



September 22, 2021

Superintendent Phillip Herman
Hudson City Schools
2400 Hudson Aurora Road
Hudson, Ohio 44236

Sent via Electronic Mail (hermanp@hudson.edu)

Dear Superintendent Herman:

The Foundation for Individual Rights in Education,¹ the National Coalition Against Censorship,² and PEN America³ write to share our concern with Hudson City Schools' decision to confiscate a textbook—a collection of 642 writing prompts used in a college course open to seniors at Hudson High—that had drawn public anger due to its content. That censorship is contrary to state law and the district's obligations under the First Amendment, which protects students' rights to receive information and the academic freedom of college instructors.

I. Background Facts

We assume your familiarity with this incident and recount the pertinent facts only briefly. If you have additional facts that would change our analysis, we invite you to share them with us.

Hudson High School participates in Ohio's College Credit Plus (CCP) program, which allows "secondary grade student[s]" to enroll in college courses.⁴ As part of this program, Hiram College offers Hudson High School seniors a college writing course entitled "Composition in the Liberal Arts II."⁵ Parents must sign a waiver acknowledging that college "[c]ourse subject matter may include adult themes and content including books [...] and will not be modified to accommodate the age" of the student.⁶

¹ The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

² The National Coalition Against Censorship (NCAC), founded in 1974, is an alliance of over 50 national nonprofit organizations, including literary, artistic, religious, educational, professional, labor, and civil liberties groups dedicated to promoting the right to free speech.

³ PEN America is a nonprofit organization standing at the intersection of literature and human rights to protect open expression in the United States and worldwide.

⁴ Ohio Rev. Code § 3365.02(A).

⁵ See HUDSON HIGH SCH., 2021-2022 COURSE SELECTIONS FOR 12TH GRADE, available at <https://bit.ly/3EjHIIH>.

⁶ HIRAM COLL., COLLEGE CREDIT PLUS COLLEGE ENVIRONMENT ACKNOWLEDGEMENT (HUDSON-FORM C), available at <https://www.documentcloud.org/documents/21063449-ccp-parent-approval>.

For the past six years,⁷ the course has used the textbook “642 Things to Write About,” which offers hundreds of “outrageous and witty writing prompts,” ranging from “crafting your own obituary . . . to telling a dying houseplant why it should live and making a case for your favorite fruit.”⁸ Some prompts involve death (*e.g.*, “Choose how you will die”), murder (*e.g.*, “Write a scene that begins: ‘It was the first time I killed a man’”), sex (*e.g.*, “Describe a time you wanted to orgasm but couldn’t”), and substance abuse (*e.g.*, “Write a letter from the point of view of a drug addict”).⁹

After parents complained, Hudson High principal Brian Wilch, at a September 13 meeting of the district’s school board, apologized for the materials’ use.¹⁰ Wilch explained that the controversial prompts had been “overlooked” because students use only approximately 40 of the 642 prompts, and none of the “inappropriate prompts” were ever “selected or discussed.” Wilch opined that the prompts “are not appropriate for our high school audience” and announced that administrators were “collecting” the books from students and “will find a suitable substitute.” During that meeting, Hudson Mayor Craig Shubert claimed he had spoken to a judge, who “confirmed” the book was “child pornography,” and pledged that members of the school board “will be charged” if they did not “choose to resign.”¹¹

In a statement, you reiterated that “at no time were any of these inappropriate writing prompts assigned” and announced an “independent investigation” to determine how the materials were “approved” and whether “additional action should be taken.”¹²

II. Ohio Law and the First Amendment Bar Hudson High School from Regulating Textbooks or Other Content of College Courses

Allowing high school students to enroll in college courses provides them a valuable opportunity to engage with advanced material, discussion, and subjects. Their participation, however, cannot justify diluting or childproofing materials offered in college courses. Hudson High’s removal of a textbook from a CCP course due to parental and public objection to its lawful content violates both Ohio law, which requires that these classes be identical to the college course, and the First Amendment, which protects the right of college students and faculty to select materials and engage in discussions others may find offensive.

⁷ Jack Shea, *Ohio high school upset over writing assessment with adult themes they find offensive, inappropriate*, WTRF (Sept. 15, 2021), <https://www.wtrf.com/news/ohio-headlines/ohio-high-school-upset-over-writing-assessment-with-adult-themes-they-find-offensive-inappropriate>.

⁸ CHRONICLE BOOKS, *642 Things to Write About*, <https://www.chroniclebooks.com/products/642-things-to-write-about> (last visited Sept. 15, 2021).

⁹ Megan Becks, Hudson Mayor Craig Shubert, parents call for resignation of Hudson School Board, teachers after students receive book of inappropriate writing prompts, CLEVELAND.COM (Sept. 15, 2021), <https://www.cleveland.com/akron/2021/09/hudson-mayor-craig-shubert-parents-call-for-resignation-of-hudson-school-board-teachers-after-students-receive-book-of-inappropriate-writing-prompts.html>.

¹⁰ Video of Wilch’s remarks is available via the Hudson Board of Education website, beginning at 28:15: https://hudson.granicus.com/player/clip/3392?view_id=3&redirect=true.

¹¹ *Id.*

¹² Jade Jarvis, *Writing prompt book sparks controversy among parents in Hudson*, NEWS 5 CLEVELAND (Sept. 14, 2021), <https://www.news5cleveland.com/news/local-news/oh-summit/writing-prompt-book-sparks-controversy-among-parents-in-hudson>.

A. *Ohio State Law Bars Hudson City Schools from Altering CCP Course Material*

Hudson’s removal of the textbook and announcement that it would find a “suitable” alternative text violates state law. The content of CCP courses—here, college courses offered as electives to high school seniors—may not be diluted on the basis that some students have not reached the age of majority.

Ohio law requires that “[a]ll” CCP courses “be the same courses that are included in the partnering college’s course catalogue for college-level” classes.¹³ As a result, college courses offered under the CCP program “shall follow the same course syllabus” and “use the same text book and materials and assessments as the college course” as delivered on the college campus. This is true even when the class is offered “in the secondary school” and taught by a “secondary teacher.”¹⁴

That’s why the Ohio Department of Education’s CCP website advises students and parents that “[s]ome college classes have content that is oriented toward a mature or adult student,” and instructors will not “modify the course content” due to a student’s age.¹⁵ The parental consent form required to enroll in Hiram College’s CCP courses similarly warns, expressly, that the course may contain “adult themes and content including books” and that content “will not be modified to accommodate the age” of the student.¹⁶

B. *The First Amendment Protects the Right to Impart and Receive Objectionable Information in College Courses*

It has long been settled law that the First Amendment is binding on public educational institutions.¹⁷ While school boards have broad leeway to formulate curricular content, that authority is circumscribed by the First Amendment, and officials may not prohibit students’ voluntary “access to” materials that some may find objectionable, as “such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.”¹⁸

Even if Ohio law did not require CCP classes to be identical to those offered by the university, officials who purport to regulate *college* courses—as here—will find their authority is even more sharply circumscribed by the First Amendment. College classrooms are “peculiarly the ‘marketplace of ideas,’” and the “Nation’s future depends on” the ability of students to gain

¹³ Ohio Rev. Code § 3365.12(A); *accord*, Board of Ed. Admin. Guideline Manual No. 2271 (rev. Sept. 24, 2018).

¹⁴ Ohio Admin. Code § 3333-1-65.4(A); *accord*, Admin Guideline Manual No. 2271, *supra* n. 13.

¹⁵ OHIO DEP’T OF HIGHER ED., COLLEGE CREDIT PLUS FREQUENTLY ASKED QUESTIONS, <https://www.ohiohighered.org/ccp/faqs> (last visited Sept. 16, 2021).

¹⁶ College Credit Plus College Environment Acknowledgement (HUDSON-FORM C), *supra* note 6.

¹⁷ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (“First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students”); *Healy v. James*, 408 U.S. 169, 180 (1972) (“[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools”) (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).

¹⁸ *Bd. of Educ. v. Pico*, 457 U.S. 853, 868 (1982); *see also id.* at 861 (First Amendment limits the “power of the State to control even the curriculum and classroom”). Indeed, some high school seniors may *already* have reached the age of majority—which carries with it the right to vote and renders them eligible to be drafted into the armed services—and diminishes any interest in regulating the material they may read.

“wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection.”¹⁹ Accordingly, our Constitution protects the academic freedom of instructors to select materials and engage in discussions without interference from the authorities.

That others find material or discussions in a college course objectionable cannot justify censorship. For example, the United States Court of Appeals for the Sixth Circuit—the decisions of which are binding on Hudson—has flatly rejected as “totally unpersuasive” the “argument that teachers have no First Amendment rights when teaching, or that the government can censor teacher speech without restriction[.]”²⁰ There, a community college instructor leading a “classroom discussion examining the impact of such oppressive and disparaging words as ‘nigger’ and ‘bitch’” was protected by the First Amendment, even when members of the community strenuously objected to the discussion’s content.²¹ This principle is sufficiently well-established that the Sixth Circuit denied qualified immunity to the administrators who ignored the First Amendment’s application to college courses, as “reasonable school officials should have known that such speech, when it is germane to the classroom subject matter and advances an academic message, is protected by the First Amendment.”²²

While some may object—reasonably or not—to some prompts contained in the book, its overall content is both lawful²³ and pedagogically relevant, advancing an “academic message” on college-level writing.

Ohio’s law requiring that CCP courses be unaltered recognizes the deleterious effect on academic freedom that would flow from “childproofing” college courses. Absent the protections afforded by Ohio law and the First Amendment, college courses open to high school students or young college students would be subject to paternalistic censorship, chilling faculty members’ ability to select books that they believe best serve their pedagogical interests. These restrictions would, as here, extend beyond sexually suggestive content, chilling the ability of college instructors to discuss race, sex, and gender, and would include books from “To Kill a Mockingbird” to “Catch 22” to “The Things They Carried.”²⁴ That this

¹⁹ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (cleaned up).

²⁰ *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 680 (6th Cir. 2001).

²¹ *Id.* at 674.

²² *Id.* at 663.

²³ Mayor Shubert’s claim that a judge assured him the book contains “child pornography,” and that imminent prosecution awaits Hudson officials, is risible. First, child pornography is limited to *visual* depictions, 18 U.S.C. § 2256(2)(B)(8), and the text does not fall into the First Amendment’s exception for obscenity because it does not depict or describe patently offensive “hard core” sexual conduct, nor does it as a whole appeal to the prurient interest or lack serious literary or artistic value. *Miller v. California*, 413 U.S. 15, 24, 27 (1973).

²⁴ *See, e.g., Open Letter: Authors Demand Texas School District Reinstate Their Books*, PEN AMERICA (Apr. 21, 2021), <https://pen.org/authors-demand-texas-district-reinstate-books>; Evan McMorris-Santoro, et. al., *Students fight back against a book ban that has a Pennsylvania community divided*, CNN (Sept. 16, 2021), <https://www.cnn.com/2021/09/15/us/book-ban-controversy-pennsylvania/index.html> (limits on a book “about Alaska Parks, Malala Yousafzai’s autobiography and CNN’s Sesame Street town hall on racism”); Alison Flood, *Alaskan school board lifts ban on Gatsby and Catch-22 after protests*, THE GUARDIAN (May 22, 2020), <https://www.theguardian.com/books/2020/may/22/alaskan-school-board-lifts-ban-on-gatsby-and-catch-22-after-protests>.

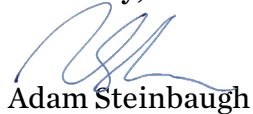
chilling effect will invade college courses is not idle speculation: In addition to the censorship advanced at Hudson High, lawmakers in Ohio have pressured a public university to cease use of particular materials in a freshman writing course due to “graphic sexual violence detailed and glorified” in a textbook about Japanese anime—the subject of the class.²⁵

III. Conclusion

Hudson High is not obligated to provide college courses to its students. Having made the decision to do so, the First Amendment’s stringent protection of academic freedom restricts officials’ ability to police course content. The course at issue is an opt-in elective intended to provide students with access to college courses. Parents aggrieved by the course content may choose not to enroll their underage students in the class, but school officials may not prevent others from making that choice by censoring the course’s content to satisfy objections to it.

We request receipt of a response to this letter no later than the close of business on Wednesday, September 29, 2021, confirming that Hudson High School will restore the college class and return any confiscated material, including the “642 Things to Write About” book.

Sincerely,



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Foundation for Individual Rights in Education



Christopher Finan
Executive Director
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Jonathan Friedman
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PEN America

Cc: Brian Wilch, Principal, Hudson High School
Dave Zuro, President, Hudson City Schools Board of Education
Steve DiMauro, Vice President, Hudson City Schools Board of Education
James Field, Member, Hudson City Schools Board of Education
Alisa Wright, Member, Hudson City Schools Board of Education
Tom Tobin, Member, Hudson City Schools Board of Education
David Haney, Ph.D., President, Hiram College
Sofia Moreno, College Credit Plus Coordinator, Hiram College
Sheri Bevan Walsh, Summit County Prosecutor (c/o James Pollack)
Perry Tabak, Chief of Police, Hudson Police Department

²⁵ Letter from Reps. Reggie Stoltzfus & Don Jones to Todd Diacon, President, Kent State Univ., Oct. 6, 2020, available at <https://www.scribd.com/document/478977542/Letter-to-KSU-from-Reps-Stoltzfus-Jones>; see also Lyndsey Brennan, *State representatives object to anime textbook that depicts sexual assault*, KENTWIRED.COM (Oct. 13, 2020), http://www.kentwired.com/latest_updates/article_802440f0-0d5d-11eb-8ecc-2b305a5064a2.html.