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Opening Statement of Chairman Jamie Raskin Hearing on “Free Speech Under Attack: Book Bans and Academic Censorship” April 7, 2022

Good morning. Thank you to our witnesses for joining us today and thanks to all the Members who are participating in this important hearing.

In 1943 in *West Virginia v. Barnette*, the Supreme Court struck down compulsory flag salutes as a violation of the First Amendment, stating that: “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 or force citizens to confess by word or act their faith therein.” In 1969, in *Tinker v. Des Moines School District*, which struck down Mary Beth Tinker’s suspension from middle school for refusing to remove her black armband protesting the Vietnam War, the Supreme Court affirmed that neither teachers nor students “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate” in *Tinker v. Des Moines School District*.

In 1982, in *Board of Education v. Pico*, the Court rejected the effort by a town school board in New York State to strip objectionable books from public school libraries. The members had gone to a conference promoting censorship of offensive and vulgar books and came back with a target list, including *Slaughterhouse-Five* by Kurt Vonnegut, Jr., *Best Short Stories of Negro Writers*, edited by Langston Hughes, *Go Ask Alice* (by an anonymous author), *Black Boy* by Richard Wright. After widely brandishing a compilation of prurient, lurid, and profane passages, the Board overrode its own censorship committee, which had recommended purging only two books from the schools and censored nine of them.

When the case got to the Supreme Court, the majority sided with students claiming that the removal of books from the school library effected a form of thought control totally antithetical to the First Amendment. Justice Brennan, who was nominated to the Court by President Eisenhower, announced the judgment of the Court and delivered an opinion that was joined by Justice John Paul Stevens, who had been nominated by President Ford, Justice Harry Blackmun, who had been nominated to the Court by President Nixon, and Justice Thurgood Marshall, who had been nominated to the Court by President Johnson. So, this was a decision dominated by Supreme Court Justices nominated by GOP Presidents, a little food for thought.

In *Pico*, Justice Brennan found that the Constitution protects not just the right to speak but “the right to receive information and ideas.” The First Amendment plays the central role in “affording the public access to discussion, debate, and the dissemination of information and ideas.”

Freedom of inquiry, the Court ruled, extends to school libraries, and the selective removal of books from libraries because someone considers the content offensive “directly and sharply” implicates students’ freedom of speech and thought. In school libraries, “the regime of voluntary inquiry holds sway.” The answer to books whose content or viewpoint you oppose—check out this powerful logic—is to not read them or to write a negative review or even, shades of Voltaire, to write your own book in answer.

The First Amendment, I used to tell my constitutional law students, is like Abe Lincoln’s golden apple of liberty. Everybody just wants to take one bite out of it—someone hates left-wing speech and wants to censor it and someone hates right-wing speech and wants to censor it, someone wants to censor hate speech about gay people

and someone wants to censor speech about the love lives of gay people. Someone wants to censor Mark Twain's *Huckleberry Finn* because it uses the N-Word and someone else wants to censor Ibram Kendi's *Antiracist Baby* because they think it means babies can be racists. Everybody wants to take a bite out of the apple, and if we allow all those bites, there will simply be no apple left. The way to save the apple for us all is to tolerate the speech you abhor as well as the speech you agree with. If we cancel or censor everything that people find "offensive," nothing will be left. Everybody is offended by something, and that is why other people's level of offense cannot be the metric for defining whether my rights are vaporized.

There's a famous story about Lenny Bruce the risqué comedian from the middle of the last century, and someone said his show should be shut down because it offended him. And Lenny Bruce said, "my parents came to America to be offensive and not to be thrown in jail for it."

Now, during National Library Week—a time to celebrate intellectual curiosity, scholarship, freedom of inquiry, and freedom of expression—basic intellectual freedoms are under attack again.

In 2021, the American Library Association's (ALA) Office for Intellectual Freedom recorded the highest number of censorious challenges to library books in its 20 years of tracking this data—729 challenges encompassing nearly 1,600 books. And let me be clear what challenge means—it means targeting books to censor them.

So, what does 729 challenges mean? In Texas, just one of these attempts to censor books, implemented by a state legislator, has initiated the review of at least 850 books in every school district in Texas. There are over 1,000 school districts and 8,000 public schools in Texas.

This challenge alone will require tens of thousands of teachers, librarians, and administrators to spend hundreds of thousands of hours reviewing these books to implement a regime of censorship. And this at a time when school resources are already stretched thin and states across the country are facing terrible teacher shortages.

The vast majority of books being targeted for censorship are not mandatory or part of the curriculum for students to read. They are books of choice—students can pull them off the shelves if they want to and check them out. Or they can ignore them entirely.

So what books are being targeted for censorship? We may hear from some colleagues that the only books being challenged are salacious, prurient, sexually vile, hateful, or driving our children toward deviant behaviors and lifestyles. This is not true. Some old favorite targets are back, like *Catcher in the Rye*, *Native Son*, and *Huckleberry Finn*. I would also be surprised if we did not hear excerpts from *All Boys Aren't Blue*, a coming-of-age memoir about a gay Black child, or *Gender Queer*, a memoir about a non-binary, asexual person coming to terms with themselves. A frequent target these days is the Pulitzer Prize winning novel about slavery and trauma, *Beloved*, by Nobel laureate Toni Morrison.

Obviously, it is a legitimate subject for parents, teachers, principals, and school boards to discuss which books are the best and most age-appropriate curricular choices for different age groups and grades. This is what educators do and the best ones include families, parents, and experts in the decision-making process.

That normal curricular and library selection process is completely different from whipping people into a moral panic over the use of this or that word or passage in a book and then demanding its removal from a library or banning from a school.

Fashions in censorship change. For a great deal of American history, books were censored because they were considered scandalously indecent, like *Lady Chatterley's Lover*, or politically subversive of the slavery system, like *Uncle Tom's Cabin*, which was seized, censored, and burned in many southern states as propaganda and miscegenationist filth. **Many books are being targeted for censorship these days simply because they address racism or white supremacy as historical or sociological realities or address LGBTQ+ issues—because the protagonist or author is gay or a person of color, or for some other allegedly objectionable reason.**

Now I actually wrote a book, *We the Students*, which is sponsored by the Supreme Court Historical Society and analyzes the constitutional freedoms of students, families, and teachers in public schools, that is actually one of several hundred books being aggressively targeted for removal from public schools in Texas. I am certain that it must be the first book ever sponsored by the Supreme Court's own Historical Society which is now being slated for censorship. I only wish that the censors would read my discussion of *Board of Education v. Pico* at p.59 before they censor it.

Most books being targeted for censorship are books that introduce ideas about diversity and our common humanity, books that help teach children to recognize and respect the humanity in one another. The books on these poster boards have all been targeted for censorship or banned from schools. *This is Your Time*, by Ruby Bridges, a remarkable figure in the American civil rights movement who we have the honor of hearing from today, has been challenged and targeted for censorship. Why? Simply, because it is said that a book describing the story of how a little girl was one of the first children to integrate public schools in the midst of virulent racism may make white children feel uncomfortable. This of course radically understates the powers of empathy, compassion, and solidarity that all children have. It also suggests that the actual lived experiences of certain people should be suppressed if learning of them would make other people uncomfortable, a farfetched, unworkable, and unjust principle that cuts against the American embrace of free expression.

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