's role in triggering the involvement of outside groups, I have no direct evidence of this. My inference is based largely on the nature of the librarian's objections and the professional training received that emphasizes the reporting of such instances to the ALA's Office of Intellectual Freedom. Superintendent Jeffrey Bender believed that the librarian was the source of the complaint to outside groups as well, Bender NHRHS 2/14/19.
87. Letters were also sent by the New Jersey Association of School Librarians, Intellectual Freedom subcommittee, and the New Jersey Library Association making similar points.
88. ALA OIF Letter to NHRHS 2/15/19, 1.
89. NCAC Letter to NHRHS 2/19/19, 1 (emphasis removed).
90. Counts v. Cedarville Sch. Dist., 295F.Supp.2d 996 (W.D. Ark. 2003).
91. NCAC Letter to NHRHS 2/19/19, 2.
92. Sopelsa, "N.J. Governor Signs LGBTQ-Inclusive Curriculum Law."
93. NCAC Letter to NHRHS 2/19/19, 2.
94. Cottrell NHRHS 2/19/19. Having been accused of debauching the morals of minors, the librarian responded by insisting the Cottrell confirm that Bender approved his order and he did so. M.H. NHRHS 2/22/19.
95. Board of Education Minutes, 3/19/19, does not mention debate or discussion of these items.
96. Original Policy 2530 Resource Materials, adopted May 1, 2001, included six different objectives. For example, "To provide materials which realistically represent our pluralistic society and reflect the contributions made by these groups and individuals to our American heritage" as one example.
97. Masticolo, "Policy Change in NJ School District Paves Way for Censors."
98. Original Policy NHRHS 2530.
99. Policy 2530 Resource Materials, revised March 19, 2019.
100. NCAC Letter to NHRHS 4/24/19.
101. New Jersey Association of School Librarians Letter to NHRHS 4/8/19.
102. Hunterdon County Librarians Association Letter to NHRHS undated.
103. M.M. NHRHS 4/27/19. Among other things M.M. invoked book burning in Nazi Germany and accused the board of setting up the superintendent as censor, threatening to go to the ACLU, NCAC, ALA, and media sources.
104. Cheryl Allen-Munley NHRHS 4/27/19.
105. Kirchberger Hand Carry statement 4/30/19, 04302019-1.
106. While outside the scope of this article, this is a plausible explanation. My FOI request was specifically designed to capture any discussion by Bender of Policy 2530 in the relevant time period to see whether the changes were motivated by the *Fun Home* experience. The request resulted in almost no records. It is certainly possible, however, that any such information was kept out of official records but the email record, at least, does not support the suspicion leveled against the superintendent.
107. Parker v. Hurley, 514F.3d 87 (1st Cir., 2008).

108. I make no claim that the lawsuit represents all of the original challengers. It appears all of the plaintiffs were involved in the initial challenge but that does not mean that non-plaintiffs supported the suit, even if some threatened litigation in their emails.
109. There were five plaintiffs on the suit but I will use Gallic as a shorthand to simplify presentation.
110. Gallic, et al. v. Watchung Hills Regional High School Board of Education, et al., C-012032-19 (N.J. Super.), Verified Complaint, 5.
111. N.J. Code of Criminal Justice 2C:34-3.
112. N.J. Code 2C:34-3(b)(1).
113. N.J. Code 2C:34-3(1). Gallic, et al. v. Watchung Hills Regional High School Board of Education, et al., C-012032-19 (N.J. Super.), Verified Complaint, 10.
114. Roth v. United States, 354U.S. 476, 487 (1957).
115. Reisman Report, 7-9.
116. Reisman Report, 12.
117. Reisman Report, 12-21.
118. Reisman Report, 5.
119. Gallic, et al. v. Watchung Hills Regional High School Board of Education, et al., C-012032-19 (N.J. Super.), Brief in Opposition to Plaintiffs' Order to Show Cause and in Support of Motion to Dismiss.
120. Gallic, et al. v. Watchung Hills Regional High School Board of Education, et al., C-012032-19 (N.J. Super.), Brief in opposition to Defendant's Motion to Dismiss and in Further Support of its Order to Show Cause, 18.
121. Gallic, et al. v. Watchung Hills Regional High School Board of Education, et al., C-012032-19 (N.J. Super.), Order Denying Injunction and Dismissing Complaint with Prejudice, 6/10/19, 7.
122. Brief in opposition to Defendant's Motion to Dismiss, 17.
123. Gallic, Order Denying Injunction and Dismissing Complaint with Prejudice, 6/10/19, 10. The Superior Court went on to clarify that even if the cause could go forward the plaintiffs would lose because none of the named plaintiffs faced harm and thus could not have standing to claim an injunction and they had failed to exhaust the administrative remedies within the state's educational system, at 10–14.
124. Knox, *Book Banning*, 70.
125. See note 68 above.
126. Meadors, *Harry Potter and the Cedarville Censors*, 106–118. The case was Counts v. Cedarville Sch. Dist., 295F.Supp.2d 996 (W.D. Ark. 2003).
127. Case v. Unified School Dist. No. 233, 908F. Supp. 864 (D. Kan. 1995) (invalidating a school's removal of *Annie on My Mind* from the library); Sund v. City of Wichita Falls, Tex., 121F. Supp.2d 530 (N.D. Tex. 2000) (invalidating relocation of *Daddy's Roommate* and *Heather Has Two Mommies* from children's shelves to general fiction shelves).
128. Mervosh and Heyward, "The School Culture Wars."
129. The Office of Intellectual Freedom of the ALA compiles self-reports from libraries and schools. It is unknown how representative these self-reports are and the ALA does not disclose the underlying challenges for the protection of reporters. The lists can be found at <https://www.ala.org/advocacy/bbooks/frequentlychallengedbooks/top10>

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