
BANNING JOSEPH HELLER'S *CATCH-22*: THE CASE OF
MINARCINI V. STRONGSVILLE CITY SCHOOL DISTRICT
AND ISSUES OF FIRST AMENDMENT RIGHTS,
INTELLECTUAL FREEDOM, AND CENSORSHIP

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INTRODUCTION

Intensely critiqued and historically challenged,¹ while widely revered and honored today as one of the most influential books of the past century,² Joseph Heller's *Catch-22* presents a problem without a clear solution. Embraced now as a colloquial term in English, a catch-22 is a situation in which there is no winning party, a resounding decision of indecision.³ Akin to its name, Heller's book turned heads and raised questions in schools across the nation, particularly in Strongsville, Ohio.⁴ In the eyes of the Strongsville City School District, Heller's use of profanity and objectionable language was a prime reason

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¹ In 1972, the Strongsville City School District Board of Education banned the book from its high school library. *Minarcini v. Strongsville City Sch. Dist.*, 541 F.2d 577, 580 (6th Cir. 1976). The book was replaced at the order of the United States Court of Appeals for the Sixth Circuit in 1976. *Id.* at 584. Other challenges to *Catch-22* include a 1974 challenge from Dallas, Texas's Independent School District high school libraries and a 1979 challenge in Snoqualmie, Washington. *Banned and/or Challenged Books from the Radcliffe Publishing Course Top 100 Novels of the 20th Century*, AM. LIBR. ASS'N (Nov. 1, 2011), <http://www.ala.org/bbooks/frequentlychallengedbooks/classics/reasons>. Both challenges were raised due to Heller's use of the word "whores." *Id.*

² See James Kelly, *All-Time 100 Novels*, TIME (Jan. 6, 2010), <http://entertainment.time.com/2005/10/16/all-time-100-novels/slide/times-list-of-the-100-best-novels/#times-list-of-the-100-best-novels>; *100 Best Novels*, MOD. LIBR., <http://www.modernlibrary.com/top-100/100-best-novels/> (last visited Aug. 8, 2015).

³ See *Catch-22*, MERRIAM-WEBSTER DICTIONARY (11th ed. 2011), <http://meriam-webster.com> (last visited Aug. 15, 2015).

⁴ See generally *Minarcini*, 541 F.2d at 577–82; *Minarcini v. Strongsville City Sch. Dist.*, 384 F. Supp. 698 (N.D. Ohio 1974).

for pulling *Catch-22* from the shelves of its school library.⁵ Though initially the school district was successful in keeping *Catch-22* out of the library stacks, the victory was short-lived after a small group of students brought a claim in the district court and appealed its decision.⁶ The United States Court of Appeals for the Sixth Circuit reversed the ruling of the lower court, holding that a school could not simply remove a book from the library because the language it contained did not have the social and moral approval of a school's board of education.⁷ In the case of *Minarcini v. Strongsville City School District*, the court grappled with these issues of censorship and intellectual freedom.⁸ This paper will focus on the court case that decided the fate of *Catch-22* in the Strongsville School District, further develop the aspects of intellectual freedom and censorship raised in the case, explore other possible alternatives to the court's decision, reflect on the case from the perspective of the Board of Education, a key party to the case, and will conclude by discussing the role of the court's decision regarding *Catch-22* in the modern and historical world of banned book challenges.

BACKGROUND: *CATCH-22*

Catch-22 was published in 1961 in the midst of the Vietnam War.⁹ The sharp critique and satirical tone highlighting the bureaucracy and absurdity of war did not sit well with some, but was a sleeper hit among others.¹⁰ The book struck a particular chord with war protestors, and was well circulated among them.¹¹ With the support of this group, the book was turned into a motion picture in 1970, which largely flopped, but did serve as a springboard for marketing the paperback version of the book.¹² The background for the book was provided by Heller's own experience serving in the Army Air Corps during World War II.¹³ Heller produced *Catch-22* with firsthand information about the turmoil

⁵ *Minarcini*, 541 F.2d at 580–81.

⁶ *See id.* at 580–81.

⁷ *Id.*

⁸ *Id.*

⁹ John W. Aldridge, *The Looney Horror of it All – Catch-22 Turns 25*, N.Y. TIMES, (Oct. 6, 1986), <http://www.nytimes.com/books/98/02/15/home/heller-loony.html>.

¹⁰ *See id.*

¹¹ *Id.*

¹² *See, e.g.*, Roger Ebert, *Catch-22*, ROGEREBERT.COM, (Jan. 1, 1970), <http://www.roger-ebert.com/reviews/catch-22-1970>.

¹³ Tracy Daugherty, *The War for Catch-22*, VANITY FAIR (Aug. 2011), <http://www.vanityfair.com/culture/2011/08/heller-201108>.

and complexities of war.¹⁴ The book has been described as much more than an anti-war book. Rather, it is interpreted as a dark mood, black humor, satirical depiction of “militarism, nationalism, patriotism, discipline, ambition, loyalty, money, big business, sex, religion, mankind, and God.”¹⁵ This controversial mix was received with both supporters and critics. This controversy became the central issue of the *Minarcini* case: whether the obscenity of *Catch-22* was grounds to remove and ban it from the shelves of a high school in Strongsville, Ohio.¹⁶

THE BANNING IN STRONGSVILLE

Located near the northern border of Ohio, Strongsville is a small town located on the outskirts of Cleveland.¹⁷ The issue of *Catch-22* first came to the attention of the Strongsville City School District Board of Education (“the Board”) in the spring of 1972 when a high school English teacher recommended that the book be included as a mandatory reading textbook for his class the following year.¹⁸ The school protocol at the time, which governed adding required readings for classes, mandated that teachers from each subject department submit a proposal containing the titles of the materials they wished to include in the curriculum.¹⁹ The process was quite lengthy, first requiring a formation of a Faculty Textbook Selection Committee to select the required readings for students.²⁰ The faculty committee then submitted its selections to the Director of Secondary Education, who was responsible for supplying copies of the proposed materials to the Citizens Textbook Committee.²¹ In Strongsville, the citizens on the committee were sixteen individuals who lived in the school district.²² They were selected, in part, by Board members and the PTAs of the designated schools within the district.²³ After reading the proposed materials, the next step required the Citizens Textbook Committee to offer its suggestions in a

¹⁴ *Id.*

¹⁵ Bill Peschel, *Heller, Joseph*, AM. NAT'L BIOGRAPHY ONLINE (Jan. 2001), <http://www.anb.org/articles/16/16-03423.html>.

¹⁶ *Minarcini v. Strongsville City Sch. Dist.*, 384 F. Supp. 698 (N.D. Ohio 1974).

¹⁷ *Strongsville, the Crossroads of the Nation*, THE CITY OF STRONGSVILLE, <http://www.strongsville.org/content/> (last visited Sept. 7, 2015).

¹⁸ *Minarcini*, 384 F. Supp. at 701.

¹⁹ *Id.* at 700–01.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

written report to the Director of Secondary Education.²⁴ Next, the Director passed this information on to the Faculty Committee and the Board's Educational Program and Policy Committee, which was comprised of two Board members.²⁵ The two Board members then made their suggestions to the entire Board for consideration.²⁶ Finally, the Board administered a vote to make its decision.²⁷

By the means of this complicated process, *Catch-22*, which was already on the high school's library shelf, was excluded from the required texts of the high school's English department. Carol Petersen, Chairman of the English Department, submitted the proposal of the new textbooks, including *Catch-22*, to Raymond J. Kestner, Director of Secondary Education, for the 1972-1973 academic school year.²⁸ Faculty member John Lohr selected *Catch-22* as his first choice for the text of his Modern Literature English course.²⁹ Upon review, the Citizens Textbook Committee reported that it found *Catch-22* to be an objectionable book as a required text.³⁰ The committee claimed that it would not have objected if students had read the book, but it did object to including *Catch-22* as a required reading.³¹

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* The full procedure as implemented by the Board of Education is denoted in further detail in the court opinion.

²⁸ *Catch-22* was selected as an example of modern literature. *Id.* at 701. Other books that were on the list aside from *Catch-22* included the following: for General English Literature, *Outlooks Through Literature* (Robert C. Pooley) and *I (Me)* (Charlotte K. Brooks); for Romantics, *The Portable Mark Twain* (Bernard DeVoto ed.); for Early Romantics, *Edgar Allen Poe: Selected Poetry and Prose* (Thomas Mabbott ed.); for Drama, *Six Modern American Plays* (Eugene O'Neill) and *Long Day's Journey Into Night* (Eugene O'Neill); and for Twentieth Century Novelist, *William Faulkner: Selected Short Stories* (Penguin Random House 1962). *Id.*

²⁹ *Minarcini*, 384 F. Supp. at 702.

³⁰ *Id.*

³¹ Included in the case decision was an exhibit that gave the names of the above books. *Id.* Missing from this exhibit was Kurt Vonnegut Jr.'s *God Bless You, Mr. Rosewater* as a selection for modern literature. *Id.* Though the book was not included in the list of proposed books, it was reviewed by the Citizens Textbook Committee and was not deemed objectionable. *Id.* It was, however, flagged as a book that was not ideal. *Id.* The committee noted that there must be other, "better" books to fill the modern literature category. *Id.* It should also be noted that shortly after *Catch-22* was banned and removed from the high school library, so was *God Bless You, Mr. Rosewater*. *Minarcini v. Strongsville City Sch. Dist.*, 541 F.2d 577, 581 (6th Cir. 1976).

Board member Ellen J. Wong was a member of the Educational Program and Policy Committee.³² She agreed with the assessment of the Citizens Textbook Committee and presented it as such to the other Board members.³³ Upon Wong's recommendation, the Board approved the proposal of the English Department with the exception of *Catch-22*.³⁴ Before making a final decision on *Catch-22*, the Board scheduled a meeting with the English Department members who proposed to include the book in the curriculum.³⁵ This meeting occurred on May 18, 1972.³⁶ Attendees included the Board members, Kestner, Petersen, and several English Department faculty members, including Lohr.³⁷ At the meeting, the group discussed openly why the English Department proposed *Catch-22* as a required reading.³⁸ Following this discussion, on June 8, 1972, the Board voted against purchasing *Catch-22* for the English classes.³⁹

According to the district court, the Board continued to hold open meetings through September in order to determine which texts to purchase for the upcoming year.⁴⁰ Notably missing from the district court analysis was the meeting held on August 31, 1972.⁴¹ The records excerpted by the court of appeals showed that at this meeting, Wong, supported by other Board members, moved to remove *Catch-22* from the Strongsville schools' libraries.⁴² The record specifically shows a

³² *Minarcini*, 384 F. Supp. at 702.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 702–03.

³⁶ *Id.* at 702.

³⁷ *Id.*

³⁸ Here, there was also further discussion of including *God Bless You, Mr. Rosewater* in place of *Catch-22*. This was Lohr's second choice as a required reading text for his class. *Id.* at 703.

³⁹ On June 17, 1972, the Board also voted against *God Bless You, Mr. Rosewater* as the replacement for *Catch-22*. The English Department then suggested *Cat's Cradle*, also by Kurt Vonnegut Jr., as a third choice. *Id.* Though the facts are unclear here, some testimony suggested that *Cat's Cradle* was used as a required text in previous English classes at the high school. *Id.* The Board rejected this choice on August 19, 1972. *Id.* Finally, on September 14, 1972, the fourth choice, John Steinbeck's *Travels with Charley*, was approved by vote as an appropriate choice. *Id.* Also noteworthy is the fact that the Board read portions of the above books prior to making their decisions. *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Minarcini v. Strongsville City Sch. Dist.*, 541 F.2d 577, 580 (6th Cir. 1976) (stating that the excerpt was taken directly from the Board meeting official minutes). *Cat's Cradle* was also removed by a similar vote. *Id.*

four to one vote, with the motion to remove the book carried.⁴³ The record further shows excerpts from Board meeting minutes that serve as exemplars of the type of analysis the proposed books underwent prior to a Board vote to include them in the curriculum.⁴⁴ On July 17, 1972, the Board held one of its many meetings to discuss the issue of which texts to approve for student mandatory reading.⁴⁵ At the meeting, Board member Arthur Cain read a review of a book that was described as “completely sick” and had the word “GARBAGE” written as a comment in the official review.⁴⁶ Though the book with this description was not *Catch-22*, which the Board had already disapproved, it was Kurt Vonnegut Jr.’s *God Bless You, Mr. Rosewater*, which was the second choice for a modern text for the course taught by Lohr.⁴⁷ The record goes on to state that the third choice of the English Department, *Cat’s Cradle*, was also considered.⁴⁸ The meeting minutes revealed that, “the same character, Vennegutter [sic]”⁴⁹ wrote the book, and it had been used as a required text for a prior English class before the new Board procedure of approval was in place.⁵⁰ The passage further reports that the book should be removed immediately from the school and the list of proposed required texts.⁵¹

STRONGSVILLE HIGH SCHOOL STUDENTS TAKE ACTION

When students and other community members heard about the actions of the Board, there was an incitement of emotions. This spurned ideas that the Board was trying to unjustly limit and control the ideas to which students could be exposed.⁵² Issues of First Amendment freedoms came to the surface.⁵³ Students bonded together in

⁴³ *Id.*

⁴⁴ *See id.*

⁴⁵ *Id.* at 581–82.

⁴⁶ *Id.* at 581.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* This is a noteworthy and possibly telling misprint of Kurt Vonnegut Jr.’s last name from the excerpt of the Board meeting minutes.

⁵⁰ *Id.*

⁵¹ *Id.* at 581–82. Furthermore, in the place of the modern texts proposed by the English Department faculty, the Board recommended purchasing the autobiography of Captain Eddie Rickenbacker for the English courses. *Id.* The reasoning was that the book would “inspire and educate the students as well as teach them high moral values” *Id.*

⁵² *See id.* at 582.

⁵³ *Id.*

hopes of protecting their own rights to receive information.⁵⁴ Supported by their parents, a group of five students came forward, the most prominent of which was Susan L. Minarcini.⁵⁵ They contacted the American Civil Liberties Union (“ACLU”) of Ohio, and planned to file suit against the Strongsville City School District.⁵⁶ Through the ACLU, they filed a 42 U.S.C. § 1983 action, alleging that the Strongsville City School District acted unconstitutionally through the Board of Education by rejecting *Catch-22* as a required reading for English classes and for removing the book from the libraries of the city schools.⁵⁷

The complaint claimed a violation of the students’ First and Fourteenth Amendment rights.⁵⁸ Specifically, the plaintiffs alleged that by not approving *Catch-22* as a required reading text and removing it from the library, the Board violated the students’ “constitutional rights to academic freedom, freedom of speech, due process, and equal protection of the laws by the commission of acts which impose prior restraints upon publications and communications.”⁵⁹ In 1974, the decision of the district court was issued in favor of the defendant Strongsville City School District Board of Education.⁶⁰ The court found no violation of any constitutional rights.⁶¹ The ACLU attorneys appealed on behalf of their student clients,⁶² and upon review the United States Court of Appeals for the Sixth Circuit issued a decision reversing in part the holding of the lower court.⁶³

On August 30, 1976, the appellate court reversed the ruling that approved the removal of *Catch-22* from the shelves of the school library.⁶⁴ The court did not, however, mandate that *Catch-22* be approved as a mandatory text for the school English classes.⁶⁵ Though it

⁵⁴ *See id.*

⁵⁵ *Id.*

⁵⁶ Michael T. Honohan, *Recollections of Minarcini v. Strongsville City School District*, AM. CIV. LIBERTIES UNION OF OHIO (Mar. 1, 2013), <http://www.acluohio.org/about/historicacluohiolitigation.asp#Minarcini>. For a further explanation of the complaint of the charging party (Minarcini and other students) and a detailed look at the merits of the case, see Arlen W. Langvardt, *Not on Our Shelves: A First Amendment Analysis of Library Censorship in Public Schools*, 61 NEB. L. REV. 98, 117–18 (1982).

⁵⁷ Honohan, *supra* note 56.

⁵⁸ *Minarcini v. Strongsville City Sch. Dist.*, 384 F. Supp. 698, 700 (N.D. Ohio 1974).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Minarcini v. Strongsville City Sch. Dist.*, 541 F.2d 577, 584 (6th Cir. 1976).

⁶⁴ *Id.*

⁶⁵ *Id.*

was not a complete victory, the plaintiffs, “won an important victory”⁶⁶ that had a great impact on the issues of intellectual freedom and censorship.

DIFFERING OPINIONS: THE DISTRICT COURT AND THE COURT OF APPEALS

The district court painted the picture that the Board meetings held to determine acceptable texts for the English courses were open and calm in nature.⁶⁷ This leaves the impression that, although the process the Board underwent was lengthy, a fair decision was reached in the end. However, the quantification methods used by the Board, as depicted in the lower court decision, were under scrutiny by the court of appeals.⁶⁸ The appellate court drew attention to possible controversies, including the labeling of certain materials as “sick” and “garbage.”⁶⁹ These reviews do not lend themselves to a happy marriage with the image the lower court presented. While the two courts may or may not have construed the facts to support the decisions made, it is important to note that these differences do in fact exist. A court’s duty is to remain impartial and neutral when issuing a decision. A reader should recognize that impartiality is a struggle to reach, and facts may be overlooked or overemphasized to make and support a particular point. These differences should be kept in mind when analyzing any case.

THE COURT DECISIONS

When all was said and done, the district court held that there was no constitutional infringement on the plaintiff students’ rights.⁷⁰ When addressing the issue of the disapproval of Heller’s book, the court noted that, “Ohio law placed upon local boards of education the duty to select the books for use in the school system, and stated that it found no constitutional problem with the discretion exercised by the

⁶⁶ Stated by Michael T. Honogan, volunteer attorney of the ALCU, who was the first chair attorney representing the students of Strongsville High School. Honogan, *supra* note 56.

⁶⁷ *Minarcini*, 384 F. Supp. at 703.

⁶⁸ *Minarcini*, 541 F.2d at 581–82.

⁶⁹ *Id.* at 581, 583.

⁷⁰ *Minarcini*, 384 F. Supp. at 705 (“The State having duly and legally acted thereon, absent constitutional infringements, the Court cannot and will not substitute its individual judgment for that of the Ohio Legislature.”). *Id.*

Board when it refused to select the works cited by the plaintiffs.”⁷¹ The lower court reasoned that even though the Board decided not to purchase *Catch-22* as a text for the English courses, it did not prohibit teachers from referring to the text in class or using it as an example to illustrate a point.⁷² Had this been the case, there would be a stronger argument for violation of constitutional rights.⁷³ This portion of the lower court’s ruling was affirmed at the appellate level.⁷⁴ By use of Ohio law, it was at the discretion of the Board of Education to decide which books were to be included as textbooks for all school curricula.⁷⁵ The court reasoned that the students still had access to the book through public libraries and other commercial means.⁷⁶ Furthermore, no student was prohibited from reading or discussing the removed book.⁷⁷ Thus, the lower court sanctioned the actions of the Board.⁷⁸

The district court further held that the removal of *Catch-22* from the library was within the powers of the Board and also raised no constitutional concern.⁷⁹ This is where the courts differed. The court of

⁷¹ Langvardt, *supra note* 56, at 117 n.150 (citations omitted). *See generally* OHIO REV. CODE ANN. § 3329.07 (West) (“The board of education of each city, exempted village, and local school district shall cause it to be ascertained and at a regular meeting determine which, and the number of each of the textbooks or electronic textbooks the schools under its charge require.”).

⁷² *Minarcini*, 384 F. Supp. at 706–07 (“The Board’s action per se did not preclude any teacher or librarian from discussing the novels in the classroom with any students or from assigning any or all of such novels as outside or supplemental reading.”). *Id.*

⁷³ *See id.*

⁷⁴ *Minarcini*, 541 F.2d at 579–80 (“To the extent that this suit concerns a question as to whether the school faculty may make its professional choices of textbooks prevail over the considered decision of the Board of Education empowered by state law to make such decisions, we affirm the decision of the District Judge in dismissing that portion of plaintiff’s complaint. In short, we find no federal constitutional violation in this Board’s exercise of curriculum and textbook control as empowered by the Ohio statute.”).

⁷⁵ *See id.*

⁷⁶ *Minarcini*, 384 F. Supp. at 709 (“The three novels here in issue were available to students and/or members of the community through commercial outlets and public libraries and no student was directly or indirectly imposed upon not to read or discuss any of the novels.”).

⁷⁷ *Id.*

⁷⁸ *See id.* at 708–09.

⁷⁹ *See id.* at 705 (“Obvious from the clear and concise language of § 3329.07 of the Ohio Revised Code, the legislative mandate charged the Board of Education of each school district, an elective body, with the ultimate authority and responsibility to ascertain and determine which, and the number of textbooks the schools under its charge require . . . wide discretion was vested in the elective Boards to implement the mandate.”).

appeals reversed this part of the ruling, overturning the portion of the district court's decision that upheld the removal of *Catch-22* from the high school library.⁸⁰ The appellate court found that by removing the book from the school library, the Board acted in a manner that infringed on the First Amendment rights of the students of Strongsville High School.⁸¹ The court of appeals acknowledged that the district court relied heavily on a prior decision from the United States Court of Appeals for the Second Circuit, *Presidents Council, District 25 v. Community School Board No. 25*, in which the court held that the school's Board of Education not only had the right to select appropriate texts for student courses, but also had the right to "winnow" the library collection at will.⁸² Specifically, the court in *Presidents Council* stated the following:

The administration of any library . . . involves a constant process of selection and winnowing based not only on educational needs but financial and architectural realities. To suggest that the shelving or unshelving of books presents a constitutional issue, particularly where there is no showing of curtailment of freedom of speech or thought, is a proposition [this court] cannot accept.⁸³

While this reasoning was central to the decision of the district court, the court of appeals did not apply the precedent of *Presidents Council* as broadly.⁸⁴

Presidents Council was the first case of its kind, one that raised the then-new issue of book removal.⁸⁵ The court of appeals in *Minarcini* thought it unwise to follow suit with the Second Circuit and vest absolute power in the Board of Education to determine which books are added to the library or not, regardless of reason.⁸⁶ The appellate court held that such an exercise of power infringed on the rights of students to receive information.⁸⁷ Of particular significance was the court's recognition that the students of Strongsville had a protected First Amendment right to receive information.⁸⁸ Specifically, the court stated that it was "concerned with the rights of students to receive information

⁸⁰ *Minarcini v. Strongsville City Sch. Dist.*, 541 F.2d 577, 584 (6th Cir. 1976).

⁸¹ *Id.*

⁸² *Presidents Council, Dist. 25 v. Cmty. Sch. Bd. No. 25*, 457 F.2d 289, 293 (2d Cir. 1972).

⁸³ *Id.*

⁸⁴ *Minarcini*, 541 F.2d at 581.

⁸⁵ See *Presidents Council*, 457 F.2d at 289.

⁸⁶ Langvardt, *supra* note 56, at 118–19.

⁸⁷ *Id.* at 117.

⁸⁸ *Minarcini* 541 F.2d at 583.

which they and their teachers desire them to have.”⁸⁹ The Board maintained that there was no infringement on the students’ rights because *Catch-22* was still available to them through other means outside of the school.⁹⁰ However, that explanation was not sufficient for the court. The court stated that the school library was a resource in a free marketplace of ideas.⁹¹ Even though *Catch-22* was available to students through other sources, the fact that it was made unavailable to the students in their own school based on a vote by the Board of Education was unacceptable.⁹² The court here implied that a library should remain neutral as to the collection of its books so as to provide access to a variety of materials regardless of the personal opinions and feelings they may conjure in readers.⁹³ Curtailing access to materials based on the social or political preferences of the Board members was not only unfair, but also unconstitutional.⁹⁴ Thus, the court of appeals reversed the decision of the district court and ordered that *Catch-22* be returned to the school library immediately.⁹⁵

ISSUES OF INTELLECTUAL FREEDOM

Minarcini was the first case of its kind to win such victory by having a banned book returned to its school library.⁹⁶ Both courts in *Minarcini* wrestled with the issues that surround the First Amendment right to receive information.⁹⁷ While the district court found no violation, the view of the court of appeals is what stands in history: there was a violation of the Strongsville students’ First Amendment right to receive information.⁹⁸ Implicit in this fundamental right to receive information is the idea of intellectual freedom. The American Library Association (“ALA”) defines intellectual freedom as the “right of every individual to both seek and receive information from all points of view without restriction. It provides for free access to all expressions of ideas through which any and all sides of a question, cause[,] or move-

⁸⁹ *Id.*

⁹⁰ *Id.* at 582.

⁹¹ *Id.* at 582–83.

⁹² *See id.*

⁹³ *See id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 579, 583–84. The court also ordered *Cat's Cradle* return to the library collection. *Id.*

⁹⁶ Langvardt, *supra* note 56, at 117.

⁹⁷ *Minarcini*, 541 F.2d at 582–83; *Minarcini v. Strongsville City Sch. Dist.*, 384 F. Supp. 698, 700 (N.D. Ohio 1974).

⁹⁸ *Minarcini*, 384 F. Supp. at 709; *Minarcini*, 541 F.2d at 584.

ment may be explored.”⁹⁹ This notion of intellectual freedom is centered on the idea that every individual has the right to express her opinion and have access to information without limitation based on subjective political, social, personal, or other such views.¹⁰⁰ Not only was *Catch-22* a platform for Heller’s voice on topics that were of social and political concern at the time, it was also a blatant attack on the bureaucracies of wartime. These ideas, however unsavory in the eyes of some viewers, including the members of the Strongsville Board of Education,¹⁰¹ should not be banned from a library simply because they challenge ideals or open the door for controversy.

On June 25, 1953, the ALA adopted The Freedom to Read Statement in an effort to support the idea of intellectual freedom.¹⁰² The statement begins:

[t]he freedom to read is essential to our democracy. It is continuously under attack. Public groups and public authorities in various parts of the country are working to remove or limit access to reading materials, to censor content in schools, to label “controversial” views, to distribute lists of “objectionable” books or authors, and to purge libraries.¹⁰³

These issues, still prevalent today, came into play in *Minarcini*, and several other cases during that time period.¹⁰⁴ *Minarcini* and the cases that continue to follow indicate that this complex issue of infringe-

⁹⁹ *Intellectual Freedom and Censorship Q & A*, AM. LIBR. ASS’N, <http://www.ala.org/advocacy/intfreedom/censorshipfirstamendmentissues/ifcensorshipqanda> (last visited Aug. 12, 2015). See also WALLACE KOEHLER, *ETHICS AND VALUES IN LIBRARIANSHIP: A HISTORY* 109 (2015), which states that intellectual freedom is “the fundamental right to have access to all expressions of knowledge, creativity and intellectual activity, and to express their thoughts in public.” See also Joan M. Reitz, *Intellectual Freedom*, ABC-CLIO ODLIS, http://www.abc-clio.com/ODLIS/odlis_i.aspx (last visited Aug. 12, 2015), which states, “[t]he right under the First Amendment to the U.S. Constitution of any person to read or express views that may be unpopular or offensive to some people, within certain limitations (libel, slander, etc.).” For further reading, see also *The Universal Declaration of Human Rights*, UNITED NATIONS, <http://www.un.org/en/documents/udhr/> (last visited Aug. 12, 2015), which provides more support for these definitions of intellectual freedom.

¹⁰⁰ See *Intellectual Freedom and Censorship Q & A*, *supra* note 99.

¹⁰¹ *Minarcini*, 541 F.2d at 582.

¹⁰² *Freedom to Read Statement*, AM. LIBR. ASS’N, <http://www.ala.org/advocacy/intfreedom/statementspols/freedomreadstatement> (last visited Aug. 12, 2015).

¹⁰³ *Id.*

¹⁰⁴ See *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 855–72 (1982); *Tinker v. Des Moines*, 393 U.S. 503, 504–14 (1969); *Right to Read Def. Comm. v. Sch. Comm. of the City of Chelsea*, 454 F. Supp. 703, 704–15 (D. Mass. 1978).

ments on First Amendment intellectual freedom due to book banning and censorship is here to stay.¹⁰⁵

BROAD ISSUES OF CENSORSHIP (AND SELECTION)

According to the ALA Library Bill of Rights, there are seven ideals that guide the services of libraries.¹⁰⁶ One of these principles states that, “[l]ibraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.”¹⁰⁷ Furthermore, the ALA Library Bill of Rights advises that libraries “challenge censorship in the fulfillment of [a library’s] responsibility to provide information and enlightenment.”¹⁰⁸ It is a library’s duty, regardless of type, to provide access to information to its patrons, regardless of subjective opinions as to whether the information is suitable for readers.¹⁰⁹ As argued by John Stuart Mill, it is only through discourse and the dissemination of ideas that intellectual freedom can reach its true goal: to assert the truth.¹¹⁰ When determining which works to include in a library collection, there is a fine line between selection and censorship. Selection promotes liberty, while censorship tries to control liberty.¹¹¹ Though there are true limitations on any library’s physical space and resources, often to avoid challenging materials and situations, it is easy to couch censorship as selection.¹¹² In *Minarcini*, there was blatant censorship of the books that were not approved by the Board.¹¹³

¹⁰⁵ For further examples and information on First Amendment court cases, see *Notable First Amendment Cases*, AM. LIBR. ASS’N, <http://www.ala.org/advocacy/intfreedom/censorshipfirstamendmentissues/courtcases> (last visited Aug. 12, 2015).

¹⁰⁶ The ALA adopted the Library Bill of Rights on June 19, 1939. *Library Bill of Rights*, AM. LIBR. ASS’N, <http://www.ala.org/ala/issuesadvocacy/intfreedom/librarybill/index.cfm> (last visited Sept. 7, 2015).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ JOHN STUART MILL, *OF THE LIBERTY OF THOUGHT AND DISCUSSION, ON LIBERTY*, 29–32 (London: Penguin, 1869).

¹¹¹ Lester Asheim, *Not Censorship but Selection*, WILSON LIB. BULL., 63–67 (1953), <http://www.ala.org/advocacy/intfreedom/censorshipfirstamendmentissues/notcensorship>.

¹¹² *Id.*

¹¹³ See *Minarcini v. Strongsville City Sch. Dist.*, 541 F.2d 577 (6th Cir. 1976); *Minarcini v. Strongsville City Sch. Dist.*, 384 F. Supp. 698 (N.D. Ohio 1974).

ALTERNATIVE VIEWS: SPECULATING WHAT COULD HAVE BEEN

In order to gain further perspective into a historical event, it is important to discuss the possibilities of a different result. In *Minarcini*, had the opinion of the district court been affirmed by the court of appeals, the ultimate outcome would likely have been much different.¹¹⁴ Had the students of Strongsville never contacted the ACLU, perhaps courts would have faced this issue much later in history. The headway made by *Minarcini*, that was considered integral in the decisions of other such book banning cases,¹¹⁵ would be erased. What would be the repercussions of such results and where would we be today had this been the case?

The decision in *Minarcini*, that receiving information is a fundamental right protected by the First Amendment, is the backbone of several cases that follow it.¹¹⁶ Had the appellate court in *Minarcini* held that there was no violation of the student's fundamental rights, *Catch-22* would have remained off the shelves of the Strongsville school libraries. This would likely have opened the door for more occasions of book banning and censorship. The Board would have had unfettered power over the collection of the library as mandated under the district court's strict construal of Ohio law and the decision of the court in *Presidents Council*.¹¹⁷ It is likely that under the cautious eye of the Board, more and more books would have been removed from the Strongsville school libraries based on the subjective tastes and beliefs of the Board members and the committee members who reviewed the texts proposed by the school's English Department faculty.

Another possible result would be the seclusion of the book to a shelf labeled "restricted materials," as seen in other cases regarding intellectual freedom and censorship.¹¹⁸ This approach is problematic

¹¹⁴ *Minarcini*, 384 F. Supp. at 698.

¹¹⁵ See *Tinker v. Des Moines*, 393 U.S. 503, 504-14 (1969); *Right to Read Def. Comm. v. Sch. Comm. of the City of Chelsea*, 454 F. Supp. 703, 704-15 (D. Mass. 1978); *Notable First Amendment Cases*, *supra* note 105; see also *Bd. of Educ., Island Trees Union Free Sch. Dist., No. 26 v. Pico*, 457 U.S. 853, 855-72 (1982).

¹¹⁶ See *Tinker*, 393 U.S. at 504-14; *Salvail v. Nashua Bd. of Educ.*, 469 F. Supp. 1269 (D. N.H. 1979); *Right to Read Def. Comm.* 454 F. Supp. 703; see also *Bd. of Educ., Island Trees Union Free Sch. Dist., No. 26*, 457 U.S. at 855-72.

¹¹⁷ See OHIO REV. CODE ANN. § 3329.07 (West); *Minarcini*, 541 F.2d at 577; *Minarcini*, 384 F. Supp. at 698; *Presidents Council, Dist. 25 v. Cmty. Sch. Bd. No. 25*, 457 F.2d 289 (2d Cir. 1972); *Langvardt*, *supra* note 56.

¹¹⁸ In *Pico*, the school board recommended the removal of certain books and others be placed on a restricted shelf. *Bd. of Educ., Island Trees Union Free Sch. Dist., No. 26*, 457

because even though the materials are not removed from the library, access to them is restricted. Furthermore, it qualifies the material with a particular label that sets it apart from other library materials. Implicit in this is judgment of the material, which again adds boundaries to intellectual freedom.

Another possible course of action would have been to take no action at all. Had *Minarcini* and other students not banded together and sought help from the ACLU, this case would not have come before the court at all. This decision would have been postponed indefinitely and progress in this area would have been delayed, changing history. Perhaps even today, such broad interpretations of the power of boards of education may have snowballed, and more items would be kept out of libraries based on the subjective whims of those in power.

One other course to consider is how the United States Supreme Court would have decided this issue. If the court of appeals had affirmed the decision of the district court and the plaintiff students of Strongsville had appealed the case again, there is a possibility that the Supreme Court would have granted certiorari and heard the case.¹¹⁹ In accord with other Supreme Court decisions, it is likely that the Court would rule in favor of the students and hold that there was a violation of the fundamental right to receive information.¹²⁰ The appellate court in *Minarcini* pointed out that the Supreme Court previously held actions less consequential than removing a book from a library as unconstitutional for burdening the “freedom of classroom discussion.”¹²¹ This lends credence to the speculation that the Supreme Court would have found the removal of the books to interfere with the First Amendment right to receive information.¹²²

U.S. at 854. The Supreme Court issued an opinion similar to *Minarcini*, in which the Court stated that it was unacceptable for the school board to decide the library's collection, as it held no such power. *Id.* at 872–75.

¹¹⁹ *Intellectual Freedom*, ABC-CLIO ODLIS, http://www.abc-clio.com/ODLIS/odlis_i.aspx (last visited Sept. 10, 2015) (noting in its definition of “intellectual freedom” that appellate cases that involve First Amendment issues are generally heard by the United States Supreme Court).

¹²⁰ See *Tinker*, 393 U.S. at 514; *Keyishian v. Bd. of Regents*, 385 U.S. 589, 609–10 (1967); *Brown v. Louisiana*, 383 U.S. 131 (1966).

¹²¹ *Minarcini*, 541 F.2d at 582.

¹²² Constitutional case law confirms that the U.S. Supreme Court generally does not allow any impairment of the fundamental rights protected by the First Amendment. See, e.g., *Texas v. Johnson*, 491 U.S. 397, 420 (1989). These types of cases are heard with a high level of scrutiny. E.g., *NAACP v. Alabama*, 357 U.S. 449, 460–61 (1958).

REFLECTIONS FROM THE BOARD OF EDUCATION'S PERSPECTIVE

When a controversial topic is brought to the attention of the legal system, stepping into the shoes of one of the parties to the case often provides further perspective and understanding. Here, the case is analyzed from the perspective of the Strongsville City School District Board of Education. While in this day of liberal thought and freedom it is easy to sympathize with the students of Strongsville, it is a more difficult task to evaluate the situation impartially through the eyes of the Board.

First in the analysis is the duty of the Board of Education. Under Ohio law, the Board had the right to approve which books were to be included as required reading texts in the school curriculum.¹²³ The Board took this power to mean that they were able to regulate and decide which materials the students would have access to through the school, including the library.¹²⁴ This idea is not a long stretch, given the duty and role of the Board in the textbook selection process. From the Board's perspective, the right to approve was likely considered to be one and the same with the right to regulate which books would be available through the school, regardless of whether they selected the books for a course or for the library. Perhaps the Board supposed that if a particular book was not approved for a class, then the fact that the same book was not available in the library was negligible. Taking that thought one step further, the Board could justify removing *Catch-22* from the library since it was not approved for the English classes. The Board members knew that they had the power to approve the books available to students for their course studies.¹²⁵ Was it really that much of a stretch to approve which books were available in the library?¹²⁶

Furthermore, the Board could argue that their reasons for not approving and removing *Catch-22* were in the students' best interest. Removing and banning have the same end result: the material is gone. However, the purpose behind each is vastly different. Banning has the negative connotation that the Board is trying to control the rights of the students. Here, the Board might have reasoned that they did not ban *Catch-22* from the school. There was never an instance where the

¹²³ *Minarcini v. Strongsville City Sch. Dist.*, 384 F. Supp. 698, 708 (N.D. Ohio 1974) (discussing OHIO REV. CODE ANN. § 3329.07 (West)).

¹²⁴ *See id.* at 700.

¹²⁵ *See* OHIO REV. CODE ANN. § 3329.07 (West).

¹²⁶ *See generally* Ken Petress, *The Role of Censorship in School*, 32 J. INSTRUCTIONAL PSYCHOL. 248-52 (2005).

Board stated that *Catch-22* could not be referenced in classrooms or discussed in relation to other materials.¹²⁷ Nor were students prohibited from accessing the book on their own.¹²⁸ These are justifications for the Board's actions, which do not include censorship. The Board argued that the right to receive information was not impaired because they did not ban the students of Strongsville from reading *Catch-22* on their own. They merely removed the book from the library because they did not want such literature in the library stacks. Though this reasoning rides the thin line between exercising the powers of the Board and censorship of intellectual freedom, it is a possible rationale for the Board's actions.

Although ignorance is no excuse for taking improper action, it may explain the Board's perspective. Perhaps the Board was not familiar with the ideas of intellectual freedom and did not believe that its actions would infringe on the fundamental rights of the high school students. Studies suggest that often school administrators or other personnel, such as a board of education, do not understand the principles of intellectual freedom and why it is important to have freely accessible information, regardless of the ideas that the information contains.¹²⁹

Even with this perspective in mind, the actions of the Board constituted censorship and opposed the idea of intellectual freedom. As recognized by the court of appeals, the Board tried to force its own ideals onto the students of Strongsville by discouraging them from reading *Catch-22* and supporting the inclusion of other texts that were morally sound in the views of the Board members.¹³⁰ A library's duty is to present information to its patrons regardless of the ideas and views that are expressed within that information.¹³¹ Housing materials without judgment is paramount.¹³² Removing books from a collection or

¹²⁷ *Minarcini*, 384 F. Supp. at 706–07.

¹²⁸ *Id.* at 709.

¹²⁹ See generally FRANCES BECK McDONALD, *CENSORSHIP AND INTELLECTUAL FREEDOM: A SURVEY OF SCHOOL LIBRARIANS' ATTITUDES AND MORAL REASONING* (The Scarecrow Press, Inc., 1993).

¹³⁰ *Minarcini v. Strongsville City Sch. Dist.*, 541 F.2d 577, 581–82 (6th Cir. 1976). Furthermore, in the place of the modern texts proposed by the English Department faculty, the Board recommended purchasing the autobiography of Captain Eddie Rick-enbacker for the English courses. *Id.* at 581. The reasoning was that it was that the book would “inspire and educate the students as well as teach them high moral values” *Id.*

¹³¹ See *Freedom to Read Statement*, *supra* note 102.

¹³² *Id.*

refusing to add books to a collection because those books present challenging issues is censorship, not selection.¹³³ This is the reality of the Board's actions, regardless of the justifications.

SITUATING *MINARCINI* IN THE PRESENT

The *Minarcini* case has historical relevance, but it is also important to analyze its significance today. The ideas of intellectual freedom and censorship raised in *Minarcini* are still hotly debated. The ALA website shows the number of banned book challenges in the past decade¹³⁴ and details how that number has increased at a significant rate since these challenges first gained steam in the time of *Minarcini*.¹³⁵ Articles have flooded journals, magazines, and other periodicals about these ideas.¹³⁶ The general consensus is that school censorship is likely widely practiced, but underreported because those who censor do not blow their own whistles.¹³⁷ *Catch-22* is just one example of a book that was removed from the shelves of a library. There are hundreds of books that are questioned yearly and many that are successfully kept off the shelf because no one challenges these acts of censorship.

The students in *Minarcini* took a stand and set a standard that censorship in the form of book banning is not an acceptable practice. This decision, where the court held in favor of the First Amendment rights of the students, may not be the first case that is cited today in support of intellectual freedom, but it has secured its place in history as a building block in the fight against censorship and the promotion of intellectual freedom.

CONCLUSION

The issue of *Catch-22* in the *Minarcini* case was decided in favor of the plaintiff students; a victory in part that has served as support for the

¹³³ Asheim, *supra* note 111.

¹³⁴ *Statistics*, AM. LIBR. ASS'N (last visited Sept. 10, 2015), <http://www.ala.org/bbooks/frequentlychallengedbooks/statistics> (featuring a chart illustrating the number of book challenges by year).

¹³⁵ *Id.*

¹³⁶ See Jessica L. Cooper, *Intellectual Freedom and Censorship in the Library*, 16 COMMUNITY & JUNIOR COLL. LIBR. 218, 218–24 (2010); Debra Lau Whelan, *A Dirty Little Secret*, SCH. LIB. J. (Feb. 1, 2009), <http://www.slj.com/2009/02/censorship/a-dirty-little-secret-self-censorship/>.

¹³⁷ Whelan, *supra* note 136.

cases that have followed in its wake.¹³⁸ In this decision, the district court and the court of appeals struggled with the complex issues of censorship and intellectual freedom in the context of the First Amendment.¹³⁹ While the district court ruled in favor of the Board of Education,¹⁴⁰ the court of appeals reversed in part, holding that the students of Strongsville had the right to receive information and removing *Catch-22* from the library violated that right.¹⁴¹

The issues of intellectual freedom and censorship are here to stay. So long as authors continue to write books on controversial subjects, there will always be a party that contends them. Despite these tensions, the role of a library is still clear. It is the library's purpose to provide access to information without judgment and limitation based on personal or societal perception.¹⁴² The role of a school board of education is not quite as clear. Though, as vested by Ohio law, the Board in *Minarcini* was given the duty to approve the texts for course curricula,¹⁴³ the waters became murky when the Board exceeded these boundaries and began regulating the collection of the school library.¹⁴⁴

Many met the substance of *Catch-22*, which was reflective of the time, with resistance.¹⁴⁵ Today it is widely acknowledged by society as a classic novel, depicting through its dark humor the bureaucracies and negative aspects of wartime.¹⁴⁶ The context of the time period in which the book was written is also a considerable factor in the challenges against *Catch-22*. If Heller had written *Catch-22* today, it is possible that this book may not have been challenged at all. However, intellectual freedom and censorship are matters that will not be put to rest, regardless of the time period. One subject matter considered benign in a particular time may be considered distasteful, dangerous, or obscene in a different time. The arguments of censors and those who promote intellectual freedom will continually come to a head. After all, they are opposite sides of the same coin. One thing that is certain is that sort-

¹³⁸ See *Salvail v. Nashua Bd. of Educ.*, 469 F. Supp. 1269 (D. N.H. 1979); *Right to Read Def. Comm. v. Sch. Comm. of the City of Chelsea*, 454 F. Supp. 703 (D. Mass. 1978).

¹³⁹ See, e.g., *Minarcini v. Strongsville City Sch. Dist.*, 541 F.2d 577 (6th Cir. 1976); *Minarcini v. Strongsville City Sch. Dist.*, 384 F. Supp. 698 (N.D. Ohio 1974).

¹⁴⁰ *Minarcini*, 384 F. Supp. at 708.

¹⁴¹ *Minarcini*, 541 F.2d at 584.

¹⁴² See *Freedom to Read Statement*, *supra* note 102; *Library Bill of Rights*, *supra* note 106.

¹⁴³ See *Minarcini*, 541 F.2d at 577.

¹⁴⁴ See OHIO REV. CODE ANN. § 3329.07 (West).

¹⁴⁵ See *Banned and/or Challenged Books from the Radcliffe Publishing Course Top 100 Novels of the 20th Century*, *supra* note 1.

¹⁴⁶ See *Aldridge*, *supra* note 9; *Ebert*, *supra* note 12; *Peschel*, *supra* note 15.

ing through these issues and trying to achieve a harmonious conclusion is a catch-22 in itself.

“There is nothing either good or bad,
but thinking makes it so.”¹⁴⁷

¹⁴⁷ WILLIAM SHAKESPEARE, *HAMLET* Act II, sc. 2.