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HYBRID RIGHTS IN THE FOURTH CIRCUIT: FACT OR FICTION?

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INTRODUCTION

In 2023, the American Library Association reported a total of 695 attempts by the public to ?censor library materials and services.? [1 Within these 695 attempts to ban or restrict library materials, ?1,915 unique titles were targeted for censorship? while ?3,293 total titles were targeted for censorship.?[2 States within the Fourth Circuit accounted for 55 attempts to censor materials, with 589 total titles targeted for censorship.[3 These attempts have been finding their way into school districts, where parents are requesting to opt out their children from lessons with topics like gender identity, sexuality, and race with varying degrees of success.[4 Picture books with LGBTQ characters were overwhelmingly targeted in children's book challenges with the main reason for wanting books removed that challengers found discussion of LGBTQ characters and their lives to be objectionable, and not appropriate for children. [5 Parents will voice their disagreement with school curriculum and literature choices by stating their child's exposure to ?inappropriate? topics run afoul of a parent's right to decide what their child should be exposed to (parental rights) and the family's religious beliefs and practices.[6

Parents brought a challenge against a Maryland school district for violating their parental rights and free exercise rights when the school district implemented a diverse reading curriculum containing children's books featuring LGBTQ characters without providing parents an option to opt their children out of the curriculum.[7 The combination of a parental rights and free exercise claim presents the Maryland District Court with the opportunity to analyze what is known as a hybrid rights claim. The Fourth Circuit, which contains the Maryland District Court, does not presently have a method to analyze hybrid rights claims while other circuits have developed frameworks to analyze these claims.[8 This paper will discuss (1) the emergence of a hybrid rights case in the Fourth Circuit; Mahmoud v. McKnight; (2) the origin of the hybrid rights theory and approaches other Circuit Courts have taken when analyzing hybrid rights cases; (3) and the best approach for the Fourth Circuit to take, seeing as the Fourth Circuit currently looks to other circuit courts for persuasive authority on hybrid rights cases. When considering how to analyze a hybrid rights claim, the current approaches pose more drawbacks than benefits. Some approaches could be combined or adapted in order to achieve a more realistic or comprehensible outcome, but the best approach is likely to eschew a hybrid rights analysis and just consider each individual claim on its own merits as the first approach does.

[1 Sareen Habeshian, Attempts to ban books at public libraries surge at record levels, Axios (Sept. 22, 2023), https://www.axios.com/2023/09/22/book-bans-libraries-surge.

[2 Book Ban Data, Banned and Challenged Books https://www.ala.org/advocacy/bbooks/book-ban-data

[https://web.archive.org/web/20240912135200/https://www.ala.org/bbooks/book-ban-data]

(last visited Nov. 8, 2023).

[3 Book Ban Data, supra note 2 (Maryland accounted for 10 censorship attempts covering 66 titles, Virginia accounted for 14 attempts covering 356 titles, West Virginia accounted for 1 attempt covering 3 titles, North Carolina accounted for 18 attempts coveriBook Ban Data,

[4 See Julia Shapero, Judge rejects Maryland parents' motion to keep kids out of lessons with LGBTQ books, Hill (Aug. 25, 2023), https://thehill.com/homenews/education/4171618-judge-rejects-maryland-parents-motion-to-keep-kids-out-of-lessons-with-lgbtq-bSee Julia Shapero; see also Hannan Adely, Can parents opt out of New Jersey's LGBTQ curriculum law?, Northjersey.com, June 26, 2019),

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https://www.northjersey.com/story/news/education/2019/06/26/teaching-lgbtq-in-schools-can-nj-parents-opt-out/1549151001; see also Margaret Barthel, Virginia Finalizing Policy Allowing Parents to Opt Out of Sexually Explicit Content in Schools, dcist.com (Aug. 3, 2022), https://dcist.com/story/22/08/03/virginia-schools-explicit-content-lgbtq-books/; see also Destinee Patterson, NC school districts adjust to controversial new ?Parents' Bill of Rights' law, WRAL News (Oct. 5, 2023), https://www.wral.com/story/nc-school-districts-adjust-to-controversial-new-parents-bill-of-rights-law/21083428/.

[5 Hannah Natanson, ?Racist,' ?grooming': Why parents are trying to ban so many picture books, Wash. Post (July 12, 2023), https://www.washingtonpost.com/education/2023/07/12/grooming-racist-why-adults-are-waging-war-childrens-picture-books-or-insidHannah Natanso

[6 Mahmoud v. McKnight, 688 F. Supp. 3d 265, 276 (D. Md. 2023), aff'd, 102 F.4th 191 (4th Cir. 2024). [7 Id. at 271, 301.

[8 Id. at 304-306.

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