**SLIDE 1: Title Slide**

**ACT 1 – INTRODUCTION (Newscasters 1 (SM) and 2 (ABL))**

**SLIDE 2**

**SM**: Good evening I’m [INSERT NAME] and welcome to PNN News.

**ABL –** And I’m [INSERT NAME].  Tonight we bring you a special in-depth news report on a trend we are seeing across the United States…

**SLIDE 3**

Book bans.  This evening we’ll be looking into the heart of this matter in real time, when we broadcast the School Board meeting in Anytown America, where this issue is front and center.

**SM:** To give our audience some perspective, bans on books are nothing new.

**SLIDE 4: Book Bans in History**

The first printed book appeared in 1473, but books have existed in handwritten form since some time around 500 B.C.  And one of the earliest efforts to ban books was in 259 B.C., when the ancient Chinese emperor Shih Huang Ti, began eliminating historical texts because he deemed them to be “subversive”.  Another example was in 35 A.D., when the Roman emperor Caligula banned the reading of Homer’s The Odyssey because he objected to the ideals of Greek freedom depicted in the text.

**SLIDE 5: New Canaan**

America’s first effort to ban a book pre-dated the founding of the United States by more than a century.  In 1637 the Puritan government of Quincy, Massachusetts banned the book “New English Canaan” by Thomas Morton.  They took umbrage at its “harsh critique” of Puritan customs and power structures.  Go figure.

**SLIDE 6: Constitution**

**ABL:** After the United States was formed, its founders, and in particular James Madison, the primary author of the Bill of Rights, took steps to  limit the government's power and protect individual liberties. This included drafting and enacting the First Amendment, which was written in response to the state-sponsored religious conflict and oppression that had occurred in America in the prior two centuries.  The primary purpose of the First Amendment was to prevent the government from taking an action  that would result in an abridgment of speech.

**SLIDE 7: “It would be a barren marketplace of ideas that had only sellers and no buyers”**

**SM:** Since the ratification of the Bill of Rights, the scope of the protections afforded by the First Amendment have expanded as it was interpreted by the courts.  The protections given to speech were held to apply to both the spoken and the printed word.  It later included non-verbal means of communication, such as dance, or attire.  And courts later found that the right applied both to the provision of information as well as the right to receive it.

Why?  It was perhaps best said by Supreme Court Justice Louis Brandeis, who counseled those living in the United States they could best resolve their differences in values and beliefs by the use of: "more speech, not enforced silence."  Except, of course, in the immediate aftermath of a hotly contested election, at theThanksgiving table with relatives you don’t care about and rarely see.

**SLIDE 8: Limits on Speech**

**ABL:** And yet the right to free speech is not completely unfettered.  There are several categories of speech that are not entitled to protections under the First Amendment.  These include obscenity (which you’ll know if you see it), child pornography, defamatory speech, false advertising, true threats, and fighting words.  Those who seek to limit the spread of information in books through book bans must successfully argue that the books fall into one of the aforementioned categories.

**SLIDE 9: Pico Intro**

**SM:** One of the areas where book bans come up most frequently is in Educational Institutions and libraries.  These entities provide texts and make reading materials available to students.  To ensure the First Amendment is upheld, they are required to create standards to guide in the selection of student materials.  Yet this obligation is in tension with the Due Process clause, which gives parents the right to guide their children’s education.

**SLIDE 10: Obscenity**

**ABL:** But what makes a book “Obscene” or harmful to minors, and who decides?  As for obscenity, the definition varies, but it generally includes materials that lack serious literary, artistic, political, or scientific value and are offensive by community standards.  As the courts have dictated, in making those determinations, state and local governments have enacted laws that allow for the review and removal of books from public and school libraries based on content deemed inappropriate or controversial.

**SLIDE 11: First Amendment Rights**

**SM:** And the same arguments used to exclude books can be flipped on their heads to keep books in place.  For example, one parent may argue to exclude a book because of content they find objectionable.  But another can argue that the importance of their child’s educational environment remaining open to diverse ideas and perspectives is protected by, that’s right, the First Amendment.

**SLIDE 12: Encouraging Diversity**

Along the same lines, publicly supported libraries, including those found in public schools, exist to provide free, equitable, and confidential access to information for the people in their communities, which are often made of individuals from a variety of backgrounds.

**SLIDE 13: Frequently Banned Books**

**ABL:** Many books that have been challenged over the years are widely considered to have significant educational value, offering insights into different cultures, historical events, and social issues. As you can see from the books appearing on your screen, many books well known to the public have been the subject of book bans.  The argument in favor of keeping them is that by removing these books, students are deprived of important learning opportunities.

**SLIDE 14: Anytown, USA**

**SM:** Excuse me [NAME], it looks like the School Board Meeting is about to begin.  Let’s go now to Anytown, America, where a number of community members have come before their local School Board to address  issues related to books in their community.

**NEWSCASTERS WALK AWAY FROM THE TABLE.  THIS IS WHERE THE BOARD SITS.**

**SLIDE 15: School Board Meeting**

**EVERYONE IS GETTING READY TO SPEAK AT THE PODIUM. MEMBER 1 (“JA”) AND MEMBER 2 (“SVB”) SIT DOWN.**

**JA**: Good evening everyone, please take your seats.   The School Board of Anytown is now in session for this specially-called meeting to discuss textbooks and funding for libraries.

**SLIDE 16: Agenda**

We have a quorum with two board members.   Given the number of speakers signed up, we will dispense with reading the minutes.

**SVB**: Wow, it looks like we’ve got a lot of people here tonight so we’ll just get started.  For all speakers, please be mindful about the rules of procedure:  Remarks are limited to 10 minutes; Direct your remarks to the chair; No cussing or personal attacks.  If you need to sneeze, please do NOT do it onto the microphone. It’s flu season, people.

**SLIDE 17: Agenda-Library Books**

**JA:** First on the agenda is a school librarian, Ms. Gloria Ginsberg.  Ms. Ginsberg would like to put forward a resolution to prevent funding from going to any libraries that remove books from library shelves.  Ms. Ginsberg, will you please approach the podium?

**ACT 2 - THE LIBRARY TAKEDOWN**

**SCHOOL LIBRARIAN (KGP)** approaches the podium.

**KGP:** Thank you very much for letting me speak here today.  To be clear, I am not speaking in my capacity as a librarian.  I am a member of the Friends of the Library, and am speaking on its behalf and as an individual.  I am here to try to stop the banning of books in our school libraries because of something that happened to an important author in our community at my school.  I was forced to remove his book from the school’s library.  And as much as I love my job, any library that attempts to deny our children the opportunity to make their own decisions about whether they want to read something isn’t worthy of receiving public school funds!  We are requesting the board pass the following resolution adopting the essence of the text of Oregon SB 1583:

**SLIDE 18: SB 1583**

As the Senate Bill states: Whereas authors have a right to free speech under the First Amendment; and whereas removing a book from the library violates that freedom of speech; be it resolved, that this School Board will not permit school officials to remove or refuse to offer library books or textbooks on the basis that they contain the perspective of, or are written by, members of protected classes, such as people of color, LGBTQX, and religious minorities.

**JA:** That’s uh, pretty broad.

**SVB:** Essentially, it’s a ban on bans.

**KGP:** Yes! And I think you will agree that this is necessary once you hear from the author himself.  Mr. Wright?  Can you please share with the Board what happened?

**AUTHOR (SK):** (comes to the podium)  I’d be happy to.  My name is Iam Wright.

**JA:** I’m sorry did you say Ian [ee-yan]?

**SK:** No, IAM.  [I am]

**SVB:** Interesting name.

**SK:** It is as unique as my incredible artistic creation and embodies my true essence.

**SLIDE 19: Defiant Ascension**

I am the author of the well-known Young Adult fantasy book called “Defiant Ascension”

My book tells the story of Sheena, a princess in the realm of Gandor.  Although she is beloved by her subjects, Sheena is cast out of the realm after she rejects the traditional gender norms of “prince and princess” when she demands that the royal ascension be gender neutral, rather than male dominated as had been historically prevalent in the realm.

After she is cast out, Sheena experiences life free of the strictures of the realm and has the freedom to come to terms with her own identity and sexuality.  Sure, my novel contains some graphic violence and non-explicit romantic encounters, some of which involve same sex or gender neutral characters, but it is a testament to the spirit of freedom to discover oneself and make their way in the universe!.

Since it was a huge success, many school libraries subsequently ordered the book.  So I was shocked to see one day that while walking near the local junior high school in my neighborhood,  my book was sitting in the **recycling bin** that had been placed out on the curb!  I plucked it from the dustbin of history and in doing so noticed that the check out card on the discarded book had been torn out.

I then went in to talk to the librarian, Ms. Gloria Ginsberg.

(OUTRAGED) She told me that the school’s principal, Principal Miller, told her to cull the book from the library’s circulation because (1) no students had checked it out in the past 2 years; and regardless, (2) he didn’t think it was very well written!  She also said she’d been instructed to remove about 60 other books, along with my own.

This lovely woman apologized to me and reassured me that it was clear that Principal Miller didn’t recognize the outstanding artistic merit of my work.  I then departed.

(GETTING WARMED UP/HEATED)

As I left, a student named Skip approached me.  They had overheard my conversation with Ms. Ginsberg.  Skip said they had heard of Defiant Ascension from several friends who had checked the book out the library, yet they could not find it.  They then shared that in addition to overhearing my conversation with Ms. Ginsberg, they had also overheard the librarian and the principal talking about the book. Setting aside for the moment the fact that this young person clearly has a propensity for eavesdropping, they shared that Mr. Miller ordered Ms. Ginsberg to remove a  total of 60 books, but **especially** Defiant Ascension because of its “gay content.”  Apparently, a band of concerned parents had told Principal Miller that students shouldn’t be exposed to such “filth” and the school had to do its part to “Make America Pure Again.”  The heroic Ms. Ginsberg initially refused, telling the principal that removing the books because some community members disagreed with the views and content contained therein would be a violation  of the 1st Amendment. But Principal Miller told Ms. Ginsberg that if she didn’t remove that book he would ensure she would be fired!

**JA:** What is it you are asking us to do?

**SK:** I ask the Board to make clear that this school district will **not** allow books to be banned!  I urge it to adopt the proposed provision for a ban on bans.   **Furthermore,** I want to ensure that individuals such as Ms. Ginsburg are protected from the nefarious actions of Principal Millers ilk, and to put protections in place for librarians who refuse to follow orders that amount to censoring what young people read!  I thank you.  (BOWS)

**SVB:** Thank you Mr. Wright.  I’m afraid your time is up.  We will now open the floor in the event there is someone here who wishes to present a counterpoint.  Is there anyone here who wants to speak against this resolution?

**PRINCIPAL (JG):** Members of the School Board, I am Principal Miller and I oppose this Measure. You can’t just ban all bans.  Not every book belongs in every school library.  Some bans are reasonable.  That’s not just me - that’s what the Supreme Court said in 1982 in *Board of Education v. Pico*.

**JA:** Excuse me Principal Miller, but I’m not sure that was what that case stood for.  That case held that the First Amendment protects not only the right to express ideas but also the right to receive them. The court in *Pico,* held that The First Amendment included the right to read library books of the student's choosing.

**SLIDE 20: Pico Case**

**JG:** Not every book.  What *Pico* does is provide guidance for School Boards to follow when dealing with requests that books be removed from school libraries.

**SLIDE 21: Books sought to be banned in Pico**

The way I read *Pico* is that after a School Board removed some books, it appointed a committee of parents and staff to review them. The committee recommended that some of the books be put back on the library shelves, but the Board overruled the committee, and kept the books off the shelves, on the grounds that the books were "anti-American, anti-Christian, anti-Sem[i]tic, and just plain filthy."

**SLIDE 22: Pico Decision**

Students sued saying their First Amendment rights were being violated, but they lost on summary judgment, because the District Court held the decision was within the School Board's authority. The case went to the Supreme Court …

**SVB:** Yes, where the court said that a Board could not exclude books based on the student’s right to have access to information.

**JG:** Well this was a plurality opinion.  Four justices said that.  But four others said the opposite.  And the swing vote just said he agreed the case wasn’t one for summary judgment.  So the whole thing went back for trial.  And the decision expressly left open the possibility books can be removed in some situations, for valid reasons.  Bottom line, a ban on bans is not justified by *Pico*.

Anyway, that’s all academic so far as this situation is concerned.  Defiant Ascension is pure trash, and Ms. Ginsberg should have followed my instructions.  And this isn’t the first time she pushed back on my orders to take down books.  In fact, I sent you an email this morning demanding that the school librarian be terminated.  She has been insubordinate, disrespectful, and has let her personal beliefs interfere with her job.  I request she be terminated and replaced with someone who will follow my orders – I mean, the law.  Same thing.

**JA:** Thank you for your comment Principal Miler.  The termination of Ms. Ginsberg is not on the agenda, but we will take the information you have provided into consideration as we move forward.  I move that we hear from the next speaker.

**SVB:** I second that motion.

**SLIDE 23: Agenda-Curriculum Concern**

**ACT 3 – TEXTBOOK BANS**

**JA:** Next on the agenda we have Ms. Darwin.  It appears she is objecting to the textbook “That’s Life:  Studies in Biology.”

**SVB:** Ms. Darwin, will you please approach the podium?

**PARENT (RS):** Good evening members of the Board, my name is Robin Darwin and I’m here with my son Andy.  I want to make clear I am not complaining about the textbook.  I’m here to ask that you require his A.P. Biology teacher, Ms. Sandra Hook, to teach evolution as part of my son’s AP biology class. The textbook, “That’s Life”, contains a chapter on evolution, but Ms. Hook totally skipped over the chapter and told the class they didn’t need to read it.   I wasn’t in the room, so I believe my son can explain.

**JA:** Well, he’s not listed as a speaker, but I suppose we will make an exception this one time.

**STUDENT (AM):** (Eagerly comes up to the podium) Hello venerable and Honorifacle Board Members.  So, last week after we finished the unit on heredity and gene expression, Ms. Hook told us she was going to skip over the next unit of the book, which dealt with natural selection.   She said she wasn’t going to teach that chapter because of her own religious beliefs.  She didn’t “agree with” the theory of natural selection because she believes in intelligent design.

**TEACHER (JP):** (Coming up and pushing STUDENT aside) Members of the Board, if I may.  I am Ms. Hook.  And yes, I did tell my class I would be skipping the chapter on natural selection due to my own religious beliefs.

**SVB:** Um, also not signed up as a speaker?

**JP:** (Loudly and proudly) I am a member of the Church of the Flying Spaghetti Monster!

**SLIDE 24: Church of the Flying Spaghetti Monster**

My religion explains that the world was created by an intelligent, though highly inebriated Flying Spaghetti Monster.  Earth is full of flaws because He was drunk when He made it, but He still managed to create pirates!  And Pirates are the absolute divine beings and original Pastafarians from whom we all evolved. So obviously, I find the idea that we evolved from monkeys presented in this AP Biology textbook offensive.  As an American and a Pastafarian, I am asking the School Board to respect my sacred religious beliefs!

**RS:** (PUSHES TEACHER ASIDE) Excuse me, with all due respect, this is our time to speak.  And while you have the right to your own religious beliefs, that does not give you the right to tell your AP Biology students that evolutionary theory is wrong.

**JA**:  Ok, folks, if we could just follow the rules about …..

**JP:**  (Interrupting and agitated) Now hold on, I absolutely did not tell my students that evolutionary theory is wrong.  I only told them that, as a member of the Church of the Flying Spaghetti Monster, I do not believe in evolution, so I skipped that section and spent more time teaching other chapters in the book that I know students tend to struggle with.

**SVB:** Ms. Hook, I’m very sorry but  if you could hold your comments until…

**AM:** (Raising his hand urgently) Point of order!  (Turning to Ms. Hook) But isn’t your job as a teacher to prepare us for the A.P. exam?  Which includes testing on natural selection?  You are hurting my chances of getting a good score on the test. If I don’t get a good score, I won’t be able to get college credit.  Besides, it’s your duty as my teacher to teach the curriculum set by the school board.

**JA**:  (Banging gavel) Order!  We will have order!  Young man, you’re supposed to direct your comments to the chair.  But yes, you are correct.  It is well settled law that teachers have a professional duty to cover the material required by the curriculum. So take comfort in the fact that at least you’ll get a good score on your civics exam.

**SLIDE 25: Peloza Case**

**SVB:** Exactly.  For example, in the 1994 case of *Peloza v. Capistrano Unified School District*, the Ninth Circuit Court of Appeals held that a school district had acted appropriately when it prohibited a high school biology teacher from teaching creationism, which was not included in the textbook.  The teacher argued that their First Amendment rights were being violated, but the court held that creationism is religious, not science, and found that the school has a compelling interest in remaining neutral to avoid violating the Establishment Clause.  It also prohibited him from speaking about his religion while working for the same reason.

**JP:**  But I’m not teaching the students about my own beliefs…

**SLIDE 26: Climate change the decline of Pastafarian Pirates**

**JP (cont.):** …like how how pirates were actually peace-loving explorers and spreaders of goodwill who distributed delectable sugar cane stalks to small children, only to have their reputation besmirched by the history books written by our oppressors.  And I don’t teach them about how global warming and natural disasters are a direct effect of the shrinking number of pirates and their wind-fueled galleons since the 1800s.

That is the difference here .  I’m not saying I should be able to teach my students about **my** beliefs.  I’m just saying that I shouldn’t have to teach natural selection since I don’t believe in it!

**JA:** And as we’ve already explained, the Pico case states that your students also have a fundamental right to receive information and ideas.  And to learn.

**AM:** Yeah, what they said! And what about my right to educational experiences and materials that promote open inquiry, critical thinking, diversity in thought and expression, and respect for others.

**JP:(** ROLLS EYES AND MAKES ARRRRRRRGH NOISE)

**RS:** Look, the bottom line is that the Board of Education reviewed this book and made it a part of the school’s curriculum.  And you are required to follow the curriculum.

**JP:** (Folding arms defiantly) Well in that case, I make a motion that the Board remove That’s Life from the curriculum and replace it with a text that does not include a chapter on evolution.  I know it’s possible to get books removed from the curriculum, because the Tillamook School Board just voted to remove Julie Alvarez’s novel “How the Garcia Girls Lost their Accents” from their high school’s 10th grade honors English curriculum in September.

**SLIDE 27: Garcia Girls Ban Response**

**AM:**  (In disbelief) Can a School Board really do that?

**SVB:**  Actually, we can.  In August of this year the Tillamook School Board voted 3-1 to remove the novel How the Garcia Girls Lost their Accents from the High School’s 10th grade honors English curriculum because it contained inappropriate, sexually explicit passages.

**JP**: Yes!  Districts can review curriculum texts so long as there is a detailed “challenge” or “reconsideration” policy that addresses things like, who is eligible to file a challenge, who makes up the committee tasked with reviewing the materials; what standards must be used by the committee to evaluate the materials; and whether the district has adopted any educational philosophies or equity principles that must be considered before making a recommendation to the School Board.

**JA:** That’s correct, Ms. Hook.  But school boards have to also comply with state and federal nondiscrimination laws when making curriculum decisions. Federal laws such as Title VI and Title IX.  Those laws require schools to ensure their curriculum and programs are free from bias and discrimination on the basis of sex, race, color, or national origin.

**SVB:**  And Oregon goes further than the federal requirements.

**SLIDE 28: Oregon Law**

**SVB:** Oregon law requires that text books and other instructional materials address the contributions of categories of individuals who have been historically overlooked, including women, immigrants, refugees, members of the LGBTQmiscX community, and more.  Oregon also has some standards that specifically require the study of texts offering multiple perspectives and points of view, often exploring inequalities and structural and historic oppression.

**JP:**  (IN A HUFF) OK, then in keeping with the requirement that curriculum offer multiple perspectives, why can’t I teach my students about the Flying Spaghetti Monster alongside evolution and other scientific theories?  I’m sure my students would be fascinated to learn that gravity isn’t real.

**AM:** What!?

**JP:** That’s right.  In fact, everything on Earth is held in place by the Flying Spaghetti Monster, pressing down on it with his Noodly Appendages.  You can tell which humans He likes the most.  They tend to be shorter because he spends more time pressing them down than the non-believers.

**RS:**  I’m going to move right  past whatever you just said and go back to the last thing I understood, which was the question, “Why can’t I teach students about my own beliefs alongside evolution?” 

**SLIDE 29: Edwards v Aguillard**

The short answer is that the courts have ruled that creationism is not science, *it’s a religious belief.* And publicly funded science textbooks can’t be tailored to a particular religious belief.  You can’t refuse to teach a chapter in a textbook because you don’t agree with it. And the school board can’t remove a textbook from the curriculum because it doesn’t align with your specific religious views as a Pastafarian.

**JP**. Well I still don’t understand how removing a textbook forcing me to teach evolution is any different from Tillamook county removing a novel with sexually explicit passages.

**SLIDE 30: Permissible Restrictions vs. Personal Beliefs**

**SVB**: Ms. Hoom, in the case of the *Garcia Girls,* the committee felt the text was not suitable for use as curricular material for 10th grade English classes because of several sexually explicit passages. The book was removed because of its content, which is very different from asking to remove a book simply because you disagree with its message.

**JA:** That’s correct. Removing a book because it doesn’t conform to a specific viewpoint is not permitted. You’re asking us to remove a book about evolution because it goes against your personal view that the Earth was created by a sauced-up manicotti. You’re not arguing that it’s obscene, or pornographic, or defamatory.

**AM:**  I think I’m starting to get it. The Tillamook County decision was OK because the decision was based on the content of the book being sexually explicit.  But if the board had been asked to remove the book on the basis that it was pro-immigration, that would be impermissible because it would be based on viewpoint?

**JA:** That’s the gist of it, yes. So Ms. Hook, it appears your bid to remove this textbook from the school’s curriculum cannot prevail. While a school board can remove a book based on its “educational suitability,” it violates the First Amendment when it removes a book in an attempt to impose its own beliefs on students.  That’s seen as an attempt to cultivate a “prescribed orthodoxy”.

**JP:** Fine. In that case, I’d like to make a motion to ADD a book to the curriculum.

**SVB:**(sighing) What book?

**SLIDE 31: Gospel of the CFSM & Pastafarian Prayer**

**JP:** The Gospel of the Church of the Flying Spaghetti Monster! If the school board recommends it as part of the curriculum, then surely I can teach it alongside evolution!

**AM:** Oh no you don’t! Even I know that courts have consistently said that public school teachers do not have a right to include religious instruction or advance religious views in their classrooms. No group, no matter how large or small, may use the “organs of government”, of which the public schools are the most conspicuous and influential, to foist their religious beliefs on others!

**SLIDE 32: Other cases prohibiting inclusion of religious materials in school settings**

**JA:** To be clear Mrs. Hook, if you are asking to add your religious text to the AP Biology curriculum, the answer is a clear cut NO. …But…. if you were asking to add it as a text in the library or to the curriculum in a comparative religion class, that might be a different story.

**RS:** Yeah! Your First Amendment right to freedom of religion does not allow you to indoctrinate my kid with your weird rigatoni fettuccine cult.

**JP (glaring):** How DARE You!  It’s Spaghetti, sometimes Ramen, NEVER fettuccine!

**JG:** (Muscling into the podium) Excuse me.  But perhaps while Ms. Hook ponders whether her Spaghetti Monster is serving up this nonsense al dente or if it’s an overcooked mess, I’d like the Board to focus on my request that Ms. Ginsberg be terminated.

**SK (also making his way back):** And what about my request that you adopt the provision submitted by the librarian, Ms. Ginsberg? What are you going to do about my rights?

**KJP: (also coming up)** And what about my proposal for a ban on bans!  And the need to protect me!?

**RS**: And my motion to require the evolution chapter in That’s Life be taught?

**SK, JG, RS, AM, KGP, JP – ALL GO TOWARDS THE PODIUM CLAMORING FOR ATTENTION TO THEIR OWN ISSUES  - THIS IS TO BE A GENERAL MELEE**

**JA:** (Banging gavel) Order!  I call you to order!  If you don’t come to order immediately I will have you all thrown out and all of your testimony will be struck from the record!

**EVERYONE SETTLES DOWN**

**LEGAL COUNSEL 1 (“UL”):** Excuse me, members of the Board?   As your lawyers we recommend that you go into Executive Session so we can discuss the issues before you make a decision.

**SVB:** Great idea.  At this time, the Board executes its right to institute an executive session for the remainder of the meeting. We ask all members of the media and public to leave the room for the board to convene. **IN PRIVATE!**

**JA:** Seconded!  If we’ve both moved, do we actually need to vote?

**SVB**: Might as well.

**JA and SVB:** Aye!

**JA:** Unanimous.  Let’s do it. Guess we’ll need to take up the other matters at a later time.  Will the public please leave the chambers.

(**Everyone else**  go sit down at regular seats)

**UL** and **LEGAL COUNSEL 2 (BV)** join the table with the Board members.

**ACT 4 - EXECUTIVE SESSION**

**SLIDE 33: Agenda-Executive Session**

**BV:** Thank you Board members. We wanted to speak with you privately so we could discuss the implications and risks of terminating Ms. Ginsberg, the librarian.

**JA**: So counsel, can you tell us what the risks are?

**UL:** First of all,I think the Board needs to know that according to the email sent this morning by Principal Miller Ms. Ginsberg’s initial refusal to remove the books was not her only infraction.

**SLIDE 34: MILLER/GINSBERG’S LIBRARIAN DUTIES**

As the School Librarian it was Ms. Ginsberg’s job to report to Principal Miller. Her duties included choosing materials for the Anytown America’s Schools, submitting those materials to Principal Miller for purchase, and putting the materials into the school library system for circulation.

**BV:** As you’ve heard, last year some parents whose children attend the junior high school looked at the school library's book collection to identify titles they deemed inappropriate. They emailed Principal Miller a list of 60 "inappropriate" books and asked him to make sure they were removed from the school library's circulation. The list included Mr. Wright’s book, Defiant Ascension.

**JA:** I haven’t read Mr. Wright’s book.  Can you give us examples of other books on the list?

**SLIDE 35: DEFIANT ASCENSION/LEAVES OF GRASS**

**UL:** Two examples areA Farewell to Arms and Leaves of Grass.

**SVB:** Why would they want to remove Leaves of Grass ?

**UL:** After it was published in 1885, Leaves of Grass was banned from libraries across the country because opponents of the book found its frank portrayal of sexuality and obvious homoerotic overtones 'obscene,' 'too sensual,' and 'shocking.'  Whitman was even fired from his job at the Department of the Interior, when his supervisor saw a copy of the book among Whitman's possessions at work.

**BV:** Hemingway’s A Farewell to Arms has been banned over the years for its sexual content and language. It was first banned in Boston, then in Texas, and in New York as late as 1980.

**UL:** The events you heard in the public session are only part of the story. After Principal Miller told Ms. Ginsberg to remove the books on the List of 60, she attended a “Friends of the Library” meeting in her individual capacity and voiced her objection to the idea of banning books. Ms. Ginsberg then changed the marquee in front of the school’s library to read, "We put the ‘lit' in literature." She wanted to suggest that the school district was engaged in modern-day book burning. Principal Miller threatened to fire Ms. Ginsberg for “insubordination,” “creating a disturbance,” “violation of policies,” “failure to follow instructions,” and “allowing personal opinions to interfere with the job duties and procedures.”   And after she presented her resolution, he’s now brought the matter here.

**JA:** What are the risks to the Board if we support Mr. Miller’s request to terminate her?

**SLIDE 36 – ANTICIPATED CLAIMS**

**UL**: We’ve already heard from a lawyer on her behalf.  She says that if Ms. Ginsberg is fired she intends to bring several claims.  Her attorneys will argue that she was fired for opposing the removal of books that advocated for racial minorities, which is unlawful race-based discrimination under Title 42 Section 1981, and books that advocated for LGTBQ rights, which is unlawful discrimination on the basis of sex under Section 1981. They also claim she was entitled to oppose censorship and attend Friends of the library meetings, and those reprisals violated her First Amendment rights of protected speech and association under Section 1983. She also intends to seek relief under 42 USC 1985, claiming that Principal Miller, for his own personal purposes, conspired with the parents to prevent her from protecting the equal rights of racial minorities and LGTBQ community members.  And she will sue for racial discrimination under Title VII.

**SVB:** I don’t understand. Ms. Ginsberg identifies as a white woman - how can she bring a wrongful termination claim under Title VII for race discrimination?

**SLIDE 37: DISCRIMINATION BY ASSOCIATION –Baker v Llano**

**UL**: Section 1981 allows plaintiffs to bring  associational and advocacy claims. Ms. Ginsberg’s attorney will argue that any termination was based not on her race, but on her support of racial minorities and LGBTQX groups. A librarian in Texas recently successfully brought such claims against a municipality after she was terminated in similar circumstances.

**BV**: We anticipate that the parents involved in choosing the books to be removed will likely argue they contain graphic language, explicit sexual content, and themes that are inappropriate for young minds, and as parents they have the right to decide what their children are exposed to, especially in a public environment.

Our primary defense would be that Ms. Ginsberg’s termination was based on her repeated misconduct as an employee of Anytown and not her advocacy for protected groups.

**SVB**: Can Ms. Ginsberg meet the requirements to state her claims?

**SLIDE 38: Burden of Proof**

**BV**: We think she can.  The key questions are whether she was discriminated against and if the reason for that discrimination was her association with members of a protected class.

When we look at what we know, Ms. Ginsberg  associated with Friends of the Library, which includes members who are racial minorities and/or members of the LGBTQX community.  She protested the removal of books that advocated in support of the civil rights of these groups. She was also threatened with termination by Principal Mille for advocating against the removal of such books. In other words, if he fires her it will be, in part, because she advocated for minority groups against the wishes of the potential defendants or was associated with these groups.

**JA:** But what about the bad acts you said you could point to in support of the decision?

**SLIDE 39- PRETEXT**

**UL:**  Assuming we can meet our burden by pointing out other acts of bad behavior, she can try and persuade the jury that our stated reason was simply a pretext to cover up the illegal reasons that actually underlie the decision to fire her.

**SvB**: Are you telling the board that Anytown can never remove books from its libraries without legal consequence?

**SLIDE 40: WEEDING**

**BV**: No.   Anytown has an official “weeding” policy, which allows books to be removed from the Anytown Library system twice a year if they have not been checked out in five years, are outdated, or are in poor condition.  The fact that the checkout page of the book is missing makes that a challenge to prove.  But more importantly, Ascension only came out 2 years ago, so it may support her argument that our defense is a pre-text.

**SvB**: Well that’s just one book.  Maybe we can find a way around it.  What about the other 59 books  that Principal Miller asked Ms. Ginsberg  to remove?

**BV**: Two other books were The Kite Runner and The Bluest Eye.

**SLIDE 41: BLUEST EYE/KITE RUNNER**

The Bluest Eye is about an eleven-year-old African American girl who wants to have lighter skin and blue eyes because she thinks this will make her life better.  She becomes pregnant after being raped by her alcoholic father.

This book has been challenged and ultimately banned in some cases because it depicts rape, incest, and is considered sexually explicit. In fact, this past August parents in a Missouri public school district sued to remove it and three others from circulation, claiming that they were “harmful to minors.” They also claimed the district violated state guidelines on sex education materials because these “sexually explicit” books were in school libraries. In October, the state court dismissed the lawsuit, ruling the books, including The Bluest Eye, possessed literary value and did not meet the statutory definition of “harmful to minors.” The court cited the fact that they had received accolades or appeared on bestseller lists as proof. It also ruled the books did not qualify as sex education instructional materials because they were not part of the curriculum.

**JA:** Fifty Shades of Grey was also a best-seller.  Thank God it didn’t get accolades!  What about The Kite Runner?  I love that book!

**UL**:  The Kite Runner is a story of Amir, the son of a wealthy man who befriends the son of one of the servants.  They grew up in Afghanistan.  Many years after Amir moves to the U.S., he returns to Afghanistan to rescue his friend’s son from a life of hardship.

According to The American Library Association, in 2017 this was the fourth most challenged book.  It was frequently challenged for depictions of sexual violence and out concerns that the novel promoted Islam and inspired terrorism. It has also been challenged because it contains offensive language, violence, homosexuality, and is sexually explicit.  This past September, a Georgia school board ordered the removal of all “sexually explicit” books from school libraries, including The Kite Runner.

**SvB**: OK, but what about a First Amendment claim? I thought public employees forfeited their rights to First Amendment protections.

**BV**: The law is clear that a public employee’s speech can be limited when they are speaking as an employee, making statements pursuant to their official duties. And an employee's official duties are not necessarily defined by a job description, or  limited to the subject matter of one's employment. Activities undertaken in the course of performing one's job activities pursuant to official duties, even if the employee is not required to undertake the activity, are still official duties.

**SLIDE 42: FIRST AMENDMENT PROTECTIONS PUBLIC EMPLOYEES**

**UL**: Yes, but the Supreme Court has also made clear that public employees do not surrender all their First Amendment rights just because they are public employees. Ms. Ginsberg will argue that she spoke as a citizen and not as a public employee.  While her attendance at the Friends of Anytown Library meetings.  Although her complaints to Principal Miller related to her duties as a librarian, attending those meetings wasn’t a part of her job.  We’re in Oregon, and the Ninth Circuit has held: “when a public employee speaks in direct contravention to [her] supervisor’s orders, that speech may often fall outside of the speaker’s professional duties. Indeed, the fact that any employee is threatened or harassed by her superiors for engaging in a particular type of speech provided strong evidence that the act of the speech was not, as a practical matter, within the employee’s job duties.”

Principal Miller threatened to fire her for attending those meetings, which also helps her pretext argument.  They will argue that her speech involved a matter of public concern (censorship).  If you support her termination, Ms. Ginsberg will have suffered an adverse employment decision, and they will potentially prevail on their defense that her speech motivated the adverse employment action, and outweighed any interest in promoting efficiency.

**JA:** So it’s a risk.  And there’s a room full of unhappy people who all want their way in there.

**SVB**: I move that we go out the back way and not tell anyone.

**JA:** Seconded.  Vote?

**BV, JA, UL, SVB:** (together – raising hands) AYE!

**JA: (bang gavel)** Unanimous again!  Let’s boogie.

**SLIDE 43: PNN Studio**

**ACT 5 - WHERE ARE WE TODAY?**

**BACK IN THE NEWSROOM WITH 2 NEWSCASTERS SITTING IN THE ANCHOR CHAIRS.**

**NEWSCASTER 3 (JR):** Welcome back, I’m PNN special interest reporter [NAME] here with fellow reporter, [NAME].  And [NAME], wasn’t that simply a mesmerizing look at the power of local governments to address the concerns of the citizenry.

**Rob Wilkinson (RW):** It certainly was [NAME].  And it was fascinating to see what happens behind closed doors when someone forgets that they’re being broadcast to the public!

**JR:** Local governments hold a lot of power in determining not only what information the public can have free access to, but also what can happen to public employees that take such matters into their own hands. [NAME], we’ve seen what’s going on in our small local Anytown community - where no decisions were made today - but what is happening across the larger nation ?

**SLIDE 44: Book Ban Trends**

**RW:** Well [NAME], this year looks to be joining the upward trend of people with nothing better to do in their own lives than determine what other people should be doing with theirs.

2024 has been another banner year for attempts to ban books from schools and public libraries across the nation. According to the American Library Association’s Office of Intellectual Freedom, this year there were 414 attempts to censor library materials and services challenging over 1100 different books between January and August. While that doesn’t come quite as close to 2023’s historic numbers, when there were almost 700 hundred reported attempts and 1900 challenged books, the 2024 numbers are far higher than the averages the country was seeing before the pandemic.

**SLIDE 45: Case Status**

And, unfortunately, the legal decisions mentioned by the speakers this evening are still what passes for “good law”. Under *Pico*, school boards cannot remove books from school library shelves simply because they dislike the ideas in the books. The removal must be based on a valid educational reason.  However, that standard hasn’t been too challenging for certain states and areas to challenge.

**JR:** True that.  The *Miller* case*,* which set the standard for determining whether a book is inappropriate  because it is obscene, also still stands.  Books can still be culled if they lack serious literary, artistic, political, or scientific value; if an average person, applying contemporary community standards, would find the work appeals to the prurient interest; and if it depicts sexual conduct in a patently offensive way.  But again, there is that whole “you know it if you see it” thing.

**RW:** In practice, this means that for a book to be banned on legal grounds, there must be a solid, objective reason for banning it. The reason must be grounded in educational suitability or obscenity standards. Subjective disagreements over ideology or content do not provide legal justification for the banning of books. This standard is intended to protect the First Amendment rights of students. It also intended to ensure a broad and diverse curriculum that exposes students to various ideas and viewpoints.

**SLIDE 46: Book Bans Continue to Grow**

**JR:** But based on the numbers of book bans, it’s clear that current laws are not enough.  Although existing laws require an inclusive selection of instructional materials and generally prohibit discrimination in education, no current law explicitly prohibits the censorship of materials based on the protected identities involved in the material's content or creation.  For this reason, efforts to ban books have continued to grow.

**SLIDE 47: Oregon**

**RW:** Oregon hasn’t been immune from the trend. The state librarian says 93 books were highlighted for possible removal from schools and public libraries last year.  That’s more than at any point since data collection on such challenges began in 1987.  In 2022 - Oregon faced the most challenges to school and library books in state history since they State started keeping count.

**JR:** Ms. Ginsberg’s ban on bans was based on  Oregon Senate Bill 1583,which was submitted in the 2024 regular session - it is not yet law.

**SLIDE 48: OSB 1583**

The language of that bill is quite expansive, and would block school boards and other school officials from removing or refusing to offer library books or textbooks simply because they contain the perspective of, or are written by, members of protected classes that can include people of color, LGBTQX people, religious minorities and more.

SB 1583 would prohibit book bans and other forms of censorship in Oregon public schools if the ban or censorship constitutes discrimination based on race, national origin, color, sex, and any of the other categories protected under Oregon law, including military status, or marital or family status. Specifically, SB 1583 prohibits discrimination when governmental authority figures make decisions about the textbooks, instructional or program materials, and library books used in Oregon public schools.

**RW:** Of course, all of this is likely to change in the near future.

**JR:** True, there is alway the possibility that we may not even have a department of education or taxpayer funding for public libraries which would make discussions on these issues moot.

**RW:** Depressing on the one hand, but on the other I can go back to reporting on elephants at the zoo.  Well, that’s our report for tonight.

**JR:** This is [NAME 1] and [NAME 2] for PNN

**SLIDE 49: SAME PASTAFARIAN SLIDE AS FIRST ONE, BUT IT SAYS “PASTAFARIAN  NETWORK NEWS”**

**JR and RW (PUT COLLANDERS ON HEADS AND SAY TOGETHER):** Pastafarian Network News.  Good night, and spaghetti blessings to you all!

**ALL: RA-MEN!**