

JOURNAL OF

# INTELLECTUAL FREEDOM & PRIVACY

Office for Intellectual Freedom, an Office  
of the American Library Association

A stirring summary of the  
essentials of intellectual  
freedom—misattributed to  
Benjamin Franklin—adorns  
the halls of the U.S. Capitol.

WITHOUT FREEDOM OF THOUGHT  
THERE CAN BE NO SUCH THING AS WISDOM  
& NO SUCH THING AS PUBLIC LIBERTY  
WITHOUT FREEDOM OF SPEECH

BENJAMIN FRANKLIN 1722

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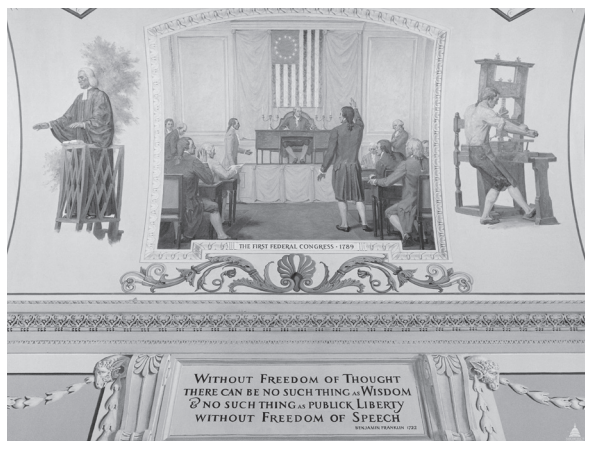
## NEWS




THE FIRST AMENDMENT CANNOT BE PARTITIONED. IT APPLIES TO ALL OR IT  
APPLIES TO NO ONE.

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## WINTER 2017 \_ ABOUT THE COVER



 \_ In one of the hallways of the U.S. Capitol building, a set of murals designed by artist Allyn Cox chronicle the legislative milestones of three centuries, including the adoption of the first ten amendments to the U.S. Constitution during the first Federal Congress. The mural—shown at left in its entirety—is framed by two vignettes and a quotation celebrating the First Amendment. One vignette depicts a preacher, symbolizing freedom of religion; the second shows a printer at work to represent freedom of the press; and a medallion featuring the phrase “Without freedom of thought there can be no such thing as Wisdom, and no such thing as Public Liberty without freedom of speech”—attributed to Benjamin Franklin—completes the mural. Photo credit: Architect of the Capitol.

But Franklin never penned the famous quote on the importance of free speech. The phrase was written by two Englishmen, John Trenchard and Thomas Gordon, who wrote and published a large number of

political essays in early eighteenth-century London using the pseudonym of Cato. The phrase opened their essay “Freedom of Speech, That the Same is inseparable from Publick Liberty,” published on February 4, 1720, in the *London Journal*. It was later collected as Cato’s Letter No. 15 in their book, *Essays on Liberty, Civil and Religious*.

A fifteen-year-old Benjamin Franklin, writing as fictitious, opinionated widow Silence Dogood, quoted extensively from Trenchard and Gordon’s essay on free speech in a column published in the July 2–9, 1722, issue of the *New-England Courant*, the newspaper founded by Franklin’s older brother James. The column served as a subtle protest against the governor’s arrest of James following James’s publication of a short news item in the *Courant* that displeased the governing British authorities. Though “Silence Dogood” informs the *Courant*’s readers that “I prefer the following Abstract from the *London Journal* to any Thing of my own, and therefore shall present it to your Readers this week without any further Preface,” those readers—and subsequent historians—have mistakenly attributed Trenchard’s and Gordon’s eloquent paean to free speech to Franklin. Photo: scan of the July 2–9, 1722, issue of the *New England Courant*, courtesy ushistory.org.



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# Speech and Consequences

James LaRue (jlarue@ala.org), Director, Office for Intellectual Freedom

**T**his issue begins with the moving story of intellectual freedom champion Gordon Conable. The drama plays out like this: a principled and outspoken defender of First Amendment rights stands up for a controversial book in accordance with library policy and federal law. Then, his community vilifies, harasses, and punishes him for this defense until his death. One lesson is the inescapable truth that although we have the right to free speech, there can be consequences, whether in Michigan, or in Russia (see this issue's review of *Garden of Broken Statues*).

Another lesson is that we don't do enough to support the bravest among us. One purpose of the LeRoy C. Merritt Fund is just that: to provide some financial support for those who literally lose their jobs over an intellectual freedom (IF) challenge. But that's a little late in the game.

One can't help but be struck by the churning anger and hypocrisy of many IF battles. Defenders of morality (there's too much sex in the library!) move quickly to an eagerness not just to silence the champion but to urge the burning of books, to issue anonymous death threats, or promise to harm children. Really? In the name of virtue?

To be fair, this dynamic works in the opposite direction, too, as people who protested the insensitivity of Milo Yiannopoulos's hate speech themselves seem to have initiated violence in Berkeley. It's hard to accept someone as an advocate of "safe spaces" when he is throwing a brick at you. All too often, we move from protesting speech to promising or delivering destruction, thereby undermining not only the Constitution, but our own humanity.

But it's clear that Conable's experience is not unique. Today, in an age of doxing and internet stalking, the public annihilation of individuals with unpopular views just moves a little faster.

Conable's story, and Cooper and Bevan-Cavallaro's probing look at Florida and the eroding intellectual freedom rights of minors, also underscore today's upsurge of attempts by nervous parents to try to erase any mention of sexuality from our culture. As is clear from this issue's many news items (so insightfully summarized and framed by Hank Reichman), some parents are convinced that their seventeen-year-old children, just a year or so away from all the rights and responsibilities of adulthood, dare not be exposed even to acknowledged classics if those classics contain a single sexual scene.



But why? What's going to happen, exactly? Teenagers will suddenly get interested in sex? They're already interested in sex, which predates not only the internet, but the alphabet. Will they be encouraged to emulate the worst behavior they read about, but not the best?

The suppression of human experience, the failure to talk about it, doesn't make the underlying realities disappear. Silence just makes it harder to acknowledge the facts and to deal with their aftermath. Conable was right to view Madonna's *Sex* as a teachable moment for the

community. Teachers are right to offer *Beloved* as a way to understand some of the root causes of racial conflict and to listen, respectfully, to some of the American voices that have been suppressed for too long.

Ultimately, the vision of the Founders is that our democracy depends on not only the freedom to speak and express, but also the right to access the speech and expressions of others. This is also true for simple human learning. If we are ever to be more than we are, we must understand what we do not.



# Living the First Amendment

Gordon Conable, *Madonna's Sex*,  
and the Monroe County (MI) Library

Sylvia Turchyn ([turchyn@indiana.edu](mailto:turchyn@indiana.edu)), Indiana University–Bloomington

*The First Amendment cannot be partitioned. It applies to all or it applies to no one.*

—Gordon M. Conable<sup>1</sup>

**W**henever a library fulfills its mission of purchasing popular books, like best-sellers and titles in high demand, it usually will carry on quietly, without much community controversy. But what happens when the best-seller and in-demand title is also a highly charged sex fantasy full of graphic photographs of one of the most recognizable popular figures of the day, who also happens to be the book's author? Community outrage, organized protest, multiple and counter legal opinions, terrorist threats to the library, and multiple death threats to the library director were some of the responses to Monroe County Library System's purchase and open circulation of Madonna's book *Sex*.

## THE BOOK

On October 21, 1992, Madonna's much hyped book *Sex* was released by Warner Books. While much has been written about reactions to the book, there is a lack of published detail describing the actual book. What follows is a descriptive analysis of the content and format of *Sex*. The New York imprint arrived in a silver Mylar sealed sleeve, which served to protect it from damage and prevent viewing from the browsing public. With the contents unrevealed to all but the purchaser, the mystique continued until the exchange of currency for commodity had

occurred. The silver metal plate book covers, with the title embossed on the front cover and the letter *x* surrounded by a parenthesis on the back cover, gave the book an artistic quality. A copy number, unique to each physical piece, was stamped on the bottom center of the back cover. The metal spiral binding offered a symbolic reference to the bondage depicted within the contents. However, the coils were too small to function as a binding medium. When turned, the pages easily tore away from the wire binding, rendering the book damaged after minimal use. This major publishing defect would later complicate the



issues facing acquisitions librarians. A large book, thirty-five by twenty-eight centimeters, *Sex* contained 132 unnumbered pages that were chiefly illustrated. The illustrations were presented as erotic portrayals of Madonna, frequently accompanied by at least one man or woman. Madonna and cohorts, sometimes partially clothed or nude, were photographed in scenes representing masturbation, oral sex, homosexuality, cross-dressing, bondage, sadism/masochism, and urination. Sexual intercourse was not depicted in the illustrations. Religious symbols were used as props in a few photographs. Text is interspersed throughout the book, addressing some of the sexual activity presented in the photographs. Occasionally the depictions are humorous, with one photograph featuring a clothed Madonna having a comical facial expression, reminiscent of Lucille Ball's Lucy character. In the same picture, two bald, nude lesbians appear to engage in sexual activity behind Madonna. On another page a laughing Madonna, wearing only thong underwear, frolics in the grass with a large dog. This scene can be viewed as an innocent, joyful scene or a thinly disguised depiction of bestiality, depending on the perspective of the beholder.

In addition to the primary book content, *Sex* included a bound-in comic book entitled "Dita in the Chelsea girl." The eight page supplement, measuring thirty-one by twenty-three centimeters, was set in after the primary text and before the acknowledgment page. Finally, a compact disc, containing excerpts from Madonna's album *Erotica*, was included in its own silver Mylar sealed sleeve along with the book. For the \$49.95 price tag, purchasers received a multimedia exposure to Madonna's sexual fantasies.<sup>2</sup>

*Sex* was also simultaneously published in several foreign markets, carrying British, Japanese, German, and French imprints. Globally, one million copies were released on the opening day.<sup>3</sup> The half-million U.S. printing sold out quickly, and *Sex* debuted at the top of *Publishers Weekly* best-seller list.<sup>4</sup> In its annual compilation of 1992 best-sellers, Madonna's book earned tenth place in the nonfiction category.<sup>5</sup> *Sex* quickly rose to the top of the *New York Times* Best Sellers and remained there for ten weeks.<sup>6</sup>

Four years after its publication, Madonna described her intention in authoring *Sex*. In an interview published in

*The Times*, Madonna explained, "It was meant to be funny, mostly, but everyone took it very seriously—which just showed me what little sense of humour most of us have when it comes to sex. In fact, no one seems to have a sense of humour about it at all, not when it's presented to you by a female. I think that if a male had conceived the idea, and I was just a model in the book, it would have had a very different reception."<sup>7</sup>

### THE PLACE

The county of Monroe occupies the southeastern corner of the state of Michigan, anchored between the big cities of Detroit to the north and Toledo to the south. The official visitor information website for the county prominently featured a photograph of General George Armstrong Custer, who was known primarily for his role in the Battle of the Little Big Horn. The photograph's caption read "Monroe is proud to be the hometown of General Custer." A statue of General Custer in Monroe was also described on the city site.<sup>8</sup> This obvious declaration of civic pride in Custer may offer a glimpse of the cultural climate in the city and county of Monroe in the 1990s.

With fifteen branch libraries, the Monroe County Library System (MCLS) served a population of 133,600 in the early 1990s.<sup>9</sup> Gordon M. Conable accepted the position of library director in 1988, immediately following his lengthy and successful tenure as associate director of the Fort Vancouver Regional Library in Washington. Conable had developed his administrative skills and nurtured his role as guardian of the First Amendment while in Washington. His style emerged as a blend of intelligence and knowledge, softened by tolerance and commitment, offered with a generous service ethic and presented within a pedagogical framework. He had attained national recognition as a leader in intellectual freedom within library circles, as evidenced by his election to the post of president of the Freedom to Read Foundation in 1992-1995 and again in 2001-2005.<sup>10</sup>

Once Madonna's book was published, the decision to purchase it was consistent with the criteria established for selection of materials for the MCLS. The primary factors considered were media attention, numerous pre-publication patron requests, and interest in the book.<sup>11</sup> Five copies were ordered and the roughly fifty dollar



BOTH CONABLES  
HELD THE POSITION  
THAT "IT WAS  
INCUMBENT ON US  
TO PRESERVE THIS  
COMMITMENT TO THE  
FIRST AMENDMENT."



per book price was significantly reduced by a 40 percent discount.<sup>12</sup>

By early December the stirrings of discontent regarding the presence of Madonna's *Sex* in the MCLS collection began with scattered protest meetings in county churches. Irene Conable, wife of the library director, recalled that her husband had attended one of those strategy meetings at a local church. When Conable was identified by the participants, a big discussion ensued on whether he would be permitted to remain at the meeting. Those present eventually voted to allow the library director to stay, as long as he remained silent. The opposition to *Sex* in the library collection was not unanimous among the clergy, as the pastor of Petersburg United Methodist Church eventually spoke against banning the book.<sup>13</sup>

The community opposition quickly escalated to an organized protest when 2,616 signatures were presented to a MCLS's board meeting on December 21, demanding the removal of the controversial book from the library. With approximately 250 residents attending the meeting, the board heard ninety minutes of comment on both sides of the issue. While some spoke in favor of the library's decision to purchase *Sex*, citing principles of free speech rather than personal preference, thirty speakers described the book variously as pornographic, harmful to children, immoral, a waste of tax money, and against community standards. The Monroe County police chief also joined the opposition. Unruly behavior, which was later described as "mass hysteria," required board chairman Judith See to call for order on numerous occasions. True to his principles, Director Conable voiced support for the dissenters, saying "this issue is about the right of everyone to have an opinion. That's what the library is for—to help people facilitate their right of expression." During that meeting the library board announced the formation of an internal review committee to determine if policy was followed in selecting Madonna's book.<sup>14</sup>

On January 19, the MCLS board held its next meeting at the Monroe County Community College to accommodate the hundreds of anticipated residents. Among the crowd of 325 people, attendees exercised their First Amendment rights, with the majority speaking against the book while others spoke in support of the library's decision to purchase. Among the frequent emotional outbursts, some called for the firing of Director Conable while others blamed the library board. Opponents recommended that disgruntled residents seek relief from the county board of commissioners. To help their cause, the angry residents distributed fliers among the audience, listing the names, home phone numbers and opinions on

the library's purchase of the *Sex* book for each Monroe County commissioner. In addition to accepting comments from the community, the library board heard conclusions from Robert A. Sedler, professor of law, Wayne State University of Detroit, regarding the constitutional and legal considerations applicable to the selection and removal of materials by a public library and the access provided to minors to materials in a public library. In his memorandum to the library board dated January 14, Sedler concluded that "for the library system to remove Madonna's book, *Sex*, from its collection because of public opposition to the book would indisputably violate the First Amendment." Further, Sedler stated, "I simply cannot conceive of any rules restricting access to the library collection by minors, particularly mature minors, that would satisfy the requirements of the First Amendment." This legal opinion further bolstered the findings of the library review committee, which had concluded that the book was properly selected. In their decision, the review committee also concurred "that to not purchase this book, in light of the attention it was receiving and the local demand for it, would fall short of the direction contained in Board policy, the mission of the library, and this library system's heritage of service." Conable noted that ninety-seven requests for the book had already been recorded, assuring that the book would not appear on the library shelves until 1994. At the end of the long evening, after listening to comments from the audience, receiving Sedler's legal opinion and the review committee's recommendation, the library board voted four to zero to keep Madonna's book in the collection.<sup>15</sup>

Following the library's decision to keep Madonna's book in the collection, the Monroe County board of commissioners, as anticipated, entered the discussions surrounding the book's controversy. Opponents expected the county board to take action against the library, but following the Sedler opinion there appeared to be no lawful option to force removal or restrict circulation of Madonna's book. On January 21, the commissioners' legal adviser, Mark Braunlich, who had studied the issue, reported in his preliminary findings that the commissioners' only authority was to appoint and remove members to the library board. Further, citing the findings of the library review committee, Braunlich found no basis for dismissal of library trustees. The commissioners had also requested county prosecutor Edward Swinkey to determine if the library would be engaging in criminal activity by circulating *Sex* to minors. The Berlin Township board became the only one to openly oppose the addition of the *Sex* book to the library.<sup>16</sup>





The furor over *Sex*, although occasionally contentious and heated, had thus far largely remained within the range of legal discourse and the parameters of protected speech. However, on the evening of January 21, the same day that Braunlich announced that he found no lawful way to force the library to comply with censors, the MCLS received a bomb threat. Via telephone, an anonymous male announced the presence of pipe bombs and that the building should be evacuated. While the caller did not mention the book controversy, library officials assumed the bomb threat was linked to the library's decision to retain Madonna's *Sex*. Monroe County deputies evacuated the thirty or forty patrons and staff from the main library building, the Ellis Reference and Information Center, within minutes of the threat. At 10 a.m., the library staff heard something hit the parking lot surface. The summoned deputies returned to discover an empty piece of pipe in the lot, though it was unclear if this incident had any relationship to the earlier bomb threat. Irene Conable confirmed that no bomb was ever located in the library following this incident.<sup>17</sup>

Attempts to ban a book from a library collection usually follow a logical progression of actions: a citizen files an objection to an item, the library implements a formal review of the item, and a decision is announced. In this case, however, multiple legal opinions were rendered while community opponents sought removal of or restricted access to *Sex*. The next step in the legal counterpoint occurred when Mark Braunlich released his findings on the Sedler opinion on January 26. As expected, Braunlich confirmed the autonomy of the library board, but he also stated that restricting access to minors would not violate the constitution.<sup>18</sup>

With an unsatisfactory response from the library board, opponents turned to the Monroe County board of commissioners for response and relief. At the January 26 meeting of the board, citizens once again gathered to primarily voice opposition to *Sex* as a part of the library's collection. Many comments addressed process and policy and included the following:

- The book-selection process lacked citizen input.
- Library board appointments should go to citizens who pledge to remove authority over selection policy from the director and give it to the citizenry.
- The library board members should resign.
- Does the county need a library?

On a personal level, it was alleged that "Mr. Conable is a dictator and he has total authority to do anything."

Dozens of citizens continued the call for Conable's resignation. The commissioners were polled on their personal opinions regarding the purchase of Madonna's book. Of the nine-member board, eight opined that, since the book could not legally be removed, it should be restricted to circulation to adults or for use in the reference area. In their comments, two commissioners did, however, address First Amendment concerns. The remaining board member did not think the library was the appropriate place for Madonna's *Sex*. Clearly, there was unanimous lack of support for the library's selection policy and decision to purchase this best-seller.<sup>19</sup>

After several weeks of community upheaval, and with no signs of this controversy diminishing, the chairperson of the library board resigned. Judith See spoke to the pressure from 4-H families and interference with her job as 4-H youth agent at the cooperative extension service as the reasons for her decision. See also spoke of the many "threatening" letters that stated she was morally unfit to work with youth. At their February 10 meeting the commissioners, however, voted six to three to reject her resignation. Many board members cited her contributions to the 4-H program and the county library, noting her positive impact on children in both roles. At that same meeting, interested citizens continued to present their opinions about Madonna's book, describing it as pornographic, degrading to women, and contributing to moral decay, child endangerment, and encouraging sexual offenders. One local lawyer described the opposition as a "highly organized, right-wing, extremist group," and then proceeded to throw several notable classic books on the floor. He ended by offering a pack of matches to the board chairman, suggesting that book burnings would follow the attempts to censor.<sup>20</sup>

The commissioners announced their intention to work with library officials to resolve the emotional and legal issues that remained, following the decision to retain *Sex* in the library collection. At their meeting of February 23, the board appointed its human resources committee to form a joint task force with library board members to work toward a resolution of the community discord regarding the library's acquisition. Specifically, the task force was charged to review the library policy on book selection and circulation as applied to Madonna's book. While welcoming citizens to attend task force meetings, the commissioners warned that improper conduct would not be tolerated.<sup>21</sup>

Instead of the community turning its collective attention to the collaborative work of the task force, this momentum was interrupted with the release of prosecutor



Edward Swinkey's legal opinion, which he presented to county commissioners on March 8. In this next step in the legal sparring between the commissioners and library officials, Swinkey concluded that the sexually explicit content of Madonna's book made it harmful to minors as defined by Michigan law. If the book is legally harmful to minors, some library employees could be prosecuted for making it available to minors at the library. The prosecutor did concede that librarians were exempt from prosecution, citing numerous citations to case law. In an interview with the *Monroe Evening News*, Swinkey declared that he would not rule out prosecution for the nonlibrarian employees.

Further, Swinkey stated that the library system "has in its power the ability to deny access to the book without violating the U.S. Constitution."<sup>22</sup>

On the same day that the commissioners received the prosecutor's opinion, the library board also convened. When informed during the meeting of the Swinkey opinion, director Conable declined to comment until he and the board were able to carefully review and discuss it. The unrelenting opponents, perhaps emboldened by the Swinkey decision, continued to dominate the comment period of the meeting, with twenty speakers repeating the same themes against Madonna's book. Even though two board members suggested that some restriction might be possible, angry citizens escalated the conflict by proposing the pursuit of legislation mandating that the library board be an elected body. Others proposed campaigning to defeat the next library millage vote. Once again the library director was the target of negative comments, with one opponent calling for future review committees to be composed of people "not beholden to the (library system) director."<sup>23</sup>

When the commissioners met on March 9, they agreed to refer the Swinkey opinion to the human resources task force that would jointly review the library's policy on material selection with representatives of the MCLS. State Representative Lynn Owen stated in a letter that he would sponsor a bill changing the library board from appointment to election, but only if the commissioners presented him with a supporting resolution to that effect.

Citing their support for the current arrangement whereby the commissioners appoint the library board, the county commissioners refused to provide the requisite resolution.<sup>24</sup>

The next salvo in the conflict came from the library, when director Conable announced that the board would meet in closed session to review another legal opinion. Citing attorney-client privilege as the justification for the private meeting, Conable also said that he was empowered

as director to hire a lawyer when needed.<sup>25</sup> As anticipated, the mystery legal opinion was the third rendered on the Madonna book controversy, with Robert Sedler issuing his second legal opinion for the library on this topic. The twenty citizens who attended the library board meeting on March 16 were excused when Sedler reviewed his opinion. Once removed from the meeting, the citizens held signs and posters complaining that the closed meeting was illegal and wasted taxpayer money. Monroe County prosecutor Edward Swinkey later confirmed that the library's closed session to review the legal opinion was within the law.<sup>26</sup>

In his opinion, Sedler stated that

a court would rule that as a matter of law, the book, which had been on the national best seller list for a number of weeks, has "serious literary, artistic, political or scientific value for a legitimate minority of normal, older adolescents." Madonna is a famous rock star, and her sexual fantasies convey messages of sexuality, rebellion, freedom, racial equality and the like to her many fans, who include "a legitimate minority of normal, older adolescents."

For the above reasons, I have no hesitation whatsoever, in concluding that a court would hold that as a matter of law, Madonna's book, *Sex*, is not "obscene as to minors" under the standard of "variable obscenity," and so is protected by the First Amendment and correspondingly is not prohibited by MCL 722.674. I note that Mr. Swinkey has made no effort whatsoever to support his contention that the book is "harmful to minors" within the meaning of MCL 722.674, and I would suggest that this is because such a contention is completely unsupported as a matter of law.<sup>27</sup>

After the library board reconvened in open session, they referred the Sedler opinion to a special subcommittee of board members who were charged to review the current decision regarding open circulation of Madonna's book.<sup>28</sup>

By the time the human resources committee of the board of commissioners met as charged, it seemed clear that its primary agenda was to find a way to legally restrict access to Madonna's book. At a meeting on March 31, the human resources committee, three lawyers involved with the controversy, and library representatives participated in the ongoing discussion, though the forty people in attendance were only allowed observer status during this official committee work session. Prosecutor Swinkey and legal advisor Braunlich were of the opinion that Madonna's book would meet the community standard for obscenity



to minors. Bruce Laidlaw, the interim general counsel representing the library, who was aligned with Robert Sedler, disagreed that this book would fail the legal litmus test of finding some artistic, educational, or scientific value, even among the average seventeen year old. Laidlaw also referred back to the legal concept of “variable obscenity,” which had been addressed in Sedler’s most recent legal opinion. Both Laidlaw and Sedler had been unable to find a single case where the court had declared a specific work legal for adults but lawfully obscene for minors. Library Director Conable reported that among several legal opinions rendered on the book *Sex*, only Swinkey’s concluded that this title was beyond the protection of the First Amendment.<sup>29</sup>

Though the public had no opportunity to speak at this meeting, they expressed their anger with T-shirts emblazoned with “Monroe county library—harmful to our children” and other slogans comparing the library and its director to hazardous waste. In a more constructive way, their collective voice was represented when twenty questions originating from the county residents were asked of Director Conable. In his responses, Conable was unwavering in his support of the Constitution, the public’s right to access at the library material protected by the First Amendment, and the library’s selection policy that safeguards that right. To summarize, Conable’s answers and statements confirmed that

- *Sex* has been the most requested title by Monroe citizens than any other book in the last five years;
- *Sex* was not viewed prior to purchase but was within the standards of selection procedure;
- no twelve-year-old had requested the title to date, and that child would probably be eighteen before the book would be available;
- current library selection policy already prohibited the acquisition of any legally obscene materials; and
- only a court of law can issue a legal opinion that would find a specific title to be legally obscene.

From the meeting two key action items emerged. The committee wanted county legal advisor Mark Braunlich to draft a policy that would define a way the county library could restrict access to Madonna’s book without violating the law. The other outcome of the meeting was a decision to draft a proposal for the full board of commissioners to adopt a resolution similar to one enacted in neighboring Ingham County, which required the library board to define policy to restrict access to sexually explicit materials that are harmful to minors.<sup>30</sup>

As requested, Braunlich drafted a one-page resolution for the county commissioners that urged the library officials to restrict access to books that are considered sexually explicit and therefore harmful to minors on the basis of community standards. Director Conable tactfully responded that this resolution would be “an invitation for dialogue” between library board members. In keeping with his steadfast resolve to follow the Constitution and rule of law, Conable also issued an open request to lawyers Swinkey or Braunlich to provide detailed legal supporting evidence for their positions that lawyers Sedler and Laidlaw disputed. The library director emphasized that the library board would surely consider a constitutionally legal restriction to minors accessing Madonna’s book.<sup>31</sup>

In mid-April, the subcommittee of library board members, who had been charged to review the decision to circulate Madonna’s *Sex* without restriction, recommended that no change be made in that decision. Around the same time, the county commissioners voted unanimously to pass Braunlich’s resolution, which asked the library board to revise its policy by considering community standards and restricting access to minors regarding sexually explicit materials. Despite the overwhelming support for this resolution among the commissioners, they also acknowledged that they cannot force the library board to change policy, so no change was expected. The commissioners agreed to continue to monitor the library board’s actions as well as the community’s response. There was also some support expressed for another, more thorough legal opinion from Swinkey or Braunlich with evidence supporting their decision that Madonna’s book was harmful to minors. After almost four months of uproar over the purchase and circulation of *Sex* by the county library, only a few residents commented on this topic at the April 13 commissioner meeting.<sup>32</sup>

Later in April, Braunlich did announce his intention to meet with Conable to discuss Braunlich’s opinion that *Sex* and other sexually explicit books can be legally restricted to adults. The culmination of this announcement resulted in a formal memorandum from Braunlich to Conable, dated July 14, wherein Braunlich agreed “with Professor Sedler that since the Library Board purchased Madonna’s book in accordance with the existing material selection policies, removal of that book at this time would likely to be found to violate the First Amendment of the United States Constitution.” The primary objective of Braunlich’s letter, however, was to ask the library to revise its circulation policy to allow legal restrictions for children seven-teen years of age and younger on the basis of sexually explicit content and laws intended to protect minors.<sup>33</sup>



With no legal means to force the library to remove Madonna's book from the collection, nor success in asking library officials to rewrite policy, angry residents and some county commissioners looked to future appointments on the library board as the sole method to instill change and some measure of control over the library. To that end, the majority of the commissioners selected William Carrigan, who openly opposed the acquisition of *Sex* in the library, to join the library board in June 1993. In doing so, the commissioners also failed to reappoint a seated library board member who had supported the library's policies. In August, new library board member Carrigan submitted a proposal to change library policy by introducing restrictions to some materials. Nancy Colpaert, retired MCLS library director and direct successor to Gordon Conable, confirmed that policies affecting open access to MCLS materials would not be changed after the Conable era.<sup>34</sup>

### NATIONAL RESPONSE TO THE BOOK

Around the United States, public libraries and library boards struggled with the decision to purchase Madonna's *Sex*. No prepublication copies were released, ostensibly to heighten the allure of the forbidden content. Once published, major book reviewers panned *Sex*, so the decision to withhold advance copies may have been an attempt to delay the inevitable bad press.<sup>35</sup> In some libraries, like the MCLS, the decision to add this book to the collection led to an aftermath of protest and challenge. With any controversial title, there is opportunity for discourse and potentially negative outcomes at every stage of a book's journey in a library, from acquisition through shelf life. For many librarians, there was no satisfactory answer to the many dilemmas this title created: purchase this pricey book and accept the likelihood that it might be stolen, vandalized, or quickly worn out. Further, library directors might expect calls to remove it from the collection, charges of peddling pornography, and motions to restrict access to adults. On the other hand, decisions not to acquire the book could expose the library to justified charges of censorship in selection. For the first time in recent memory, a book with undeniable and sustained best-seller status, as well as great reader interest, pushed the limits of what the populace considered acceptable mainstream reading. For librarians who did not reject this purchase out of hand, this title became a litmus test of their principles, policies, and practices.

Across the country, libraries were involved in various stages of controversy regarding Madonna's book. Individual citizens, action groups, and county boards protested decisions to acquire the title as well as the policies that

supported unrestricted access to *Sex* once it was added to the library catalog. Reports in multiple issues of the *Newsletter on Intellectual Freedom* in 1993 showed a clustering of activity in the southwest, midwest, and east coast. A particularly fierce response occurred in Houston, Texas, where residents banded together as the "Citizens Against Pornography." They called on the mayor to prevent the purchase of the title despite funding provided by an anonymous donation. Failing that, there was a call to remove the book from the library and to recall lawmakers who did not comply. Library Director David Henington, whose resignation had been requested by the citizen group, convened a review committee. Based on the committee's recommendation, the book was retained in the collection, but with noncirculating status only to adult users. In two cases, library directors in Austin, Texas, and Downers Grove, Illinois, responded to written attorney opinions by limiting access to persons over eighteen. The Topeka and Shawnee County (KS) Public Library removed the book on the recommendation of the library's review committee, but then reversed itself and reinstated the book with adult-only circulation status. The Des Moines, Iowa, public library similarly restricted viewing by keeping the book in the reference area, with access limited to readers eighteen and older. Many libraries in Arizona (Phoenix, Glendale, Tempe, and Scottsdale), Connecticut (Stamford, Norwalk, and New Canaan), and Omaha, Nebraska, made known their intentions not to purchase *Sex*. In Mesa, Arizona, Colorado Springs, Colorado, and St. Louis, Missouri, orders that had already been placed were canceled following numerous complaints. The public libraries in Champaign, Illinois, and Manchester, Connecticut, delayed decisions on access and circulation after the book was received.<sup>36</sup>

In 1990, the American Library Association's Office for Intellectual Freedom (OIF) created a database of challenged materials, from which it publishes an annual list of challenged or ultimately banned titles. From 1992 to 1993, the OIF collected data on twenty-seven cases surrounding libraries and Madonna's *Sex*, many of which have been summarized in the previous paragraph.<sup>37</sup> In 1991, the year preceding the publication of Madonna's book, the OIF tallied 508 challenges. In 1992 and 1993, at the height of the *Sex* controversy, the reported cases increased to 641 and 686, respectively. The amount of challenges to library materials continued to increase significantly, with 758 reports in 1994 and 762 in 1995. In 1996, the number of cases dropped to 661. While these numbers are significant, it is difficult to determine if fluctuations reflect changes in reporting, a rise or fall in censorship activity, or a combination of both.



In Indiana, comprehensive data were gathered from public, academic, and special libraries regarding the decision to purchase Madonna's *Sex*. In 1993, the Danny Gunnells Intellectual Freedom Committee of the Indiana Library Federation included its first "question of the year" along with the annual survey on intellectual freedom for the previous year. Two-hundred and ninety libraries responded to the question: did your library purchase Madonna's *Sex* book? Of the 188 public libraries, 36 academic libraries, and 66 special libraries, only 3 public libraries and 2 academic libraries reported acquiring this sex fantasy book. Respondents were asked to designate criteria used not to purchase the title, choosing all categories that applied: Here are the results<sup>38</sup>

- Community standards: 100
- Cost: 97
- Professional reviews: 87
- Format: 69
- Erotica: 58
- Patron request: 56
- Written selection policy: 50
- Controversy: 46
- Availability: 17
- Best-seller status: 11

When community standards alone carry significant weight in determining material purchases, the librarian may neglect his or her responsibility to provide all viewpoints on a controversial topic. When paired with cost and book reviews, the decision not to purchase gains strength. The wise librarian takes great care to ensure that such criteria are always equally applied to all acquisitions and not only to provide convenient reasons when confronted with a potentially contentious selection.

Fifteen years after the publication of *Sex*, the OCLC WorldCat catalog, a global bibliographic database, listed library holdings for this title in eight countries, forty U.S. states, the District of Columbia, and Puerto Rico.<sup>39</sup> A further analysis of these 155 libraries revealed that college, university, and research libraries were the predominant owners of one or more copies of Madonna's book (63 percent). The remainder was divided among public libraries (23 percent), art libraries and museums (10 percent), and other special libraries (4 percent).

Because of poor binding quality, even moderate use would damage this book. Given the uproar and interest in the *Sex* book, it is quite possible that consecutive circulations occurred at public libraries. If so, representative OCLC holdings from the public library group type may

have been higher immediately following its purchase in late 1992. When anger is generated in some segments of the population by the presence of controversial items in library collections, vandalism may occur. This too would prompt the removal of the title from the collection and OCLC holdings.

### THE PERSONAL PRICE

One might question if the strong and unwavering persona that Conable displayed to his staff, the library board, and the general public might differ from Conable the private citizen. Irene Conable, herself a librarian, quickly dismissed that possibility. She emphasized that both she and her husband were "one hundred percent" committed to the library's acquisition of and open access to Madonna's book. Both Conables held the position that "it was incumbent on us to preserve this commitment to the First Amendment." It was sadly ironic that one of the most highly regarded leaders in the intellectual freedom community, the library director who frequently counseled other librarians facing censorship challenges around the country, was himself the object of one of the most vicious and lengthy attacks in the modern history of public libraries. Throughout the duration of this series of events, Conable kept in contact with the staff of the OIF, generally to keep them apprised of developments. While the OIF staff served as a sounding board for and offered advice to Conable, this was clearly not a situation where a librarian needed significant help and direction to handle that which was not taught in library school.<sup>40</sup>

It would be naive to think that enduring months of personal and professional attack would not have some profound affect on a person. While the hateful comments, placards, and signs as well as calls for the library director's resignation were public knowledge, Conable did not tell his wife about the two written death threats that he had received until long after the Madonna episode had passed. Irene Conable related that in one letter to the editor of a local newspaper, the writer referred to Conable as "Satan" and that the purchase of the *Sex* book was the work of Satan. It must be stated that Conable did not balk at controversy. In his wife's words he was "engaged by the difficult." Conable also loved the challenge of a teachable moment, regardless of whether it was while addressing his library staff or facing an angry group of residents trying to portray him as a purveyor of pornography. Sadly, the sustained tension of many months of discord and personal attacks manifested itself in a life-threatening medical condition. Conable developed high blood pressure, which his wife believes was a contributing factor in his early and untimely death on January 12, 2005.



The impact of the community backlash also had an impact on the rest of the Conable family, both individually and collectively. Irene, who was employed as a school librarian, stopped taking lunch in the teacher's lounge when the atmosphere became contentious. Some friends simply disappeared from her life. Conversely, some previous acquaintances became steadfast friends. One woman who sang in the community chorus with Irene would pick her up every Sunday so she wouldn't drive by herself. Irene's fear of being alone was not unfounded. The Conable family lived on three acres in a rural part of Monroe County, with a homestead containing a barn and a granary. In the midst of the Madonna crisis, their closest neighbor, still acres away, made a point of telling the Conables that he would not help if there was ever a need. With Gordon Conable frequently away evenings to attend meetings at various branch libraries, the family decided to put their farmhouse on the market, and they moved into town.

Their young son Ted was five years old at the time and attended the local Montessori school. The Conables considered moving him to another school because the private school was in an isolated location. The head of the school, however, assured Ted's parents that she would assign one person each day to watch Ted and so he remained. This precaution was not based on paranoia, as Ted was also threatened in a letter received by his father. Irene recalled how she and Gordon had speculated that this letter may have been related to a local letter to the editor in which the writer thought the children of Monroe were threatened by the presence of Madonna's book and that the library director needed to pay attention to the fact that he had a small child himself. Irene's parents were furious with her and Gordon for doing anything that could have put Ted in danger. At the height of these threats a good friend offered the Conable family refuge in Chicago. The Conables seriously considered moving Irene and Ted to Chicago but eventually decided to keep the family together in Monroe.

Enduring hardship in every facet of his personal life, however, was not the end of this saga. The pressure on Conable at the MCLS never completely relented, so as 1993 came to a close he began applying for other library positions. For the next five years, Conable applied for every reasonable library director vacancy that was advertised. Though he was frequently one of two finalists, not once was Conable offered a job. Feeling doomed, Conable started applying for assistant director positions, thinking he would fare better if the hiring decision was the prerogative of the director. Still, no offers

were tendered. At some point during the years of rejection Conable contemplated returning to school to pursue a law degree.

One cannot help but acknowledge that this form of professional shunning was a damning indictment on the library profession itself. We librarians rally around our collective free speech battle cry and declare intellectual freedom as one of our "core values."<sup>41</sup> We support the American Library Association's "Library Bill of Rights" and the Constitution on which it is based. In Gordon Conable, we witnessed an esteemed library administrator who embraced best practices, who followed law and policy to the letter, yet was no longer an acceptable hire for a position of library leadership and authority.

## THE TRIUMPH

In 1998, Gordon Conable was finally offered an administrative position, which would build on his impressive resume. He accepted an appointment as executive vice president for public libraries at LSSI (Library Systems and Services, Inc.) and the family moved to California. Accolades also followed his courageous defense of free speech. In 1994, he was recognized as "Michigan Public Servant of the Year" and was the first librarian so honored by the Public Administration Foundation. In 1996, Conable was named to the Freedom to Read Foundation's Roll of Honor in addition to other honors bestowed by various foundations. When LSSI announced Conable's death, he was described as "an outstanding senior manager" and "a passionate advocate for libraries and the library profession" who "brought his extensive knowledge and deep convictions to every aspect of his job and life."<sup>42</sup>

## FINALE

Here are answers to a few lingering questions that emerged during the investigation of these events. Did Madonna's book remain in the collection at Monroe? The answer is no, but not because of censorship. Former MCLS Library Director Nancy Colpaert confirmed that the five copies of *Sex* were eventually withdrawn because of damage to the spiral binding following five years of continuous circulation.<sup>43</sup> Did Madonna ever contact the Monroe library during the long controversy? According to Irene Conable, she did not. Gordon Conable tried to contact Madonna, but she did not respond. Finally, how should librarians view Conable's role in this prolonged crisis? To quote Irene Conable, "He was not only a shining example but a warning."



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# We've Come a Long Way (Baby)! Or Have We?

Evolving Intellectual Freedom Issues in  
the United States and Florida

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**T**his paper analyzes a shifting landscape of intellectual freedom (IF) in and outside Florida for children, adolescents, teens, and adults. National ideals stand in tension with local and state developments as new threats are visible in historical, legal, and technological context. Examples include doctrinal shifts, legislative bills, electronic surveillance, and recent attempts to censor books, classroom texts, and reading lists.

Privacy rights for minors in Florida are increasingly unstable. New assertions of parental rights are part of a larger conservative animus. Proponents of IF can identify a lessening of ideals and standards that began after doctrinal fruition in the 1960s and 70s, and respond to related occurrences to help mitigate the impact of increasingly reactionary social and political currents. At the same time, progressive librarians can resist erosion of professional independence that comes when censorship pressures undermine core values.

## Historical Context

Intellectual freedom (IF) is one of eleven core values of librarianship. Along with access and confidentiality/privacy, IF is deeply rooted in professional ethics. Together, each supports the freedom of individuals to access all points of

view without restriction or undue surveillance.<sup>1</sup> All three core values evolved out of a period stretching from the 1930s into the 1970s. Yet the historical roots penetrate deeper into the past—to another fifty-plus years stretching back to the founding of the American Library Association



(ALA) in 1876 and which includes the Progressive Era (1890–1920s).

The Progressive Era was a watershed period of American liberalism. It created early and systematic environmental preservation and conservation, women's suffrage and birth control movements, and protections for working classes and children experiencing the ravages of corporatization and industrialization. The period also created a basis for future expanse of government regulation and protection that allowed a nascent middle class to prosper and expand throughout the century, absorbing masses of immigrants into an American way of life.

At times however, a strong reactionary conservatism pervaded the milieu. Aspiring and affluent classes acted to oppose or control immigrant groups. Responses included fixations on ethnic and racial differences. Immigrants in northern cities were linked to perceived threats in proliferating saloons, urban political machines, and socialist ideology. Southern states constructed a system of legal apartheid. Prohibition grew out of a tension between Irish and Italian cultures and established Protestant ideas of morality. Religious reactionaries galvanized against scientific evolution, while racists became more organized. Ku Klux Klan membership grew with an expanded hostility against Jews and Catholics in addition to African Americans, to an all-time high of up to 5 million white Protestants.<sup>2</sup>

Progressive Era librarianship was in many ways the antithesis of IF, and was defined largely in terms of service as social censor, with emphasis on repressing controversial literature and serving to uphold morality.<sup>3</sup> Militarism and a rise in nationalism contributed to deeper forms of censorship. When the United States entered into World War I in 1917, the librarian as censor collaborated with the U.S. government to repress what soldiers could read, moving beyond morality and into the realm of politics and viewpoint. Library-related censorship continued to manifest itself as a force seeking to shape and restrict collections and access.

The Progressive Era also brought a focus on children that was formative and longstanding, and it had a secondary impact on librarianship. Government protection of minors was a response to a rapid doubling of child industrial labor from 1890 to 1910 and paralleled growth of mandatory public schools as populations surged. Increasingly literate children accessed mass-produced books while there was a post-1900 expansion of access to new public libraries. School library collections began to form, and integrative roles between public libraries and schools were established in professional philosophy and praxis.

In Florida, Tampa received the state's first gift from Andrew Carnegie in 1901, as the industrialist-turned-philanthropist ramped up capitalization of new libraries through multiple organizations. This occurred well in advance of the 1911 formation of his main funding apparatus, the Carnegie Corporation of New York. Over a period of sixteen years, thirteen other libraries were built in Florida with the help of Carnegie funds, including nine public and four academic libraries.<sup>4</sup> Although the trend reflected a real growth of access and expanding intellectual choice for the literate, ALA President Arthur Bostwick also reflected that era's chauvinism. In 1908, he celebrated librarians as having greatness "thrust upon them" with what he saw as a growing social need for "censorship" aligned with the "library's . . . educational functions . . . bear[ing] on more and more of the young and immature."<sup>5</sup> In tune with ALA leadership, attendees of the 1908 Teacher's Association meeting in St. Petersburg, where the Florida Library Association (FLA) held its annual business meeting, heard how teachers and librarians must be careful—and not purchase books beyond an assumed level of comprehension. Furthermore, "simplicity, adaptability and rationality should ever be kept in mind, avoiding too much fiction."<sup>6</sup> This reflected a larger fiction debate—whether it was appropriate to include or increase its prevalence in public libraries and the extent it should serve as an education tool. The debate would continue for decades not subsiding until after World War II. But levels of comprehension in reader's advisories and other contexts would become an issue of potential bias and obstacle to access in the second half of the century.

Yet IF ideals would not reach maturity until well after the onset of the Great Depression. Both the Library Bill of Rights (LBR) and Freedom to Read (FTR) ideals—from which IF ideals flow—arose out of a progressive response to economic collapse and world war against fascism and imperialism in the 30s and 40s, McCarthyism of the 50s, and repressions leading up to civil rights movement achievements of the 1960s. Building on Progressive Era success, there was a second women's rights movement leading to congressional passage of the Equal Rights Amendment (1972) and acceptance by thirty-five states.<sup>7</sup> Ageism also was addressed in the Age Discrimination in Employment Act (1967). In this period, American librarianship arrived at a most striking advance regarding intellectual freedom for minors when the ideal of unfettered access to library collections for children arose in the 1960s.

In 1961, the LBR was amended so library access should never be abridged because of "race, religion, national origin or political views." By 1967, children received their



rights as “age” was added, along with “social views.”<sup>8</sup> Protection of divergent social views covered new areas of collection access, including civil rights, black nationalism, feminism, ecology, and myriad other sociopolitical subjects. The combined privileges inherent in core professional values allowed children new access and awareness about trends within the world they were growing up within.

It would take longer for the FLA to fully express national achievements through its first Intellectual Freedom Manual (IFM), ratified in 1990. Yet today’s version fully aligns with the highest ideals of the ALA LBR and directly references Article V of the LBR: “library [use] should not be denied or abridged because of . . . age, [or] background.” In addition, within the FLA IFM, there is full recognition of the broadest ALA interpretation: “every restriction on access . . . based solely on the chronological age, educational level, and literacy skills, or legal emancipation of users violates Article V.”<sup>9</sup>

In tandem with a most popular advertising jingle born of the 60s and 70s, one could say, “We’ve come a long way (baby!).”<sup>10</sup> But just as there was convolution in women being marketed their own cigarette—by recognizing a pinnacle of their social and sexual liberation, alongside evidence of health problems caused by tobacco companies in a decade defined by sexist advertising—the principles of access and intellectual freedom for minors is not completely solid and without controversy.

### Consensus and Change

During the formative stages of library beliefs, subtle and not-so-subtle ambiguities exist in seminal documents. Carefully crafted wording, sometimes purposefully vague, reflects pragmatism and consensus-building. With this comes the possibility for later stages of amendment. Yet it also reflects unresolved tensions.<sup>11</sup>

Shifting attitudes can be found in the LBR adopted in 1939. It took years of revision and consensus building—in 1944, 1948, 1961, 1967, and 1980—to arrive at the current version. Freedom to Read (FTR) was revised four times in the decades following its initial creation in 1953. FLA’s IF manual of 1990 experienced revisions in 1993, 2009, and 2014.

After “age” was added to Article V of the LBR in the late 60s, subsequent related ALA interpretations arose. “Free Access to Libraries for Minors” (FALM)—adopted in 1972—was amended in 1981, 1991, and in 2008. FALM, especially its early wording in 1972, was in many ways the high point as a most explicit right of children to think and explore for themselves in libraries as part of the

process of maturation and becoming effective individuals. The document stood against all current restrictions in libraries because of age and local assumptions that librarians must act to restrict minor’s rights “to avoid controversy with parents.”<sup>12</sup>

Free access dovetailed with the Benjamin Spock-influenced Baby Boomer generation, which largely recognized the need to foster individualism in children. At the 1972 ALA Midwinter Meeting, IF committee discussion aligned with this awareness, articulating that children matured at significantly different rates and were exposed to “adult life” at increasingly earlier ages. FALM also stated that librarians needed to adjust to the times and included admonitions against known examples of bias in library policy that hindered access for children. Moreover, it directly provided guidance to librarians who would restrict access because of what they thought parents would object to, making it clear we were not to act in *loco parentis*.<sup>13</sup> This included both public and school librarians, with the later especially bolstered in that even though school librarians must act in *loco parentis* regarding safety and health of students, a provision of censorship did not necessarily have to be part of public school doctrine and contracts.

The 1970s also brought a high point in terms of legal successes in the United States that supported First Amendment rights for minors, but with limitations. In 1973, Chief Justice Berger came close to achieving a majority opinion that would have rescinded *Roth v. United States* and all obscenity laws. In other words, anything “patently offensive” or “utterly without redeeming social value” would have been protected under the First Amendment for adults with continued restriction for minors. Instead, in *Miller v. California*, a more refined definition of obscenity was created that built on *Roth*. The resulting “Three-prong standard,” or Miller test as it is known now, meant that a work in question must be patently offensive as defined by state law, appeal to a prurient interest defined by contemporary community standards reflecting beliefs of the average person, and lack “serious, artistic, political or scientific value” to be legally obscene and prohibited by local courts.<sup>14</sup>

Florida became a center of jurisprudence pertaining to minors in 1975 in the U.S. Supreme Court with *Erznoznik v. City of Jacksonville*. Justice Powell, speaking for the majority, stated that if speech was not obscene or subject to any other “legitimate proscription,” a local legislature cannot suppress “ideas or images” that it thinks are unsuitable for youth. Still, there was an unresolved tension where First Amendment rights might begin or end for minors, and the exact limit or extent of local control that might



define a “legitimate proscription.” Other successes outside Florida included a 1978 federal case in Massachusetts overturning a school board attempt to remove an anthology of poetry by adolescents in a high school library and a legal decision in New Hampshire that forced a high school library to return *Ms. Magazine* after its removal because of parental opposition to topics of sexuality, contraception, masturbation, lesbianism, and left-wing musicians.<sup>15</sup>

Roughly three decades would pass after FALM’s adoption in the 70s before select ALA amendments included wording that largely expanded and made parental rights more evident and illuminated a retrenchment concerning children’s rights. This resulted in part from a 1999 document: *Libraries: An American Value* (LAV). LAV was the ALA’s first “contract with the public.” Although it generalized support for the “constitutional rights for children and teenagers,” LAV codified and made more visible “the right of parents and guardians to guide their own children’s use of the library.” Most notably, it guaranteed the ability of individuals to express “opinions about library resources and services.”<sup>16</sup>

By 2004, the original succinct 1972 FALM paragraph on parental ability to restrict *only* what their own children might access became infused with more expansive and complex wording reflecting broader LAV ideas and an assuaged tone from that of the more progressive and simply assertive tone from the 60s and 70s.

1972:

The American Library Association holds that it is the parent—and only the parent—who may restrict his children and only his children—from access to library materials and services. The parent who would rather his child did not have access to certain materials should so advise the child.

2004:

The mission, goals, and objectives of libraries cannot authorize librarians or library governing bodies to assume, abrogate, or overrule the rights and responsibilities of parents. As “*Libraries: An American Value*” states, “We affirm the responsibility and the right of all parents and guardians to guide their own children’s use of the library and its resources and services.” Librarians and governing bodies should maintain that parents—and only parents—have the right and the responsibility to restrict the access of their children—and only their children—to library resources. Parents who do not want their children to have access to certain library services, materials, or facilities should so advise their children. Librarians and library governing bodies cannot assume the role of

parents or the functions of parental authority in the private relationship between parent and child.

Through amendments up to 2004, the FALM paragraph above more than doubled from its original 1972 size and clearly raised parental rights to the LAV level. The LAV was referenced directly, and FALM now recognized parents in the plural instead of the original singular, as if portending a growing collective effort to protest library material.<sup>17</sup> Clearly, expressions of “rights” and professional responsibilities had, in some ways, been downplayed by the library profession. As Eliza Dresang wrote, more nebulous “values” were elevated in a seeming attempt to more generally engage a larger public—including “less compatible groups.” The engagement would contrast with the earlier alliance with booksellers, publishers, children’s book organizations, teacher’s and anticensorship organizations.<sup>18</sup>

Confidentiality and privacy rights for all “individuals” also is briefly professed in LAV, but the definition of an individual in the public contract is ambiguous. Left unsaid in LAV and later iterations of FALM was how the public, at state or local level, may or may not differentiate between teenagers, adolescents or children and their rights. Furthermore, there was and still is no reference to the majority of state laws protecting circulation records of minors, even from parents.

The LAV clearly reflects an ALA adjustment to an era defined by various legal outcomes against intellectual freedom, beginning with the Communications Decency Act (CDA, 1996). Known by some legislators as the “Great Internet Sex Panic of 1995,” the CDA arose with the popularization of internet use and undermined First Amendment rights for adults—if children might be exposed online, even if inadvertently, to adult communications. This effort to protect children was so broad and injurious the Supreme Court ruled the CDA unconstitutional in June of 1997.<sup>19</sup>

Another pro-IF Supreme Court decision followed in *Reno v. American Civil Liberties Union* (1997), which temporarily reassured that the internet had the highest First Amendment protections. Congress responded by passing CIPA—today’s Children’s Internet Protection Act (2000)—forcing all libraries that receive E-Rate funding or LSTA dollars for internet access to install and manage filters on computers, both public and staff.

After a third Supreme Court ruling, this time upholding CIPA (*United States v. American Library Association*) in June of 2003, the shift to internet filtering increased. In 2001 only thirty-six public libraries in Florida filtered access on all computers, nine on children’s computers, and



thirty-eight libraries did not filter access. By 2007, only twenty-four libraries were not filtering (17 percent of reporting libraries). In 2014, nonfiltering libraries dropped to the all-time low in Florida of just under 13 percent. Also, as of 2015, even all nonfiltering libraries, with the exception of one library in Florida, have internet policies and prohibitions on the display of obscene images or images offensive to others—also related to a requirement of CIPA.<sup>20</sup>

In 2014, FALM was renamed. “Free” was dropped from the title, with all that the two words “Free Access” imply together, and today’s title is “Access to Library Resources and Services for Minors” (ALRSM).<sup>21</sup> That same year, a new ALA document “Minors and Internet Activity” (MIA) reflected the impact of CIPA and called for increasing instruction of children to safely navigate the internet through knowledge and skills to shape safe behavior for “responsible use of internet-based communications.” Although FALM, in name, was officially changed after over forty years, the ALA through the MIA still called on libraries and librarians to be First Amendment advocates and to “offer unrestricted access to Internet activity in accordance with local, state and federal laws and to advocate for greater access where it is abridged.”

### Local Diversity

Looking closer at Florida library policies at the local level, there is great diversity touching on questions of IF, access, and confidentiality/privacy for children and families. Examples of varying policies include the Florida Division of Libraries in Tallahassee, which has an open access library with no internet filters installed on computers. There are, however, warnings in the policy that the internet is not to be used for recreational purposes, that no pornographic material may be accessed, and that no patron shall access obscene material.<sup>22</sup> Although it does not filter, this state library policy parallels CIPA’s definition of obscene material substantiated in the *Roth* and *Miller* Supreme Court cases.

Northwest Regional Library System’s policies are particularly noteworthy as they state that the library system does not use filters on their computers at all.<sup>23</sup> Hence, it would appear they also exist outside the impact of CIPA’s requirement that, for libraries to receive federal funds supporting internet access, filtering software must be provided on all public and staff computers to assure that a minor’s access to images that are obscene, child pornography, or harmful to minors, as defined by law, are blocked, along with blocking adult access to obscene images.

In contrast, the Jacksonville Public Library uses filters, but states that the library does not necessarily advocate any

content and affirms the responsibility of guardian to monitor access of a minor. In the West Florida Public Library System, computer access to minors under thirteen is fully denied without parents present, and parents must approve any child’s use up until seventeen.<sup>24</sup> This, in part, is in keeping with CIPA and its designation of an adult patron as seventeen or older. However, the policy regarding those under thirteen appears to be local interpretation.

The ability to create library accounts for minors also varies from region to region within Florida. The Collier County Public Library system allows a patron from birth to be able to have a Library account though a guardian must be present to sign for the application. A patron within that system under the age of sixteen is regarded as a minor overall, which is in contrast to CIPA, which states that a child under the age of seventeen is in fact a minor. In comparison, Seminole County’s rules classify a minor as birth to seventeen years of age in full alignment with CIPA.

In Orange County, in contrast to CIPA and state law, online applications are available for patrons who are eighteen and older. Leon County also states in their policy that anyone under the age of eighteen qualifies as a minor, as does the policy of Brevard County. The apparently large exception to this overall rule is the City of Lakeland, which participates in the Polk County Library Cooperative. Lakeland allows any teen with a driver’s license *or* ID to be able to gain a library account without guardian consent. This means that a patron of thirteen with a government ID would be capable of gaining access to library materials unfettered by supervision—a full five-year difference from aforementioned policies of Leon and Brevard.<sup>25</sup>

Since the passing of Senate Bill No. 770 in 1978, Florida has assured all individuals, including children, will have confidentiality and privacy in public library records. Scores of Florida library and library system websites give mention of their adherence to FS 257.261, and many directly mention the clause pertaining to the privacy of minors. Yet there also appear to be deviations in the application of state law pertaining to protection of minors.

From 1978, there were no exemptions to allow for parents to ask for their child’s circulation records until 2003, when amendments to FS 257.261 occurred. The amendment was specifically designed to assist libraries by making it easier to collect library system totals for fines and lost books. Parents were then allowed to get a list of material their children under sixteen had checked out, but only if money was owed to the library for those books. At the same time, the legislature clearly reaffirmed that the



change to the law was in no way be construed to support parental surveillance of what their children were reading.<sup>26</sup> Moreover, for minors sixteen or older, parents had no right whatsoever to surveil by requesting circulation records, even if there was financial liability. And if under sixteen, only the names of parents could be revealed to collection agencies—further protecting confidential records of children, but this time from the collection agency database. Nevertheless, Florida legislative staff analysis recognized that, according to the Department of State (under which the State Library exists), FS 257.261 “is interpreted differently among local communities” in that “some libraries allow parental access to their children’s records and some prohibit this access.<sup>27</sup> The varied local interpretation seems to have thrived without incident, even though unlawful provision could result in a misdemeanor charge.<sup>28</sup>

### Recent Occurrences

The FLA IFC has taken action against infringements on the rights of minors in Florida libraries in various ways, most notably within middle and high school libraries and related to parental calls to censor books. In addition, members have observed, analyzed, or played a part in other occurrences statewide, both political and technological. To address new privacy and IF threats, specific examples demonstrate how the FLA IFC should work closely with the FLA Legislative Committee to monitor state direction.

One of the more regular attempts at censorship and FLA IFC response arose in February of 2016, when the FLA president drafted a letter opposing the banning of *This One Summer*—an adolescent coming-of-age story by Mariko and Jillian Tamaki—from three Seminole County High Schools after it was found by a third-grader in an elementary school. Next, in May of 2016, the IFC composed a letter responding to the challenge of Stephen Chbosky’s *The Perks of Being a Wallflower* within Pasco County schools. In both cases, the books were retained at the high school level; and in the case of *Perks*, the book was banned from one middle-school library but retained in the others.

A more noteworthy challenge occurred in May of 2015. *Beautiful Bastard* (BB), by Christina Lauren, suddenly appeared in the evolving online list after an influx of votes from teen users. It caught the eye of a political activist and web coordinated group Parents ROCK, and one particular parent who, self-described, works to review public school history textbooks for examples of “brainwashing and indoctrination of . . . children,” and creates YouTube videos questioning historical examples of climate change and its impact on societies.

Collier County quickly removed a reading list because of an age inappropriate title (BB was cataloged as adult erotica in the Collier County Public Library). The list was replaced with a link to reading lists on the State of Florida library website. But the event appears to have led to closer scrutiny of the local school library collection. Four other titles were then identified and challenged by the parental organization, including award winning books designed for the school age group.<sup>29</sup> The group also challenged reading lists that included Toni Morrison, and notable authors like Kate Chopin and Anthony Burgess.<sup>30</sup>

The inclusion of BB on a reading list reflected over two million plus online book sales for the title, and considerable social and pop-cultural power. The event also is indicative of an age-spanning online democracy challenging professional assessment of age-appropriate material and educational value. Although the end result was a successful defense of four titles—after the IFC and FLA Board submitted a letter of support for the books—a crowdsourced reading list was censored according to select community standards.

In November of 2015 the IFC discussed that the Collier County School System had developed a new web portal allowing parents to view online any materials checked out by the minors in their charge. If this occurred in a public library instead of a school library—it would be in contradiction to state law allowing parents to only have access to their minors records when parents or guardians are faced with fines or paying for lost material checked out by children 15 and under; and it would violate that portion of state law that completely protects the privacy of minors from 16 to 18. Instead, the action by the school system allows guardians to see materials for any reason attached to the minor’s account and furthermore allows such activity to be done up to adulthood. Although it is unknown if the system has been or will be used to track what students read by adults other than their parents, the capacity is there, legally and technologically.

A response from the FLA IFC was discussed but halted. Later, research revealed the Family Educational Rights and Privacy Act (FERPA) can be interpreted as providing parental access to school library records if they are deemed educational records.<sup>31</sup> Although it possibly supports parental surveillance of school library reading material, it could protect student circulation records from other prying eyes. For example, unless there is clear “educational interest” at stake, administrators, teachers and staff should not access a student’s circulation records without parental consent or a court order. Hence, it would behoove a school district to clearly define such with local standards, and for the FLA



IFC to amend its IFM with new policy recommendations encouraging school libraries to work toward policy manuals including the federal intent.

ALA OIF staff also expressed concern with the Collier portal. In its *Choose Privacy Week* blog, Helen Adams and Michael Robinson of the ALA IFC Privacy Subcommittee, recognized the “delicate balancing act between the rights of minors and the rights of parents.” They further stated how the Collier portal is a “bad practice that the library profession must strongly advocate against before it becomes a precedent.”<sup>32</sup> The potential of precedent gaining traction is reinforced in a 2010 *Florida Libraries* article by Barbara Morse that identified the growing power of internet based groups to foster bulk challenges, which increasingly network with larger audiences and make it harder to broker solutions.<sup>33</sup>

Five years after Morse’s observation, a larger web-based Southwest Florida Citizens’ Alliance (now Florida Citizens’ Alliance—covering Collier, Lee, Charlotte, Brevard, Marion, Lake, Okaloosa, and Volusia Counties)—has citizen “watchdog teams” pitted against public school and local government control of learning resources, and the larger state reading list. Core values of the FCA include resisting “an overbearing government safety net,” living the “ideals of liberty . . . characterized by morality and righteousness,” and “affirming private property rights.”<sup>34</sup> The organization has actively lobbied legislators, in particular for a Senate Bill (SB) 1018, sponsored by Alan Hays (R-District 11).

In February of 2016 the FLA IFC referenced SB 1018 and its equivalent House Bill 899. On initial review, it appeared that the two bills fell outside the scope of the IFC as a result that library books were thought not to be included in the definition of educational material. A close reading of the bills revealed potential impact on intellectual freedom in general, within and without school classrooms and related to text book choice.

The bills stated in particular that “parents and taxpayers shall have full access to all school library media services.”<sup>35</sup> Notwithstanding the logistical and security issues for school libraries, the intent of the wording appears to align fully with the desires of the activist parent. The result would have been an increase in access for reviewing and challenging the content of text books, and, in this apparent case, material in school libraries—for items they would censor.

The bills sought to remove, at the budgetary level, any obligation for a school library to purchase “instructional materials, including library and reference books and nonprint materials” included on the state-adopted list.<sup>36</sup>

Section 1006.40, for example provided wording supporting allocation of up to 100 percent of funds to purchase material not on the state approved list. This would have opened the door to allow a singular focus on creationist material, if a school board was so inclined. The impact also would have allowed for local battles for control and hence censorship of material teaching students about evolution and climate change, in part by inserting wording that allowed for local standards that are “equivalent to or better than state standards,” and by restricting materials to those that are “noninflammatory, objective and balanced viewpoint on issues.”<sup>37</sup>

Perhaps as disconcerting, the bill, if passed into law would have allowed not just parents to object to material, but all taxpayers; and would have established processes by which organizations could sue and be reimbursed for legal and court costs for challenging text books and school board decisions. The parallels in the broad effects of *Citizen’s United v. FEC* (2010)—and its application of the construct of “corporate personhood” that undermined campaign finance reform—should also be considered; and possibly juxtaposed with *United States v. Sourapas and Crest Beverage Company* (1975), where corporate attorneys used the word “taxpayer” to claim Fifth Amendment rights regarding self-incrimination.<sup>38</sup> Either way, the recent Florida bills portend reactionary forces using the courts to shore up mechanisms that challenge and undermine the longstanding Constitutional concept and rights of individuals.

### Privacy Law and Minors

Like that of adults, a Florida child’s right to privacy emerges in part from the Fourth Amendment of the U.S. Constitution. Restrictions on unreasonable searches and seizures apply to circulation records and related personally identifiable information (PII). Every state (except Hawaii) also has statutes that protect library records from prying eyes. For the most part, these rights extend fully to minors, with only fifteen states allowing parental access to otherwise protected children’s circulation records.

Along with Wisconsin, Florida has the most protection for children from parental surveillance within those fifteen states, and only allows parental access to a minor’s public library records when there is the financial impact through overdue or lost books—and only for material checked out by children fifteen years old or younger. If sixteen or older, parents have no legal right to surveil circulation records of their children. Hence, if an IF grade was given to both Florida and Wisconsin for public library records, they would get a “B.”



Where Florida is deficient is in lack of law supporting the privacy of minors in school libraries. Maine, Connecticut, and Massachusetts also have no privacy protections regarding school library circulation records. In these four states there is no state law impeding teachers, counselors, administrators, and other school officials from surveilling school library records by physical or digital access. In contrast, forty-six states and the District of Columbia provide no exceptions in their privacy statutes to allow school teachers and officials such access—and it is hence illegal to do so.

Florida's privacy law was first crafted in 1978, in close proximity to the revelations of the 1976 government report, "Intelligence Activities and the Rights of Americans, Book II." The Congressional analysis, also called the Church Committee report, detailed FBI focus on civilians and families for political reasons. Privately owned bookstores thought to contain "subversive or seditious publications" were surveilled, and there was significant attention to "Afro-American type bookstores" and civil rights groups. Alongside traditional surveillance of the KKK, there was rapid escalation of government surveillance of progressive groups, including antiwar and women's rights groups, and the ACLU.

It would be in keeping with the Church Committee's recognition of an abuse of power that Florida and many other states sought ways to protect residents using libraries.<sup>39</sup> In the following decade, the 1978 Florida statute protecting adults and minors equally stayed in force, and likely was bolstered after revelations from the 1987 *New York Times* story of the Library Awareness Program, otherwise named DECAL (Development of Counterintelligence Among Librarians), which was used by the FBI to discern the reading habits of library users.<sup>40</sup>

Another portent of a possible new legislative direction regarding privacy for minors in Florida was received in December, 2015, when the IFC received related statutory information vis-à-vis memo from the chair of the FLA Legislative Committee (LC) to the FLA Board. In it, the LC iterated what it believed was common practice in public libraries of telling patrons what they have checked out regardless of whether for the purpose of collecting fines or recovering overdue materials, and this was not legal under FS 257.261. The LC recommended that the issue be fully discussed with the library community "prior to . . . a [needed] change in the law." The LC also addressed the need to amend state statute to limit private companies working with libraries by anonymizing and encrypting personal identifiable information (PII) of patrons.<sup>41</sup>

The memo included mention of the September 2015 LC meeting, whereby committee members discussed an appropriate age after which parents "would not have the ability to access their children's records." Suggestions ran the gamut from thirteen to eighteen. Although clearly not statistical sampling, the diversity of opinion reflects what could be the larger difficulty of amending the law—without the possibility of decreasing the current intellectual freedom-privacy status of minors in Florida—as the bill runs the gauntlet in Tallahassee.

It followed that an FLA virtual web presentation for library directors and over 80 online attendees was held on June 17, 2016. ALA IFC Deputy Director and attorney Deborah Caldwell-Stone presented on a number of issues, including a "mature minor" concept of privacy and confidentiality, possibly beginning at age twelve or thirteen—after which children would receive full privacy and confidentiality rights based on evolving jurisprudence. She also mentioned an oddity of K-12 school student library records being excluded from Florida privacy/confidentiality law, and that FLA might want to try to extend protection to this category of minors.

Caldwell-Stone also referenced existing Florida privacy law pertaining to minors, holding it up as an example of a successful balance—where all children have a key to their own privacy. In other words, minors under sixteen can maintain their public library privacy in Florida as long as they are responsible and return their books on time and do not lose library material. She also stated that bringing mature minor constructs to Florida and fixing it at thirteen "was not ideal," largely because setting it could mean that parents of children twelve and under would then have unfettered ability to surveil their children in concert with participating libraries, legally and without restriction.<sup>42</sup>

The mature minor concept grows out of the recognition that minors clearly have First Amendment rights, but that these rights grow and expand as they age. Catherine Ross, a legal scholar at George Washington University, states that "an emerging right for mature minors to receive information" can include both public schools and libraries, when she identified a government option and shift of common presumptions that would allow minors to access information opposed by parents. Court decisions also demonstrate that government cannot be responsible for enforcing what parents would desire about limiting minor's access, and a recognition that teens should be protected against an overreach of parental oversight.<sup>43</sup>

The June 2016 FLA webinar also included reference to two recently revised state statutes in Missouri and California—which the ALA OIF consulted on. Those states





include specific wording that appears to protect both children and adults equally, but each provides apparent local loopholes by which decisions to limit privacy for minors could be implemented. For example, the California law allows the dissemination of circulation record data through “written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library.” Hence, it might be possible for a library, at the point a card is provided, to have the card-holder stipulate that records be released according to the local expectations. This could possibly include children, who might, along with the parent responsible for fines and replacement costs, sign and agree that release of records to parents be included before a card is issued.<sup>44</sup>

In Missouri, comparable language exists, in that an individual can authorize, in writing, a person who can inspect the records. Again, this could be a parent who is authorized at the point that a child signs up for his or her library card. But it is uncertain what local permutations could legally exist. Library forms might provide the child a choice, as to if he or she would allow parental access to the records. But it is uncertain if such could be a legally binding contract, given other clear legal limits of a minor to enter into contractual relationships.

Either way, as revisions to FS 257.264 are considered in Florida, attention can continue on those political groups reflected in HB 899 and SB 1018. Although the two bills ended up dying in committees, twenty Florida representatives signed on to the House version of the bill. The larger political efforts arose from aspirations of groups under the Florida Citizen’s Alliance and Better Collier Public Schools, who could seek to leverage FLA LC proposals toward a view opposing any idea of a mature minor, or continuance of existing confidentiality and privacy rights for children. Such threats correspond with an even earlier recognition of a growing “privacy problem” for minors, as identified by Helen Adams in 2011.<sup>45</sup>

## Conclusion

At times, history reveals a cutting edge of progressive thought and defense of intellectual freedom. It was especially so in June 2005, when FLA leadership passed a resolution opposing the removal of a Gay and Lesbian Pride Month exhibit from the lobby of a Hillsborough County (HC) library—an exhibit that was challenged and taken down because it exposed minors to the reality of ideas and other lifestyles. Under counterprotest, the removed exhibit was reassembled. Yet it was hidden away in the “adult fiction” section.

The HC Commission next banned any and all future gay pride displays and any county recognition of gay pride by a vote of 6–1. In turn, the FLA Board resolved not to hold official meetings in the county until rescension of the policy. Eight years would pass before repeal of the municipal ban, 7–0, in June 2013. It would be another two years before the U.S. Supreme Court upheld the right to same-sex marriage.<sup>46</sup> Hence, it took at least a decade (and in reality much longer) to traverse a long road to protecting intellectual and related lifestyle freedoms.

Reviewing IF, LGBT, privacy and other historical contexts, an awareness of the past for shaping progressive movement forward is essential, as George Santayana understood. Yet John F. Kennedy shifted Santayana’s ideal and focused hindsight by speaking about Goethe’s notion of losing one’s soul by trying to hang on to the present, instead of adapting to change and preparing for the future.<sup>47</sup> Touchpoints from other eras, including the rise of reactionary forces and librarianship’s past alignment, cannot be forgotten. Yet librarians also can envision a future that serves as counter force to philosophical and practical retrenchment.

At the national level, ALA IFC committee and roundtable members can continue to play a strong role in future amendments suggested for ALA documents, and seek to uphold the full intent of IF standards. Equally, state IFCs can work more closely with their legislative committee counterparts to track, assess, and defend against statutory developments. FLA IFC members can work to defend current state protections for preteens of ten, eleven, or twelve and their ability to freely explore solutions for family alcoholism, sexual abuse, or other topics at hand. Likewise, they can recognize and spread word how IF values stretching back to the 1970s might be profoundly altered in Florida, with long-term negative impact on kids growing up with less awareness of privacy rights and needs.

IF committees could network with and encourage individuals outside the library profession to help chart new censorship forces related to library service. Library-hosted crowd-sourced reporting systems could augment traditional state-wide reporting from library associations, and build bridges by involving a progressive public. Such could balance against internet based reactionary forces, allowing the library profession to better discern, for example, how filtering is being used to censor material beyond what was intended by the Supreme Court, and defend against known blacklisting of LGBTQ websites and whitelisting of sites advocating against gay rights.<sup>48</sup>

Librarians can of course continue to support IF work in terms of our older alliance with the publishing industry and



banned and challenged books. Yet a new focus could identify and analyze the other elements that fall off the radar, such as when Yahoo was banned by one library in Florida in 2015—impacting the on-average 13 percent of internet users who use the search engine plus users of YahooU Mail because the site was deemed less compatible with filtering software. IF advocates might also ask how, as library professionals, they might have addressed what was revealed by the press in 2015 about the governor's office influence on banning the term climate change from Florida websites.<sup>49</sup>

The FLA IFM, like other state IFM manuals, could be updated and amended. There is appropriate detail in some older IFM policy recommendations—such as material-selection approaches assuring intellectual freedom. But internet use and filtering policies could evolve with more suggestions for impactful policy, especially following the ALA ten-year report on the clear and negative impact of over filtering in our libraries.<sup>50</sup> Since the last IFM amendment in 2014, the USA PATRIOT Act has been replaced by the Freedom Act. A new proviso allows libraries, if served with a National Security Letter with a gag order, to appeal by asking for judicial review.<sup>51</sup> The IFM could mention this possibility, and detail the possible use of “warrant canaries” on future library websites as legal response to gag orders.

States face decisions related to big and local data, and the role libraries can play in improving collections and customer service by researching user and use information while protecting anonymity. Privacy best-practices for public and academic libraries could align with NISO consensus statements. Florida academic libraries in particular face new metrics to measure institutional and student success across the state. In past years, library circulation data has been scrubbed in support of defending possible future incursions undermining privacy. Such data could have been anonymized and aggregated with institutional academic program data to discern longitudinal correlations between library use and student retention and success. Future IFM sections could address a needed balance, while helping define the boundaries of analysis, and assuring proper data-based communication with stakeholders and entities that ultimately impact our budgets and continued existence.

In short, there is much that the FLA IFC and IF advocates can do to engage the future of intellectual freedom in Florida, and beyond. But librarians might be careful to not step into old shoes of a century or more ago. Equally, they might always ponder in the present if future generations will be able to say, or at least freely question, if they have come a long way in expanding intellectual freedom.

## Notes

1. American Library Association, “Core Values of Librarianship,” accessed June 6, 2016, <http://www.ala.org/advocacy/intfreedom/statementspols/corevalues>; “Intellectual Freedom,” Wikipedia, accessed June 7, 2016, [https://en.wikipedia.org/wiki/Intellectual\\_freedom](https://en.wikipedia.org/wiki/Intellectual_freedom).
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## Garden of Broken Statues: Exploring Censorship in Russia

Author \_ Marianna Tax Choldin

Publisher \_ Academic Studies Press, 2016. 188 p. Cloth (also available in paper and as e-book)  
\$69.00. ISBN: 9781618115010

Reviewer \_ Henry Reichman, California State University, East Bay

Memoirs by western scholars of Russia and the Soviet Union have emerged in recent years as a mini-genre of academic writing. Such works have common virtues. They depict, sometimes quite graphically, the many challenges and trials experienced by Western researchers in Moscow, Leningrad-St. Petersburg, and less accessible Russian cities; they offer keen, sometimes heartbreaking, insights into the daily life of Russians, mainly from the intelligentsia, both under Soviet and post-Soviet rule; and, through the recounting of personal experience and at times painful life choices, they sometimes humanize their authors and academic life itself in fresh ways. The tales repeatedly recounted in such works—of commodity shortages and the smuggling of American cigarettes and blue jeans to Soviet friends, of the warm hospitality (and chilled vodka) of the Muscovite intelligentsia in their cramped apartments, of the professionalism and friendship of harried archivists, for examples—have almost become clichés, even when individual stories still hold readers' attention.

In most respects this engaging and readable memoir by Marianna Tax Choldin is typical of the genre, no better nor worse than most. But what distinguishes Choldin's from other such efforts is that the author is a university librarian and one of the world's eminent (perhaps *the most eminent*) historians of Russian and Soviet censorship. In 2011, she received the Robert B. Downs Intellectual Freedom Award "for her extensive contributions to intellectual freedom over the span of her professional career," most of which was spent at the University of Illinois at Champaign-Urbana. In 2005, the ALA honored her significant contributions to international librarianship. She was also the third recipient of Russia's prestigious Pushkin Medal for extraordinary contributions to Russian culture. (I should note that Choldin, who is nothing if not modest, does not tout these richly deserved honors in her book.)

Informed readers seeking to learn more about either librarianship or censorship might be better advised to turn

to Choldin's more scholarly works, *A Fence Around the Empire*, her 1985 now-classic study of tsarist censorship, for instance, or her many essays and reviews on Soviet libraries and censorship. However, most readers, especially those less familiar with Russian history and life, will still find things to learn here. And, more important, all readers will enjoyably encounter and indeed come to know and admire a compelling cast of characters, Choldin's family, colleagues, and friends, as well as Choldin herself.

The book's title refers to what is now a museum-park in Moscow, where old Soviet monuments were dumped and later restored. Choldin visits it twice, once in 1997 and again in 2013, and it becomes the book's central metaphor, with a series of "stops" around places evocative of the actual garden, which interrupt the text, mostly in the introductory and concluding chapters. The technique is clever, but it didn't work for me; it seemed more distracting than illuminating. I became far more absorbed in Choldin's essentially chronological narrative—with multiple digressions—of her life and career, from her childhood as the intellectually precocious daughter of a prominent University of Chicago anthropologist to her mature ruminations on Russia's fate, religion, and, of course, libraries and censorship. The story is usefully organized around a second metaphor, that of two "planets" between which Choldin travels—both in reality and in her mind—her American planet and her Russian planet. (There is also a gripping account of her two years as a young woman in Bangladesh, which led to a nearly decade-long interruption in her focus on Russia, not to mention a harrowing tale of pregnancy and childbirth with twin daughters.)

Blessed with a facility for languages, Choldin is in many ways a truly international figure. She began as a Germanist, then learned Russian, picked up some Bengali, and is capable in French (and perhaps a few other languages) as well. Hence a cosmopolitan spirit suffuses these pages. Her thinking, she recognizes early on, is



characterized by three components—“tolerance for people different from myself, the rejection of controls on thought and expression, and my intense interest in a community’s history as expressed through tangible symbols.” In her hostility to what she calls the “omnicensorship” of the tsars and, especially, their Soviet successors, Choldin thus articulates a classically liberal vision.

She is, however, conscious as well of the dangers posed by less authoritarian means of controlling free expression. “Here’s my understanding of American ‘censorship,’ a word that remains in quotes because I remain unconvinced that it is the right term for what we do,” she writes. “I have no name for our kind of ‘censorship.’ I tend to think of it as ‘from-the-bottom-up challenges,’ which isn’t very elegant.” I think Choldin may be a bit naive about the extent of “top-down” censorship, even in the western “free market of ideas,” but this is not her main concern and it would be churlish to fault her too strongly for this.

Somewhat surprisingly, at least to this reviewer who has not had the pleasure of knowing Choldin personally, is her extraordinary concern with religion, from her secular Reform Jewish upbringing and the role played in her mind by the specter of the Holocaust to her growing interest in and respect for the Russian Orthodoxy of her closest Moscow friends. Though she (and her friends) embrace ecumenism, Choldin never loses her connection to her Jewishness and her broader spirituality. Several of her closest Soviet friends are converts from Judaism to Orthodoxy, which she freely acknowledges makes her “uncomfortable,” even as her rational side affirms that “every individual should have the right to espouse any religion he or she chooses.” Hence, hostility to Soviet-era atheism and

anticlericalism becomes an important, if secondary, theme in her scholarship.

Finally, it would be wrong not to recognize the important role played in Choldin’s life and work by her “sister-friend,” the extraordinary Russian librarian Katia Genieva, to whose memory the book is dedicated. Choldin’s work and life with Katia is a continuing theme (Genieva’s entry is by the far the longest in a disappointingly limited index of proper names), but Katia also receives her own chapter. Indeed, in many respects Choldin’s work—what one might call her “activist” scholarship (Choldin’s father, Sol Tax, was famous for creating “action anthropology”)—really begins in the early 1990s when she and Genieva agree to mount jointly a major international library exhibition on Russian and Soviet censorship. This led to Choldin’s later work with George Soros’s Open Society Institute and as director of the University of Illinois’ Mortensen Center for International Librarianship, in which roles she visited some twenty-five countries to promulgate the core principles of intellectual freedom in libraries.

I wish Choldin had written more about the substance of that work, its successes and failures. Instead, Choldin spends much of the book on periods before she could travel regularly to Russia. (Choldin recalls more than fifty separate visits to Russia, most of them after the 1991 Soviet collapse.) But this is a more personal volume, a work of an elder stateswoman looking back to make sense of her entire life for the enlightenment of those who follow. It is worth reading just to get to know Marianna Tax Choldin, a fascinating woman and an exceptional librarian with a memorable circle of colleagues, family, and friends.

## On the Burning of Books

Author \_ Kenneth Baker

Publisher \_ Unicorn, 2016. 266 p. \$40. 978-1-910787-11-3

Reviewer \_ Professor Robert Ridinger, Social Sciences and Area Studies Librarian,  
Northern Illinois University

The image is unmistakable—pages of printed or handwritten words reflecting the sustained thought processes of the author being taken (sometimes forcibly) from the security of desks, personal bookshelves, libraries, archives, royal palaces and places of worship among other locales and unmade by fire. The hands that feed the fires are driven by a wide range of motivations, and the events themselves are often chronicled as merely one part of a broader historical narrative of social change or stand as footnotes

to the lives of authors, their heirs and executors. Publishing within the history of the book on book burning (a somewhat inaccurate term, as the practice has frequently been applied to unpublished letters and draft manuscripts as well) often takes the form of examining specific cases (such as the eradication of “Un-German” literature by the Nazis and the thirteenth century trial of the Talmud in France) or reviewing a defined group of centuries to trace the application of and justification for the practice.



Kenneth Baker's *On the Burning of Books* departs significantly from this, both through its thematic structure and its accessible approach to the subject.

The author (a British peer and former home secretary) introduces the volumes with a thoughtful consideration of the idea and occurrence of book burning, clarifying the main features of its history for both general and specialist readers, and then relates the growth of his own awareness of the practice. The main body of the work is divided into sections covering political burning, religious burning, war burning, personal burning, accidental burning, royal burning, and some lucky escapes. The first two categories are perhaps the most frequently associated with book burning in the public mind, while the third focuses on instances of book destruction occurring during wartime but not done as a part of a campaign of censorship. An example of this is the damage done to the Library of Alexandria by Roman legions. The image of the writer as a fervent proponent and defender of his or her work and ideas almost precludes the notion that they would give their own words to the fire, yet many of the examples given in this section show authors engaged in deliberate management of their legacies so as to present a desired image to both the contemporary public and posterity. Perhaps understandably, given the author's nationality, many of the examples given of personal burnings come from the pool of leading literary figures of nineteenth century Britain. The category of accidental burning covers the loss of manuscripts

through mischance, with the most spectacular case noted being the burning of Parliament in 1834 and the loss of the records of the House of Commons. The idea of "royal burning" is centered exclusively on incidents involving members of the British royal family from the eighteenth to the twentieth century, including Queen Victoria, while the final category of "lucky escapes" has among its varied actors dustmen, poets who misplaced their works in manuscript multiple times, and a wide range of writers from Robert Louis Stevenson to Franz Kafka, Dylan Thomas, and C. S. Lewis.

Through a deft combination of illustrations (both color and monochrome) and extensive use of quotations from primary documents, many of them not easily accessible, each example is set out with cogent attention paid to its political, cultural, literary, or religious contexts. Discussion also explores the often complicated roles of kin, friends, lovers or employees who, while named as executors with instructions to incinerate specific items or sections of an individual's written creations, sometimes failed to completely eradicate the targeted texts. In other cases, the executors displayed a dogged persistence in tracking down offending letters or manuscripts, sometimes persisting for years or a lifetime. The brief index provides access by subject, personal names, and the titles of works. A colorful and accessible work suitable for augmenting the intellectual freedom collections of public, college and university libraries.

## Which Side Are You On? Seven Social Responsibility Debates in American Librarianship, 1990–2015

Author \_ Elaine Harger

Publisher \_ McFarland, 2016. 236 pp. Paper. \$25.00. ISBN 978-0-7864-9455-2

Reviewer \_ Martin Garnar, Dean, Kraemer Family Library, University of Colorado Colorado Springs

Many people would not associate the governing body of a professional association of librarians with high drama. However, the council of the American Library Association (ALA) has been the venue for some rather contentious debates. These livelier sessions are usually related to proposed resolutions related to some aspect of social responsibility and libraries. The debate may focus on whether the issue at hand has a strong enough connection to libraries or librarianship, or it may be about how strong the argument regarding the issue can or should be in light of political concerns, whether it's related to funding, legislation affecting libraries, or the general reputation

of the profession. Regardless of the topic, the final language of an approved resolution rarely captures the emotions expressed in these debates. Using seven such debates from the last twenty-five years, Elaine Harger provides a first-person perspective on controversies including the ALA-produced film *The Speaker*, anti-apartheid boycotts, censorship in Israel and the Occupied Territories, McDonald's, the Boy Scouts of America, Edward Snowden, and climate change.

Harger, a long-time member of the ALA's Social Responsibility Round Table (SRRT) and a former councilor, is well-positioned to share the perspective of SRRT



members on these debates as well as to explain the workings of Council, which can seem quite arcane to the uninitiated. For each debate, Harger also provides the context of the external situation. For example, in the case of the anti-apartheid boycotts, she first looks at U.S. librarians' responses to racism in the Jim Crow period, then turns to a brief history of South Africa's reaction to the inclusion of human rights in the United Nations Charter before discussing the Sharpeville Massacre that drew international condemnation and provoked the first economic sanctions. With this background, Harger then turns to the cultural boycotts that ultimately led to the fight within ALA on whether books and other materials should be exempt, and examines the arguments presented by both sides through analysis of meeting minutes and transcripts from ALA units and groups. Finally, she weaves threads of critical theory into this chapter and throughout the rest of the book, looking at the power structures within ALA and their impact on each debate.

The title of the book signals the tone of the author's arguments, which are clearly based on her strongly held beliefs on these social issues: you are either with us or against us. As the blurb on the back cover of this book leads off with "shattering any idea that librarianship is a politically neutral realm," so must this reviewer acknowledge that writing an objective review of this book has been challenging. This reviewer's formative experience within ALA was with groups connected to the Office for Intellectual Freedom, including the Intellectual Freedom Committee and the Intellectual Freedom Round Table, and is currently serving the latter group as its representative to the ALA council. Not surprisingly, this reviewer doesn't always agree with Harger's characterization of the actions of his colleagues and of other members of the association, but he respects her commitment to her ideals. Having said that, the author made some assertions that, in this reviewer's opinion, weaken her arguments.

In her introduction, Harger quotes an important statement on social responsibility from the ALA Policy Manual's introduction, but says it comes from the association's mission statement. However, the actual mission statement is as follows: "The mission of the American Library Association is to provide leadership for the development, promotion, and improvement of library and information services and the profession of librarianship in order to enhance learning and ensure access to information for all."

Later in that section of the Policy Manual, social responsibility is listed as a core organizational value, along with eight other values including intellectual freedom.

This may seem like a minor point, but when framing the importance of social responsibility in the library profession, the erroneous reference to social responsibility's place within the mission statement has the impact of elevating it above the other core values with which social responsibility is occasionally in conflict. Additionally, there are some errors in the book, such as the wrong date of the Gay, Lesbian, Bisexual, and Transgender Round Table's separation from SRRT (10) and the claim that SRRT "has long been ALA's largest round-table" (20), which has not been true since 2009, thus potentially overestimating the influence that SRRT currently has within the association. However, the latest figures do show a trend of increasing membership, though they would have to see significant continuing growth to regain the top spot.

Though these minor errors can distract the reader into wondering if other facts in the book are correctly stated, the greater concern with Harger's approach is when she speculates about the motivations of various members of ALA, as these can begin to cross the line into *ad hominem* attacks. When she recounts the admittedly frustrating use of parliamentary procedure to substitute a watered-down resolution for one that had already been adopted by council, she suggests that perhaps the mover of the substitute resolution "wasn't quite awake" when the original resolution was passed (155). When she notes that one councilor voted in support of both the original and substitute resolutions, she states that the councilor "simply abandoned her conscience" (168). These are just two examples of a trend that becomes more apparent in the book's later chapters. Harger's arguments would have been stronger if she had let the actions of the council speak for themselves. Instead, by including the names, statements, and votes of numerous councilors obviously not on her side, and by providing commentary clearly disapproving of their actions, the author appears to be more interested in shaming those councilors. Perhaps that's the point, as there are few options left to oppose hegemonic power when it's being used to overturn the democratic process, which this reviewer believes to be an accurate description of how Harger would view what happened with the Snowden resolution.

Ultimately, Harger has succeeded in providing an insider's view, albeit just one of multiple perspectives, of the politics and principles at stake when issues are debated on the ALA council floor. The story of these debates told through official ALA records is greatly enhanced by the author's viewpoint. For a complete picture, we must wait for someone from the "other" side to weigh in with their behind-the-scenes account of the same debates.





## LIBRARIES

### Oklahoma City, Oklahoma

For ten years, the Metropolitan Library System, which serves the Oklahoma City metro area, has placed a group of children's books with sensitive subject matter into a smaller, elevated section. The section, known as "family talk," includes books on drug and alcohol abuse, sexual abuse, incarceration, mental illness, death and divorce.

Another theme that finds itself in this category are books dealing with LGBT issues, like *Heather Has Two Mommies* and *King and King*. Now, a local LGBT rights advocacy group plans to ask the Metro Library Commission to revisit the policy and consider amending it to remove LGBT children's books from the family talk section and place them in general circulation.

Relegating these LGBT books to the special section creates an unnecessary and outdated stigma, they contend.

The policy began in 2006, after a group of parents, commission members, and lawmakers raised concerns about the availability of books for younger readers that dealt with homosexuality in the children's sections within the library system.

Janet Brooks, the system's material selection manager, said the family talk section was seen as a compromise. "We didn't want to have this material in a locked room," she said. Or removed altogether. Placing them in a separated section allowed parents to have more control over when to introduce their children to the subjects placed there.

"We preferred thinking of it as a place for responsibility for parents, not a place to hide it," she said. The discussions grew tense at times, those involved said, but in 2006 the commission approved the policy.

"I can tell you that it was that particular situation that caused me to get off the board. I'm one of the ones that wanted to pull the books altogether because of my Christian beliefs," said Cynthia Trent, who served nine years on the commission. Trent said she still believes books dealing with LGBT issues should be banned from the children's section.

"It's not because I have anything against those folks that have that kind of a lifestyle, it's that children that young don't have any business being faced with that type of book, unless they're in that type of family," she said.

Two years after the policy was adopted, commission member Ralph Bullard introduced an amendment that required the family talk section be placed at least five feet from the ground.

"When I came on the commission there was a lot of interest in the community that certain books were not really books that they thought children should be reading," Bullard said.

Bullard, a retired educator and former headmaster of a private Christian school, said while he believes books with LGBT themes have no place in the children's section, if the current commission reconsiders the policy it will reflect the people it serves.

"Just on a personal basis, I think that whole issues and homosexuality and all the different versions it's moved into, transgender and changing sexes and same sex marriage and all those things that come from homosexuality and it being morally correct or immoral, is much more widespread now," he said. "If I were at the library myself, I'd be more restrictive for sure, but it's a public library and it's reflecting the interests of the public that exists."

While Troy Stevenson, with Freedom Oklahoma, an Oklahoma City-based LGBT rights advocacy group, applauds library staff for finding a

compromise that kept the books in circulation, he disagrees with the placement of LGBT-themed books in a category that includes topics such as sexually deviant behavior and drug abuse.

"They singled out one class of people," he said. "Everything else on that list was a medical condition, a substance abuse issue, but you've got one class of people that are singled out. It identifies the entire LGBT community with sex, and I think that's the biggest problem. I think that any book, any material that has to do with sex should be in a place that a kid doesn't have easy access to it, but to say the entire LGBT community is only defined by sex is clear discrimination. It denies us our humanity."

Stevenson said he plans to appeal to the commission at their October 12 meeting to remove LGBT-themed children's books from the family talk section and allow them to be shelved as any other children's book would. Reported in: *The Oklahoman*, October 11.

### Accomack County, Virginia

The classic novels *The Adventures of Huckleberry Finn*, by Mark Twain, and *To Kill a Mockingbird*, by Harper Lee, are no longer temporarily banned from Accomack County schools.

Use of the two classics was suspended in November after a parent raised concerns about their use of the N-word. Combined, the two books use the N-word more than 250 times. However, the books' final fate remained undecided.

"We agree that some of the language used is offensive and hurtful," said Ronnie E. Holden, chairman of the board. "Fortunately, Accomack County's excellent teachers and media center specialists have a wonderful talent for conveying the bigger meanings and messages of literature, including these two seminal works."



At a November 15 school board meeting, Marie Rothstein-Williams, the woman who made the complaint, said her son struggled to read the racist language, telling the Accomack County public schools board, “There’s so much racial slurs and defensive [*sic*] wording in there that you can’t get past that.” The challenge also appears to be motivated by the current political landscape in the United States, as the mother told the board, “Right now, we are a nation divided as it is.”

“I keep hearing ‘This is a classic, this is a classic,’” said Rothstein-Williams. “I understand this is a literature classic, but at some point I feel the children will not or do not truly get the classic part, the literature part—which I’m not disputing this is great literature—but there is so much racial slurs in there and offensive wording that you can’t get past that.”

As a committee had yet to discuss the future of the books, a permanent ban had not been placed on them. However, they were removed from classrooms in the district, a move the National Coalition Against Censorship described as “particularly egregious.”

A policy update disallowing challenged books from being suspended from libraries and classrooms during review had been approved by the Accomack County School Board in May, according to Chairman Dr. Ronnie E. Holden.

“What we found was that we had approved two policies in May. The policy was not updated in the policy manual. What we’re doing is going back and making sure all policy has been updated,” said Holden.

The updated policy states that challenged books “shall not be proscribed or removed because of partisan or doctrinal disapproval,” but the board followed a previous policy and removed the books on November 29. The books

were reinstated during a December 6 work session.

Dozens of local residents gathered December 5 to protest the ban. Charles Knitter, a parent who attended Accomack County Public Schools, organized the gathering. He calls the ban “a terrible injustice” and says both novels condemn racism.

Reported in: wavy.com, November 30; DelMarVa Public Radio, December 5; DelMarVaNow.com, December 6, 9, 15; *The Guardian*, December 5.

### Issaquah, Washington

An Issaquah mother said her son brought home a graphic novel from school that is pornographic. Shirley Lopez said her fourteen-year-old checked out the book from the Issaquah High School library. Lopez said *Mangaman*, by Barry Lyga, had sexual content she found inappropriate for her son who is a freshman.

“I don’t want to send my child to school and have him come home with this,” said Lopez looking through the book. “These are sexual images, they are naked images, they are naked and sexual. I don’t want my kid to be feeding his mind with that.”

Lopez glanced through the book her son brought home. On page 86 she found a drawing of the character, Ryoko, with his pants down about to have sex with Marissa, a woman who is wearing only underwear. The man’s penis is digitized. The page ends with the pair choosing not to have sex.

Shirley Lopez contacted administrators at Issaquah High School and expressed her concern about the book being available in the school library. She said she was told for her son to just stay away from the book. When she told school staff she didn’t think that was possible, she said their solution was for him to stay out of the school library.

“I have to opt my child out of library to ensure that he isn’t exposed to this,” said a frustrated Lopez.

She said later the librarian agreed to try to “shoo” her son away from the graphic novel. The book was put back on the shelf for other students to check out.

The Issaquah School District is investigating the complaint and said there is a process for parents to ask for a “reevaluation of materials.”

“I certainly sympathize with this parent. She is trying to do the best for her child. If she feels there is inappropriate material I certainly understand her desire to protect her child from that,” said L. Michelle, Issaquah School District spokesperson. “She can fill out the form and I’m confident in that process.”

Lopez plans to challenge the book. “I don’t want to control anybody. I just want to send my kid to school and feel he is safe,” said Lopez. Reported in: kiro7.com, October 27

### SCHOOLS Santa Rosa, California

*Gutless*, by Carl Deuker, was pulled from Jay High School’s Celebrate Literacy Week reading list after some parents questioned its content, according to Santa Rosa County Director of High Schools Jason Weeks.

*Gutless* tells the story of a Seattle high school student, Brock Ripley, balancing his football aspirations with a friend the team’s quarterback doesn’t like. The book features themes of bullying, overcoming failures, family illness, and growing up. Weeks said parents objected to pieces throughout the book they felt were inappropriate.

“The longest set together is about three pages of things that are not appropriate,” Weeks said. “It’s more about body parts and things like that that shouldn’t be being discussed. It’s inappropriate in that nature.”



The following is a passage from the book describing a girl, Suzanne Friend, who was in special education classes: “Then, in middle school, she got breasts. She got them before any of the other girls. Beautiful breasts. Movie star breasts.” The passage continues to describe the movement of her breasts and how boys reacted to them.

“Other girls didn’t like being stared at, but Suzanne did,” the passage said. “Probably it was the first time anyone paid attention to her, the first time she had anything on the other girls.”

“She shook them for lots of guys,” the narrator continued. “Every time she did it for me, I felt guilty. I never once asked her to do it, and she seemed to like it, but watching her didn’t feel right.”

Weeks said he, Jay High Principal Stephen Knowlton, and Superintendent Tim Wyrosdick agreed with the parents’ assessment of such content.

“Mr. Knowlton met with everyone that wanted to meet with him and listened to their concerns and took the appropriate action,” Weeks said.

District staffers are reviewing how educators missed material parents would find objectionable. “That process had a gap in it and we will make sure it doesn’t happen again,” Weeks said. “Neither Mr. Knowlton nor the district supports the inappropriate pieces of that book. There was no disagreement about that. . . ; We care about the community values and we want to make sure our folks understand it.”

“I’m naturally sorry that *Gutless* was pulled,” Deuker said. “In context, *Gutless* is moral to the core—maybe to the point of being too preachy. The characters that abuse power are, by the last page, revealed as moral cowards—despicable people. The main character learns through the course of the novel that developing the moral courage to

stand up to evil is essential, far more important than physical courage on an athletic field. The teachers would have used the book to take on the topics of bullying and abuse of power.

“A part of me does, I’ll admit, sympathize with parents. They want to keep their children young and innocent—fourth-graders for life. But Peter Pan and Wendy aren’t real. Their junior high ‘children’ are no longer children, but are now young adults. Reading *Gutless* would have been good for them.” Reported in: *Santa Rosa Press-Gazette*, February 2.

### Enfield, Connecticut

Billie Joe Armstrong, lead singer of the band Green Day, penned a powerful response to a Connecticut high school’s decision to call off a production of the musical *American Idiot*, based on the Green Day album of the same name. Armstrong challenged the cancellation, arguing that the high school’s choice to not host the production is an issue of censorship.

“I realize that the content of the Broadway production of [*American Idiot*] is not quite suitable for a younger audience,” Armstrong wrote in an Instagram post addressed to the Enfield High School board. “However, there is a high school rendition of the production, and I believe that’s the one Enfield was planning to perform, which is suitable for most people. It would be a shame if these high schoolers were shut down over some of the content that may be challenging for some of the audience.”

Enfield High School cited sex, drugs, and foul language as the reason why the show was cancelled. “The bigger issue is censorship,” Armstrong continued in his note. “This production tackles issues in a post-9/11 world, and I believe the kids should be heard and most of all be creative in telling a story about our history.”

Enfield’s drama club director Nate Ferreira responded to Armstrong’s plea that “the show must go on” in an interview with *The Hartford Courant*.

“It wasn’t the school board as he thinks that forced us to not do the show,” Ferreira stated. “It was a decision that the principal and I arrived at together because there were some kids in the group whose parents didn’t want them involved.” The high school will perform *Little Shop of Horrors* instead. Reported in: *Rolling Stone*, January 26.

### Mystic, Connecticut

A controversial move to take a beloved book off a reading list has parents at one Connecticut school confused and upset. George Orwell’s *Animal Farm*, a popular book for students to read, was taken off the main reading list at Mystic Middle School.

“Nobody knows why it was taken off the list,” said Dan Kelley, whose son is a seventh grader at Mystic Middle School. He was astonished that the book was removed.

School Superintendent Van Riley said the decision was made two years ago to change the curriculum, which included moving *Animal Farm* off the list of “core books for eighth grade,” but it remains on a secondary reading list. Riley said teachers made that choice because different instructors at the middle school level were using different material, creating an advantage for some in high school.

A middle school English teacher, who had long used the book, was upset about the change and let parents know about it. It grew on social media and now many are questioning the reasoning.

Riley stressed the book is not banned by any means, but is no longer an “anchor” book. “We love the book, it’s a great book,” Riley said. Reported in: *kabc.com*, February 2.



## Marion County, Florida

A group of parents say they're upset about a book their children have to read in English class that contains a racial slur. "It was something I was shocked to hear," parent Tanya Walker said. The book, *The Land*, has the N-word and the teacher reads it out loud in class at Forest High School, parents said.

The book follows an African American man during the late 1800s.

"That word is a horrible word in our vocabulary and it's something that we don't use on a regular basis," said Kevin Christian, with the Marion County School District. Christian said the teacher is able to teach and read the book out loud as long as it's inside the educational confines of a classroom.

"To say we're not going to use this book because it upsets you and it doesn't upset me or vice versa, I'm not sure that's a valid argument; to take a piece of highly respected and award-winning piece of American historical literature out of the classroom and never expose students to that," Christian said. Reported in: wftv.com, October 3.

## Chicago, Illinois

After a prize-winning novel was yanked from the classroom at Lemont High School District 210, parents are saying other books on the reading list are too racy to read.

The school pulled Booker-prize winning novel *The God of Small Things*, published in 1997 by Arundhati Roy, from the reading list of the Academic English II class, because the book "contains subject matter in some sections that is not appropriate for our students," wrote Principal Eric Michaelsen in a November 2 email to parents. "The questionable passages were not assigned for students to read. The books have been collected and will not be used again," Michaelsen wrote.

Now some parents want eight additional "X-rated" books banned from advanced English classes. At a November 21 meeting, mothers Laura Reigle and Mary Kay Fessler, along with other "parents and community members," urged the Lemont School Board to pull Maya Angelou's 1969 autobiography, *I Know Why the Caged Bird Sings*, off of school reading lists.

In addition to her problems with Angelou's classic, Reigle—who is the mother of a Lemont High School junior—also published a complaint against seven other "pornographic" books on the high school's English curriculum, which she claims "contain sex, murder, suicide and homoeroticism." They are, in addition to *The God of Small Things*, *The Lovely Bones*, by Alice Sebold; *Thirteen Reasons Why*, by Jay Asher; *A Separate Peace*, by John Knowles; *After the First Death*, by Robert Cormier; *All the Bright Places*, by Jennifer Niven; and *Go Tell it on the Mountain*, by James Baldwin.

"I think it was a big, huge wake-up call for parents who are questioning the school's activities and looking at their actions and not trusting them," said Reigle. She said she thinks the selection of curriculum materials should be more transparent.

Resident Rick Lighthart came with a prepared statement of changes he wanted in the district's policy. "Regardless of the books, I'm recommending to the board that no literature whatsoever be inclusive of literal, metaphorical, figurative or allegorical words for male or female genitals," he said. Identifying himself as a former tenured school teacher he said, other than exceptions for state-mandated sex ed, "English classes should not be involved in sexuality in literature for our kids. It shouldn't be in any books. No books."

"We can't have eighteen-year-olds reading about masturbation or sexual

issues, regardless of the literature. I don't care if it's from Dickens or who else," he said, in summary.

*The God of Small Things* is a debut novel described as a coming-of-age story of two separated fraternal twins in India who meet again as adults. Each of their childhoods is affected by current events in India such as state communism, the caste system, and arranged marriages. Shortly after the book was released, Roy was sued in her home state of Kerala, India, on obscenity charges.

"Any writer can be harassed in this way," Roy told the *New York Times* in July 1997. "It comes to the point where one citizen can hold literature to ransom."

According to the superintendent and a district spokesman, the Roy novel slipped through the curriculum approval process in error. New curriculum items are supposed to be publicly displayed by the board for a period of time and then approved by a vote of the board.

"Unfortunately, with *The God of Small Things*, this process was not followed. The book was introduced into our curriculum without approval of the board of education," wrote Tony Hamilton, D210's director of school and community relations, in an email.

The district will use this experience as a "springboard to review all materials that are used in our English classes—regardless of how long they've been a part of our curriculum—to ensure they are appropriate for our students," he added.

The school has also implemented a permission-slip policy that would allow parents to opt their children out of reading *I Know Why the Caged Bird Sings*. But Reigle and Fessler don't believe the opt-out policy is fair.

Fessler said her "kid would . . . be ostracized and read different material somewhere else" if she did not



approve of a book, and Reigle said the permission slips would coerce parents into signing in order to avoid the “exclusion” of their children from the classroom. Reported in: *Cook County Chronicle*, November 29; *bustle.com*, December 6.

### Carmel, Indiana

It should have been simple. It should have been a moment for teaching. Instead, when a Carmel High student apparently complained about a poster promoting adoption over abortion, a work created by a group of pro-life students and displayed with permission on a cafeteria wall, school administrators went in the opposite direction. They had the poster removed and destroyed.

In November, which is National Adoption Month, student members of a school-approved club called Carmel Teens for Life created a poster that featured 300 paper hearts and the word abortion edited to read as adoption. A Carmel High administrator then approved the sign, and the students displayed it in the cafeteria November 17. But the next day, the poster was taken down and trashed, reportedly after a student complained that others were offended by the message.

On December 5, a Christian legal defense organization, Liberty Counsel, notified Superintendent Nicholas Wahl that it would sue if the district didn’t reverse its decision to stifle the students’ free speech rights. Then, four days after Liberty Counsel’s letter was sent to the superintendent, the student leaders of Teens for Life were told to sign an agreement barring them from communicating with outside agencies without approval from the club’s staff sponsors. The sponsors also would have to sign off on parental involvement with the club as well as any student communication about the group’s activities.

In a letter to school administrators the National Coalition Against Censorship (NCAC) wrote: “While a school may follow a viewpoint-neutral policy of approving student posters for display, school administrators may not remove or refuse permission to display a poster only because of its real or perceived potential to offend. Indeed, if offense were used as a justification to suppress political expression, discussions on polarizing societal issues such as immigration, terrorism, religion, contraception, marriage, and race would be purged from our high schools.”

Suppressing such discussions would undermine one of the core goals of public education: to encourage civic engagement and develop students’ critical-thinking skills. Reported in: *Indianapolis Star*, December 15; *ncac.org*, December 20.

### Henderson, Nevada

A book assigned in a Henderson elementary school has some parents furious. *Bad Kitty for President* is a chapter book more than one hundred pages long meant to teach children about America’s electoral system. On page 76, talking about money in a campaign, it says “A billion dollars! Holy %#@\$.”

Fenix Ohman, a third grader at James Gibson Elementary School, reads the symbols, and his mind jumped to a word that needs a \*bleep\*. Pages later, the symbols show up again. Ohman says he read those as the F-word.

“My reaction was of complete shock,” said Sonya DeRossi, Ohman’s aunt. “I’ve had four children in that elementary school. My job as a parent is to keep my child innocent as long as I can but if I’m fighting the schools what chance do we have?”

The author of the book, Nick Bruel, believes the symbols are vague and unharful. “She can take offense but

honestly I’m not entirely sure what she’s taking offense with,” Bruel said. Other parents at the school like Amanda Knapp don’t think the symbols are a big deal.

“I think that parents nowadays are way too sensitive and that exposure teaches children and if your child knows not to use those words, it shouldn’t be an issue,” she said.

Ohman’s mother said the teacher told her the book would be pulled from the assignment.

Clark County School District says it reviews all formal complaints about educational materials, but no such complaint has been filed for this book. Reported in: *ktnv.com*, November 17.

### Cherry Hill, New Jersey

Cherry Hill High School East students of all races made a passionate plea to school officials January 24 to allow the musical *Ragtime* to hit the stage without removing several racial slurs.

More than one hundred people packed a Cherry Hill School Board meeting to press their case on whether the N-word should be used in the upcoming production, the school’s spring musical. There were cheers, tears, and angst on both sides of the issue, which brought national attention from Broadway stars, people affiliated with the arts, and civic groups weighing in.

Ezra Nugiel, a white student who plays a character in the play who utters the N-word several times, was among several cast members who asked the South Jersey district to rescind a decision announced a week earlier banning the use of the N-word.

“I don’t say it [the N-word] happily, but I know I have to,” Nugiel told the board, which has two minority members. “We want to hear these words to not let history repeat itself.”

Cedric Middleton, a black student in the play, also supported using the



script unaltered. “I fully understand the feelings of discomfort,” he said. “*Ragtime* is how we get through such ugliness.”

Carey Savage, vice president of the Camden County East Branch of the NAACP, also made an emotional appeal, saying civil rights leaders don’t “need to be refreshed on what racism is by the unfettered use of this word.”

“You can’t call me the N-word and then tell me it’s art. I don’t care what your rationale is,” said Savage, of Voorhees, a retired school administrator. “I’ve been through too much for that.”

The school board took no action on the controversy during a meeting that lasted several hours.

Superintendent Joseph Meloche said the district has contacted Music Theatre International, the leading theatrical license agency, which must approve any changes to the script. Without authorization, the district would be “at a crossroads to determine whether to move forward with the show in its original form or to pursue other options,” he said. Reported in: *Philadelphia Inquirer*, January 25.

### Blountville, Tennessee

A Tennessee mother has launched a campaign against textbooks used in the local school district for teaching about Islam as part of the curriculum. Michelle Edmisten wants the Sullivan County board of education in Blountville to remove a seventh-grade textbook from the course because it teaches basic lessons about Islam.

“It is time as parents, teachers, and administrators, we stand up and take back our families, our schools, and our country,” she told the school board. She added her daughter felt some assignments about Islamic beliefs violated her Christian beliefs, so the student refused to do some of the school work and failed those assignments.

“Those are zeroes that we proudly took and we will not compromise,” Edmisten said.

Some of the assignment questions were “Islam’s holy book is called the \_\_\_\_\_,” “List the five pillars of Islam,” and, “After the death of Muhammed, did the Muslim empire spread or get smaller?”

Edmisten is adamant that her daughter’s “personal religious beliefs were violated.” She is, therefore, adamant in her demand to get *My World History*, published by Pearson, removed. “I would like to see the Pearson book yanked from the school immediately. I would like to see parents, Christians, veterans, anyone that’s anyone, stand up for this fight.”

“How can I, as a Christian, say that I have these values? And I want to instill these values in my daughter, but then say it’s OK, go ahead and do it,” she wonders.

Director of Schools Evelyn Rafalowski and Board of Education Chairman Michael Hughes said the system is exploring a religious accommodation option since there is no “opt out” allowed in Tennessee.

At the close of the board meeting, board member Mark Ireson made a motion to remove the textbook immediately “because it does not represent the values of the county.” However, after Ireson’s motion, school system officials said there is a textbook removal policy in place that is to be followed, including the parent filling out a form and the formation of a committee on the matter, and that the matter could be addressed at a future called board meeting.

“We support our faculty and our staff,” said Hughes, who also said he has issues with the Pearson textbook. “This debate over the textbook has nothing to do with the faculty.”

However, Edmisten disagreed. “I’m very happy (with Ireson’s motion).

I’m very unhappy about the board for apologizing to the staff because it is a teacher’s discretion,” Edmisten said. “That’s why I’m going to continue the fight.”

In November, Edmisten formally asked the school system to remove *My World History*. Making her second appearance before the board in as many months, Edmisten, is now represented by Freedom X, a California-based, self-described conservative Christian group with a website that says it fights Islamic indoctrination in U.S. schools. “This will not go away. I will not go away,” Edmisten told the board.

“I want the book removed immediately,” Edmisten said. She lamented that Bible verses were removed from a wall at Indian Springs Elementary School and said that Tennessee law prohibits discrimination against a religious viewpoint and voluntary expressions of faith-based views.

The Tennessee state board of education is currently reviewing draft seventh-grade standards, which would remove a section on Islamic history from 400 to 1500 but retain mentions of Islam in other sections. Until and unless the standards change in 2019–20, Hughes said Sullivan County must follow the law and standards “whether we like it or whether we don’t.” Reported in: *Kingsport Times-News*, October 4, November 7; carbonated.tv, October 6.

### Cumberland County Schools, Tennessee

John Green’s young-adult novel *Paper Towns* was returned to library shelves in Cumberland County Schools after a reconsideration committee rejected a parent’s request that it be removed from all schools in Cumberland County. The parent filed a request for reconsideration after her daughter, a seventh-grade student at Brown Elementary School, checked it out and



brought it home from the Brown Elementary School library.

The parent told school officials she did not want the book to be available to any students of any age and believed it only appropriate for adult audiences. She said there was nothing good about the item and believed the theme was “teenage party life.”

“She said she would like it removed from all the schools,” said Stephanie Speich, principal at Brown Elementary.

The report issued by the reconsideration committee reviewing *Paper Towns* noted that the book was not used in classroom instruction, has a UG (Upper Grade) label to notify students about its reading and maturity level, and that it was purchased following student requests that it be made available through the school library. It has won a literary award and has been made into a popular film. In deciding to retain the book, members of the committee expressed appreciation for the quality of the writing, the novel’s use of literary references, and its modeling of positive behaviors like calling for a designated driver. It also provided a number of perspectives on suicide, which is a component of the story. The committee said that while the book’s language is a concern, it was not language students would be unfamiliar with.

Speich noted the parent was acquainted with the material her child was reading, something all on the committee praised. But several on the committee said such decisions were best made by parents for their children.

Rebecca Atkinson, librarian at CCHS, said, “I tell students there is a book in my library for every student, but not every book is for every student.”

Their decision to return books to library shelves will be sent to Director of Schools Donald Andrews.

The parent, who was not present for the committee meeting, has the option to appeal the decision of the committee. Reported in *Crossville Chronicle*, March 10, 2016.

### Argyle, Texas

Several parents spoke out against two required readings during an Argyle school board meeting in September, citing disturbing and inappropriate content. The two books in question, *Trash*, by Andy Mulligan, and *Iqbal*, by Francesco D’Adamo, are in this year’s sixth-grade lesson plans to promote cross-curriculum reading, district officials said.

“The readings go along with world cultures and social studies,” Argyle Superintendent Telena Wright said.

But for the six parents who spoke during an open forum, the content and language were too graphic for their eleven- and twelve-year-old children.

“I thought it [*Trash*] was a really good book,” said parent Amy Fanning. “But it’s not appropriate for that age level.”

Most of the parents said they should be the ones to teach children about tough concepts, not the school system.

*Trash*, which students read over the summer, follows the story of Raphael, a fourteen-year-old boy who lives in a third-world country and stumbles on widespread governmental corruption. Parent Traci Johnson said she hosted a book club for sixth-grade girls as they were reading the book. After they finished, they cooked a meal for local police and firefighters.

“I didn’t want the girls to think police were corrupt,” she said.

*Iqbal*, scheduled for reading later in the semester, is historical fiction that deals with child slavery. The book is based on the real life of Iqbal Masih, a Pakistani boy who helped free child slaves but was fatally shot in 1995 when he was only twelve years old.

“That can also send the message that bad things can happen when you stand up for something,” Fanning said.

Both books appear on national reading lists and have won multiple literary awards in children and young adult categories.

“One of our sixth-grade teachers taught one of the books for four years at another district,” Wright said. The alternative book to the assigned readings is *I Am Malala*, an autobiography about a girl who stood up to the Taliban, was shot in the head at point-blank range and lived to tell about it. If parents still aren’t satisfied, Wright said, they can discuss an alternative assignment with their child’s teacher and principal. Reported in: *Denton Record-Chronicle*, September 20.

### COLLEGES AND UNIVERSITIES Long Beach, California

Michele Roberge resigned in September as theater director at California State University at Long Beach after fourteen years in the post. Her resignation followed a disagreement with administrators over whether the university’s performing-arts center should host the racially charged play *Nigger Wetb\*ck Ch\*nk*.

After the university’s president, Jane Close Conoley, told Roberge that the play must be canceled, the theater director said she felt she could no longer remain in her position. “I couldn’t imagine myself doing this job anymore,” she said.

Conoley, however, said she had not banned the play. She said that because of the racially sensitive nature of the material and because faculty members did not feel the play created many teaching opportunities, they would not be asked to plug the play in their classrooms or plan educational events around it. But Conoley conceded that



this decision had made the play financially unviable.

“To be pretty frank, I hate to be critical, but it was described as kind of a *Saturday Night Live* skit. They didn’t think it was deep. They didn’t think it was thought-provoking,” the president said. “In my view, it was not about censorship.”

Rafael Agustin, co-founder of the troupe that created the play, disagrees. The play features black, Latino, and Asian actors mocking racial stereotypes, he said, and is intended to open a dialogue about race.

“The same act of censorship that today may seem to protect a community may be used next time as justification to silence a community in desperate need of a voice,” Agustin said in a written statement. “It has long been the position of our company that there is a vast difference between using these words to express hatred and having a mature conversation about their use.”

Roberge said that rather than simply placing limits on the play’s advertisement, the president had made it very clear to her that it would not run. “She said, ‘Cancel it,’” Roberge said. Reported in: *Chronicle of Higher Education*, September 9.

### Kellogg, Kansas

Newman University canceled a planned talk by Kansas Supreme Court Justice Carol Beier after people who oppose abortion launched an “unsettling” social media campaign opposing her visit, the university’s provost said.

Beier had been invited by the campus student history club on August 22 to answer questions as part of the school’s Constitution Day program. She was scheduled to discuss topics such as how to get into law school, what it is like to be a judge and what role judges play in the judicial

system, said Clark Schafer, a Newman spokesman.

But opposition to her visit from people outside the campus grew so ominous in tone that Newman vice president and provost Kimberly Long said she worried about the safety of Beier and of students attending her talk.

Newman, near Kellogg and Edwards, is a Catholic university.

“There were no specific threats of violence, but . . . I found some of the things being said were quite unsettling,” Long said. “I decided it was in the best interests of good operations of the university to cancel the event.”

“We worried about safety of students, and about perhaps having a guest on campus not be treated right,” Long said. “I hope that our civic discourse here would be respectful to all persons in the future. I felt the behaviors in some of the messages to me were not respectful.”

Diana Stanley, a Newman student and president of the student history club, said that members of the club invited Beier to talk about the history of the Kansas Constitution and the general duties of judges.

“We were very excited when Justice Beier agreed because she has over thirty years of experience in the legal field and is a Wichita native,” Stanley wrote. Opponents to Beier’s visit “made very public statements that implied our club had invited Carol Beier, a member of the highest court in Kansas, to speak about abortion . . . at a Constitution Day event.”

“As a student of history, I think that civil discourse is one of the bulwarks of a free society. I find disappointing that in our current political climate, even a lecture on the Kansas Constitution is considered controversial.”

Long said the messages that seemed unsettling came from people not affiliated with Newman students or faculty.

But at least one former Newman student, in a posting on his Facebook page, opposed Beier’s visit and called on people to contact Long’s office.

“Absolutely disgusted that my alma mater, Newman University, is hosting pro-abortion Kansas Supreme Court Justice Carol Beier to speak this Friday on campus for Constitution Day,” he wrote. Reported in: *Wichita Eagle*, September 8.

### Lynchburg, Virginia

An attempt by the Liberty University administration to censor one of its newspaper’s student columnists backfired with the widespread republication of a column criticizing Republican presidential nominee Donald Trump across numerous national news outlets.

The column, written by *Liberty Champion* Sports Editor Joel Schmiege, came in response to University President Jerry Falwell Jr.’s continued support of Trump’s campaign following the release of a now-infamous 2005 *Access Hollywood* video in which the Republican nominee boasted about being able to kiss and grab women by their genitals without their consent because of his celebrity status.

Falwell pulled Schmiege’s column, justifying his decision by calling the piece “redundant.”

“The paper already had a letter that was very similar in content supporting Hillary Clinton and condemning Donald Trump for the 2005 video,” Falwell wrote in an October 19 statement. “The two letters were redundant so an editorial decision was made to go with the other letter, which written [*sic*] by a medical student, because it did not come from a staff member but an independent reader.”

A statement released by a university spokesperson cited space limitations as another reason for Falwell’s excision of the article.





“Space allocation always requires editorial judgment and that judgment simply does not allow for repetition,” the statement reads. “This was discussed with Mr. Schmieg and the University is at a loss for why he seems to have not recalled or understood these facts and circumstances.”

After Falwell pulled the column, Schmieg took to Facebook to post the piece, writing, “I find these words from Jerry amusing and extremely hypocritical as yesterday I was told he was not allowing me to express my personal opinion in an article I wrote for my weekly column in the *Liberty Champion* about Trump and his ‘locker room talk.’ Here is the story I was not allowed to publish because Jerry didn’t like it.”

In his column, Schmieg wrote about his own experiences as a male athlete and the content of the “locker room talk” to which Trump compared his own words in the *Access Hollywood* tape.

“As a former male athlete, I know exactly what high school guys talk about when they think they are alone,” Schmieg wrote. “It absolutely can be vulgar and objectifying to women. But here’s the thing—I have never in my life heard guys casually talk about preying on women in a sexual manner.”

Schmieg’s column condemned Trump and those who continue to support him despite the comments he made in the video.

“This is not locker room talk,” he wrote. “Anyone who says otherwise is just trying to excuse the terrible things they or others have said.”

Despite labeling Trump’s words as “reprehensible,” Falwell continued to defend the candidate in his pursuit of the presidency, something with which Schmieg and other Liberty students and faculty have found fault.

This was not the first time Falwell has been criticized for his support of the candidate. A week before Schmieg’s column was cut, a Liberty student group called Liberty United Against Trump released a statement denouncing Falwell for defending the GOP nominee.

“A recently uncovered tape revealed his comments bragging about sexually assaulting women,” the statement reads. “Any faculty or staff member at Liberty would be terminated for such comments, and yet when Donald Trump makes them, President Falwell rushes eagerly to his defense—taking the name ‘Liberty University’ with him.”

Falwell, who campaigned as an evangelical supporter on the candidate’s behalf, issued his own statement criticizing the students’ views but called the letter “a testament to the fact that Liberty University promotes the free expression of ideas unlike many major universities where political correctness prevents conservative students from speaking out.”

While Falwell claims pride for the campus’ free expression, Schmieg’s column still wound up on the cutting room floor a week after Falwell issued his statement.

Liberty University, a private institution not subject to First Amendment standards, regards itself as the owner and publisher of the *Champion*. Consequently, Liberty administration—namely Falwell—is charged with making editorial decisions about any potentially “controversial” content each week the paper is published. Even though excising the column was legally within the college’s authority, the message sent by the president’s decision has been a chilling one for other would-be dissenters on the Lynchburg campus.

Frank LoMonte, executive director of the Student Press Law Center (SPLC), expressed his own concerns

surrounding the chilling effect on Liberty’s campus.

“It’s concerning that any university, public or private, has created a hostile climate where people don’t feel safe in expressing political views that diverge from their administration’s,” he said. “That’s a good way for an educational institution to produce robots, not informed and engaged citizens.”

But LoMonte has hope that Liberty’s blowback against its student journalist will allow the university to re-evaluate the role it plays in facilitating free speech on campus.

“I imagine that the ironically named Liberty University will be seeing a drop in applications from people who want to learn in a climate that values and rewards independent thinking,” he said. “Liberty should join the 21st century and recognize that administrative censorship of journalism is irreconcilable with fundamental American values.” Reported in: *The Elm*, November 10.

## U.S. GOVERNMENT Washington, DC

The U.S. Department of Agriculture on February 3 abruptly removed inspection reports and other information from its website about the treatment of animals at thousands of research laboratories, zoos, dog breeding operations, and other facilities.

In a statement, the USDA’s Animal and Plant Health Inspection Service cited court rulings and privacy laws for the decision, which it said was the result of a “comprehensive review” that took place over the past year. It said the removed documents, which also included records of enforcement actions against violators of the Animal Welfare Act and the Horse Protection Act, would now be accessible only via Freedom of Information Act requests. Those can take years to be approved.



“We remain equally committed to being transparent and responsive to our stakeholders’ informational needs, and maintaining the privacy rights of individuals with whom we come in contact,” the statement said.

The records that had been available were frequently used by animal welfare advocates to monitor government regulation of animal treatment at circuses, scientific labs and zoos. Members of the public could also use the department’s online database to search for information about dog breeders, as could pet stores. Seven states currently require pet stores to source puppies from breeders with clean USDA inspection reports, according to the Humane Society of the United States—a requirement that could now be impossible to meet.

Animal welfare organizations quickly condemned the removal of the information, which they called unexpected and said would allow animal abuse to go unchecked.

“The USDA action cloaks even the worst puppy mills in secrecy and allows abusers of Tennessee walking horses, zoo animals, and lab animals to hide even the worst track records in animal welfare,” said John Goodwin, senior director of the Humane Society’s Stop Puppy Mills Campaign.

In a statement, Kathy Guillermo, the senior vice president of People for the Ethical Treatment of Animals, called it “a shameful attempt to keep the public from knowing when and which laws and regulations have been violated. Many federally registered and licensed facilities have long histories of violations that have caused terrible suffering.”

It is unclear whether the decision to remove the animal-related records was driven by newly hired President Donald Trump administration officials. When asked questions about the change, a USDA-APHIS representative

referred back to the department’s statement. The Associated Press reported that a department spokeswoman declined to say whether the removal was temporary or permanent.

The change came two days after Rep. Ken Calvert, R-Calif., introduced a bill calling for more information about and a reduction in testing on animals at government research labs. The bill is backed by an advocacy group, the White Coat Waste Project, which says such testing is a waste of taxpayer dollars.

Justin Goodman, the group’s vice president for advocacy and policy, said much of the information he has gathered on animal testing at hundreds of federal facilities—including inspection reports and annual reports that can include information on the species and numbers of animals used—came from the USDA-APHIS database. He said the department’s reference to privacy requirements were puzzling because many of the documents were already heavily redacted. The page where the information was located now brings up the announcement about its removal.

“There was already a troubling lack of transparency about what happens in government-funded labs,” Goodman said. “This was a very important resource for us, and for every animal organization, in terms of tracking patterns of animal use and compliance, whether it’s in labs or other settings.” Reported in: *Chicago Tribune*, February 3.

## PRISONS Austin, Texas

Dan Slater’s new book *Wolf Boys* recounts the story of two Mexican American teens in Texas seduced by the violent cartels across the border and the Mexican-born Texas detective who hunts them. It is grim and violent, yet it is a detailed and thoughtful look at American society and the war

on drugs. It has also been condemned by the Texas Department of Criminal Justice’s Directors Review Committee, which declared *Wolf Boys* off limits to all Texas prisoners before it was even published.

Paul Wright, executive director of the Human Rights Defense Center and editor of *Prison Legal News*, says Texas has 15,000 banned books but the list “is growing exponentially. Once a book goes on it never comes off.”

The Texas list is not just long but diverse. It includes former Senator Bob Dole’s *World War II: An Illustrated History of Crisis and Courage*; Jenna Bush’s *Ana’s Story: A Journey of Hope*; Jon Stewart’s *America: A Citizen’s Guide to Democracy Inaction*; and *101 Best Family Card Games*. Then there are books banned for what TDCJ calls “racial content,” such as *The Narrative of Sojourner Truth*, the Texas football classic *Friday Night Lights*, Flannery O’Connor’s *Everything That Rises Must Converge*, and Lisa Belkin’s *Show Me a Hero*, which depicts the struggle to desegregate housing in Yonkers, New York, in the face of institutional racism.

But Adolf Hitler’s *Mein Kampf*, David Duke’s *Jewish Supremacism*, and the *Nazi Aryan Youth Primer* are all acceptable. Texas inmates are also free to read Che Guevara’s *Guerrilla Warfare*, which teaches everything needed to know about Molotov cocktail construction, as well as “U.S. Army manuals [that] contain combat strategy and tactics for fighting small, loosely organized groups.”

A 2011 report from legal advocacy nonprofit Texas Civil Rights Project found that in 2008, 11,851 titles were on the state’s banned book list. Of those, 8,000 books had no chance of being challenged or removed from the list. The report highlighted books critical of the prisons system and about civil rights, as well as classics.



Here are some of the classic works of literature that have been banned, according to that report: *Shakespeare and Love Sonnets*, edited by O.B. Duane; *Inferno*, Dante Alighieri; *Vintage Hughes*, Langston Hughes; *The Color Purple*, Alice Walker; *American Psycho*, Bret Easton Ellis; *Tropic of Cancer*, Henry Miller; *Big Sur*, Jack Kerouac; *The Satanic Verses*, Salman Rushdie; *Deadeye Dick*, Kurt Vonnegut; *The Great American Novel*, Philip Roth; *The Deer Park*, Norman Mailer; *First Love: A Gothic Tale*, Joyce Carol Oates; *Eight Men*, Richard Wright; *Villages*, John Updike; *Fugitives and Refugees: A Walk in Portland, Oregon*, Chuck Palahniuk; *12 Million Black Voices*, Richard Wright; *Breakdowns: Portrait of the Artist as a Young %@&\*!*, Art Spiegelman; *Salammbô*, Gustave Flaubert; *Delta of Venus*, Anaïs Nin; *Utopia*, Thomas More; *Middlesex*, Jeffrey Eugenides; *The Way to Paradise*, Mario Vargas Llosa; *White Oleander*, Janet Fitch; *Hooking Up*, Tom Wolfe; *Everything that Rises Must Converge*, Flannery O'Connor; *It Can't Happen Here*, Sinclair Lewis; *How the Other Half Lives*, Jacob Riis; and *The Essential Gore Vidal*, Gore Vidal.

“Texas is less rational than other states,” says Michelle Dillon, program coordinator of the Seattle-based nonprofit Books to Prisoners. She adds that it is a national problem, particularly in more conservative states in the South. Wright says federal prisons have even banned President Obama’s books.

In Texas, as in most states, the judge and jury on a book’s fate is typically an anonymous mailroom clerk, “who often don’t have high school diplomas,” says Wright. “The bureaucratic system rubber stamps it from there.”

Texas is one of the few states with a comprehensive database. While most states allow each prison to operate haphazardly, Wright says the states with databases—Arizona, Florida,

Michigan, and North Carolina—“are the most systematic and organized in their censorship.”

The lists are generally not accessible, Wright says, and the lack of transparency means publishers or groups or people sending books don’t know what’s banned.

Arizona prisons have banned books on physics, mythology, dragons, home medical care, and local wildlife. In 2010, a detention facility in Moncks Corner, South Carolina banned all books except the Christian Bible. Prisoners in Pennsylvania can’t read books related to Dungeons & Dragons, Pathfinder, Magic: The Gathering, Warhammer 40k, or World of Warcraft, because those games allegedly “advocate violence, insurrection or guerrilla warfare against the government or any of its facilities.”

“There is no accountability,” Dillon says, adding that some inmates have complained that one clerk might ban a book that another would let through, either because the one clerk is grouchy, doesn’t like the prisoner for whom it is intended, or has more conservative values. Wright says any minority viewpoint—racial, ethnic, political, or religious, is especially likely to be shot down.

But it goes beyond that. A collection of Shakespeare’s sonnets and a collection of Leonardo DaVinci’s sketches have both been banished in Texas for sexual content (the Shakespeare edition had a painting with nudity on the cover) while a book like *The Pleasure’s All Mine*, filled with descriptions of kinky sex, made it through. Reported in: *The Guardian*, September 25; Quartz, September 26; bustle.com, September 27.

## ART St. Louis, Missouri

The Contemporary Art Museum St. Louis is at the center of controversy over artwork that appears designed

to address racial tensions but, instead, is provoking them. Museum directors came up with a supposedly Solomon-like solution, putting the artwork behind screens to appease those who might be offended.

Part of the exhibit of work by Kelley Walker, a New York-based multimedia artist, shows altered images of black civil rights protesters in the 1960s being attacked by police, and covers from the men’s lifestyle magazine, *King*. The images appear to be smeared with whitening toothpaste and chocolate. They have been criticized as racially insensitive and particularly caustic in St. Louis, a community that is trying to heal in the aftermath of civic unrest and deep racial fissures. Reported in: *St. Louis Post-Dispatch*, September 29.

## FOREIGN Toronto, Canada

The Toronto Public Library released its annual list of customer complaints at a June 2016 board meeting. Library patrons asked for the removal of Ian McEwan’s award-winning novel *Atonement* and David Egger’s best-selling memoir *A Heartbreaking Work of Staggering Genius*. The library also received complaints about two graphic novels that were deemed a little too graphic by the complaining patrons, and a call to remove a documentary based on a Palestinian woman’s life. All three removal requests were rejected.

McEwan’s *Atonement* was targeted for its poor grammar and sentence structure. The request to ban Egger’s *A Heartbreaking Work of Staggering Genius* was based on the accusation that it contained profanity, poor grammar, and poor sentence structure. The library’s materials review committee retained both books, citing high demand and positive reviews for both books.



The complaint seeking the removal of the documentary, *Soraida, A Woman of Palestine*, directed by Egyptian-Canadian filmmaker Tahani Rached, claimed it lacked any artistic or educational merit and had no basis in factual events. The committee retained the film in the library's collection, noting that the film is "subjective in nature," and that it is recommended for high school students by a Canadian educational magazine.

The library did agree to move the comic strip collection *Cyanide and Happiness: Punching Zoo* to the adult graphic novel section from the teen collection. The patron challenged the work on the ground that it contained vulgar language, pornographic humor, racism, and sex. The library committee noted that the comic strips, which were originally published online, contained dark humour that may not be appropriate for everyone.

The committee refused a request to institute a labelling system for its graphic books after a patron complained about *The Troublemakers*, a graphic novel by award-winning writer and artist Gilbert Hernandez. The individual complained about sexual language and depictions of prostitution and violence in the book, and said a new labelling system is necessary so children will not borrow books with material that is not suitable for them.

The library committee responded by citing the author's award-winning track record, and added that the book is already categorized in the adult graphic book collection. The committee acknowledged that graphic books are inherently appealing to children, because they contain images that are easier to interpret than words. However, they also pointed out that the graphic books meant for older audiences are stored separately from

the children-oriented books. "Parents and legal guardians are responsible for monitoring and limiting the use of library materials by their children," the committee said. Reported in: *Toronto Life*, June 28; CTVNews.ca, June 29.

### Westmount, Quebec, Canada

The Westmount Public Library temporarily removed a displayed copy of *Robert Mapplethorpe: The Photographs* from a public display after a patron complained. The book features a number of Mapplethorpe's images that are included in the permanent collection of the Getty Museum. The library's display was created to coincide with the Montreal Museum of Fine Arts's exhibit of Mapplethorpe's work, called *Focus: Perfection*.

In accordance with the library's policies, a reconsideration committee was formed to review the book in light of the patron's complaint. The committee voted to retain the book and return it to the public display. The complaining patron was not identified. Reported in: *Montreal Gazette*, November 4

### Beijing, China

Apple has withdrawn the *New York Times* from its China App Store following a request from Chinese authorities. The paper said the move was aimed at preventing readers in China "from accessing independent news coverage." Apple said they had been informed the app violated Chinese regulations but did not say what rules had been broken.

Western media have long been facing difficulties making their content available in China, with many outlets frequently or permanently blocked. According to the *New York Times*, Apple removed both the English-language and Chinese-language apps from the App Store in China December 23.

The paper cited an Apple spokesperson as saying the firm had been "informed that the app is in violation of local regulations," which meant it had to be taken down.

"When this situation changes, the app store will once again offer the *New York Times* app for download in China," the spokesman said.

*The New York Times* said they had asked Apple to reconsider the decision.

The paper's website has been blocked in China since 2012 after it published a number of reports on the private wealth of members of the political elite and their families. The *Times* attributes the request to pull the app to new regulations officially designed to curb activities "such as endangering national security, disrupting social order and violating the legitimate rights and interests of others."

"The request by the Chinese authorities to remove our apps is part of their wider attempt to prevent readers in China from accessing independent news coverage by the *New York Times* of that country, coverage which is no different from the journalism we do about every other country in the world," the paper's spokeswoman Eileen Murphy said.

Users who have their accounts registered on an App Store other than the Chinese one can still download the apps.

Apps from some other international media outlets can still be accessed, including the *Washington Post*, the *Wall Street Journal*, BBC News, the *Financial Times*, ABC News, CNN, and Reuters.

In the case of the BBC, the Chinese-language website is blocked while the English version occasionally has some human rights or political stories blocked on both the website and the app. A number of other western websites like Google, YouTube, and Facebook are also blocked



in China. Reported in: BBC News, January 5.

## Shanghai, China

Customers of the Shanghai Foreign Language Bookstore used social media to complain that two pages had been torn out of their newly-purchased copies of the *Merriam-Webster English Dictionary*.

“I bought a dictionary two days ago in Shanghai Foreign Language Bookstore. I’ve noticed that the plastic wrapping on all the copies had been removed and the shop assistant told me, ‘There are some problem, and we removed the wrapping to deal with them.’ I bought the books and carefully examined it, only to find that two pages have been torn out. I wonder what could be the words that irritate the authorities,” said Twitter user Tyler Wang.

The missing pages contain the definition of Taiwan.

An employee with the Beijing Foreign Languages Bookstore told the *Washington Post* that all imported copies of the Merriam-Webster dictionary had been “treated” before they went on the shelf.

“There is content violating the One China principle, and we have dealt with it in accordance with relevant regulations,” he said, only giving his surname as Zhu.

According to reports on social media, prior editions of the Merriam-Webster dictionary have been censored by covering the definition of Taiwan with black marker or paper stickers. Reported in: *Washington Post*, October 13.

## London, England

Recently, the Student Union at Queen Mary University—a public research university in London—approved a motion to prohibit the sales of tabloid newspapers on campus. The

*Sun*, *Daily Mail*, and *Express* contain viewpoints that are “hateful” toward refugees, immigrants, and other marginalized groups, and therefore, no one should be able to read them.

“The Union should continue to stand by its mission, vision and values such as ‘diversity and inclusivity,’” the motion states, according to *The Tab*.

The motion does not carry actual weight: university officials would have to agree to enforce it. Nor does it stop students from bringing copies of the papers onto campus. The motion is merely “a commercial boycott that will ensure the Union does not profit from the sale of these newspapers.”

Queen Mary’s Student Union is not the first to take this step. City University’s Student Union recently approved a similar ban on tabloids. Reported in: *reason.com*, January 9.

## India

A high court in Chennai, Madras, India dismissed an attempt to bring criminal charges against novelist Perumal Murugan for the content of one of his books, *Madhorubagan*.

*Madhorubagan (One Part Woman)* is set about a century ago near the author’s home town of Tiruchengode in southern India. It is about a childless Tamil woman who participates in a sex ritual during a temple festival in an attempt to conceive, a scenario Murugan says was based on historical fact.

Although Murugan is Tamil himself and a respected scholar of the region’s history and culture, right-wing nationalists offended by the historical novel claimed that he “defamed Tiruchengode town and the womenfolk and the community.” In their decision, the court offered an easy nonjudicial solution for those who were troubled by the novel: “If you do not like a book, simply close it. The answer is not its ban.” Reported in: BBC News, July 5; *The Hindu*

Centre for Politics and Public Policy, July 6, 2016

## Ireland

The Irish Censorship of Publications Board has put a prohibition order on all editions of *The Raped Little Runaway*, written by Jean Martin. It is the first book banned in Ireland on the grounds of obscenity in eighteen years. The order applies to all editions of the book by any publisher.

Board chairman Shane McCarthy said the decision was unanimous among the five board members.

“It was the only resort,” said Mr McCarthy. “We either ban it or allow it. It isn’t like a film where you can put in an age restriction. It is black or white.” The book contains numerous explicit descriptions of the rape of a child.

McCarthy said only a small number of books are banned in Ireland and that prohibitions were an extreme and rare occurrence. Reported in: *The Irish Independent*, March 10, 2016.

## Qatar

The International School of Choueifat (ISC) in Qatar, Bahrain, Saudi Arabia, the UAE and Jordan has been forced to withdraw textbooks which describe the Palestinian resistance as terrorists. Parents complained to the school after spotting excerpts from the books that said Palestinians are practicing terrorism in the Middle East.

The Qatari ministry of education and higher education visited the school and issued a statement on Twitter, stating: “The books’ contents were found to contradict Qatar’s foreign policy.” The ministry responded after photographs of a page from the unnamed English-language book were posted on Twitter.

The school confirmed that the book was a grade 9 history text titled *Technology, War and Independence*, published



by Oxford University Press. All copies of the book were removed and students were reimbursed for its costs, the ministry said, adding that the school was warned to seek approval before using any book. Reported in: *Middle East Monitor*, October 6.

### Uganda

Ugandan officials seized copies of British children's author Jacqueline Wilson's *Love Lessons* from a private school on the orders of a minister who

has led several crackdowns on obscene conduct.

Minister for Ethics and Integrity Simon Lokodo said the book exposed children attending the exclusive Greenhill Academy to sex at too young an age. The school in the capital Kampala is popular with Uganda's elite and western expatriates, and admits pupils between five and twelve years old.

*Love Lessons* tells the story of fourteen-year-old Prudence, who escapes the misery of life at home with

a controlling father by falling in love with her handsome art teacher.

Greenhill Academy management refused to comment on the raid. Lokodo says an investigation has been opened into the school's motives. He said he would not hesitate to shut down the establishment if it did not make changes. Reported in: News24.com, August 11; Agence France Presse, August 11.



## U.S. SUPREME COURT

The U.S. Supreme Court on November 14 declined to hear the appeal of a group of Kansas parents and students who object on religious grounds to the state's adoption of the Next Generation Science Standards.

The group alleged in a lawsuit against the Kansas state education department that the standards, developed by twenty-six states based on a framework published by the National Research Council, address religious questions by removing a "theistic" viewpoint and creating a "non-theistic worldview" in science instruction in the public schools.

The lawsuit by a group called Citizens for Objective Public Education said that in addressing questions such as "where do we come from?" the Next Generation standards rely on an "orthodoxy called Methodological Naturalism or Scientific Materialism and a variety of other deceptive methods to lead impressionable children, beginning in kindergarten, to answer the questions with only materialistic/atheistic answers," as the group said in its Supreme Court appeal.

The group argued that Kansas's 2013 adoption of science standards based on the Next Generation Science Standards and the National Research Council's framework constituted an unconstitutional government establishment of religion and also violated the First Amendment free exercise of religion rights of the families.

A federal district court held in 2014 that the group and its members lacked standing to bring the suit because the alleged injuries were abstract.

In an April decision, a three-judge panel of the U.S. Court of Appeals for the Tenth Circuit, in Denver, unanimously upheld the district court and rejected COPE's theories of legal injury.

"COPE does not offer any facts to support the conclusion that the Standards condemn any religion or send a message of endorsement," the Tenth Circuit court said. "And any fear of biased instruction is premised on COPE's predictions of school districts' responses to the Standards—an attempt by COPE to recast a future injury as a present one."

The U.S. Supreme Court asked Kansas to respond to COPE's appeal, and the state stressed that curriculum decisions remain a matter for local school districts.

"Although Kansas law requires the state board of education to establish curriculum standards, locally elected school boards remain free to determine their own curricula," said the brief filed by Kansas Attorney General Derek Schmidt. He added that COPE had not alleged that any children involved in the suit attended school districts where the science standards had been implemented. Reported in: *Education Week*, November 14.

At a lively Supreme Court argument January 10, the justices considered how the First Amendment applies to credit card fees.

The case was the latest battle in a continuing dispute between some merchants, who want to avoid fees charged by credit card companies by steering customers toward cash, and credit card companies, which seek to make the fees invisible to consumers.

The New York law at issue in the case, similar to ones in nine other states, bars merchants from imposing surcharges when their customers use credit cards. Discounts for using cash, on the other hand, are permitted.

That distinction runs afoul of the First Amendment, said Deepak Gupta, a lawyer for several merchants challenging the law.

"This case is about whether the state may criminalize truthful speech

that merchants believe is their most effective way of communicating the hidden cost of credit cards to their customers," Gupta said. Credit card companies charge a so-called swipe fee, often ranging from two to three percent of the transaction, to merchants who accept their cards.

The justices' view of the case seemed to turn on where they stood in a rolling debate at the court about how the First Amendment applies to laws regulating economic matters, an issue that generally divides the justices along ideological lines.

Some of the more liberal justices said that the law was an unexceptional and permissible economic regulation. "What this statute says is, you can't impose a surcharge," Justice Stephen G. Breyer said. "Very well, you can't. What's that got to do with speech?"

"If you look at this statute," Gupta conceded, "it doesn't scream First Amendment."

"But this is a regime," he added, "that says you are allowed to call it a surcharge, you just can't call it a discount."

Some of the more conservative justices saw a threat to free speech. "They are forcing the merchant to speak in a particular way," Justice Samuel A. Alito Jr. said.

Justice Anthony M. Kennedy seemed to agree. "It's a matter of how the pricing structure is communicated in the speech," he said.

Steven C. Wu, a lawyer for the state, said it was free to require merchants not to exceed an announced price. "The First Amendment doesn't prohibit the state from using a previously conveyed price as a baseline for a price regulation," he said.

Much of the argument concerned a semantic and psychological puzzle. As an economic matter, the prohibited surcharges and permitted discounts are identical. But as a matter



of behavioral science, people resist the former and embrace the latter.

“A discount and a surcharge are the same thing economically,” Justice Breyer said. “But we live in a world in which not everyone is an economist.”

Eric J. Feigin, a lawyer for the federal government, said the New York law would not violate the First Amendment if it barred a deli from saying that it charges credit card users a little more. The hypothetical example came from a brief in the case, which posed the question of whether it would violate the law to charge \$10 for a pastrami sandwich, adding a 20-cent surcharge for using a credit card.

Chief Justice John G. Roberts Jr. said that position was patronizing. “You’re saying that the American people are too dumb to understand that if you say ten dollars plus a twenty-cent surcharge,” he said, “they can’t figure out that that’s ten dollars and twenty cents.”

The New York law, enacted in 1984, makes it a crime to impose a surcharge for the use of credit cards. The law was for many years almost irrelevant, as credit card companies imposed similar rules in their merchant contracts.

But credit card companies started to back away from those restrictions as part of class-action settlements that continue to be litigated. Not long after, several New York merchants sued to challenge the law on First Amendment grounds.

One of them, *Expressions Hair Design*—one of the five plaintiffs in the Supreme Court case—said that it wants to tell its customers that it charges 3 percent more for using a credit card but fears criminal prosecution.

“It really is a freedom of speech issue,” said Valerie Bandurchin, an owner of the hair salon, who attended the arguments. She said the salon had

taken down a sign announcing a surcharge but would put it back up if her side won. While it was in place, she said, customers took the fee in stride. “We’re not dealing with thousands of dollars here,” she said. “It’s small amounts of money. When they realized the surcharge was two dollars or such, they didn’t seem to care.”

Justice Breyer, returning to a theme that has engaged him in recent years, said he was alarmed that the court could use the First Amendment to strike down ordinary economic regulations. He said he feared a return to the era of *Lochner v. New York*, referring to a 1905 decision that overturned a work-hours law in New York and has become shorthand for improper interference with matters by legislatures.

Justice Breyer said he would have voted against the law had he been a legislator. But he added that judges should leave such matters to elected lawmakers. “The fact that you have the questions you’ve had, and both sides of the bench have had such trouble with this, is strong evidence that the court should stay out of this under normal First Amendment standards,” he told Wu.

The eight-member court, fearing a deadlock, may look for a narrow way to decide the case, *Expressions Hair Design v. Schneiderman*. One alternative, proposed by Justice Alito, would be to ask New York’s highest court for a definitive interpretation of the state law. Reported in: *New York Times*, January 10.

In 2011, Simon Tam tried to register *The Slants*, the name of his rock band, as a trademark—a word, name, or symbol used to identify a product and to identify its source. Tam had named his band *The Slants* to bring attention to discrimination against Asian Americans, but the U.S. Patent and Trademark Office rejected

his application. They explained that a provision of the 1946 Lanham Act bars the government from approving trademarks that contain “matter which may disparage . . . persons, living or dead, institutions, beliefs, or national symbols.”

The U.S. Court of Appeals for the Federal Circuit reversed. It agreed that the mark *Tam* was seeking to register was “disparaging,” but it concluded that the Lanham Act’s ban on the registration of disparaging marks violates the Constitution. The Supreme Court agreed to weigh in last year, and after nearly an hour of oral argument January 18 in the case of *Lee v. Tam* it seemed poised to agree with the lower court. That could be good news for the Washington Redskins, whose case is now on hold in the U.S. Court of Appeals for the Fourth Circuit after the NFL team’s trademarks were cancelled in 2014.

Arguing on behalf of the federal government, Deputy Solicitor General Malcolm Stewart emphasized that the Lanham Act’s disparagement bar does not limit the ability of the mark’s owner to use the mark or express himself. Instead, he contended, the disparagement provision is merely a “reasonable limit on access to a government program.”

Stewart was quickly peppered by a barrage of questions from virtually all of the justices. Chief Justice John Roberts told Stewart that he was “concerned that your government program argument is circular.” When the holder of a mark complains that the government is not registering that mark because it is disparaging, Roberts observed, the government’s response is that it runs a program that doesn’t register disparaging marks. “It doesn’t seem to me to advance the argument,” Roberts said.

When Stewart responded that trademark law imposes several





different restrictions on the registration of trademarks “that really couldn’t be placed on speech itself,” Justice Stephen Breyer joined the fray. Those other restrictions, Breyer observed, are related to “the ultimate purpose” of a trademark: identifying the source of a product. How is the bar on disparagement—which, he noted, would allow you to say something nice about a minority group but not something disparaging—serve that purpose?

Justice Elena Kagan then stepped in. Government programs, she noted, generally can’t distinguish between different kinds of speech on the basis of the viewpoints expressed in that speech. But why, she asked, isn’t the disparagement bar a “fairly classic case of viewpoint discrimination?”

Justice Samuel Alito suggested that the government was “stretching the concept of a government program past the breaking point.” The government provides many kinds of services to the public, he noted, such as fire protection. But the government can’t say that it will only provide those services to some groups, Alito concluded.

Justice Ruth Ginsburg chimed in to voice yet another “large concern”: that the disparagement provision is too vague. Referring to a list provided to the justices that identifies things that were or were not trademarked, she observed that the word “Hebe” appeared on both sides of the list. It was “okay in one application,” she pointed out, but not in another. Stewart’s answer—that the Patent and Trademark office receives 300,000 trademark applications every year, so that it’s “not surprising that there will be some potential inconsistency”—didn’t seem to mollify either Ginsburg or Sotomayor, who queried whether Stewart’s answer wasn’t just “another way to say it’s not clear enough to get it right.”

Arguing for Simon Tam, the lead singer of The Slants, attorney John Connell took a firm stance from which he refused to budge. When Justice Anthony Kennedy characterized his position as being that the “First Amendment protects absolutely outrageous speech insofar as trademarks are concerned,” Connell agreed that the statement was “correct.”

Sotomayor saw the scenario as different from most First Amendment contexts. Tam and his band, she pointed out, can still call themselves The Slants, advertise themselves as The Slants, and sign contracts. They just can’t stop someone else from trying to use the same trademark. But even then, she continued, they would still have recourse because they can sue under other causes of action. Their speech, she concluded, “is not being burdened in any traditional way.”

Connell responded that Tam “is denied the benefits of legal protections that are necessary for him to compete in the marketplace with another band.” That answer, as well as Connell’s responses to the other justices’ questions, did not necessarily satisfy the justices, but his strategy of declining to give an inch may well prove effective in the end. Even if the justices saw flaws and inconsistencies in his arguments, they seemed to regard Tam’s position as preferable to the statute (and the government’s defense of it). Reported in: *ScotusBlog*, January 19.

Another First Amendment case the high court has agreed to hear is *Trinity Lutheran Church of Columbia v. Pauley*. This case doesn’t concern free speech, but instead deals with the First Amendment in the religious context. The case involves recycled tires and a Missouri grant program that provides shredded recycled tire pieces to soften playgrounds. The dispute is this: Trinity Lutheran argues that its

constitutional rights are being violated by being excluded from the grant program. The church says its members have a right to exercise religion while at the same time being treated the same as others.

Missouri counters that the state has done nothing to interfere with the church’s ability to worship or run its church child daycare program. Missouri’s constitution prohibits state funds from going “directly or indirectly, in aid of any church, sect, or denomination of religion.” And Missouri also said that the First Amendment prohibits government from making laws that “prohibit” the free exercise of religion. But Missouri also says it is free to enact laws that “frustrate” religion.

Many groups watching this case suggest that a ruling in favor of Missouri could jeopardize government funding for a wide array of faith-based social services, including soup kitchens and even battered women’s shelters. The justices have not announced a hearing date. Reported in: *arstechnica.com*, January 10.

One more First Amendment case before the high court also touches on religion. *Brown v. Buhman* concerns a polygamous Mormon family from Utah on TLC’s *Sister Wives* reality TV show. The family sued Utah over the state’s anti-polygamy law, and a federal judge struck down portions of the law that made “cohabitat[ing] with another person” illegal if they weren’t legally married. But a federal appeals court ruled that, because the state and local county said they would not prosecute—even after police opened an investigation once the show aired—the case was therefore “moot” and should not have been decided by the lower courts.

But on appeal to the Supreme Court, the *Sister Wives* family wants that federal appeals court’s decision



overturned. They say a lawsuit can't simply go away because the government adopted a nonenforcement policy during the pendency of litigation—a nonenforcement policy that is not even enforceable.

“At its core, this case concerns whether a Utah statute that bans married persons from engaging in voluntary cohabitation with other persons is unconstitutional—either as a violation of Petitioners’ sexual privacy rights protected by this Court’s decision in *Lawrence v. Texas*, [which overturned anti-gay sodomy laws] or their religious liberty rights protected by the First Amendment,” according to the family’s petition to the justices. The petition adds that “this constitutional question is currently blocked from continuing on the merits.” Reported in: *arstechnica.com*, January 10.

## SCHOOLS Leesburg, Florida

A federal appeals court on December 6 reinstated a lawsuit filed by a gay-straight alliance that was denied recognition at a Florida middle school.

A three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit, in Atlanta, held that Florida middle schools qualified as “secondary schools” under the federal Equal Access Act, which requires such secondary schools receiving federal funds to give extracurricular clubs equal access to school resources.

The panel also overturned other rationales cited by a federal district court for throwing out the challenge of the Carver Middle School Gay-Straight Alliance in the Lake County school district in central Florida, and it sent the revived case back to the district court.

The panel opinion was written by Judge William H. Pryor Jr., a judicial conservative who was on President Donald Trump’s list of twenty-one

potential U.S. Supreme Court nominees.

“We conclude that ‘secondary education,’ under Florida law, means at least ‘courses through which a person receives high school credit that leads to the award of a high school diploma,’” Pryor said, citing a provision of state law. “Carver Middle School provides courses through which students can obtain high school credit. The Equal Access Act applies to Carver Middle School.”

The case stemmed from efforts by students at Carver Middle School, in Leesburg, to form a gay-straight alliance club as early as the 2011–12 school year. That year, the school principal denied the application, court papers say. The next school year, a new principal referred the request to the Lake County school board, which in 2013 adopted a policy that required middle school clubs to be curriculum-related and be “limited to organizations that strengthen and promote critical thinking, business skills, athletic skills, and performing/visual arts.”

During the 2013–14 school year, a student identified as H.F. submitted an application for the gay-straight alliance, which included a teacher’s sponsorship and goals that included “to promote critical thinking by discussing how to address bullying and other issues confronting students at Carver Middle School.”

The application was rejected by a district official as deficient because it made no attempt to explain how the club would promote critical thinking. The district administrator returned the application to the middle school principal and said it might be approved if it was resubmitted with more information on critical thinking.

Instead, the alliance and H.F. sued the district under the Equal Access

Act. A federal district court ruled for the school district on several procedural grounds as well as on the rationale that the Equal Access Act did not apply because under Florida law, secondary schools refer to high schools.

In its December 6 decision in *Carver Middle School Gay-Straight Alliance v. School Board of Lake County*, the Eleventh Circuit court panel reversed the district court on both the procedural issues and the Equal Access Act.

Pryor acknowledged that Florida statutes used the term “secondary school” inconsistently. But he concluded that the critical term in the federal statute was “secondary education,” and that term under Florida law “means providing courses through which students can obtain high school credit.”

And because Carver Middle provides such courses, the Equal Access Act applies, he said.

The decision sent the case back to federal district court, which will determine whether the gay-straight alliance has standing as an organization to pursue the suit since H.F. is no longer a student at Carver Middle School. Reported in: *Education Week*, December 6.

## Brunswick, Georgia

A Glynn County man won’t be prosecuted for a confrontation with a school bus driver after the Georgia Supreme Court ruled that the law under which he is charged is unconstitutional.

Michael Antonio West was charged in early 2015 under a law that makes it a crime to upbraid, insult, or abuse a public school teacher, administrator, or bus driver in the presence of a student at a school or on a bus. West, who has two children in elementary school, was upset that his children were being bullied aboard the bus by



the driver's grandchildren, said his lawyer, Jason Clark.

Clark said that West met the rural bus at the stop north of Brunswick to tell the driver that her grandchildren had spit in his children's faces, Clark said. It started badly with driver saying, in effect, "You get off my bus. That's a \$500 fine," and threatening to call police, Clark said.

West responded in kind with, "I'm calling the law on you for cruelty to children," for allowing the bullying, Clark said.

West didn't follow through, but the bus driver apparently complained back at the bus barn.

"Four or five months later, they pick him up on a warrant," Clark said.

A video tape showed that neither the driver nor West used any profanity or vulgarities, but West was nonetheless charged and faced a maximum \$500 fine.

Clark said that he objected in Glynn County State Court to his client being charged with a misdemeanor under a statute that violated First Amendment protections of free speech. The trial judge, Orion Douglas, denied that objection but gave Clark permission to make an immediate appeal to the high court.

Mark Bennett, a Texas lawyer who specializes in First Amendment cases, joined Clark as co-counsel and argued the case before the Georgia Supreme Court. The high court unanimously found the statute overly broad because it did not forbid speech that "might be boisterous or disruptive" but instead prohibited only speech directed at public school officials that could be perceived as negative or unfavorable.

Although the law may have a legitimate application, it criminalizes a substantial amount of speech protected under the constitution, the court ruled.

The law is among those that schools include in their student behavioral code and handbooks. The law applies, however, only to nonstudents.

The court also ruled that the Georgia General Assembly has enacted other laws prohibiting disruptive content on school grounds that are content neutral. Reported in: *Florida Times-Union*, October 31.

### Killeen, Texas

A state judge has ordered a Texas school district to permit a school staff member's door display featuring the main religious message from the classic TV special "A Charlie Brown Christmas."

In a case that attracted nationwide attention, Judge Jack Jones of the 146th Judicial District in Bell County, Texas, issued a temporary restraining order that prohibits the Killeen Independent School District from refusing to allow the display of a poster that featured words from the special about the meaning of Christmas.

The case involves a Christmas display put up by Dedra Shannon, who is described in court papers as a "clinic aide" at Patterson Middle School in Killeen. On December 5, Shannon decorated the door of the school nurse's office with a customized poster based on "Charlie Brown Christmas" that highlights an essential scene from the thirty-minute special, which first aired in the 1960s.

The poster reads, "'For unto you is born this day in the City of David a Savior which is Christ the Lord' . . . That's what Christmas is all about Charlie Brown.' Linus."

The phrase is from a longer soliloquy delivered by Linus during the special about the true meaning of Christmas that is adapted from the Bible's Gospel according to Luke. On December 7, Principal Kara Trevino asked Shannon to remove the poster

or delete the quote, citing concerns about "the separation of church and state" and the possibility it could offend non-Christians, court papers say.

The Killeen school board on December 9 issued a statement supporting the principal's actions. The statement referred to a 2013 Texas statute, known as "the Merry Christmas law," which is designed to encourage public schools to teach about religious holidays and to allow teachers and students to use greetings such as "Merry Christmas," but which also requires that holiday displays not adhere to a specific religion.

On December 13, it debated the issue further and voted 6-1 to ask administrators to study holiday displays, but also to encourage school staff members "to use, to the fullest extent allowed by law, the name Jesus, the name God, and anything about our Christian religion."

The motion called for no further action that would allow Shannon to restore her poster. That prompted the school aide to sue the Killeen district and administrators, citing her right to free speech and free exercise of religion under the Texas constitution.

Shannon, backed by a group called Texas Values, argued in court papers that the Linus quote on her poster did not encourage anyone to adhere to Christianity in violation of the Merry Christmas law.

Shannon was also backed by Texas Attorney General Ken Paxton, who filed a brief in Jones's court that said "contrary to the decision of [the Killeen district], the inclusion of Bible verses or religious messages on student or teacher-sponsored holiday decorations does not violate Texas law. To the contrary, Texas law prohibits KISD from expressing hostility toward religious messages, and it also specifically encourages school districts



to take a more inclusive approach to religious and secular celebrations.”

Paxton said the school district was muddling the distinction between government and private speech, and that Shannon’s poster did not constitute government speech.

In issuing a temporary restraining order against the school district on December 15, the judge did not accept several sweeping statements proposed by Shannon’s lawyers. Instead, he wrote that the defendants were restrained from prohibiting Shannon from “displaying the poster that was previously on her door with the

addition of the words ‘Ms. Shannon’s Christmas Message’ in letters as large as the other letters.”

In a statement, the Killeen school district said, “Christmas and winter celebrations and messages are important to our community. The board’s actions taken on Tuesday directing district administration to develop guidelines for employees underscore the board’s commitment to this effort. Despite these efforts we found ourselves in court this afternoon.”

The district noted the judge’s requirement that Shannon add lettering

to her poster indicating that it was her Christmas message.

“We believe that directing the individual to include the additional text better complies with state and federal law,” the district’s statement adds. “We support this decision.”

In a statement issued by Texas Values, Shannon said, “I am so thankful that the court ruled in my favor and that Killeen ISD’s efforts to ban my Charlie Brown Christmas poster have failed. I was thankful to put my poster back up today.” Reported in: *Education Week*, December 16.



## LIBRARIES Iowa City, Iowa

The American Civil Liberties Union of Iowa is asking the Iowa City Public Library to remove security cameras from its bathrooms over privacy concerns raised by a patron.

The ACLU of Iowa emailed the letter January 13 on behalf of University of Iowa sophomore Kelsie Pepponi, who in September had used one of the bathrooms and afterward noticed a camera on the bathroom ceiling.

Pepponi saw a sign outside the bathroom noting cameras were in use but, in seeing cameras outside the bathroom, believed the sign was referencing those cameras, the letter said. She did not notice the camera inside the bathroom on her way in because they are near the entrance, but noticed it while standing inside one of the stalls, the letter said.

In the letter, the group asks that the cameras, located in the common areas of the bathrooms, be removed because of violation of patrons' privacy. If that is not possible, the letter said, the group asks the library to post more adequate notice that the cameras are located inside the bathrooms, that the recordings are subject to open records requests, and to make clear what is being recorded and who maintains the recordings.

In 2013, the ACLU of Iowa obtained recordings from the common areas of men's and women's restrooms via a public records request, the letter said. The footage showed patrons changing, getting dressed and "adjusting themselves."

"While individuals are given notice that they are being recorded, library patrons have an expectation that these private acts should not be observed nor recorded by a government entity," said Rita Bettis, ACLU of Iowa Legal Director, in a news release.

Library Director Susan Craig said that the cameras record only the common areas and do not collect video from inside the stalls.

"I absolutely understand concerns people have about what exactly we're taking pictures of, but usually once they understand that it's only in the common space, not in the stall area of the restrooms, they are more understanding," Craig said. "It's just part of the security camera system in the library, and it is there for the safety and security of people. It is also there to protect against theft and vandalism."

Footage from the bathrooms is not actively monitored by library staff, she said, and is deleted after seven days. If footage is required for criminal investigations, there are four employees authorized to examine the footage, she said. Those employees are Craig, the administrative business office manager, the head of the library's IT department, and a staff member who works in the community and access services department.

In the past, the library has provided police with footage that has led to arrests related to theft, vandalism, and an assault, Craig said.

"The cameras have been quite invaluable since they were installed," she said. "The city attorney has said that as long as it is the common area only, it is legal and that there should be no expectation of privacy in the common area of a public bathroom. That's why we have them."

The library opened its new building in 2004, Craig said, and the cameras have been functioning for more than ten years. Signs stating "security cameras are in use" are posted outside of the bathrooms and inside some of the bathrooms.

Veronica Lorson Fowler, communications director for the ACLU of Iowa, reiterated that at least, according to the complaint, the signage should

be updated. She said the situation is different than a department store placing security cameras in common areas near changing rooms and in bathrooms.

"There's a problem there and, obviously we love libraries and we love the Iowa City Public Library, but there's a problem that needs to be addressed. Right now, any footage they take, because they are a government agency, is subject to open records," she said. "At the very, very least they need to update their signage, because people are not aware that they are being, in some of their more private moments, recorded. That would seem a very straightforward solution to part of the problem."

Craig said the city attorney's office and the library's board of directors are reviewing the complaint. She said the nine-member board will review any recommendations made by the attorney's office.

"Ultimately, it's the board's decision," Craig said. Reported in: *Iowa City Press-Citizen*, January 13.

## Kansas City, Missouri

A patron and a library director face charges stemming from an event at the Kansas City Public Library in May.

Jeremy Rothe-Kushel, a documentarian and activist who lives in Lawrence, asked provocative questions of a diplomat, who had just concluded a talk about U.S. presidents' attitudes toward Israel.

Kansas City police said they arrested Rothe-Kushel because he was disruptive. Steven Woolfolk, the library's director of programming and marketing, was charged with interfering with that arrest.

Library officials say the arrests were unwarranted. R. Crosby Kemper III, the executive director of the library, said the police infringed



on Rothe-Kushel's First Amendment rights, and he stands by Woolfolk, who tried to intervene as Rothe-Kushel was removed from the auditorium of the library's Plaza branch.

The police say Rothe-Kushel was arrested because of his actions, not the content of his beliefs. "It was his behavior that was disrupting the flow of the event," Capt. Stacey Graves, a police spokeswoman, says.

But free speech is not the only issue at stake. The case also raises questions about the lines that blur when police officers exercise their powers while working for private employers.

Off-duty Kansas City police officers made the arrests at the May 9 event, a talk by Dennis Ross, an ambassador who has worked in the Middle East. A sergeant and two detectives were hired by the Truman Library Institute, which sponsored the event with the library and the Jewish Community Foundation of Greater Kansas City.

The officers' point of contact at the event was Blair Hawkins, the Jewish Community Foundation's director of community security. The foundation hired Hawkins, a former Seattle police detective, after a white nationalist murdered three people in the parking lots of two Jewish facilities in Overland Park in 2014.

Hawkins was an assertive presence at the May 9 event. He requested that one of the off-duty officers search Rothe-Kushel and a friend before they entered the auditorium where Ross was speaking. During the question-and-answer period, he closed in on Rothe-Kushel, who was trying to extend his exchange with Ross.

In the police's version of events, Hawkins approached Rothe-Kushel and "advised him that he was done speaking and needed to leave." A

video of the incident recorded by Rothe-Kushel's friend indicates a forceful "advising." Rothe-Kushel is leaning into the microphone as two men in suits descend on him, their arms extended. Hawkins is the first to arrive, and he grasps Rothe-Kushel by the arm.

Woolfolk tried to intervene as Hawkins and the other man removed Rothe-Kushel. Woolfolk said he was trying to deescalate the situation. Police claim he did the opposite. "When an officer is effecting arrest, whether you agree with it or not, you cannot interfere with that arrest," Graves said.

For months, library officials protested that the arrests and charges were a violation of the First Amendment, but did not go public with its objections until late September. That prompted ALA President Julie Todaro to issue this statement:

"The ALA commends the Kansas City Public Library for its commitment to fostering public deliberation and the exchange of a wide spectrum of ideas by offering meeting rooms and other spaces for lectures, educational programs, and organizational meetings. Its long history of support for free speech in public programming exemplifies the library profession's mission to influence positive and lasting change within their communities by providing opportunities for patrons to freely express opposing viewpoints without fear of persecution.

"Libraries are public institutions that serve as catalysts for public discussions that help solve community challenges. Such efforts are not possible when patrons are not allowed to engage in open debate in a public forum, but rather are arrested for asking difficult questions.

"The ALA commends Steve Woolfolk for defending a patron's right to question and debate matters of public concern. The association will

continue to extend resources to library staff as the Kansas City (Mo.) Public Library moves forward with its legal efforts."

Woolfolk said he has hosted dozens of library events where more provocative questions have been asked, and no one was arrested. The only time anyone has been asked to leave was when an audience member fell asleep and started snoring.

The library ordinarily does not have security or off-duty police at such events, but on occasion allows it if a speaker, such as an author on abortion issues, may be in danger.

In this case, the library agreed to have the Jewish Community Foundation bring security, in part out of sensitivity to the 2014 shootings that left three dead at Jewish sites in Overland Park. But library officials said they had specified that no one was to be removed for asking uncomfortable questions and not without permission of library staff, unless there was an imminent threat.

Kemper, the library director, said the security guards and police officers violated that agreement, along with the library's core reason for existence as a place to exchange ideas.

"We're going to be living in a different kind of country" Kemper said, if people can be arrested for asking questions at a library. "If this kind of behavior is unacceptable to the police, then I guess we're going to have to shut the library down." Reported in: *The Pitch*, October 11; *Kansas City Star*, September 30, October 4; *nybooks.com*, October 14.

### Omaha, Nebraska

If a child were kidnapped at an Omaha library, staffers would want to turn over security video to police immediately. But the current library policy says officers would first have to obtain a court order. So Director Laura



Marlane has proposed loosening that policy so that library officials could release security video if police needed to take immediate action to save a life.

But at least one board member wants to further loosen the policy to allow police access to footage any time there is reasonable suspicion that a crime has occurred.

Twice in recent years, law enforcement officials have asked the library to loosen its policies on releasing information, including the security video policy. In one instance, the police chief appeared before the board to ask the library to provide video to police without requiring a court order. Library leaders resisted, saying patrons should expect privacy in libraries.

Marlane's proposal doesn't go as far as police have requested. She suggests allowing some library staffers to turn over security video in situations that require "immediate action to prevent imminent danger to life, or to identify a person currently in custody on the premises."

Marlane said that if, for example, a child were kidnapped at a library branch, the staff would want to turn over video footage immediately. "I wanted to change the policy to reflect real situations," Marlane said.

But board member Kathleen McCallister, who is married to an Omaha police captain, said the proposed change doesn't go far enough.

"I think we're being too nice to the bad guys," she said.

She offered an alternate proposal that says staff can release video to police in any "situation where there is a reasonable suspicion that a crime has occurred, or to identify a person currently under investigation, including medical emergencies."

That would greatly broaden the types of situations where the library would provide video to police. McCallister said that if someone was

suspected of exposing themselves to a library patron, she would want staff to be able to turn over the video.

Libraries generally resist releasing information that could identify patrons or reveal what they are reading. The American Library Association's guidelines on patron privacy include the following: "Libraries should not share personally identifiable user information with law enforcement except with the permission of the user or in response to some form of judicial process (subpoena, search warrant, or other court order)."

In 2014, Mayor Jean Stothert's chief of staff, Marty Bilek, and Metropolitan Community College Police Chief Dave Friend appeared before the board to ask that the library release patron names, addresses, and phone numbers to police in emergencies. They cited a situation at the South Omaha branch, a joint facility between the library system and Metro. Friend said a drunk man was harassing other patrons and wouldn't give police his name. The chief said that prevented officers from taking the man to a treatment facility and tied up officers for about two hours.

The ACLU of Nebraska stepped in, saying the change would be unconstitutional. The mayor's office withdrew the request.

Last year, Police Chief Todd Schmaderer and Captain Katherine Belcastro-Gonzalez told the board that the downtown library was draining police resources. At that time, Belcastro-Gonzalez asked the board to enact a policy that would allow library officials to turn over footage from security cameras to police without requiring a subpoena. She also suggested searching patrons' bags to make sure they don't have weapons or open containers of alcohol.

The board didn't make those changes but did beef up the library's

misconduct policy, including lengthening a ban from library premises for infractions such as breaking items and public intoxication.

At its meeting, the board voted to take no action on Marlane and McCallister's proposals but rather to send them back for more work.

Marlane said that if someone suspects that a nonemergency crime has occurred—such as a theft of a purse or a hit-and-run car crash in the parking lot—library staffers save the security footage until police can obtain a court order.

"We want to keep the library safe for everybody and we want to work with police the best we can," Marlane said. "But preserving patron privacy is also a very important part of what we do." She said she plans to work with McCallister on striking the right balance.

Assistant City Attorney Michelle Peters noted that the Fourth Amendment comes into play and said obtaining a warrant or subpoena is common. She said in libraries people have a "heightened expectation of privacy."

Board member Mike Kennedy said there are legitimate privacy concerns. "We're not going to zoom in the camera to see if you checked out *Fahrenheit 451*," he said. Reported in: *Omaha World-Herald*, October 26.

### Roselle Park, New Jersey

A public official's tribute to America's military veterans has stirred controversy in a New Jersey town. Outside of Veterans Memorial Library in Roselle Park is a silhouette of a soldier kneeling at a cross. It's become the center of controversy among residents including Gregory Storey.

"It's a very touching memorial, but the problem is there's a cross in it. It singles out veterans of one religion, and in doing so ignored and



disrespects veterans of all other religions, or no religion,” Storey said.

The memorial—paid for by Mayor Carl Hokanson—was installed on July 29 by city workers and came as a surprise to the board that runs the library.

After sixty-eight days in front of the Roselle Park Veterans Memorial Library, the “Kneeling Soldier At Cross” memorial was removed in early October at the behest of Mayor Hokanson.

What started out as a donation from Hokanson, acting as a private resident, has led to a lawsuit filed by the American Humanist Association and Gregory Storey along with his wife, Councilwoman-At-Large Charlene Storey—acting as a private citizen—against Hokanson in his capacity as mayor and the Borough of Roselle Park for approving its placement at the library.

Although Mayor Hokanson said he would “temporarily remove the ‘Kneeling Soldier’ while the Storey lawsuit plays out in court,” his action did not end the lawsuit that was filed on September 30. This is due, in part, to the mayor’s use of the word ‘temporary’ in his statement.

David Niose, the legal director of the Appignani Humanist Legal Center, which is the legal arm of the American Humanist Association, commented, “As far as the removal goes . . . it doesn’t really change anything as far as the lawsuit. I think the mayor made it pretty clear that he’s just removing it temporarily, for some reason; presumably due to the litigation. He has every intention of putting it back up and he thinks it belongs up so the issue still needs to be resolved in the courts.”

When asked whether the organization’s concerns would have been resolved if the mayor had removed the memorial before the lawsuit was filed,

Niose stated, “It may have, as long as he acknowledged that it wasn’t going to be put back up.”

Additionally, an acknowledgement from the borough regarding the Establishment Clause violation also may have resolved the matter, according to the AHA spokesman.

Charlene Storey stated that she would not comment on the matter due to litigation other than to say, “This doesn’t end the lawsuit. First of all, it’s temporary. The mayor stated it was temporary. Secondly, it’s not just a matter now with the mayor, it’s actions by council. If it [was removed] before council voted to accept it and to place it at the library, there would have been no lawsuit.”

The council approved accepting the donation and its placement at an August 18 mayor and council meeting. At that meeting, Roger Byron, senior counsel for First Liberty Institute—a law firm that has offered to defend the municipality in case of a lawsuit—was in attendance.

“The mayor is my boss, we listen to him, but it was not put through the board of trustees,” Interim Library Supervisor Kit Rubino said when Storey first raised his complaint. However, Storey claimed that the mayor told him, “This was approved by the Board of Trustees of the library. Don’t talk to me, talk to them.”

Jeff Regan, vice president of the Roselle Park Library board of trustees, claimed a quorum was present at a library board meeting where a vote was taken to accept the statute. However, the library board of trustees website shows no meetings were scheduled in July or August. It seems, therefore, that a majority conducted business without following proper channels. Five of the nine members of the library board of trustees are also members of either the Roselle Park Democratic Committee or the Roselle

Park Democratic Club, so there was speculation that an illegal meeting may have taken place during a political event. Patricia Butler, the library board president, stated that she herself was not aware of any approval.

On October 6, the council voted unanimously to reverse its previous decision to accept a donation of the memorial and to approve its placement in front of the Roselle Park Veterans Memorial Library. The action was believed to have been taken to put an end to the lawsuit filed against the municipality to have the memorial removed from public property. Reported in: *cbsnews.com*, August 16; *New Jersey Today*, September 11; *Roselle Park News*, August 23, October 7, 12.

### New York, New York

In an apparent response to the election of Donald Trump, libraries are promising to destroy user information before it can be used against readers and backing up data abroad.

The New York Public Library (NYPL) changed its privacy policy November 30 to emphasize its data-collection policies. The previous week, the NYPL website stated that “any library record or other information collected by the Library as described herein is subject to disclosure pursuant to subpoena, court order, or as otherwise authorized by applicable law.”

Now, the page reads, “Sometimes the law requires us to share your information, such as if we receive a valid subpoena, warrant, or court order. We may share your information if our careful review leads us to believe that the law, including state privacy law applicable to Library Records, requires us to do so.”

The NYPL also assured users that it will not retain data any longer than is necessary. “We are committed to





keeping such information, outlined in all the examples above, only as long as needed in order to provide Library services,” the librarians wrote.

Meanwhile the digital library Archive.org, which keeps a searchable database of public websites, announced that it would create a new Canada-based backup of its huge information repository to respond to the increased threat of invisible government scrutiny. The group’s services include the Internet Archive and a search engine cataloging it called the Wayback Machine.

“We have statements by President Trump saying he’s against net neutrality and he wants to expand libel laws,” Archive.org founder Brewster Kahle said. “Librarians are wary of storing hoards of precious information ‘along faultlines,’ whether those faultlines were literal or ideological. Trump has called for surveillance of Muslims and nominated Jeff Sessions as his attorney general; the Alabama senator called plans to stop the NSA’s warrantless domestic wiretapping ‘idiotic.’”

Archive’s director of partnerships, Wendy Hanamura, said the decision had been a sober one. “We didn’t pick Canada out of a hat,” she said. “Law in Canada has shifted recently, making it a really great place for libraries to experiment.”

“Even before the election we had made the decision to host at least Canadian materials in Canada,” Kahle said. “They have rigorous privacy rules because they don’t particularly like patients’ privacy information going to the United States.” The response to the fundraising campaign had been overwhelming, he said.

The Wayback is a popular tool among journalists; one of its key features is the ability to see what changes were made to a given website and when. The project automatically captures some 300 million webpages

every week and devotes some of its resources to splitting its archived material into collections of similar material, such as political ads and books in the public domain.

Backlash from the librarian community to Trump’s election was so rapid that the American Library Association (ALA) issued an apology for its November 18 statement, saying its members would “work with President-elect Trump” and his transition team.

“We understand that content from these press releases, including the 11/18/16 release that was posted in error, was interpreted as capitulating to and normalizing the incoming administration,” the ALA president, Julie B Todaro, wrote in *American Libraries*. Todaro said that the ALA’s core values remained unchanged: “free access, intellectual freedom, privacy and confidentiality.”

“It is clear that many of these values are at odds with messaging or positions taken by the incoming administration,” she wrote. Reported in: *The Guardian*, November 30.

### Longview, Texas

A Longview High School librarian has been suspended for two days without pay after she posted life-size cutouts of presidential candidates with modified versions of campaign trail quotes at the library entrance.

Longview ISD board President Chris Mack said he was uncertain when librarian Linda Bailey will take the two days of unpaid suspension, and noted that would be a decision for administrators to make.

Trustees took the action against Bailey on October 10 after a closed session hearing in which they were scheduled to consider suspension without pay for a district employee.

Bailey put the cutouts of Donald Trump and Hillary Clinton at

the library doors with text attached to each. The Trump comment read, “Sign in or you will be deported.” The Clinton comment read, “This is the only door to use. Only deplorables use the other door.”

After being alerted to the signs October 5, the school district immediately had the cutouts removed. The district issued an apology for the librarian’s actions.

District officials said the cutouts, particularly the one of Trump, offended some students, staff, and community members.

Veronica Lu, whose nephew sent her a picture of the Trump cutout at the library, said last week it was offensive to her, her nephew, and many of his peers. Lu’s family is Hispanic.

“My nephew was upset about it, and there were several other students who were upset about it,” she said. “Some students felt like they don’t belong here—like a certain race of people do not belong here.”

Before the closed session hearing, two men spoke in open forum urging trustees to consider cultural sensitivity training in the district.

Longview immigration attorney Jose Sanchez called the cutouts “offensive and definitely not appropriate.” He said the word “deported” on the Trump note has enhanced “fear” for the undocumented and the documented community.

“To hear that Longview High School students were upset and to hear that some of them felt like they don’t belong here—like a certain race doesn’t belong here—is sickening,” Sanchez told trustees. He added that the cutout of Clinton and the note attached to it also was “a disgrace.”

Sanchez said that he didn’t believe Bailey should be fired for her actions. He said the librarian should issue a personal apology to students, staff, and the community, as well as be



reprimanded. Reported in: *Longview News-Journal*, October 11.

## SCHOOLS Mountain View, California

A Mountain View High School history teacher was placed on paid leave after comparing Donald Trump to Adolf Hitler in an effort to show students that the 2016 election is a reflection of the past.

Frank Navarro, a Holocaust scholar who has taught at Mountain View High School for forty years, said the school's principal and district superintendent asked him to leave after a parent complained about the parallels he was drawing in his world studies class.

"This parent said that I had said Donald Trump was Hitler, but I would never say that," Navarro said. "That's sloppy historical thinking."

He did, however, point out the connections between Trump's presidential campaign and Hitler's rise to power: Both had promised to eject foreigners and make their countries "great again," Navarro said.

"I think it makes sense," he said. "It's factual, it's evidence-based." He added: "It reminds students that history is real."

But Principal Dave Grissom and Superintendent Jeff Harding feared that the lessons may have been inappropriate in the tempestuous aftermath of the election.

"Regardless of their political affiliation, many of our students show signs of emotional stress," Grissom wrote in a letter to parents. He said he has an obligation to maintain an "emotionally safe environment" for students while protecting teachers and staff against unsubstantiated allegations.

Grissom called the paid leave process a "time-out" for the staff member under investigation.

The school's newspaper, the *Oracle*, published an article about the investigation, prompting outrage among parents and students.

"Emails started flowing in to the principal late that night," Navarro said. Two days later, a Mountain View High School alumnus started a Change.org petition, demanding that Grissom revoke Navarro's leave and publicly apologize "for attempting to intimidate a respected educator."

Within two days the petition had gathered almost 4,000 signatures. Reported in: *San Francisco Chronicle*, November 13.

## COLLEGES AND UNIVERSITIES Orlando, Florida

*Knight News*, an independent student news website at the University of Central Florida, has been forced to sue the University of Central Florida three times in the past three years for access to records and meetings. In response, UCF has repeatedly asked the courts to force the student-run outlet to pay the university's legal bills—an unusual move, since public-records laws generally provide compensation only to the requester, not to the government agency.

On April 7, the Student Government Association (SGA) at UCF, a campus of more than 60,000 students located in Orlando, passed an \$18.6 million budget in a meeting closed to public comment.

This followed an incident in December where the SGA held committee meetings on the allocation of the Activities and Services Fee during the time the campus was closed for winter break. Students at UCF are not allowed to stay in the dorms over the holiday, and anyone wishing to attend the meeting would have had to arrange for alternate accommodations.

*Knight News* asked to inspect copies of SGA budget requests along with an electronic copy of the Activities and Services Fee financial database. The requests for budget documents went unanswered for more than a month, and the news outlet filed a lawsuit against the university on May 23 requesting the release of the documents and a permanent injunction to require SGA to allow public comment.

In response to the lawsuit, the university released a heavily redacted version of the documents June 3, including removing student names, citing the Family Educational Rights and Privacy Act (FERPA), which protects students' education records.

Michael Williams, a government reporter for *Knight News*, said reporters' ability to cover the news was compromised by the redactions.

The university didn't stop at withholding the documents under FERPA. They claimed that the lawsuit was so baseless that *Knight News* should pay UCF's legal fees—an unorthodox move, as the normal practice in Florida open-government lawsuits is that only the requester is entitled to recover attorney fees.

"If we had to pay attorney's fees it would cripple us," Williams said. "We're not a money-making machine. We're not *The New York Times*. We are student-run, independent publication."

*Knight News* is a 501(c)(3) nonprofit launched in 2009. Students run the newsroom and do all the reporting, but the website is neither affiliated with nor funded by the university.

Last summer, the campus's only official student newspaper, the *Central Florida Future*, closed after forty-eight years.

UCF argues that *Knight News*' request for the documents is "meritless," and therefore the journalists and their attorney should be responsible for the



financial resources the university must expend to fight the case.

In refusing to release the documents, the university is concealing the use of government funds, Justin Hemlepp, a local attorney representing *Knight News*, said. Not only is their legal position indefensible, but he also finds it “preposterous” that a university would ask for attorney’s fees from a student paper.

“What this is really about is a university spending \$250,000 in taxpayer money in asserting the ridiculous ideas that budget records are private and that student government can spend taxpayer money in secret,” Hemlepp said.

Hemlepp said the budget documents and database records are necessary to report on how SGA will allocate its \$18.6 million budget. Hemlepp argues that UCF’s FERPA defense has no legal basis, as the budget documents are not educational records and the students waived their claim to privacy in taking an SGA position.

On August 11, the Ninth Florida Judicial Circuit Court ordered the university to release the documents to the paper within forty-eight hours, without redactions, and denied the university’s request for attorney’s fees.

The ruling was consistent with Hemlepp’s position, with Judge John Jordan deciding that budget documents are not educational records, and that SGA participants implicitly waive their right to privacy with relation to their participation in governmental activities.

The university filed a stay to the ruling almost immediately, following it up with an appeal on August 22.

In previous years, UCF has released these records without a fight, and neither the student journalists nor the lawyer can determine why releasing

in this instance has become such an issue.

“This information is and always has been public and for reasons I cannot understand, UCF has engaged in creative interpretation of what these rules mean,” Hemlepp said.

If the court had ruled that the paper would be responsible for the fees, Hemlepp said it could have easily bankrupted the independent student news outlet.

Brigitte Snedeker, the editor-in-chief of *Knight News*, said it is unfortunate their university is willing to seek the destruction of a news outlet where students learn journalism.

“In my mind [seeking attorney’s fees] is aggressive behavior because the university knows how small we are,” Snedeker said.

Not only is the lawsuit using the financial resources of the site and taking time away from other reporting, Williams said the *Knight News*’s persistence in getting the records is causing students to feel that the news organization is antagonistic.

“It’s leading students to believe that we’re one-sided or that we’re only going after SGA because we have some kind of grievance with them,” he said.

And even if or when the records become available, the delay is still costly because of the loss of timely coverage about SGA spending, Williams said.

“We would prefer to have gotten them as soon as possible so students would have been more aware of what was happening in the university community as it was happening and not months after the fact,” he said. Reported in: [splc.org](http://splc.org), September 12.

### Lexington, Kentucky

The University of Kentucky filed a lawsuit against its student paper, the *Kentucky Kernel*, over an unfavorable decision by the state’s attorney general

regarding a records request. This action came in response to the paper’s request for documents relating to the firing of a professor accused of sexual assault.

On August 8, the university announced its decision to sue the *Kentucky Kernel*, the independent student newspaper, over their open records request. On August 31, they made good on that threat.

The lawsuit came in response to an opinion by Attorney General Andy Beshear’s office stating that the university had violated the state’s Open Records Act by withholding records concerning a former associate professor’s sexual misconduct case from the *Kernel*.

The day the complaint was filed, the university posted a statement to Twitter asserting that the lawsuit was necessary to protect those who report harassment under a promise of confidentiality: “We appealed the Office of AG’s opinion to protect the rights of victim-survivors—today and those that follow.”

Because of the way Kentucky’s law is structured, a lawsuit is the only way for the university to appeal the attorney general’s decision.

The issue began in April, when then editor-in-chief Will Wright requested documents detailing the university’s investigation and subsequent dispensation into sexual harassment and assault complaints against former associate professor James Harwood.

The university did release documents that showed the final agreement between administrators and the accused professor, and the paper was able to report that the university entered into an agreement with Harwood allowing him to resign his position and continue to receive pay and benefits until he resigned August 31.

But Wright said there were still major gaps in the coverage because



reporters knew almost nothing else about the case without the remaining documents UK withheld. The documents the newspaper did receive were basically a conclusion of the case with few details, leaving journalists unable to confirm what actually took place, Marjorie Kirk, the *Kernel*'s current editor-in-chief said.

After the university declined to release additional records detailing their investigation, citing privacy concerns, the paper appealed to Beshear's office for an opinion. Beshear's office issued a memorandum on August 8, stating that the university had refused to release the documents to the attorney general's office for review and ruling the university must release the records—with names and identifiers of the witnesses redacted—as they were not proven to be protected under any exemptions to the open records law.

Beshear's decision prompted UK President Eli Capilouto to send a campus-wide email threatening to sue the *Kernel*. In the email, Capilouto cited the confidentiality and privacy of the victims as the reason for sealing the documents. Capilouto called the investigation "preliminary," and therefore not open to public record laws—though the case is closed.

But the *Kernel*, which has been in contact with the victims' spokesperson since they were first approached in March, reported that the victims wanted the documents to be public, with names and identifiers redacted. The spokesperson, the *Kernel* reported, said the victims were not contacted before Capilouto's email was sent—they only heard about it when they later saw an article about it.

And for Tom Miller, the attorney representing the *Kernel* in the suit, the university's claim for protecting the victims' privacy doesn't hold up.

"With the redaction of the names and of any identifying information,

the students are not identifiable—therefore there is no privacy right being protected here," Miller said. "The victims have reported to the *Kernel* that they want the documents' information disclosed. To the extent the university is claiming that privacy is an interest, let [the university] go ask the victims—who they never talked to, according to the *Kernel*—and let them say if they want their rights protected."

Shortly after Beshear's decision and UK's announcement of the suit, a 122-page investigation document, with the victims' names and identifiers redacted, was handed over to the *Kernel* by a source related to the case. University officials would not confirm the authenticity of the documents acquired by the *Kernel*, but the newspaper reported that the report was signed by the university's deputy Title IX coordinator, Martha Alexander.

UK's lawsuit claims that Beshear erred in ordering disclosure of the records about UK's investigation because the documents are protected from disclosure for three reasons: because they are confidential "education records" under FERPA, because they are "preliminary" and do not represent the final outcome of the investigation, and because they contain attorney-client privileged material.

In a statement issued with the lawsuit, Jay Blanton, UK's executive director of public relations and marketing, said, "Our argument is not with the *Kentucky Kernel*. Respectfully, it is with an opinion from the Office of Attorney General that, if allowed to stand, would force the university to turn over private information about victim survivors to anyone, including the media, other students, employers, and strangers."

Blanton stated concerns about a possible chilling effect on the trust students and others on campus might

have in the university and their willingness to report crimes of a similar nature were the attorney general's decision to stand up in court.

"The decision of the Attorney General, if it stands, would mean confidential and private information relative to a survivor wouldn't just have to be turned over to the *Kernel* or another newspaper. It would have to be turned over to a private citizen, fellow student or faculty or staff member. There would be no discretion," he said in an email.

But, according to the report, the case's complainants came forward only after finding there were other victims.

The *Kernel*'s advisor, Chris Poore, said the students' appeal to the attorney general followed a common course of action—one that would elicit a decision backed by the force of law.

According to a statement from Capilouto, the university fully complies with 90 percent of open records requests, but in a small minority of cases, they feel they must deny the requests. "But in a handful of very specific cases, we are faced with the decision of whether transparency is more important than the need to protect the privacy and dignity of individual members of our community. It is not," Capilouto said in the statement.

The university will never release the names of victims of violence, not only for the safety of victims that are named in the documents, but also so that victims who have not yet come forward will feel comfortable doing so, he said.

However, it is the policy of the *Kernel*—and most newsrooms—to not print victims' names, and the attorney general's decision specified that the names and possible identifiers for the victims must be redacted from the documents.



But for Miller, who is fielding two other cases involving the university and its noncompliance with open records laws, UK might be toeing a thin legal line. “This is just a pattern of conduct the university has recently displayed by just refusing to comply with the Open Records Act,” he said.

For Kirk, as the *Kemel* moves on in its legal proceedings and coverage of the new school year, she hopes the case could provide a stepping stone to amending policies that might undermine student safety nationally.

Because of a provision in his employment agreement with the university, Harwood was able to tender his resignation and forego a hearing—a policy that is recognized as a permissible resolution in federal Title IX guidelines. And because his resignation precluded a hearing, the victims who filed complaints against Harwood will not be able to appeal the decision and the investigation will not be disclosed if he applies for a job elsewhere.

“I would hope that instead of the legacy of this year being the year our university decided to sue our student newspaper, rather it would be the year our university was the first to take a stand against broken policies all over the country,” Kirk said. Reported in: [splc.org](http://splc.org), September 12.

### New York, New York

Fordham University has denied an application to form a Students for Justice in Palestine (SJP) chapter on campus, citing as its rationale the group’s political goals—including its support for the boycott, divestment, and sanctions movement against Israel—and the potential for polarization.

Keith Eldredge, the dean of students at the Manhattan campus of Fordham, a Jesuit institution, outlined the reasons for the denial in a December 22 email. “While students are

encouraged to promote diverse political points of view, and we encourage conversation and debate on all topics, I cannot support an organization whose sole purpose is advocating political goals of a specific group, and against a specific country, when these goals clearly conflict with and run contrary to the mission and values of the university,” Eldredge wrote.

“There is perhaps no more complex topic than the Israeli-Palestinian conflict, and it is a topic that often leads to polarization rather than dialogue,” Eldredge’s letter continued. “The purpose of the organization as stated in the proposed club constitution points toward that polarization. Specifically, the call for boycott, divestment and sanctions of Israel presents a barrier to open dialogue and mutual learning and understanding.”

The civil rights and legal advocacy organizations Palestine Legal and the Center for Constitutional Rights first publicized the email from Eldredge as part of an eleven-page joint letter to Fordham’s president. The letter describes in detail a protracted application process for the students who proposed the club—they first submitted an application in November 2015—and outlines the types of questions they report facing from administrators about their political beliefs and their plans to collaborate with Jewish organizations on campus. Those questions included “What does BDS mean to you?” “Does BDS mean the dissolution of the state of Israel?” and “Why use the term ‘apartheid?’”

SJP chapters across the country have regularly attracted controversy with, for example, their programming marking “Israeli Apartheid Week” or with “mock eviction” events meant to draw attention to the removal of Palestinians from their homes. In its profile of the organization, the Anti-Defamation League

(ADL), a civil rights group focused on anti-Semitism, describes SJP as “the primary organizer of anti-Israel events on U.S. college campuses and the group most responsible for bringing divestment resolutions to votes in front of student governments.” ADL writes that “since its founding in 2001, SJP has consistently demonized Israel, describing Israeli policies toward the Palestinians as racist and apartheid-like, and comparing Israelis to Nazis or Israel to the Jim Crow-era U.S.”

Yet SJP has organized on many campuses, with many college and university leaders viewing the group as a part of the student organizing landscape (one that often includes pro-Israel groups). Various SJP chapters have had run-ins with college administrators before—Palestine Legal has written previously about what it describes as the differential treatment of student groups that focus on Palestinian issues, writing in a 2015 report that “universities often respond to complaints from Israel advocacy groups by investigating and disproportionately disciplining students and student groups for events and actions in support of Palestinian rights”—but Radhika Sainath, a staff attorney for the organization, said this is the first case of which they’re aware in which a SJP chapter has been preemptively banned.

“All evidence indicates that the denial was based on the viewpoint of students’ message and/or their national origin,” the joint letter from Palestine Legal and the Center for Constitutional Rights states. The letter observes that all four of the original applicants for the SJP chapter’s executive board were students of color, three were Muslim and one was Palestinian American.

The letter continues, “The denial violates free speech and association



principles, the university's commitment to protect free inquiry, and could give rise to a violation of Title VI of the Civil Rights Act," which prohibits discrimination on the basis of race, color, or national origin.

The Foundation for Individual Rights in Education, or FIRE, which advocates for free speech on campuses, has also taken an interest in the case and plans to send its own letter to Fordham, according to Ari Cohn, the director of FIRE's individual rights defense program. "In this case, I think that the justification for denying SJP recognition is completely without merit and cannot stand at any university that proclaims that it values freedom of expression, which Fordham's written policies do," said Cohn.

Cohn noted that Fordham has chapters of the College Democrats and College Republicans, both of which advocate for specific political goals. "The fact that the group [SJP] is oriented toward advocating a specific political viewpoint is not out of the ordinary, and student organizations at every campus across the country do just that," Cohn said. "It's a little bit baffling to see that justification used to deny a student organization recognition."

Eldredge, the dean of students who wrote the email outlining the reasons for the denial, referred an interview request to a college spokesman, Bob Howe, who issued a written statement. "Fordham has no registered student clubs the sole focus of which is the political agenda of one nation, against another nation," the statement said. "For the university's purposes, the country of origin of the student organizers is irrelevant, as is their particular political stance. The narrowness of Students for Justice in Palestine's political focus makes it more akin to a lobbying group than a student club. Regardless of the club's

status, students, faculty and staff are of course free to voice their opinions on Palestine, or any other issue."

Ahmad Awad, a graduating senior at Fordham and the would-be president of the SJP chapter, said the group is still pushing for recognition on campus. He said Eldredge's reasoning for denying the organization club status is contradictory to Fordham's mission statement, which articulates a commitment to freedom of inquiry and to the promotion of justice and protection of human rights.

"Yet we were declined when that's what we were trying to advocate for," said Awad. "We're advocating for a free Palestinian people. We're advocating for a Palestinian people who are not oppressed and occupied." Reported in: [insidehighered.com](http://insidehighered.com), January 18.

## NET NEUTRALITY Washington, DC

The U.S. Federal Communications Commission's two Republican members told internet service providers December 19 that they will get to work on gutting net neutrality rules "as soon as possible."

FCC Republicans Ajit Pai and Michael O'Rielly sent a letter to five lobby groups representing wireless carriers and small ISPs; while the letter was mostly about plans to extend an exemption for small providers from certain disclosure requirements, the commissioners also said they will tackle the entire net neutrality order shortly after President-elect Donald Trump's inauguration on January 20.

"We will seek to revisit [the disclosure] requirements, and the Title II Net Neutrality proceeding more broadly, as soon as possible," they wrote, referring to the order that imposed net neutrality rules and reclassified ISPs as common carriers under Title II of the Communications Act.

Pai and O'Rielly noted that they "dis-sented from the Commission's February 2015 Net Neutrality decision, including the Order's imposition of unnecessary and unjustified burdens on providers."

Pai and O'Rielly will have a 2-1 Republican majority on the FCC after the departure of Democratic Chairman Tom Wheeler on January 20. Pai previously said that the Title II net neutrality order's "days are numbered" under Trump, while O'Rielly said he intends to "undo harmful policies" such as the Title II reclassification.

The net neutrality order gave ISPs with 100,000 or fewer subscribers a temporary exemption from enhanced transparency requirements that force operators to provide more information about the plans they offer and their network performance. ISPs can comply with the rules by adopting "nutrition labels" that give consumers details about prices (including hidden fees tacked onto the base price), data caps, overage charges, speed, latency, packet loss, and so on.

The exemption for small providers lapsed on December 15 after the FCC couldn't agree on a deal to extend it. Pai and O'Rielly tried to convince fellow commissioners to extend the exemption for small providers and apply it to any ISP with up to 250,000 subscribers.

To make things more complicated, the enhanced transparency rules haven't yet taken effect for ISPs of any size because that portion of the net neutrality order required an additional review by the Office of Management and Budget (OMB) to comply with the Paperwork Reduction Act. The OMB finally approved the new requirements in December, and they are now set to take effect on January 17.

"We want to assure you and your members that we would not



support any adverse actions against small business providers for supposed non-compliance with the ‘enhanced transparency’ rules after that date [January 17],” Pai and O’Rielly wrote. That means small ISPs won’t have to worry about complying even when the rules are technically in effect.

More broadly, the Title II net neutrality order prohibits ISPs from blocking or throttling traffic or giving priority to web services in exchange for payment. The order also set up a complaint process to prevent “unjust” or “unreasonable” pricing and practices. The threat of complaints to the FCC helped put an end to several disputes between ISPs and other network operators over network interconnection payments; this in turn improved internet service quality for many subscribers.

All of that is in jeopardy with the Pai/O’Rielly promise to undo the entire Title II net neutrality order. The process could take months, even if they get started right away, because of requirements to seek public comment. The Republican-controlled Congress could act more quickly, since Trump has opposed net neutrality rules and isn’t likely to veto a bill overturning the Title II order. When either the FCC or Congress do act, the biggest question will be whether the net neutrality regime is replaced with a weaker set of rules or scrapped entirely.

Shortly after his inauguration, President Trump appointed Pai to succeed Wheeler as chair of the FCC. Although consistent with Trump’s largely deregulatory agenda, Pai’s appointment breaks from the president’s habit of appointing Washington outsiders to key roles. A former lawyer for Verizon and the Justice Department, Pai is well-versed in the minutiae of America’s telecom law. He has pushed for streamlining the

FCC’s operations, accelerating the rollout of airwaves for mobile broadband and knocking down regulatory barriers that he claims deter companies from investing in wired internet. In a December speech, he said it was time to fire up the “regulatory weed whacker.”

Consumer advocates urged Pai to safeguard consumer protections and prevent large corporations from unreasonably raising prices.

“Chairman Pai has a record of promising to undo the agency’s landmark 2015 net neutrality rules as well as targeting consumer privacy while refusing to stand against consolidation among telecommunications and media giants,” the advocacy organization Public Knowledge said in a release.

Pai’s opposition to the commission’s net neutrality rules could give Republicans in Congress the political room to craft a legislative deal with Democrats who view net neutrality protections as a key to preserving competition, policy analysts said. Senator John Thune (R-S.D.), chair of the Senate Commerce Committee, said he is committed to drawing up a “long-term legislative solution to protecting the open Internet.” Reported in: *arstechnica.com*, December 20; *Washington Post*, January 23.

## SOCIAL MEDIA Washington, DC

The U.S. government quietly began in December requesting that select foreign visitors provide their Facebook, Twitter, and other social media accounts on arriving in the country, a move designed to spot potential terrorist threats that drew months of opposition from tech giants and privacy hawks alike.

Since December 20 foreign travelers arriving in the United States on the visa waiver program have been presented with an “optional” request

to “enter information associated with your online presence,” a government official confirmed. The prompt includes a drop-down menu that lists platforms including Facebook, Google+, Instagram, LinkedIn, and YouTube, as well as a space for users to input their account names on those sites.

The new policy came as Washington tries to improve its ability to spot and deny entry to individuals who have ties to terrorist groups like the Islamic State. But the government has faced a barrage of criticism since it first floated the idea last summer. The Internet Association, which represents companies including Facebook, Google, and Twitter, at the time joined with consumer advocates to argue the draft policy threatened free expression and posed new privacy and security risks to foreigners.

Now that it is final, those opponents are furious the Obama administration ignored their concerns.

“There are very few rules about how that information is being collected, maintained [and] disseminated to other agencies, and there are no guidelines about limiting the government’s use of that information,” said Michael W. Macleod-Ball, chief of staff for the American Civil Liberties Union’s Washington office. “While the government certainly has a right to collect some information . . . it would be nice if they would focus on the privacy concerns some advocacy groups have long expressed.”

A spokeswoman for Customs and Border Protection, who said the government approved the change on December 19, said the new policy is meant to “identify potential threats.” Previously, the agency had said it wouldn’t prohibit entry to foreigners who didn’t provide their social media account information.

The question itself is included in what’s known as the Electronic



System for Travel Authorization (ESTA), a process that certain foreign travelers must complete to come to the United States. ESTA and a related paper form specifically apply to those arriving here through the visa-waiver program, which allows citizens of thirty-eight countries to travel and stay in the United States for up to ninety days without a visa.

As soon as the government unveiled its draft proposal in June, however, consumer protection advocates expressed outrage. In a letter sent in August, the ACLU, Center for Democracy and Technology charged it posed immense privacy risks, given that social media accounts serve as “gateways into an enormous amount of [users’] online expression and associations, which can reflect highly sensitive information about that person’s opinions, beliefs, identity and community.” The groups also predicted the burden would “fall hardest on Arab and Muslim communities, whose usernames, posts, contacts and social networks will be exposed to intense scrutiny.”

After the policy changed, Nathan White, the senior legislative manager of Access Now, again blasted it as a threat to human rights.

“The choice to hand over this information is technically voluntary,” he said. “But the process to enter the U.S. is confusing, and it’s likely that most visitors will fill out the card completely rather than risk additional questions from intimidating, uniformed officers—the same officers who will decide which of your jokes are funny and which ones make you a security risk.”

Opponents also worry that the U.S. change will spark similar moves by other countries.

“Democratic and nondemocratic countries—including those without the United States’ due process

protections—will now believe they are more warranted in demanding social media information from visitors that could jeopardize visitors’ safety,” said Internet Association general counsel Abigail Slater. “The nature of the DHS’ requests delves into personal information, creating an information dragnet.” Reported in: politico.com, December 22.

### Parma, Ohio

Anthony Novak, who was arrested for creating a parody of the Parma, Ohio, police department’s Facebook page, has filed a federal lawsuit accusing seven officers of violating his constitutional rights by using the legal system to punish him for making fun of them.

In August, Novak was acquitted of using a computer and the internet to “disrupt, interrupt, or impair” police services, a felony punishable by up to eighteen months in prison. Now he is trying to get some compensation from the city for the injuries inflicted by that charge, arguing that the police did not have probable cause to arrest him or search his apartment. He also argues that the statute used to prosecute him is “unconstitutionally overbroad because it provides the police unfettered discretion to wrongfully arrest and charge civilians in the State of Ohio with a crime for exercising their First Amendment rights.”

Novak’s parody, which he posted on March 1 and deleted on March 3 after the Parma Police Department issued an indignant press release about it, copied the logo from the department’s actual Facebook page but was in other respects notably different. It included notices announcing “our official stay inside and catch up with the family day,” during which anyone venturing outside between noon and 9 p.m. would be arrested; advertising a “Pedophile Reform event”

where sex offenders who visited all of the “learning stations” could qualify to be removed from the state’s sex offender registry; and offering teenagers abortions, to be performed in a van in the parking lot of a local supermarket “using an experimental technique discovered by the Parma Police Department.”

There was also a warning that anyone caught feeding the homeless would go to jail as part of “an attempt to have the homeless population eventually leave our city due to starvation,” along with an ad seeking applicants for jobs with the police department that said “Parma is an equal opportunity employer but is strongly encouraging minorities to not apply.”

The police were not amused. “The Parma Police Department would like to warn the public that a fake Parma Police Facebook page has been created,” said a Facebook notice posted on March 2. “This matter is currently being investigated by the Parma Police Department and Facebook. This is the Parma Police Department’s official Facebook page. The public should disregard any and all information posted on the fake Facebook account. The individual(s) who created this fake account are not employed by the police department in any capacity and were never authorized to post information on behalf of the department.”

Despite the implication that people might think officers really were performing abortions in a van or really did plan to promote family togetherness by forcibly confining people to their homes, it is hard to believe anyone mistook the parody for the real thing. “The Facebook page was not reasonably believable as conveying the voice or messages of the City of Parma Police Department,” Novak’s complaint notes. “Mr. Novak had no intention of deceiving people into believing that the account was actually





operated by a representative of the police department, and no reasonable person could conclude such an intent from the content of the page.”

Parma police nevertheless launched an investigation that involved at least seven officers, a subpoena, and three search warrants, and a raid on Novak’s apartment, during which police surprised his roommate on the toilet and seized two hard drives, a laptop, two tablets, two cellphones, and two video game systems. After his arrest on March 25, Novak spent four days in jail before he got out on bail, and then he had to report weekly to a probation officer if he wanted to keep his freedom.

Explaining the justification for Novak’s arrest, Lieutenant Kevin Riley, a department spokesman and one of the officers named in the lawsuit, said “the material that Novak posted on the fake account crossed the line from satire to an actual risk to public safety.” How so? Riley complained that “Novak posted derogatory and inflammatory information that purported to be from the Parma Police Department.”

The police knew it was inflammatory because people had posted negative comments about the department on the parody page, including “Fuck the Parma Police.”

It was obvious how Novak had offended the police but not so clear how he had disrupted police services. Even after settling on that charge, Novak’s lawsuit notes, the police had no “supportive evidence or facts that any of the functions of the Parma Police Department had been disrupted or that Mr. Novak intended his Facebook page to in fact disrupt any function of the Parma Police Department.” When they applied for a search warrant demanding that Facebook surrender the records associated with the parody page, the police “failed to

mention any function or service that Mr. Novak purportedly disrupted.” The post-arrest press release likewise “mentioned nothing about any police function that Mr. Novak intentionally disrupted through the exercise of his constitutional rights.”

Someone in the Cuyahoga County Prosecutor’s Office evidently had second thoughts about the case because Novak was offered a plea deal under which the felony charge would have been reduced to an unspecified misdemeanor. Novak turned the offer down, by that point eager to have his day in court. By the time his trial rolled around, prosecutors had settled on the theory that Novak’s Facebook gag had disrupted police services by generating phone calls to the police department—a grand total of ten in twelve hours. The jury did not buy it.

To this day Riley maintains that “we were just doing our job.” Which is true, if you assume an officer’s job includes hunting down online speech that offends him, making sure it is scrubbed from the internet, and trying to imprison the people responsible for it. Reported in: *Reason*, September 21.

## PRIVACY San Francisco, California

Yahoo secretly built a custom software program to search all of its customers’ incoming emails for specific information provided by U.S. intelligence officials, according to people familiar with the matter. The company complied with a classified U.S. government demand, scanning hundreds of millions of Yahoo Mail accounts at the behest of the National Security Agency or FBI, said three former employees and a fourth person apprised of the events.

Some surveillance experts said this was the first case to surface of a U.S. internet company agreeing to

an intelligence agency’s request by searching all arriving messages, as opposed to examining stored messages or scanning a small number of accounts in real time.

It is not known what information intelligence officials were looking for, only that they wanted Yahoo to search for a set of characters. That could mean a phrase in an email or an attachment, said the sources, who did not want to be identified.

Reuters was unable to determine what data Yahoo may have handed over, if any, and if intelligence officials had approached other email providers besides Yahoo with this kind of request.

According to two of the former employees, Yahoo Chief Executive Marissa Mayer’s decision to obey the directive roiled some senior executives and led to the June 2015 departure of Chief Information Security Officer Alex Stamos, who now holds the top security job at Facebook.

“Yahoo is a law abiding company, and complies with the laws of the United States,” the company said in a brief statement in response to Reuters questions about the demand. Yahoo declined any further comment.

The request to search Yahoo Mail accounts came in the form of a classified edict sent to the company’s legal team, according to the three people familiar with the matter.

U.S. phone and internet companies are known to have handed over bulk customer data to intelligence agencies. But some former government officials and private surveillance experts said they had not previously seen either such a broad demand for real-time web collection or one that required the creation of a new computer program.

“I’ve never seen that, a wiretap in real time on a ‘selector,’” said Albert Gidari, a lawyer who represented



phone and internet companies on surveillance issues for twenty years before moving to Stanford University last year. A selector refers to a type of search term used to zero in on specific information.

“It would be really difficult for a provider to do that,” he added.

Experts said it was likely that the NSA or FBI had approached other internet companies with the same demand, since they evidently did not know what email accounts were being used by the target. The NSA usually makes requests for domestic surveillance through the FBI, so it is hard to know which agency is seeking the information.

Alphabet’s Google and Microsoft, two major U.S. email service providers, separately said that they had not conducted such email searches.

“We’ve never received such a request, but if we did, our response would be simple: ‘No way,’” a spokesman for Google said in a statement.

A Microsoft spokesperson said in a statement, “We have never engaged in the secret scanning of email traffic like what has been reported today about Yahoo.” The company declined to comment on whether it had received such a request.

Under laws including the 2008 amendments to the Foreign Intelligence Surveillance Act, intelligence agencies can ask U.S. phone and internet companies to provide customer data to aid foreign intelligence-gathering efforts for a variety of reasons, including prevention of terrorist attacks.

Disclosures by former NSA contractor Edward Snowden and others have exposed the extent of electronic surveillance and led U.S. authorities to modestly scale back some of the programs, in part to protect privacy rights.

Companies including Yahoo have challenged some classified surveillance

before the Foreign Intelligence Surveillance Court, a secret tribunal.

Some FISA experts said Yahoo could have tried to fight last year’s demand on at least two grounds: the breadth of the directive and the necessity of writing a special program to search all customers’ emails in transit.

Apple made a similar argument earlier last year when it refused to create a special program to break into an encrypted iPhone used in the 2015 San Bernardino massacre. The FBI dropped the case after it unlocked the phone with the help of a third party, so no precedent was set.

“It is deeply disappointing that Yahoo declined to challenge this sweeping surveillance order, because customers are counting on technology companies to stand up to novel spying demands in court,” Patrick Toomey, an attorney with the American Civil Liberties Union, said in a statement.

Some FISA experts defended Yahoo’s decision to comply, saying nothing prohibited the surveillance court from ordering a search for a specific term instead of a specific account. So-called “upstream” bulk collection from phone carriers based on content was found to be legal, they said, and the same logic could apply to web companies’ mail.

As tech companies become better at encrypting data, they are likely to face more such requests from spy agencies.

Former NSA General Counsel Stewart Baker said email providers “have the power to encrypt it all, and with that comes added responsibility to do some of the work that had been done by the intelligence agencies.”

Mayer and other executives ultimately decided to comply with the directive last year rather than fight it, in part because they thought they would lose, said the people familiar with the matter.

Yahoo in 2007 had fought a FISA demand that it conduct searches on specific email accounts without a court-approved warrant. Details of the case remain sealed, but a partially redacted published opinion showed Yahoo’s challenge was unsuccessful.

Some Yahoo employees were upset about the decision not to contest the more recent edict and thought the company could have prevailed, the sources said. They were also upset that Mayer and Yahoo General Counsel Ron Bell did not involve the company’s security team in the process, instead asking Yahoo’s email engineers to write a program to siphon off messages containing the character string the spies sought and store them for remote retrieval, according to the sources.

The sources said the program was discovered by Yahoo’s security team in May 2015, within weeks of its installation. The security team initially thought hackers had broken in.

When Stamos found out that Mayer had authorized the program, he resigned as chief information security officer and told his subordinates that he had been left out of a decision that hurt users’ security, the sources said. Due to a programming flaw, he told them hackers could have accessed the stored emails.

Stamos’s announcement in June 2015 that he had joined Facebook did not mention any problems with Yahoo.

In a separate incident, Yahoo last month said “state-sponsored” hackers had gained access to 500 million customer accounts in 2014. The revelations have brought new scrutiny to Yahoo’s security practices as the company tries to complete a deal to sell its core business to Verizon for \$4.8 billion. Reported in: reuters.com, October 4.



## Washington, DC

Federal officials approved broad new privacy rules October 27 that prevent companies like AT&T and Comcast from collecting and giving out digital information about individuals—such as the websites they visited and the apps they used—in a move that creates landmark protections for internet users.

By a 3-to-2 vote, the Federal Communications Commission clearly took the side of consumers. The new rules require broadband providers to obtain permission from subscribers to gather and give out data on their web browsing, app use, location and financial information. Currently, broadband providers can track users unless those individuals tell them to stop.

It was the first time the FCC has passed such online protections. The agency made privacy rules for phones and cable television in the past, but high-speed internet providers, including AT&T and Verizon, were not held to any privacy restrictions, even though those behemoth companies have arguably one of the most expansive views of the habits of web users.

The passage of the rules dealt a blow to telecommunications and cable companies like AT&T and Comcast, which rely on such user data to serve sophisticated targeted advertising. The fallout may affect AT&T's \$85.4 billion bid for Time Warner, which was announced in October, because one of the stated ambitions of the blockbuster deal was to combine resources to move more forcefully into targeted advertising.

"There is a basic truth: It is the consumer's information," Tom Wheeler, the chairman of the FCC, said of the necessity of protecting internet users who want more control over how companies treat their private information. "It is not the information of the network the consumer hires to deliver that information."

Privacy groups applauded the new rules, which they said brought the United States more in line with European nations that have moved aggressively to protect their citizens' online privacy.

"For the first time, the public will be guaranteed that when they use broadband to connect to the internet, whether on a mobile device or personal computer, they will have the ability to decide whether and how much of their information can be gathered," said Jeffrey Chester, executive director of the Center for Digital Democracy.

The outcry from industries that depend on online user data was also swift. Cable lobbying groups called the rules a result of "regulatory opportunism," while the Association of National Advertisers labeled the regulations "unprecedented, misguided, counterproductive, and potentially extremely harmful."

Even with the new rules, online privacy remains tricky. Many people have been lackadaisical about what information they give up online when they register for websites or digital services. The convenience of free services like maps also appeals to people, even though they give companies access to personal information. And some people unknowingly forgo their privacy when allowing apps or other services to track their location or follow their browsing across websites.

The FCC rules also have their limits. Online ad juggernauts, including Google, Facebook, and other web companies, are not subject to the new regulations. The FCC does not have jurisdiction over web companies. Those companies are instead required to follow general consumer protection rules enforced by the Federal Trade Commission. That means Google does not have to explicitly ask people

permission first to gather web browsing habits, for example.

AT&T, Verizon, and Comcast will also still be able to gather consumers' digital data, though not as easily as before. The FCC rules apply only to their broadband businesses. That would mean data from the habits of AT&T's wireless and home broadband customers would be subject to the regulations, but not data about AT&T's DirecTV users or users of the HBO Now app, which would come with the merger with Time Warner, for example.

The companies also have other ways to collect information about people, including the purchase of data from brokers.

AT&T, which has criticized the privacy regulations for internet service providers, would not comment on how the rules would affect its proposed purchase of Time Warner. But it emphasized the benefits of ads that allow for free and cheaper web services.

"At the end of the day, consumers desire services which shift costs away from them and toward advertisers," said Robert W. Quinn Jr., AT&T's senior executive vice president for external and legislative affairs. "We will look at the specifics of today's action, but it would appear on its face to inhibit that shift of lower costs for consumers by imposing a different set of rules on" internet service providers.

Comcast said that the rules were not needed and that the FCC did not prove that broadband providers were hurting consumers.

For over two decades, internet service providers "and all other internet companies have operated under the FTC's privacy regime and, during that time, the internet thrived; consumer privacy was protected," said David L. Cohen, Comcast's senior executive vice president.



Major broadband providers will have about one year to make the changes required by the new rules; the companies must notify users of their new privacy options in ways like email or dialogue boxes on websites. After the rules are in effect, broadband providers will immediately stop collecting what the FCC deems sensitive data, including Social Security numbers and health data, unless a customer gives permission.

The new rules are among a set of last-ditch moves by Wheeler to make the FCC a stronger watchdog over the broadband industry. Since he was appointed FCC chairman in 2013, he has tried to open the cable box market in an effort to promote streaming videos, among other actions. Wheeler is entering what are probably the last few months of his tenure at the agency, as he was not expected to be reappointed by whoever becomes the next president.

The FCC proposed the broadband privacy rules in March. That followed the reclassification of broadband last year into a utilitylike service, a move that required broadband to have privacy rules similar to those imposed on phone companies.

Once the rules were proposed, the FCC immediately faced a backlash. Cable and telecom companies created a lobbying group called the 21st Century Privacy Coalition to fight off the regulations. The group is led by Washington heavyweights like Jon Leibowitz, the former chairman of the FTC, and former Representative Mary Bono, Republican of California. Henry A. Waxman, former chairman of the House Energy and Commerce Committee and a Democrat, was also hired by the 21st Century Privacy Coalition and wrote an op-ed article in *The Hill* to protest the rules.

Even some web companies protested the proposed rules. Google said

in comments filed to the FCC this month that the regulations should not include web browsing, because that does not necessarily include sensitive personal information.

“Consumers benefit from responsible online advertising, individualized content, and product improvements based on browsing information,” wrote Austin Schlick, Google’s director of communications law.

In the end, the objections had little effect on the FCC.

“Hopefully, this is the end of what has been the race to the bottom for online privacy, and hopefully the beginning of a race to the top,” said Harold Feld, senior vice president at Public Knowledge, a nonprofit public interest group. Reported in: *New York Times*, October 27.

### Washington, DC

A broad coalition of over fifty civil liberties groups delivered a letter to the Justice Department’s civil rights division October 18 calling for an investigation into the expanding use of face recognition technology by police. “Safeguards to ensure this technology is being used fairly and responsibly appear to be virtually nonexistent,” the letter stated. The routine unsupervised use of face recognition systems, according to the dozens of signatories, threatens the privacy and civil liberties of millions—especially those of immigrants and people of color.

These civil rights groups were provided with advance copies of a watershed 150-page report detailing—in many cases for the first time—how local police departments across the country have been using facial recognition technology. Titled “The Perpetual Lineup,” the report, published October 18 by the Georgetown Center on Privacy and Technology, reveals that police deploy face recognition technology in ways that are

more widespread, advanced, and unregulated than anyone has previously reported.

“Face recognition is a powerful technology that requires strict oversight. But those controls by and large don’t exist today,” said Clare Garvie, one of the report’s co-authors. “With only a few exceptions, there are no laws governing police use of the technology, no standards ensuring its accuracy, and no systems checking for bias. It’s a wild west.”

Of the fifty-two agencies that acknowledged using face recognition in response to 106 records requests, the authors found that only one had obtained legislative approval before doing so. Government reports have long confirmed that millions of images of citizens are collected and stored in federal face recognition databases. Since at least 2002, civil liberties advocates have raised concerns that millions of drivers license photos of Americans who have never been arrested are being subject to facial searches—a practice that amounts to a perpetual digital lineup. This report augments such fears, demonstrating that at least one in four state or local law enforcement agencies have access to face recognition systems.

Among its findings, the report provides the most fine-grained detail to date on how exactly these face recognition systems might disproportionately impact African Americans. “Face recognition systems are powerful—but they can also be biased,” the coalition’s letter explains. While one in two American adults have face images stored in at least one database, African Americans are more likely than others to have their images captured and searched by face recognition systems.

In Virginia, for instance, the report shows how state police can search a mug shot database disproportionately populated with African



Americans, who are twice as likely to be arrested in the state. Not only are African Americans more likely to be subject to searches, according to the report, but this overrepresentation puts them at greatest risk for a false match.

These errors could be compounded by the fact that some face recognition algorithms have been shown to misidentify African Americans, women, and young people at unusually high rates. In a 2012 study co-authored by FBI experts, three algorithms that were tested performed between 5 and 10 percent worse on black faces than on white faces. And the overall accuracy of systems has been shown to decrease as a dataset expands. The Georgetown report interviewed two major facial recognition vendors which said that they did not test for racial basis, despite the fact that systems have been shown to be far from “race-blind.”

A slideshow on San Diego’s privacy policy obtained by the researchers reveals that people of color in the county are between 1.5 and 2.5 times more likely to be targeted by its surveillance systems. San Diego County uses a mugshot-only system, and repeated studies have shown that African Americans are twice as likely as white people to be arrested and searched by police.

The Georgetown report shows for the first time that at least five major police departments have “run real-time face recognition off of street cameras, bought technology that can do so, or expressed a written interest in buying it.” They warn that such real-time surveillance tracking could have serious implications for the right to associate privately.

“This is the ability to conduct a real time digital manhunt on the street by putting people on a watchlist,” explained Alvaro Bedoya, the

executive director of the Georgetown Center and one of the report’s co-authors. “Now suddenly everyone is a suspect.” Real-time recognition, he added, could have a chilling effect on people engaging in civil conduct. “It would be totally legal to take picture of people obstructing traffic and identify them.”

Indeed, as the ACLU revealed the previous week, face recognition systems were used to track Black Lives Matter protesters in Baltimore. “There’s a question of who is being subjected to this kind of facial recognition search in the first place,” David Rocah, a staff attorney at the ACLU of Maryland, told the *Baltimore Sun*. “Is it only Black Lives Matter demonstrators who get this treatment? Are they drawing those circles only in certain neighborhoods? The context in which it’s described here seems quintessentially improper.”

Bedoya pointed out that these systems in Baltimore uploaded social media photographs of protestors into these systems to conduct real-time street surveillance. “It turns the premise of the Fourth Amendment on its head,” he added.

The Georgetown report shows that some departmental policies allow for face recognition algorithms to be used in the absence of an individualized suspicion, which means the technology could conceivably be used to identify anyone. At least three agencies, according to the report, allow face recognition searches to identify witnesses of a crime in addition to criminal suspects.

As privacy organizations have previously noted, the FBI’s federal database includes and simultaneously searches photographic images of U.S. citizens who are neither criminals or suspects. The Georgetown report likewise shows that some state databases include mug shots, while others

include both mug shots and driver’s license photos.

In a landmark Supreme Court decision on privacy, in which the justices unanimously concluded that the prolonged use of an unwarranted GPS device violated the Fourth Amendment, Justice Sotomayor wondered whether “people reasonably expect that their movements will be recorded and aggregated in a manner that enables the government to ascertain, more or less at will, their political and religious beliefs, sexual habits, and so on.”

Of the fifty-two agencies found by the report to have used face recognition, however, only one department’s policy explicitly prohibited officers from “using face recognition to track individuals engaging in political, religious, or other protected free speech.”

Apart from some news stories focusing on the policies of specific departments, most notably those of San Diego County, reporting on law enforcement’s use of face recognition technology has been scarce. Departments themselves have not been forthcoming about their use of the technology to identify suspects on the streets and to secure convictions. And many of the documents obtained by privacy organizations about face recognition programs largely date to 2011, prior to the federal face program’s full implementation.

This is partly due to how little information is available. There is no national database of departments using these programs, how they work, what policies govern them, who can access them, and how the passive information is being collected and queried. The Georgetown report, compiling tens of thousands of records produced in response to Freedom of Information requests sent to fifty of the largest police departments across the country, provides the most comprehensive



snapshot to date of how and on whom face recognition systems are used—and what policies constrain their use, if any. But even this picture continues to be partial, given the continued lack of transparency of several large law enforcement agencies with some of the most advanced systems.

The researchers state that despite several news articles and descriptions of the New York Police Department's face recognition program, the NYPD denied their records request entirely, arguing that the records fell under a “non-routine techniques and procedures” exemption. Likewise, while the Los Angeles Police Department has claimed to use real-time, continuous face recognition and has made decades of public statements about the technology, the department found “no records responsive to [their] request” for information about this or any other face recognition system. “We followed up with a number emails and calls inquiring what that meant,” Garvie said. “The final word was that they found no records responsive.”

Of the fifty-two agencies that did provide responsive records to the researchers, at least twenty-four did not provide a face recognition use policy. Four of those two dozen agencies admitted that they expressly lacked any policy whatsoever to govern their face recognition systems.

Civil rights groups have long described the difficulties of calling for greater oversight for a system whose contours, uses, and abuses are unknown. The amount of up-to-date public records collected by the Georgetown researchers has the potential to change this and spark a national conversation on oversight, Bedoya said.

“I genuinely hope that more and more of the American public has a chance to see what's at stake here,” Bedoya said, describing face

recognition as “an extraordinarily powerful tool.” “It doesn't just track our phones or computers. It tracks our flesh and our bones. This is a tracking technology unlike anything our society has ever seen. You don't even need to touch anything.”

No national guidelines, laws, or policies currently regulate law enforcement's use of face recognition technology. To fill this gap, the Georgetown report proposes protective legislation for civil liberties, limits on the amount and types of data stored, and a push for independent oversight and public notice procedures.

Among their recommendations, the Georgetown researchers advise that mug shots, rather than driver's license and ID photos, be used to populate photo databases for face recognition, and for those images to be “periodically scrubbed to eliminate the innocent.” They also suggest that financing for police face recognition systems be contingent “on public reporting, accuracy and bias tests, legislative approval—and public posting—of a face recognition use policy.”

In Seattle, where a face recognition program was funded by a \$1.64 million grant from the Department of Homeland Security, some of these model guidelines are already in place. Only specially trained officers use the software, real-time use is banned, and the software's use is limited to scanning suspicious subjects only.

The ACLU, when it first investigated nascent uses of face recognition technology back in 2002, presciently warned that the “worst-case scenario . . . would be if police continue to utilize facial recognition systems despite their ineffectiveness because they become invested in them, attached to government or industry grants that support them, or begin to discover additional, even more frightening uses for the technology.”

The Georgetown report offers a glimpse into this worst-case scenario, but Bedoya is hopeful that the Model Face Recognition Act proposed by the report and endorsed by the letter's signatories provides a “deeply reasonable” solution. He pointed to the fact that state legislatures have previously passed laws to limit geolocation technology by police, automatic license plate readers, drones, wiretaps, and other surveillance tools. “This is very feasible. It's not about protecting criminals. It's about protecting our values.” Reported in: *The Intercept*, October 18.

### Jackson, Mississippi

Mississippi's Democratic attorney general is again tangling with Google, alleging in a lawsuit that the company is illegally violating student privacy, even as some Republicans seek to muzzle his ability to file such civil suits.

Attorney General Jim Hood sued the California-based computer giant January 13 in Lowndes County Chancery Court. In a news conference, Hood said Google is breaking Mississippi consumer protection law by selling ads using data from services it provides to schools.

“They're building a profile so they can advertise to them,” Hood said. “They expressly stated in writing that they would not do that.”

Hood said a test involving a student account from the state-run Mississippi School of Math and Science in Columbus showed ads targeted to previous searches. The attorney general wants a judge to order Google, a unit of Alphabet, to stop the practice.

The suit says Google could be fined up to \$10,000 for each of its student accounts in Mississippi. With half the state's school districts using Google's email, calendar, and other online services, that amount could top \$1 billion.



Hood sent a letter to local school superintendents asking them to preserve evidence to help with the lawsuit. He's advising parents to consult their local school systems.

"When you give a written contract and you don't follow it and you mine the data, then it's a violation of the Mississippi Consumer Protection Act. It's an unfair and deceptive trade practice," he said.

Google sued Hood in 2014, saying his wide-ranging attempts to investigate whether Google was helping music pirating and illegal drug sales were illegal. The U.S. Court of Appeals for the Fifth Circuit ruled in April that Hood's inquiry is legal. Hood said that the investigation continues but denied that he was motivated by personal animus against Google.

"You make decisions based on the facts and the law and you set emotions aside," Hood said.

Some Mississippi Republicans continue to try to trim Hood's ability to

file civil lawsuits without outside permission, part of a long-running Republican perception that Hood pursues civil lawsuits in part to provide income to plaintiffs' lawyers who politically support him. Hood said outside lawyers brought the student privacy issue to him after publicity about his earlier dispute with Google.

A committee in the Republican-led House passed House Bill 555, which would require a three-person panel of the governor, lieutenant governor, and secretary of state to approve plans to file any civil lawsuit where the state could win more than \$250,000. That panel is supposed to approve hiring outside lawyers for big lawsuits but has never met because Hood has instead hired lawyers according to a preset fee schedule that an earlier law allows as an alternative.

The bill to limit Hood's powers now moves to the full House. Similar measures have failed in previous years.

House Judiciary A Committee Chairman Mark Baker, a Brandon Republican, said Hood's use of civil lawsuits is a "rampant abuse" of his role.

"Every lawsuit that he files is a declaration of public policy" Baker said. "We're the legislators, the setters of public policy. He's the lawyer. He's not also the client." Hood, though, said efforts to limit his power violate the state's Constitution.

The attorney general's victories have contributed tens of millions of dollars to patch state budget holes in recent years. For example, Mississippi will gain \$25 million from a settlement with New York-based Moody's over credit ratings the company assigned to various securities before the financial crisis. Last year, Hood collected about \$55 million from lawsuits against large companies. Reported in: Associated Press, January 17.



## LIBRARIES

### Northbrook, Illinois

The Northbrook Public Library board has reversed a two-year-old policy banning political and religious organizations from using library meeting rooms. Representatives of some of the five liberal groups refused use of the rooms attended a January 19 library board meeting ready to argue, but that wasn't necessary.

"Don't worry, you're preaching to the choir," board President Carlos Frum said.

Longtime board member Marc Lonoff added, "We're going to fix this." And the library board quickly voted 7-0 to reverse the edict, passed in the spring of 2015.

Executive director Kate Hall said that she had relayed the groups' concerns to board members in previous days.

"It's not very often we appear before a board that treats us so well," longtime progressive activist Lee Goodman said.

The library had voted to ban partisan groups as a ground floor rehab job spruced up and expanded the three meeting rooms that surround the auditorium, which was also rebuilt. Hall said she was unsure at the time what the purpose of the ban was, but it seemed, she said, that it was to cut down on difficulties that might stem from the use by groups attracting extremist individuals.

The 2015 policy change was in conflict with the American Library Association's *Library Bill of Rights*, which states that libraries which make exhibit spaces and meeting rooms available to the public should make such facilities available on an equitable basis to all groups, regardless of the beliefs or affiliations of individuals.

One of the groups that was refused was MoveOn.org, a Democratic

party-leaning organization. The group's Susan Cohen said she found that ironic, since she had to move the meeting to her synagogue, Shir Hadash Congregation, in Wheeling. She said that twenty-two years ago, the new congregation held meetings in the library.

"If it were not for the library, Shir Hadash would not exist today," the Northbrook resident said.

Another Northbrook resident, Sharon Sanders, said that she had twice been questioned by Hall about the nature of her January 10 meeting featuring speeches about gun control, "anti-fascism," and progressivism, before Sanders promised the group was nonpartisan, and Hall relented.

Northbrook resident Nancy Goodman said that it was important that the library get back its open meetings attitude, adding that a group she and her husband, Lee, helped found, the Northbrook Peace Committee, had been born in the library.

"People in other towns thought Northbrook was a pretty special place," she said. She said that partisan speech can lead to social change and progress, and libraries should want to help foster it.

"What if Ben Franklin had wanted to use a room?" she asked. "You would have wanted to say yes."

The library's Pollak Room was booked 131 times since September 2015, and the smaller Civic Room 173 times, Hall said. The library's interactive classroom was booked ten times in roughly the same period. The Northbrook library doesn't charge for meeting room use. Reported in: *Northbrook Star*, January 24.

### Chapel Hill, North Carolina

The Chapel Hill town council passed on a proposed change January 23 that would have let the Chapel Hill Public Library use internet-filtering software.

The library is one of three in the state that now provide free, open internet access, officials said. The current policy lets staff intervene if patrons are viewing pornographic material and suspend privileges or access for those who don't comply. Patrons who break the law can be prosecuted.

They don't track policy violations, Library Director Susan Brown said, but staff probably deals with a couple each month. They don't condone censorship, she said, but decided to look at online content filters after realizing the policy blocked access to federal grants for technology.

The Children's Internet Protection Act requires agencies receiving grants to use internet filters to block obscene images, child pornography and images considered harmful for minors. Filtering software uses a series of preset rules to block internet content deemed undesirable.

Chapel Hill's library has received \$235,000 in federal Library Services and Technology Act money over the past three years, Brown said, but could not spend it on internet-related technology. She estimated adding an image filtering software could cost the library up to \$10,000 a year.

The library received feedback from residents concerned about censorship and about limiting children's exposure to pornographic images, she said. Resident Kim Stahl cited an ALA report that says image-blocking internet filters mischaracterize information up to half the time. Keyword and other types of filters block the wrong things up to 20 percent of the time, she said.

She and former Mayor Mark Kleinschmidt said the proposed change would infringe on First Amendment rights. That runs counter to the view of Chapel Hill's library as a place where open access to information is celebrated, Kleinschmidt said.





“Before the CIPA was passed, Congress tried to ban this activity twice, and it was found unconstitutional,” he said. “It is only constitutional today because government extorts compliance from cities and libraries and schools by preventing them from applying for these various funds.”

While she has concerns about what her young children might be exposed to at the library, council member Jessica Anderson said she’s also mindful of what’s happening nationally, including “the assault on information and ‘alternative facts.’”

“I perhaps am a little more vigilant at this point because of some of the changes that have taken place, but I do think it’s a complicated issue and I appreciate the (library board of trustees) looking at it and bringing it to us, because I know it is not cut and dried. It is not just a matter of free speech versus censorship,” she said.

The citizens who spoke made “excellent points,” council member George Cianciolo said. “Potentially selling rights for \$100,000 is not justified in this situation,” he said. “If we need technology, and I’m sure we do, then I think we need to find other ways to fund it, and I wouldn’t want to fund it at the expense of curtailing free speech and access to information for the other citizens.”

Council member Donna Bell urged Brown to ask for help if the library needs more money to provide universal internet access and information. Reported in: *Raleigh News and Observer*, January 24.

## SCHOOLS Dubuque, Iowa

A committee has decided to keep a book some say is too racy for use in a Dubuque high school class.

Parents, students, teachers and others packed the board of education

meeting room in Dubuque December 1 to voice opinions on *The Perks of Being a Wallflower* as assigned reading in a high school class.

*The Perks of Being a Wallflower* is required reading for an Advanced Placement literature class at Hempstead High School. But some parents have complained about the book’s sex scenes and depictions of drugs and alcohol use.

After nearly three hours of public comment, mostly in support of keeping the book, the committee of parents, teachers, and students unanimously voted to take no action. That means the book will remain an assigned reading for that class.

The district has clarified the book is not required for all students, only those taking the AP modern literature class. The teacher provides an alternative book if students or their parents request it. Reported in: *kcrg.com*, December 1.

## Williamsburg, Iowa

Following a request by a school district parent to have reading material reconsidered as part of a junior high whole class literature discussion, the Williamsburg Board of Education accepted the consensus of the committee created to reconsider the issue and took no removal or limitation action.

On September 13, Michelle Jennings submitted her concerns regarding S.E. Hinton’s *The Outsiders*, in accordance with board policy 605.3, which allows a member of the school district community to challenge instructional materials used in the district’s education program. Megan Schulte, junior high English teacher, then presented how the book is used at the school and what discussions are created and take place during the reading.

The book focuses on the life of a fourteen-year-old boy who struggles

with concepts of wrong and right in a society in which he feels he is an outsider. Jennings felt the book contains subjects that are socially, emotionally, and developmentally difficult for seventh-grade students to deal with, including conflict, crime, death of a character, and gang fighting.

A reconsideration committee was formed to provide an open forum for discussion of the challenged materials and to make an informed recommendation on the challenge. This eight-member committee included students, community members, and school employees. The focus of the committee was to address the question, “Is the material appropriate for its designated audience?” Their consensus was that no action should be taken to remove the book or limit its use.

The following reasons were cited for retaining the book in the seventh grade curriculum:

“Book reviews show it is the first ever book written for pre-teens and because it is written as a lower lexile level, it allows the focus to be placed on the understanding and recognition of the themes that are developed in the book. This is exactly the purpose of the use of this book in our school system.”

“It is also a favorite of boys, which tend to be more averse to reading in general.”

“The student members both felt the book was something they enjoyed reading and that the material in concern were things that come up in everyday (movies, television, video games) and a classroom discussion about those things is helpful.” Reported in: *Iowa City Press-Citizen*, November 14.

## Taunton, Massachusetts

*First French Kiss*, by Adam Bagdasarlian, is composed of stories about a



boy's comedic journey from childhood to manhood. Each chapter is a different story. But the first chapter, which carries the book's title and describes the character's humorous narrative of his first "make-out" in sixth grade, sparked a parent complaint at Taunton High School after the book appeared on a summer reading list.

Assistant Superintendent Christopher Scully said he had gathered a team to review the book, which included the high school librarian, the principal, and a citizen. Ultimately the group decided to keep the book. They noted that the book was optional and students could have chosen from the other thirteen options on the list; as well, they found it not objectionable—they didn't read any other "explicit sexual reference" in the book—and felt it was a good quality book.

The district council then voted unanimously to keep the book on the summer reading list. Reported in: *Taunton Daily Gazette*, October 27.

### Austin, Texas

The Texas Board of Education voted 14–0 November 15 to deny the adoption of a Mexican American studies textbook decried by opponents as racist and inaccurate. The textbook, *Mexican American Heritage*, was the only submission the board received when it made a 2015 call for textbooks for high school social studies classes, including Mexican American studies.

Critics say the book is riddled with factual, "interpretive," and "omission" errors and doesn't meet basic standards for use in classrooms.

The vote followed an hours-long public hearing when thirty-five Hispanic activists and scholars spoke out against the textbook's adoption.

Cynthia Dunbar, CEO of Momentum Instruction, the publisher of the

controversial textbook, said she had sent a letter telling the board their rejection of the book would be "unconstitutional." Dunbar said that she had addressed opponents' corrections of the book in a newer draft. Hispanic scholars said the new draft is still inaccurate.

Before the vote, board member Thomas Ratliff addressed Dunbar's comments, saying that the state board of education is "not censoring" the textbook. "I want us to be very clear about the vote we are taking today," he said. Nothing prohibits Dunbar from publishing the book as it is or selling it to public school districts, he said. But it will not be on a board-approved list of instructional materials.

"The unanimous vote by the board today is an amazing victory for everyone who showed how inaccurate the book was," said University of Texas at Austin professor Emilio Zamora, who was on a committee that submitted a list of more than 140 corrections of the textbook. Zamora is working with a co-author to negotiate a contract with a publisher on a Texas Mexican American studies textbook. Reported in: *Texas Tribune*, November 16.

### Chesterfield County, Virginia

Three school books that have been criticized as inappropriate should no longer be banned from use in Chesterfield County schools, the district's superintendent has concluded. Superintendent James F. Lane followed the recommendation of a panel that had been tasked to review the content of the books and determine their appropriateness for inclusion in Chesterfield middle schools and in middle school media centers.

The disputed books are *Tyrell*, by Coe Booth, the story of a teenager growing up homeless; *Dope Sick*,

by Walter Dean Myers, a novel about a young drug dealer who vows to change his life; and Rainbow Rowell's *Eleanor and Park*, a love story between two young misfits that is set in the 1980s.

The three books, all novels, had been temporarily pulled from a summer reading list after some parents complained that they were laden with sexually explicit language and violence.

Throughout the summer, the panel looked at "the applicable policy and regulation, read the books, received external reviews of the books, heard . . . the concerns expressed by parents (and) received information from school division instructional specialists and held a vigorous discussion about the books," Lane wrote in his recommendation.

Lane presented the final report to the school board at a meeting September 13, but there was no discussion and neither Lane nor the board members commented on the issue.

In a written statement, schools spokesman Shawn Smith said school officials recognize that "everyone may not agree with the committee's decision, but will move forward" with the recommendations.

"We hope that the increased parent engagement in this topic will bring us each closer to our families and our students. We have revised our summer reading list and feel like we addressed the parent concerns related to the lists," Smith said. "As it relates to the books in the libraries, we encourage parents to work directly with their school librarians to help choose the best books for their child."

Although the books remain on school library shelves, the school division in the future will not recommend individual books for reading, but will share lists of "nationally recognized/award-winning books." Individual



schools may continue to require summer reading assignments involving specific books but must have an alternative assignment available for students who express a concern.

The dispute had drawn the attention of a state senator and criticism from national free-speech advocacy groups after the district issued a revised reading list in June in response to about twenty parents expressing concern over the content and language in some of the books.

The parents and state senator Amanda F. Chase, R-Chesterfield, said some of the books removed from the nonmandatory list contain pornographic scenes and inappropriate language. They called for a review into how the district selects books for its summer reading list.

The review committee included three parents representing the Chesterfield County Council of PTAs, a middle school principal, two middle school teachers, a middle school librarian, and a member of the school division's curriculum and instruction team.

Chase's efforts were criticized by groups advocating free speech, charging that rating books is, in and of itself, censorship. In a letter written in July on behalf of more than half a dozen organizations, the National Coalition Against Censorship quoted from a position statement from the National Council of Teachers of English stating that giving letter ratings or "red-flagging" is "a blatant form of censorship" that "reduces complex literary works to a few isolated elements."

The review committee also recommended that the district develop a review of the process by which books are selected for inclusion in the media center at certain school levels to ensure appropriateness for grade level and to create consistency across the school division.

The panel also urged "enhanced outreach and communication between librarians, teachers, students and parents about appropriate book selections to meet the interests and needs of individual students." Reported in: *Richmond Times-Dispatch*, September 13.

### Richmond, Virginia

The Virginia Board of Education has gutted a controversial measure allowing Virginia parents to be notified and opt their children out of classroom material deemed "sexually explicit."

The death of the proposal came January 26 after more than two hours of debate between board members who eventually agreed that parents have a right to know what their child is learning and reading, but also that defining "sexually explicit" isn't a matter for a state board.

"We are addressing this by saying we are not going to address the sexually explicit issue in the classroom and we are going to rely on local policy to deal with those issues," board member Daniel Gecker said.

Essentially the regulatory twin of a bill vetoed by Governor Terry McAuliffe, the measure pitted free-speech groups and many teachers against some parents who say the notification is simply common sense. Opponents said the bill would lead to a slippery slope of suppression.

"Sadly, unfiltered sexually explicit messages bombard our kids every day. We've all got one of these," Charles Miller, a Virginia educator for forty years, said as he held up his cellphone. "And ironically, these regulations seek to reduce some of the greatest works of literature to nothing more than one of those messages."

Objections to some scenes in *Beloved*, Toni Morrison's post-Civil War and Pulitzer Prize-winning novel, gave the vetoed bill its moniker. In his veto message last year, McAuliffe

mentioned that the Virginia Department of Education was already looking at similar regulation.

The most recent language expanded the reach of previous proposals, requiring teachers to both notify parents of "sexually explicit" material at the beginning of the year and throughout the school year if any more such material is added. It also directed school boards to have clear procedures for providing alternative assignments for students whose parents request it.

It would have been up to local school boards to define "sexually explicit," a main difference between the vetoed bill and the regulation change.

Five members voted to keep the current language intact, while two voted against that. The majority of members even backed away from language requiring the advance notice. Some said that it should be up to local school boards to decide how and what kind of notice should be given. An existing policy, though, does dictate that all schools provide parents with syllabi.

"We are so lucky to live in the twenty-first century . . . where it is very easy to find out information, and I think we should act like it," board member Elizabeth Lodal said of parents' ability to investigate what their child is reading. "You can't zoom in as a parent and solve all of your children's problems."

Lodal also pointed out that state regulations already allow parents to request a review of any instructional materials. Existing rules also require local school boards to lay out the basis on which someone can request reconsideration of materials considered "sensitive or controversial," which Lodal and some other board members felt was sufficient.

According to a 2013 survey of school divisions conducted by Virginia Department of Education staff,



74 percent of 108 districts and five professional organizations had policies allowing students to be excused from instruction related to sensitive or controversial materials. Forty-eight percent of those respondents required that parents receive advance notice before potentially sensitive or controversial materials are used in the classroom.

Since October, the majority of the 171 comments received by the board expressed opposition to the proposal. The American Civil Liberties Union of Virginia and a host of free-speech groups have said the term “sexually explicit” is vague and potentially prejudicial. In a letter to the board, the groups wrote that it could be used to describe classic works of literature such as *Romeo and Juliet*, *The Diary of Anne Frank*, *Slaughterhouse Five*, and *Brave New World*, and that such “red-flagging” of books could lead to a “regime of labeling that will leave few books unaffected.”

Of the 171 comments received by the board, teachers were among the main opponents to the proposal while parents favored it in greater numbers.

“You build trust with parents by listening,” board president Billy K. Canaday Jr. said. “I was really troubled by the fact that they couldn’t solve it at the local level.” Reported in: *Richmond Times-Dispatch*, January 26.

### PRISON West Liberty, Kentucky

The Kentucky Commissioner of Corrections has said that a minimum and medium security prison in West Liberty can no longer enforce a mail policy that prohibited prisoners from receiving books and magazines that “promote homosexuality.” In just a four-month period in 2015, the Eastern Kentucky Correctional Complex (EKCC) used the policy thirteen different times to confiscate mail including magazines like *Out* and *The Advocate*.

On June 2, the Kentucky Department of Corrections issued a state-wide memo implementing substantial changes to the department’s regulations governing prisoner mail. The changes are effective immediately and were the direct result of an ACLU investigation into mail regulations at Kentucky’s prisons. The ACLU previously sent a letter demanding that EKCC end its policy of censoring mail that “promotes homosexuality” because it violated the free speech rights of prisoners and publishers.

“The outdated mail policies that prompted our investigation barred prisoners from receiving mail that ‘promotes homosexuality,’ but such policies single out pro-LGBT messages for unfavorable treatment,” ACLU of Kentucky legal director William Sharp said. “And that type of viewpoint discrimination by the government is precisely what the First Amendment is designed to prevent.” Reported in: [aclu.org](http://aclu.org), June 6.