

Monya G. Virgil, James Virgil, Claudia H. Johnson, and Susan G. Davis, Plaintiffs, v. School Board of Columbia County, Florida, and Silas Pittman as Superintendent of the Columbia County School System,
Defendants
No. 86-1030-Civ-J-14

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA,
JACKSONVILLE DIVISION

677 F. Supp. 1547; 1988 U.S. Dist. LEXIS 877
January 30, 1988, Decided, January 29, 1988, Filed

Susan H. Black, United States District Judge

I. *Undisputed Facts*

the Court makes the following findings of fact.

From approximately 1975 to the present, Columbia High School has offered a two-semester course entitled "Humanities to 1500" to its students. In 1985, the school designed the course for eleventh- or twelfth-grade students, and prescribed as textbooks Volumes I and II of *The Humanities: Cultural Roots and Continuities* (M. Witt, *et al.* ed. 1980) [hereinafter "*Humanities*"]. In the previous [**2] year, the Florida Department of Education had approved these textbooks for humanities courses and placed them on its Catalog of State-Adopted Instructional Materials for secondary school students.

Among the selections in Volume I of *Humanities* are English translations of the play *Lysistrata*, written by the Athenian playwright Aristophanes in approximately 411 B.C., and the narrative poem *The Miller's Tale*, written by the English poet Geoffrey Chaucer in approximately 1380 A.D. Although neither *Lysistrata* nor *The Miller's Tale* were required or assigned reading in the humanities course, a portion of *Lysistrata* was read aloud in class during a session of the humanities course in the first semester of the 1985-86 school year. Among the students in the class on that day was the daughter of The Reverend and Mrs. Fritz M. Fountain.

In the spring of 1986, The Reverend and Mrs. Fountain filed a formal complaint regarding Volume I of *Humanities* with the defendant School Board of Columbia County, the government entity responsible for [*1549] administration of the Columbia County School System [hereinafter "School Board"]. The Fountains also filed a Request for Examination [**3] of School Media on a form provided by the defendants.

In response to this complaint, the School Board first adopted a "Policy on Challenged State Adopted Textbooks," which established the mechanisms for addressing any challenges to textbooks in use in the school system. Next, pursuant to the newly-enacted policy, the School Board appointed an advisory committee to review Volume I of *Humanities*. The advisory committee reviewed Volume I and recommended that the textbook be retained in the curriculum, but that *Lysistrata* and *The Miller's Tale* not be required reading in the humanities course.

At its April 22, 1986, meeting, the School Board considered the advisory committee's report on Volume I. It also heard from the defendant Silas Pittman, the Superintendent of the Columbia County School System. Pittman disagreed with the committee's findings and recommended either that *Lysistrata* and *The Miller's Tale* be deleted from Volume I or that the book itself be discontinued from use in the school's curriculum. The School Board agreed with the latter proposal, voting to discontinue any future use of Volume I in the curriculum. On a subsequent date, the Board members provided [**4] the

following reasons for their decision:

1. The sexuality in the two selections.
2. A belief that portions of the two selections were excessively vulgar in language and subject matter, regardless of the value of the works as literary classics.
3. A belief that the subject matter of the selections was immoral, insofar as the selections involved graphic, humorous treatment of sexual intercourse and dealt with sexual intercourse out of wedlock.
4. A belief that the sexuality of the selections was violative of the socially and philosophically conservative mores, principles and values of most of the Columbia County populace.
5. A belief that the subject matter and language of the selections would be offensive to a substantial portion of the Columbia County populace.
6. A belief that the two selections were not necessary for adequate instruction in the course; nor was this particular textbook, in its entirety, necessary for instruction in the course.
7. A belief that the two selections were inappropriate to the age, maturity, and development of the students in question.

Stipulation Concerning Board Reasons, filed on October 14, 1987.

Pursuant to the School Board's April [**5] 22, 1986, decision, Volume I of *Humanities* was placed in a storeroom and has been kept there ever since. Thereafter, Volume II of *Humanities* has been used as the textbook for both semesters of the humanities course. In addition, both Volumes I and II have been placed in the school library and made available for student use. Other adaptations and translations of *Lysistrata* and *The Miller's Tale* are also maintained in the school library.

In their Motion for Summary Judgment, the defendants contend that the School Board's decision to remove Volume I of *Humanities* falls within the scope of its broad discretion regarding establishment of high school curriculum. According to the defendants, the School Board simply performed its proper function of transmitting community values by removing materials that it considered to be vulgar or indecent.

The plaintiffs argue in their Motion for Summary Judgment that despite the School Board's broad discretion regarding curriculum, the Board must nonetheless exercise that discretion in a manner that comports with the first amendment. According to the plaintiffs, removal of the textbook in the present case violated the first amendment [**6] [*1550] because the School Board improperly attempted to deny the students access to views which differ from its fundamentalist religious orthodoxy. n1

-----Footnotes-----

n1 The plaintiffs do not contend that the defendants violated the "establishment of religion" clause of the first amendment, and the Court, therefore, does not consider the issue.

-----End Footnotes-----

II. *Conclusions of Law*

Based on the Supreme Court's recent decision in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 56 U.S.L.W. 4079, 98 L. Ed. 2d 592, 108 S. Ct. 562 (U.S. 1988), the Court finds that the defendants acted within their broad range of discretion in determining the educational suitability of the curricular materials in question.

Initially, the Court must determine whether the pedagogical goals motivating the School Board's decision in this case were legitimate ones. The members of the School Board identified two specific factors as having given rise to their decision to remove Volume I of *Humanities*: "the sexuality in the two selections" [**13] and the selections' "excessively vulgar . . . language and subject matter." The remainder of the reasons supplied by the Board members simply amplify why they believed that vulgar and sexually explicit materials could properly be removed from the curriculum. According to the Board members, the content of the subject materials violated the "conservative mores" of the community and was "inappropriate to the age, maturity and development of the students."

The plaintiffs contend that these reasons highlight the actual purpose of the Board members in removing the subject materials from the humanities curriculum, which was to impose their fundamentalist Christian beliefs on the students. According to the plaintiffs, such an attempt to deny the students access to viewpoints differing from the Board members' religious orthodoxy is essentially what the first amendment forbids.

The Court agrees with the plaintiffs that the School Board's decision reflects its own restrictive views of the appropriate values to which Columbia High School students should be exposed. The Court finds, however, that such content-based decision-making regarding curriculum is permissible under the standards set forth [**14] in *Kuhlmeier*. The Court in *Kuhlmeier* held that educators may limit both the "style and content" of curricular materials if their action is reasonably related to legitimate pedagogical concerns. 56 U.S.L.W. at 4082. n6 The Court further held that denying students access to "potentially sensitive topics" such as sexuality is a legitimate pedagogical end. *Id.* But see *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642, 87 L. Ed. 1628, 63 S. Ct. 1178 (1943) (schools may not "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion"). Because this pedagogical goal is the uncontroverted justification for the School Board's decision in the present case, this Court need only consider whether the decision of the School Board was reasonably related to this goal.

The Court faces a number of difficulties in making this determination. First, the Court finds it difficult to apprehend the harm which could conceivably be caused to a group of eleventh- and twelfth-grade students by exposure to Aristophanes and Chaucer. Indeed, authorities on Western literature are virtually unanimous in their high praise for the works of these authors. *See, e.g., U. Viola, Greek [**15] and Roman Classics*, (1965), at 328 (Aristophanes's comedies "are considered among the greatest ever written"); *Major British Writers*, (G.B. Harrison, ed. 1967), at 1 (Chaucer's name "stands in the annals of English literature second only to that of Shakespeare").

[*1553] Second, the Court has a more general concern regarding the breadth of measures that may be

taken to protect students from materials containing sexuality or vulgarity. The plaintiffs argue in this case that the School Board's decision to remove Volume I in its entirety, rather than to take the less drastic measure of warning students of the potentially sensitive nature of two particular works, violates the established first amendment principle that restrictions on speech must be "narrowly tailored" to achieve the government's legitimate interests. Under the standard set forth in *Kuhlmeier*, however, a School Board's decision to remove curricular materials will be upheld if it is reasonable, even where that decision is not the least restrictive of student speech. See *Kuhlmeier*, 56 U.S.L.W. at 4083 (upholding principal's decision to excise two pages of newspaper rather than objectionable articles within those two [**16] pages). See generally *Cornelius v. NAACP Legal Defense and Education Fund, Inc.*, 473 U.S. 788, 808, 87 L. Ed. 2d 567, 105 S. Ct. 3439 (1985) (government's limitation of speech in nonpublic forum need only be reasonable; it need not be the most reasonable or the only reasonable limitation). Thus, under *Kuhlmeier*, this Court assumes the limited role of determining whether sexuality or vulgarity are at all present in the removed materials, and if so, determining whether the measure taken to remove the sexuality and vulgarity was at all reasonable.

The Court finds that sexuality and vulgarity are both unquestionably present in the contested materials. The plots of both *Lysistrata* and *The Miller's Tale* involve sexual relations: *Lysistrata* concerns the attempt by the women of a community to put an end to an ongoing war by denying the men sexual intercourse; *The Miller's Tale* concerns a sexual affair between a divinity student and his landlord's wife. In addition, both works contain passages which may reasonably be considered to be sexually explicit n7 or vulgar. n8

-----Footnotes-----

n7 An example of a sexually explicit passage may be found in *Lysistrata*, where the heroine Lysistrata leads the women of the community in a pledge of allegiance designed to convince the men of the community to end the Peloponnesian Wars.

LYSISTRATA Lampito: all of you women: come, touch the bowl, and repeat after me:

I WILL HAVE NOTHING TO DO WITH MY HUSBAND OR MY LOVER

KALONIKE I will have nothing to do with my husband or my lover

LYSISTRATA THOUGH HE COME TO ME IN PITIABLE CONDITION

KALONIKE Though he come to me in pitiable condition

(Oh, Lysistrata! This is killing me!)

LYSISTRATA I WILL STAY IN MY HOUSE UNTOUCHABLE

KALONIKE I will stay in my house untouchable

LYSISTRATA IN MY THINNEST SAFFRON SILK

KALONIKE In my thinnest saffron silk

LYSISTRATA AND MAKE HIM LONG FOR ME.

KALONIKE And make him long for me.

LYSISTRATA I WILL NOT GIVE MYSELF

KALONIKE I will not give myself

LYSISTRATA AND IF HE CONSTRAINS ME

KALONIKE And if he constrains me

LYSISTRATA I WILL BE AS COLD AS ICE AND NEVER MOVE

KALONIKE I will be as cold as ice and never move

LYSISTRATA I WILL NOT LIFT MY SLIPPERS TOWARD THE CEILING

KALONIKE I will not lift my slippers toward the ceiling

LYSISTRATA OR CROUCH ON ALL FOURS LIKE THE LIONESS IN THE CARVING

KALONIKE Or crouch on all fours like the lioness in the carving

LYSISTRATA AND IF I KEEP THIS OATH LET ME DRINK FROM THIS BOWL

KALONIKE And if I keep this oath let me drink from this bowl

LYSISTRATA IF NOT, LET MY OWN BOWL BE FILLED WITH WATER.

KALONIKE If not, let my own bowl be filled with water.

LYSISTRATA You have all sworn?

MYRRHINE We have.

Volume I, *Humanities*, at 72-73. [**17]

n8 An example of what may be reasonably considered to be vulgarity may be found in *The Miller's Tale*, where the parish clerk Absalon attempts to kiss the landlord's wife Alison at her bedroom window:

The night was dark as pitch, black as coal, and out the window she thrust her hole. And Absolon, as Fortune had in store for him, with his mouth kissed her naked ass with relish before he knew what was happening. He started back and thought something was wrong, for he knew well that women do not have beards and he had felt something rough and long-haired.

Volume I, *Humanities*, at 212. In another passage, Alison's lover, Nicholas, similarly encounters Absalon:

Nicholas had gotten up to piss and thought that he could improve on the joke. He would have Absalon kiss his ass before he left. He quickly raised the window up and slyly thrust his ass far out, buttocks and all, even to the haunches.

Then Absalon said, "Speak, sweet bird. I don't know where you are."

Nicholas at once let fly a fart as great as a thunder clap, that almost blinded Absalon. But he was ready with his hot iron and smote Nicholas in the middle of his ass.

Id. at 213.

-----End Footnotes-----

The Court finds that the [**18] School Board's removal of Volume I of *Humanities* was [*1554] reasonably related to its pedagogical goal of keeping vulgarity and certain matters of sexuality out of its curriculum. Although the School Board could reasonably have, as the plaintiffs suggest, provided warnings to students regarding the potentially objectionable contents of *Lysistrata* and *The Miller's Tale*, the School Board's chosen alternative was not an unreasonable one. Given the stated beliefs of the School Board regarding sexuality and vulgarity, the Board reasonably decided that including Volume I in its curriculum would be inconsistent with its duty to limit students' exposure to "material that may be inappropriate for their level of maturity." *Kuhlmeier*, 56 U.S.L.W. at 4082. Given these beliefs, the additional step of making Volume I available in the school library represented a fair compromise with those students holding a particular interest in Volume I.

III. Conclusion

The parties do not dispute that the curriculum decision of the School Board in this case was based on the Board's own standards regarding sexuality and vulgarity. Although the Court wishes that the Board had imposed its standards in [**19] a manner less restrictive of speech, the Court recognizes that the Board retains broad discretion under our constitutional system in dealing with such potentially sensitive topics. As stated by the Supreme Court in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 56 U.S.L.W. 4079, 98 L. Ed. 2d 592, 108 S. Ct. 562 (U.S. 1988), "the education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges." *Id.* at 4082. The Court will therefore grant the defendants' Motion for Summary Judgment.