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PEN American Center, Inc. v. Escambia County School Board

United States District Court, N.D. Florida, Pensacola Division - October 18, 2024 - F.Supp.3d - 2024 WL 4527789

Parents, authors, publisher, and literary organization brought action alleging that school board improperly removed or restricted certain library books based on viewpoint discrimination, in violation of First Amendment.

Board moved for protective order to prevent deposition of board members.

The District Court held that:

- Legislative privilege barred board members' depositions, and
- Board did not waive legislative privilege.

School board's actions regarding access to library books pending review of objections and its decision to remove or restrict access to books were legislative in nature, and thus legislative privilege barred school board members' depositions in action alleging that it improperly removed or restricted certain library books based on viewpoint discrimination, in violation of First Amendment; creation of district-wide policy regarding access to challenged books pending completion of review process was legislative decision, board members' votes were preceded by public notice, consideration of input, and debate and discussion by board members, actions had policymaking function and general application, and members were making judgment call and engaging in line-drawing on matter of public concern.

School board did not waive legislative privilege to preclude deposition of its members in action alleging that their removed or restricted certain library books violated First Amendment by producing documents in discovery without making privilege objection; privilege belonged to members, and members were not parties, and were not responsible for responding to document production request.

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