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Office for Intellectual Freedom, an office
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Students make use of library databases at the Howard-Tilton Memorial Library at Tulane University in New Orleans. Databases such as EBSCO are the among latest targets of censorship.

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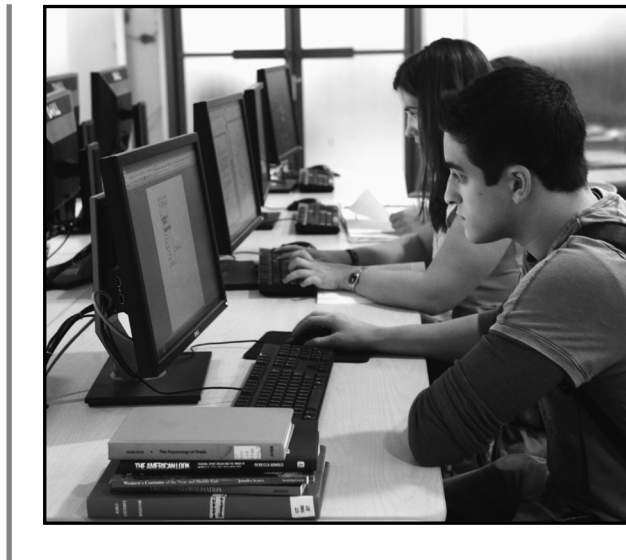
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"WE HAVE A FUNDAMENTAL OBLIGATION. WE ARE RESPONSIBLE FOR PROVIDING ACCESS TO THE INTELLECTUAL CONTENT OF OUR CULTURE. IT TURNS OUT THAT PEOPLE TALK AND WRITE ABOUT SEX FROM MANY PERSPECTIVES. WE DO NOT HIDE, WE DO NOT SUPPRESS, THE EVIDENCE. WE PRESERVE AND PRESENT IT."

James LaRue, *False Witness* _ 18

 _ James LaRue's feature article in this issue of the *Journal of Intellectual Freedom & Privacy* prompts us to recognize how challenges to intellectual freedom increasingly extend beyond the familiar challenges to books available in public libraries. His discussion of Morality in Media's desire to block access to the entire EBSCO periodical database in a Colorado school district is a stark reminder that school and academic libraries are just as susceptible to attempts to restrict access to material in both print and digital formats. As the American Association of School Librarians (AASL) notes in their materials on intellectual freedom for school librarians,

The school library center has the unique responsibility of introducing young citizens to the world of information. Nowhere else do children and young adults have unlimited daily access to books, magazines, newspapers, online resources, and the Internet. Students have the right to a relevant, balanced, and diverse school library collection that represents all points of view; school librarians assume a leadership role in protecting minors' First Amendment right to read and receive information and ideas.¹



The cover image for this issue features students at Tulane University making use of library databases at the Howard-Tilton Memorial Library, and reminds us that our attentiveness to intellectual freedom and privacy must continue to include school and academic library settings.

i. "What Is Intellectual Freedom?," brochure, American Association of School Librarians, last updated December 2010, http://www.ala.org/aasl/sites/ala.org/aasl/files/content/aaslissues/intellectual_freedom_brochure0212.pdf.

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Censorship(s) in Translation

Constraints and Creativity

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As an intellectual, creative, and cultural practice with a high potential of introducing dissident and subversive ideas to a culture, translation has historically been subjected to various censorial mechanisms in countless contexts and time periods. Translation as a vessel of the foreign content, which frequently implies damage to the native culture, attracts the attention of the censor. The means of these censorial mechanisms range from monitoring and regulating translation products at micro levels to prosecuting, jailing, and even murdering translators, with the purpose of establishing a domain within which the translator is allowed to produce.

However, institutionalized censorship is not the only site of censorship, neither does it manifest itself only in the form of direct state intervention. As such, censorship practices extend beyond the straightforward form of preventive and repressive censorship (i.e., pre-censorship and post-censorship) by mostly authoritarian regimes, and encompass the subtler practice of self-censorship and broader explicit or tacit structural pressure put on translators. Particularly in socio-cultural and literary systems where censorial activities dramatically pervade many fields and discourses, translators, similar to writers, are placed in a domain circumscribed by the censorship mechanism. They can conform to boundaries and/or resist these given domains and create alternative domains in order to introduce ideas subverting or intruding the protected space. This space might consist of certain national sensibilities, socio-cultural patterns, legal norms, ideological systems, and religious convictions, and they change through time

and place. Thus conceived, a study on censorship in translation could also illuminate how cultures and literatures function by casting light on the multifaceted power relations between the human agents of translation, e.g., translators, editors, and publishers, and the wielders of political power. The abundance of official records and other archival material made available to researchers after the demise of dictatorships in Europe, fall of the Berlin Wall, and dissolution of the Soviet Union contributed to the proliferation of scholarly works on censorship in general. Censorship exercised in translation in varying forms has also received ample interest from translation scholars particularly in the context of these authoritarian regimes. Regardless of the structural differences and the rigidity of the censorship systems in these oppressive contexts, it can be argued that fear of importing foreign and potentially pernicious ideas through translation results in a rejection of or reservation for translation in these contexts where a strong



belief in self-sustainability and a strong desire to safeguard the national identity also lead to the exclusion of the foreign. In what follows, I will present a brief account of commonalities that run through well-known authoritarian regimes such as Nazi Germany, Fascist Italy, Francoist Spain, and the USSR. These common threads can also be traced in censorship systems under contemporary repressive systems and even democracies.

Challenges, Oppositions, Subversions

Censorship under totalitarian regimes functions in multiple locations and affects multiple agents of culture, leading one into assuming centralized, consistent, regular, and rigorous systems that incontestably subordinate the cultural agents to the ideological norms of the regime. Such an envisioning is, however, not the norm. Although there are certain hard and fast rules and regulations governing the mechanism in authoritarian regimes, such as strict banning of Jewish or anti-Nazi writers in Hitler's Germany, the most threatening censorship mechanisms are marked by unpredictability, lack of transparency, intimidation, contingency, and delegation of the monitoring and filtering responsibilities to various agents, including the targets of censorship themselves. Subordination of cultural agents to the dominant ideological norms is not always uncontested even under an iron-clad censorship mechanism under dictatorships. Translators and other agents of translation (e.g., editors and publishers) might show submission in the face of censorship, or enter a complex negotiation process with the censoring mechanism. In the latter cases, political imposition and cultural restriction brought about by censorship encounter challenges, providing the translators with the leeway to employ devices for circumventing the censorship system. Translators under the Francoist regime, for instance, used numerous literary devices to convey non-conformity, criticism, opposition to and dissent from the regime's ideology, morality, and the doctrines of the Catholic Church, such as "circumlocution or periphrasis, a vague skirting of the taboo words, concepts or incidents" on the language level; silencing of significant details, time-lapse, temporal and spatial evasion as forms of allegory, and using symbols on the narrative level (Pérez 1984). Another creative technique that translators, editors, and publishers employed to persuade the censors that the work in question did not pose a threat for the regime was to write carefully worded prefaces in the publication market of Mussolini's Italy (Dunnett 2009). Such devices are examples of the creativity engendered by the repressive system which also contributed to literary refinement.

The questions of cultural capital and size of the audience, genre of the source text, and reputation of the

author can dictate the censorial decisions and determine the rigidity of the scrutiny to a great extent in totalitarian regimes, coercing the regime at times to cave in to the demands of the publishers. Cultural media with larger audiences, such as theater and cinema, and the press, most of the time receive a closer scrutiny due to the broader extent of their possible effect and the feasibility of exerting preventive censorship. Artistic status of a text or reputation of an author might give the translators, editors, publishers, and censors the license to manipulate the text freely or, conversely, impose an obstacle to make cuts and changes. *Ulysses*, for example, which was banned in the USA until 1933 and in Britain until 1936 for obscenity charges, received surprisingly favorable and flattering comments by the censorship board under Franco's regime. Artistic value of the text and James Joyce's international importance, in this case, overrode Francoist sensibilities and survived the quite rigid system of scrutiny by the Censorship Board (Lázaro 2001). However, it should be borne in mind that international reputation of an author or literary value of a foreign text more often than not go hand in hand with economic considerations. The entangled relationship between economic policies and censorship is likely to give rise to cases where economic concerns take precedence over censorial concerns such as allowing the publication of a work on the basis of its international economic success and the reputation of its author despite its unacceptable content. Many internationally renowned leftist and supposedly pernicious Latin American writers were also able to publish their work under Franco's censorship because the regime allowed for the publication and distribution of these writers and even changed the regulations of the censorship mechanism, when necessary, to cater to the demands of the publishers. A similar case is observed in the Fascist Italy as well. The regime's reluctance to obstruct the flow of translated literature until the racial laws of 1938, despite recognizing the subversive effects of foreign culture, partly stemmed from economic factors (Rundle 2000). Translated literature, accordingly, was a profitable market and enforcing censorial restrictions on the publishers, who were loyal proponents of the regime, would damage the economy. Seeing as tight control and cultural protectionism under censorship systems strike a major blow on native and translated literary production, economic considerations and similar contingencies can be said to salvage authors and texts by actually subverting the system.

Negotiation and Collaboration

Salvation of a text in a literary system strictly governed by censorship is also possible by mutilation through *rewriting*.



The editors and rewriters who, albeit unwillingly at times, mutilate texts may do this to assure approval and publication. As the ultimate purpose of publishing houses is to reach the public and avoid financial losses, a form of negotiation is, thus, usually formed between publishers and the censorship mechanism. These negotiations, on the one hand, could indeed put contentious texts in circulation after the suppression of disallowed material. On the other hand, they could transform into a collaboration with the censorship system which, in the long run, creates more effective self-censorship systems placing the screening and censoring responsibility of publications on translators and publishers themselves. Translators are, ultimately, pressured into being self-censors. Such collaborations, when extended to include the larger society, adds a new layer of complexity to the censorship mechanism because a new aesthetic culture is thus created as a result of the collaboration among censors, producers of cultural products, and the audience in a suppressive state. The complex and extensive censorship system of the USSR can be used to illustrate the collaboration between the society and the wielders of political power. Accordingly, the work of the censors and the secret policemen did not suffice to run the convoluted censorship system, creating a need for a wide base of collaboration of the agents of cultural production such as writers, editors, and publishing houses. Due to the fact that the rules of censorship were not explicitly laid out, as is the case in many repressive contexts, the subsequent uncertainty as to what was allowed or proscribed led to a system of self-censorship which was exercised in a much harsher way than formal state censorship. A form of collusion with the government-instituted censorship apparatus was, thus, established (Kuhiwczak 2009).

Motivation

Formulation of the rules and regulations of censorship under dictatorships was contingent upon the space that needed to be protected, which was often defined by the ideology of the regime. Safeguarding the nebulous category of Fascist morality and moral health of the public and keeping the native culture pure, for instance, were the guiding principles of the censoring mechanisms in Mussolini's Italy and Franco's Spain. Despite structural differences, similar restrictions which were indeed quite in line with Catholic morality were applied to translators in both systems. Formal issues and thematic elements of the works were subjected to a close scrutiny in order to exclude sexually, politically, morally, and religiously unacceptable themes. Jane Dunnett (2009) notes that "pacifist tendencies and unpatriotic sentiments were discouraged

in literature" and certain themes such as suicide, incest, and abortion were unequivocally taboos under Mussolini's Fascism. In a similar manner, sex, homosexuality, and adultery were systematically bowdlerized themes in Franco's Spain (Merino and Rabadán 2002), where the word censorship was deployed as a source of pride since it was considered as a way to enable the Spanish people to have the freedom to do only good.

Concern for public morality was an important constituent of the Nazi censorship system as well. Detective fiction translated from English, in particular, was one of the most attacked genres because it was "a threat to the moral and ethical backbone of the nation," on account of being a product of Western rationalism (Sturge 2002). Rejection of translation in the Nazi censorship system was deeply rooted in a sense of paranoia that the *Volk* spirit would be a victim of "alien conspiracy" and that true German literature would be adulterated and finally destroyed by alien elements. As opposed to these three well-known authoritarian regimes in which various forms of censorship were rigorously enforced on massive scales, concern for public morality did not occupy a primary space in the Soviet censorship system. Piotr Kuhiwczak (2009) argues that the multi-layered and complex system of Soviet censorship was built on maintaining the closed and autocratic borders of the communist society and hindering the entrance of texts that could possibly lead to the questioning of this system. Accordingly, writers or texts that elsewhere had been perceived as pernicious or controversial on moral and religious grounds were tolerated. For example, while George Orwell (*Animal Farm* and *1984*) and Karl Popper (*The Open Society and Its Enemies*) were considered among the most seditious fiction and non-fiction writers due to the relevance to and potential harm for the Soviet political system, the production of Shakespeare's plays was limited because of their emphasis on struggle for power (Kuhiwczak 2009). Protection of the moral health of the public is a prevalent ground for censorship in totalitarian regimes; however, this ground is neither unique to, nor can be regarded as a common denominator of, such oppressive regimes as illustrated by the examples. The commitment of governments to protect the vague concept of "public morals" has led to the enforcement of censorship in Western democracies as well. For example, one of the most notorious literary trials of the twentieth century, the prosecution of D.H. Lawrence's *Lady Chatterley's Lover*, was based on The Obscene Publications Act 1959 of the United Kingdom Parliament which was designed to "provide for the protection of literature and to strengthen the law concerning pornography." Likewise, the history



of literary censorship in the USA abounds in novels that have long reached the status of classics after years of strict censorship, some of which are still igniting disapproval in some regions on account of morality. Even if formal book banning and prosecutions no longer constitute a significantly common form of censorship in the USA today, a more pervasive and prevalent form of censorship is still observed. Private intervention of nongovernmental groups, teachers, librarians, and parents practice censorship in the form of book removal, blacklisting, protests, and boycotts. The society is, in this way, included in the establishment of a sort of self-censorship system in the absence of a strict formal censorship mechanism, which can prove to be quite alarming for a repressive or an emerging repressive regime. The Republic of Turkey, a parliamentary democracy, sets a striking example for this category. Especially the past decade has been characterized by an increasingly authoritarian style of governance, and oppressive policies which dramatically affect translators and their products, to the point of prosecuting translators along with their publishers. A concern for morality has come to the fore in these prosecutions. Many translators, including the translators of William Burroughs's *The Soft Machine*, Chuck Palahniuk's *Snuff*, and Guillaume Apollinaire's *The Adventures of a Young Don Juan*, have been charged with distributing obscene material. Interestingly, all these prosecutions were based on Article 226 of the Turkish Penal code, known as the "Obscenity law," along with the Law on Protection of Minors from Harmful Publications, although none of these novels is categorized under children's literature or young adult literature. Turkey had indeed previously been condemned by the European Convention on Human Rights for banning the translation of

Apollinaire's *Eleven Thousand Rods* on obscenity and morality grounds in 1999, yet translators and other intellectual figures are still increasingly facing obscenity charges.

Conclusion

External pressures and constraints affecting the translators personally or their translational process and product overlap at many levels in cases of institutional censorship, and self-censorship. Ideology in its various dimensions, such as political, ethical, moral, or religious, is inherent in both forms of censorship. However, while it is relatively easier to pinpoint the motivations of an institution in enforcing pre- or post-censorship, especially in cases of official prosecution, understanding of the exact motivations underlying the formation of a self-censorship mechanism is rarely uncomplicated because of the voluntary nature of self-censorship. Related to ideology by extension, economic factors driven by the risk of displeasing or offending the readership due to the content of a translated text are frequently involved in the translator's decision on self-imposed censorship. The relationship between translation and censorship is further complicated by the fact that translation has come to be effectively employed in different contexts as a tool for challenging censorship and fighting political oppression, on the one hand, and perpetuating and endorsing censorship on the other. Thus, it is important to bear in mind that a system of censorship, with all its agents, tools, motives, and forms, functions on a highly dynamic continuum that shifts over time and space and demands a perspective extending beyond the simple model of translator as "victim" or "hero."

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Behind UCT's Removed Art

The Writing on the Wall

Ivor Powell (peter@thecommunicationfactory.org), a South African journalist and art critic

Editor's note: This commentary was first published in the South African Art Times, and is reproduced here with permission.

During the past two years, fine art has been under attack at the University of Cape Town (UCT), with artworks defaced, intentionally destroyed by fire and black-listed during various student protests. In response, some 74 works of art from the University's collection—by some of the country's most acclaimed artists—have been taken down or covered up “on the grounds of their vulnerability to potential damage” or because “some members of the campus community have identified certain works of art as offensive to them—for cultural, religious or political reasons.”

More than a year since UCT Vice Chancellor Max Price assured the public that the removal of these 74 artworks from public view was merely “provisional,” he once again addressed the issue as part of an opinion piece highlighting what he described as institutional racism on a structural level at UCT and feelings of marginalization on the part of black students. But, writes Ivor Powell, the longer that the artworks are kept out of the public eye, the greater the risk to the integrity of UCT and the more compromised the humanist values at its institutional heart.

As far as artist Willie Bester is concerned, his sculpture of the so-called Hottentot Venus, Sara Baartman—which is part of UCT's art collection and currently covered up by black cloth in the university library—provides a kind

of locus for issues of identity: firstly for the suffering and racism that occurred in the colonial and post-colonial context, and secondly, as he put it in a recent interview, “so that [we] can confront who we are.” We “fought for



everyone to be acceptable with whatever deficiency they have, or what is seen as a deficiency.”

For University of Cape Town Vice Chancellor, Max Price, however, Bester's concerns around inclusivity and social cohesion are of no great import, at least according to a recent column that he wrote for *City Press* on News24. Conjecturing the way in which Bester's artwork might be encountered by a black student born after 1994, Price writes of the “familiar naked sculpture of the Khoikhoi woman, Sarah Baartman, with her exaggerated buttocks that made her a freak show in Victorian England.” To be fair, Price does, in passing, allow that the student's reading of the work might alter if they knew that the sculptor, Willie Bester, was black and that he utilized the figure to project his personal pain. But then again it might not. “Or,” he continues, “this may be irrelevant, and your anger at the sexual objectification of this woman—this black woman—may continue to burn. It is not difficult to see why black students would say: ‘This is not simply art that provokes. This art makes me deeply uncomfortable . . . the University surely doesn't care about my feelings.’”

Well, as the Price administration is at pains to demonstrate, the University does apparently care. Responding to questions from the *SA Art Times*, UCT media manager Elijah Moholola said that the removal of the works was “part of the short-term recommendations made by the Artworks Task Team (ATT) earlier this year” and that the artworks that were removed from the walls are to remain in storage, pending, among other things, a broader consultative process. This consultation will take the form of displays of some of the contested artworks (in dedicated spaces such as the CAS (Centre for African Studies) gallery, debates and discussions around specific artworks and/or themes. Seminars involving the creators of some of the ‘contested’ works will also be hosted by the Works of Art Committee (WOAC) and other departments in the university, around different artworks and symbols.” According to Moholola, these short-term recommendations are to be implemented within one year, “so the process is still ongoing and on-track.”

In the meantime, Bester—a sculptor of some pre-eminence in the democratic South Africa and the son of a Xhosa father and a mother of mixed race—has been silenced in a debate about race and identity in the new South Africa. What Bester's artwork has to contribute to the institutional conversation is to count for nothing when weighed against the projected perception that the university doesn't care about the feelings of some of its students.

What right, one might ask, does the university have to devalue Bester's cultural and artistic expression? And

IT IS MIND-BOGGLING THAT THE VICE CHANCELLOR CAN SO THOROUGHLY MISREAD AND MISREPRESENT HIS OWN INSTITUTION'S ART COLLECTION AND THESE PHOTOGRAPHERS. IT SEEMS HE HAS DONE SO TO REPOSITION HIMSELF IN THE PUBLIC DOMAIN, AND FOUND IT EXPEDIENT TO ESSENTIALIZE AND GROSSLY MISREPRESENT THEIR LIFE'S WORK IN THAT CAUSE.

—DAVID GOLDBLATT AND PAUL WEINBERG,
IN RESPONSE TO MAX PRICE'S COLUMN ON NEWS24

according to what measures of student perception and experience is Bester's work considered too hot to handle in the first place?

But Price's aesthetic prevarication does not stop there. He proceeds to discuss a body of photographs that he concedes might have been “intended to reveal the callousness of apartheid” but in which “black people are shown in the wastelands of the Bantustans, in desolate squatter camps, and in the dehumanizing grip of the migrant labor system.” He notes that photographs of white people, in the same collection, are portrayed as “powerful, privileged overlords.”

While Price does acknowledge that the photographers involved—“Peter Magubane, David Goldblatt, Paul Weinberg, Omar Badsha”—all acclaimed masters of their craft—intended their works to be “ammunition in the struggle against apartheid,” this is not sufficient to justify their display on the walls of academe. One might be excused for thinking that the observation is hardly more illuminating than saying that Nelson Mandela might have spent 27 years in prison as a criticism of the apartheid government—and indeed Weinberg's photograph of Mandela casting his first vote in 1994 hangs in the UCT library.

But so what? What matters for Price is this: “if you are a black student born well after 1994 what you see is a



parade of black people stripped of their dignity and whites exuding wealth and success. Even if you know the historical context of the photos, a powerful contemporary context may overwhelm this, leading you to conclude that the photos are just one more indication of how this university views black and white people.” And this is what counts.

For the record, the university does not own any works by Peter Magubane and Omar Badsha in its art collection. Although this fact is of little relevance to the broader issues under discussion, the fact that Price seems to think that they do is telling in itself.

Whatever the details, Price’s message is unambiguous: just in case artworks might be misunderstood by students, it behooves the administration to remove the works from view or to cover them up. To a neutral observer, this might seem a bit like saying medical students should be protected from autopsies in case they are offended by the sight of blood.

By the logic of the Price administration, the removals are justified as part of an ongoing process based on the short-term recommendations made by the Artworks Task Team (ATT) earlier this year. Both Price and Moholola have relied heavily on these recommendations in recent statements. What has never been highlighted, however, is the fact that the administration did all it could to keep the workings of the committee secret, finally releasing its report in response to a PAIA (Promotion of Access to Information Act) application launched by UCT staffer William Daniels, in the interests of public accountability. However, the university’s intentions remain vague and are mainly projected in terms of the one-year deadline from the ATT’s report in February. Moholola indicated further that medium-term curatorial strategies—including the possible construction of a special museum where works could be contextually exhibited—would be effected within two to four years. In the meantime, the longer that the artworks are kept in ‘safe keeping’ the more the stakes continue to rise. Price is the

head and occasional mouthpiece for an important institution of higher learning, one that is moreover founded on humanist principles and which has an extensive humanities department. This means that UCT, as an institution, is not merely geared to the inculcation of technical skills, nor to only what is measurable or subject to forensic analysis. Learning, as it is understood and practised at UCT, is not limited to calculus and empirical methodologies and procedures. Instead, in its institutional structures, UCT largely pursues disciplines that are traditionally designated as the Humanities—disciplines that include languages and their literatures, history, architecture, philosophy, anthropology, sociology, art and politics. As such, the humanities account for a very significant portion of all the study undertaken within the institution. Such disciplines are neither capable of proof nor usefully available for measurement. The knowledge to which they address themselves is of a different and more subtle kind, and accessed and developed by procedures different from those of the scientific method. In the humanist model, it is by engaging with and considering the claims of that with which you disagree—or that which

offends you, or that which you wish to supersede in some way—that you contribute to the sum of human knowledge, that you engage in the business of academic learning in the first place.

In this context, it is useful to think of a work of art as serving a similar function in the humanities to the hypothesis in empirical science. It is precisely through engagement with human consciousness that art works become part of the intellectual property of society. Such engagement and the art that it produces is, in a sense, the living memory of an institution.

In the normal context then, a society and its institutions simultaneously celebrate and critique themselves in and through the art and the imagery collected and displayed. Of course, what is collected and what is displayed changes over time—influenced by the fashions and politics of the



Paul Weinberg, Nelson Mandela voting for the first time in his life, Ohlange High School, Inanda (1994).



David Goldblatt, Exhaust pipe service, Esselen Street, Johannesburg (2002).

time and many other factors. It is not even unthinkable that it could, in some instances, be meaningfully argued that the destruction of works might be advisable. But such actions need to be broached within the frameworks of humanist engagement and transacted in public—not just by kowtowing to the demands of those who would hold art to ransom and make non-consultative decisions behind closed doors. In the case of the UCT militants, it is far from clear just who the so-called Fallists actually speak for, or that they are anything more than a disaffected minority, unrepresentative of either the majority or more persuasive opinion. In response, Price's administration has failed to establish meaningful platforms for the issues to be thrashed out openly and constructively. Meanwhile, his administration is left in the untenable position—anathema in a humanist institution—of siding with ignorance and misperception, and acting in order to suppress the very humanism it is tasked with furthering. The point here is that this is not really *about* art nor about learning. The narrative engaged by UCT's student militants is bluntly, brutally and convulsively political in ways that have more in common with the conventions of warfare than they do with parliamentary processes. This is about a struggle for the control and ownership of resources, a winner-takes-all model in which the old is obliterated and a tabula rasa is created on which to inscribe the new. Thus, in the Shackville protests, five paintings by Richard Baholo, the first black student at UCT to be awarded an MA in Fine Art, were set alight. The paintings in question addressed—in



David Goldblatt, Anna Boois, a goat farmer, one of 14 women given land by the government, with her birthday cake and vegetable garden on her farm Klein Karoo, Kamiesberge, Northern Cape (2003).



David Goldblatt, Copper bearing rocks at Simon van der Stel's exploratory mine, Carolusberg, Northern Cape (2004).

generically social realist and protest-friendly style—precisely the issue the students were ostensibly protesting: racist inequities in South African education.

Equally distressing for many democratically minded observers was the burning of two collages of images of



Paul Weinberg, Baptism, Nyaka Island (1999).

Black Sash activist Molly Blackburn—a woman closely associated with both the university and the city, and one of the key figures in the powerful non-racial opposition to apartheid that mushroomed in the broadly inclusive politics of the United Democratic Front in the 1980s and early 1990s. According to reports, the students responsible for the arson did not have the faintest idea who Molly Blackburn was.

Not that it would necessarily have mattered. Speaking in his personal capacity, Ramabina Mahapa, former UCT SRC president and Rhodes Must Fall leader, provides chilling insight into the militants' motivations in a student publication in March 2016:

The aim is to get the university to reach a stage where they will be unable to concede to any more significant demands and therefore resort to use the state policing apparatus and private security to repress student protests. The expectation is that this will detach the black masses from the hegemonic bloc of the ruling party and thereby awaken the “sleeping” masses that will then redirect their frustrations and rage towards not only the universities but the state.

This is populism in the raw. The idea is to drive the administration to violence and then—cynically and strategically—to cry foul. It has nothing to do with art, except insofar as destroying artworks raises the political temperature.

Burning the tokens and tracteries of the past—official portraits from the colonial era, statues, buildings, whatever—is essentially infantile. It is a denying through force

what gives displeasure, trying to unremember, as it were. Such actions seek a condition of radical discontinuity with the past. But the past cannot be wished away. Recontextualizing and reinterpreting history is one of the key jobs that a university in the international humanist mold is expected to undertake. And to do so on its own terms, as an institution of higher learning. That is, in the humanist tradition on which UCT was built, through robust debate and discussion, through processes of engagement which, incrementally and over time, lead to the writing of different histories and the enriching of our understanding of who we are and where we come from. But as long as the UCT administration continues to operate behind closed doors through its own management committees and without any public engagement, the institution loses credibility and will convince very few of its bona fides. The way that UCT has dealt with the crisis is, frankly, anathema to an institution of humanist learning whose *raison d'être* is informed debate and research, the systematic interrogation of what is believed and what is thought. In fact, it is precisely the presence of paintings by the university's first black Fine Art Masters graduate (Richard Baholo)—that marks out a moment of transformation already engaged by a gallery of elders, including Njabulo Ndebele and to Mamphela Ramphele. These are markers of a transformation that by rights should be built upon. Such images and such progressions are precisely what need to be seen and to be discussed. And, in the case of the destroyed Baholos, they now need to be shown in reproduction, with clear indications of exactly why the originals were not available for hanging. As long as such issues are not addressed, argued, and thrashed out in a context where opposing views are considered and debated, they will not be dealt with in any convincing way. It is somewhat chilling to note here that—even if we accept the Price administration's statements that the intention was not to hide or censor the work—the university's committees insist on inserting themselves in a kind of supervisory or nanny role within the process, as Moholola makes clear when he says that “It is untenable to think that works of art that were of relevance and importance in the past decades can simply continue to be. This does not mean that they lack value. . . . This is why it is important to develop curatorial strategies that investigate context and art works and respond accordingly as any collection or exhibition at this time in our history should and will do.”

Another medium-to-long-term recommendation was for the university to consider building an art museum with a curatorial team for exhibiting artworks. This will also act as a space for different discourses around all forms



of art—“problematic” and “non-problematic.” In other words, UCT appears to be building a platform from which it will be in a position to tell you what to think. Though the thought might be unkind, one can’t help remembering Adolf Hitler and Adolf Ziegler’s Degenerate Art Exhibition in Munich 1937, where works identified as “problematic” were shown in ways that showed up “differences” in “discourse.” The rest, of course, is history. Not that one expects anything quite so dramatic in the case of works notionally tainted either in themselves or through their context with “institutional racism.” What is clear, though, is that until UCT as an institution takes sides in what is increasingly a constitutional issue, many will have empathy with the despairing expedient followed by David Goldblatt, arguably South Africa’s most distinguished photographer and one of its most respected cultural figures, in withdrawing his archive and collection from UCT, lodging it instead at Yale University in the USA, where at least its humanist syntax will be guaranteed.

The way that UCT is playing it, however, the removed artworks have come to be something like hostages, except that the expected negotiations and conversations are not taking place. Now, these hostages are demanding to be returned as symbols and tokens of good faith, presences in a future more broadly under construction. Until that process takes place—and includes referendums among the



Paul Weinberg, *On the Quickie* (1996).

entire student body, the University’s alumni and its staff to assess, among other things, just how widely felt are the sensitivities so glibly attributed by Price to the notional born-free student—UCT will almost certainly remain a battlefield in a war of attrition—or at the very least an academic basket case in the making.



False Witness

Morality in Media and EBSCO

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Thou shalt not bear false witness against thy neighbour.
Exodus 20:16, King James Version

In June of 2017, the Office for Intellectual Freedom got its first ever intellectual freedom challenge to a library database. The case was in Colorado and involved the Cherry Creek School District. According to a parent in the district, EBSCO, a periodical database, was promoting obscene and pornographic content to middle school students. At this writing, the campaign has spread to almost a dozen other states from the southeast to the northwest. Some schools immediately, and without much analysis, shut down access to EBSCO. Others have followed their policies and procedures and retained it, despite persistent attempts at political pressure.

Most librarians are familiar with EBSCO. We have used it for decades in our schools, public libraries, and universities. It replaced the old paper indexes, and enabled the swift retrieval not just of citations, but the content of mainstream magazines. By providing access to magazines whose reputations are far more credible than anonymous sources on the internet, EBSCO has greatly aided the ease and quality of research.

I have never talked to a librarian who thought EBSCO was an intentional gateway to internet pornography. This surprising claim has done something no librarian had thought to do: make EBSCO (or any other electronic library resource) sound salacious. (But I doubt that any middle or high school student would buy it.)

This essay will examine the organization orchestrating challenges against library databases, the history and agenda of that organization, its claims, the data contradicting those claims, and conclude with recommendations for librarians.

Morality in Media

The complainants challenging EBSCO cite and use language from an organization called the National Coalition on Sexual Exploitation (NCOSE). But the group may be more familiar by its first name: Morality in Media. Founded in 1962, Morality in Media, which then described itself as a “faith based organization,” led various campaigns against the sin of dirty words (one of its members filed a



complaint with the Federal Communications Commission about George Carlin's famous "7 words" radio show (Sanburn 2012); the sale of *Playboy* magazine on military bases (Green 2013); and pushed for the vigorous enforcement of anti-obscenity laws (Steigerwald 2012).

In 2015, Morality In Media, Inc. changed its name to National Center on Sexual Exploitation "to better describe our scope and mission to expose the seamless connection between all forms of sexual exploitation" (NCOSE 2018a). Another explanation might be that Morality in Media was often dismissed by mainstream media for its overt religious bias. Subsequently, it attempted to recast its image as more research and policy-based.

But its concern for "decency" and opposition to sexual imagery continued. For instance, in February of 2015, it tried to pressure stores to remove a *Sports Illustrated* swimsuit issue. "It's blatant pornography," said spokeswoman Dawn Hawkins (Bumpas 2015). Retailers, such as Walgreen's and Barnes and Noble, mostly ignored the complaints.

Dirty Dozen List

One of the NCOSE's key public awareness strategies is the production, beginning in 2013, of a "Dirty Dozen" list, an annual selection of twelve mainstream corporations intended "to name and shame the bad corporate actors in America that perpetuate sexual exploitation—whether that be through pornography, prostitution, and sex trafficking" (NCOSE 2018b). NCOSE claims a "seamless connection"—remember; George Carlin, *Playboy*, and *Sports Illustrated* are deemed one with child sex rings.

On their site (endsexualexploitation.org), they state, "The term 'pornography' is a generic, not a legal term"; "The term 'obscenity' is a legal term" (NCOSE 2018c). But in practice, they persistently conflate the two. The only definition of pornography they point to comes from the 1969 unabridged *Webster's Third New International Dictionary*: "1: a description of prostitutes or prostitution 2. a depiction (as in a writing or painting) of licentiousness or lewdness: a portrayal of erotic behavior designed to cause sexual excitement." That's a pretty broad description, embracing not just internet imagery, but novels and art.

The 2017 and 2018 Dirty Dozen lists include EBSCO. The problem, as NCOSE sees it, is that EBSCO's "Explora, Science Reference Center, Literary Reference Center, and other products, provide easy access to hardcore pornography sites and extremely graphic sexual content. Innocent searches provide pornographic results. Via a system that bypasses school Internet filters, EBSCO brings the dark world of XXX to America's elementary, middle,

and high school children" (NCOSE 2018d). The American Library Association is on the list, too. According to NCOSE, "The ALA zealously encourages public libraries to not install internet filters on public-access computers, thereby granting patrons—including children—the opportunity to view sexually obscene or explicit material. This has turned the once safe community setting of the public library into a XXX space that fosters child sexual abuse, sexual assault, exhibitionism, stalking, and lewd behavior in libraries across the country" (NCOSE 2018e). This intended-to-be-shocking list of porn-pushing human traffickers also includes Amazon, Amnesty International, Comcast, *Cosmopolitan*, and social media destinations Snapchat, Twitter, and YouTube.

NCOSE Claims and Policy Recommendations

In general NCOSE makes some suggestive and overbroad claims. Here are two examples.

"Evidence supports the fact that child sexual abuse, prostitution, pornography, sex trafficking, sexual violence, etc., are not isolated phenomena occurring in a vacuum. Rather, these and other forms of sexual abuse and exploitation overlap and reinforce one another. For example, we know that child sexual abuse often predates an individual's entry into prostitution, and that sexting makes adolescents vulnerable to revenge porn or sexual extortion. We also know that pornography is often made of sex trafficked women and children, and increases the demand for buying sex. Further, females who consume pornography are at greater risk of being a victim of sexual harassment or sexual assault. The list of connections goes on and on" (NCOSE 2017a).

A second example, from the same set of policy recommendations, is the citation of a 2015 meta-analysis by Wright, Tokunaga, and Kraus, whose abstract states, "22 studies from 7 different countries were analyzed. Consumption was associated with sexual aggression in the United States and internationally, among males and females, and in cross-sectional and longitudinal studies. Associations were stronger for verbal than physical sexual aggression, although both were significant. The general pattern of results suggested that violent content may be an exacerbating factor."

The common denominator of these studies is the fundamental confusion between correlation ("The list of connections goes on and on") and causation. Some sex criminals may use pornography; but looking at pornography does not make everyone a sex criminal.



On the basis of these studies and others like them, NCOSE advances a sweeping policy agenda. Some samples (2017b):

- “The government can curb the demand for prostitution, sex trafficking, child sex abuse, and sexual violence by demanding the Attorney General enforce these existing federal laws, which prohibit distribution of hardcore pornography on the internet, on cable/satellite TV, on hotel/motel TV, in retail shops, and by common carrier.” (“Pornography” includes what, exactly?)
- “Institute routine audit and removal of pornography found on military computers, storage drives, work areas, and officer’s clubs, across *all* branches of the US military.”
- Outlaw strip clubs for all military personnel.
- “Direct the US Surgeon General and the US Department of Health and Human Services to fund research into the public health harms of pornography, and launch comprehensive efforts to abate these problems.”

In short, on the basis of studies that do not prove what they suggest, NCOSE seeks increased governmental censorship, and research to prove things they have already decided to be true.

Counter-evidence

In 1995, 14 percent of Americans used the internet. By 2010, the that number had risen to 79 percent, according to the Pew Research Center (Fox and Rainie 2014). And yet during the same time period, “the rate of completed rape or sexual assault declined from 3.6 per 1,000 females to 1.1 per 1,000,” according the US Department of Justice’s National Crime Victimization Survey, 1994–2010 (Planty et al., 2013). Few would dispute that there is a lot of pornography, here meaning “sexual imagery” on the internet. How much? Estimates vary between 3 and 30 percent, according to a *Psychology Today* overview of statistics about porn searches on the internet. That overview quotes two computational neuroscientists, Ogi Ogas and Sai Gaddam, who estimate that porn accounts for around 10 percent of internet content (Castleman 2016). Yet somehow that historic change, when NCOSE and other conservatives fear an exponential increase of access to sexual content, occurs at a time when sexual violence against women has dropped by almost two-thirds. Similarly, American teen pregnancy has seen historic declines, from 83.6 teen pregnancies per 1,000 in 1995 (Kauffman et al. 1998), to 57 per 1,000 in 2010 (Kost and Henshaw 2014).

Again, correlation is not causation. But if pornography is so bad, if we are in a “public health crisis” of epidemic

proportions, why has sexual misbehavior declined? How credible is NCOSE?

In “The Sunny Side of Smut,” Melinda Wenner Moyer writes, “Contrary to what many people believe, recent research shows that moderate pornography consumption does not make users more aggressive, promote sexism or harm relationships. If anything, some researchers suggest, exposure to pornography might make some people less likely to commit sexual crimes.” Moyer continues,

The most common concern about pornography is that it indirectly hurts women by encouraging sexism, raising sexual expectations and thereby harming relationships. Some people worry that it might even incite violence against women. The data, however, do not support these claims. “There’s absolutely no evidence that pornography does anything negative,” says Milton Diamond, director of the Pacific Center for Sex and Society at the University of Hawaii at Manoa. “It’s a moral issue, not a factual issue.”

“Rates of rapes and sexual assault in the US are at their lowest levels since the 1960s,” says Christopher J. Ferguson, a professor of psychology and criminal justice at Texas A&M International University. The same goes for other countries: as access to pornography grew in once restrictive Japan, China and Denmark in the past 40 years, rape statistics plummeted. Within the US, the states with the least internet access between 1980 and 2000—and therefore the least access to internet pornography—experienced a 53 percent increase in rape incidence, whereas the states with the most access experienced a 27 percent drop in the number of reported rapes, according to a paper published in 2006 by Anthony D’Amato, a law professor at Northwestern University.

It is important to note that these associations are just that—associations. They do not prove that pornography is the cause of the observed crime reductions. Nevertheless, the trends “just don’t fit with the theory that rape and sexual assault are in part influenced by pornography,” Ferguson explains. “At this point I think we can say the evidence just isn’t there, and it is time to retire this belief.” (Moyer 2011)

The EBSCO Attack

But NCOSE has mounted a campaign, often through social media (particularly Facebook), occasionally through appearances at school board meetings and letters to the editor, to grab media attention. While most of the challenges have focused on schools, some have also been directed at public libraries. What does NCOSE claim about EBSCO? In response to a 2017 *Intellectual Freedom Blog* post by



Fredric Murray, “Responding to Database Challenges,” one NCOSE supporter wrote,

Much of the obscene content is actually not from 3rd party sites, but is streaming directly into EBSCO search platforms and, as such, is protected as proprietary. Furthermore, adult material tends to stream to the top of even benign searches. Innocent searches beginning on terms such as diabetes, respiration, celebrity, fashion, and other similar innocuous terms rapidly link to age-inappropriate material. . . . while it is true that schools should be blocking obscene 3rd party sites, it is also true that the articles containing such links are obscene and pornographic in and of themselves. Moreover, third party blocking is only effective on school property, and easily bypassed once kids are off site to do their homework.

EBSCO has admitted that the obscene and pornographic content being complained of is, indeed, in their products. It is not restricted or filtered in any manner, either for content or by state.

There is no defense of EBSCO’s callous and greedy exploitation of our nation’s children. . . . Schools and libraries, nationwide, should be cancelling their EBSCO subscriptions until EBSCO can guarantee that all the offending material has been removed from all databases being provided to minor children. (Patterson 2017)

All of these claims, like NCOSE’s claims about pornography generally, are false. The content hosted by EBSCO—consisting almost entirely of mainstream periodicals—is *not* obscene. Obscenity, remember, is a legal term. No obscenity charges have ever been brought against EBSCO, nor are they likely to be. In my own experience, “benign searches” lead to benign and relevant content. EBSCO has certainly not admitted to hosting obscene content. It does have various configurations of data sources for different audiences, but it does not exercise editorial control over the content from those sources. Nor is the provision of indexed mainstream periodicals “callous and greedy.” If libraries were to cancel their subscriptions until EBSCO can guarantee that no sexual content will ever be offered by magazines again (an absurd aim in itself), students then will have what access to magazine information? Google? Even when NCOSE has been successful in pressuring schools to suspend access, they surely have left students with alternatives that are *more likely* to lead to sexual content.

EBSCO Rebuttal

I spoke with Kathleen McEvoy, an EBSCO representative, after the first challenge. I asked if I could review the

top 100 search terms used by students across the country. I agreed to keep the exact terms confidential. Search terms are valuable business intelligence. But here is my finding: students use EBSCO precisely as one would hope—for research. In other words, they were searching for scientific topics in the news: climate change and global warming; they were looking up such social issues as abortion, gun control, and cyberbullying. They searched for the changing laws about gay marriages. They were not looking for sites featuring gay sex. There were no pornographic terms in the top 100.

The bottom line: the people most likely to be searching for sexual content in EBSCO are not students. They are adults, poring obsessively through search terms students do not use to ends students do not seek from that source.

In response to the Dirty Dozen attack, EBSCO issued several statements. They wrote, “EBSCO Information Services (EBSCO) has been working with libraries for more than 70 years. EBSCO is consistently named to both the *Information Week* Top 500, as a top U.S. technology innovator, and the *EContent* 100, as a top company in the digital content industry.” Many of their customers understand the great contribution of the vendor. Among their testimonials is this one from Amy Marquez, librarian, Marcia R. Garza Elementary School: “Instead of having to search Google and sift through so many search results, students find a manageable number of reliable resources through Explora.” Dorian Myers, director of libraries and archives, The Kinkaid School, said, “Google made it so easy for kids to find stuff online. . . . When I went to school, the problem was finding any information. Now the problem our kids face is too much information, too many sources.” Myers also explained that information found on the internet is not always trustworthy (McEvoy 2017).

Further, EBSCO declared,

EBSCO has a long history of supporting libraries and increasing access to information as an aggregator of content. We take the need to provide age-appropriate content seriously and appreciate the families and groups that have brought these issues to light relative to EBSCO, ProQuest and Cengage content available in school libraries. In no way is EBSCO deliberately including materials that would be considered inappropriate, and we are increasing the level of scrutiny around how content is selected for databases and specifically those designed for use in K-12 schools.

EBSCO databases are often purchased at the state level and provided to a wide range of institutions that serve many age groups. The intent is for each institution to provide



access to the appropriate databases. While EBSCO provides guidance as to which databases are appropriate for K-12 use, it is possible that a given school or district may expose the full suite of resources, unintentionally providing access to resources that may not be considered completely age-appropriate. In these cases, we are working with customers to switch to age-appropriate versions of databases as recommended. We are also allowing sites to leverage the tools that have been in place for decades to remove publications at their discretion so that they can access the value of the various resources, but with the comfort of knowing that the content is appropriate for each institution and its users.

We are working closely with our customers (schools and school districts) to evaluate these concerns and develop approaches where each school has a more granular level of control over content availability. We will introduce ways for each institution to make specific determinations about content not only at the publication level, but at an individual article level. The determination of what is appropriate and what is not appropriate may not be readily agreed upon across the groups of customers that we serve. As such, EBSCO wants to ensure that we do our due diligence initially, but also provide the tools that allow flexibility for customers to make additional decisions around content availability on their own.

Additionally, we have undertaken changes creating algorithms to identify and eliminate clearly objectionable articles and we are working with our content management team to create ways to deactivate links that are embedded in articles that link to inappropriate external content. We are working with our customers to better educate students and their families about internet safety and information literacy. Reloads that will remove inappropriate content have been fast tracked and we have created editorial policies to address content selection. (EBSCO 2017)

Businesses, like libraries, tend to respond to criticism. But not all criticism is justified. EBSCO acknowledges that some articles may be age-inappropriate or objectionable. That's not an admission of obscenity. Rather, it indicates that human beings write about sex. Even in schools, young minds have questions about that topic; the answers are neither illegal nor obscene. Supreme Court Justice Thurgood Marshall said, "The level of discourse reaching a mailbox simply cannot be limited to that which would be suitable for a sandbox" (*Bolger v. Youngs Drug Products Corp.*). That is, while we may have preferences about what we want our children to have access to, not all parental preferences are the same, and what we prefer for children cannot be imposed on adults.

Responding to the Challenges

What should librarians do if their libraries receive a challenge to the use of EBSCO? If the challenge comes over the internet, on Facebook, through email, from someone who does not reside in your district, the professional obligation may extend no farther than this: "thank you for your comments."

OIF provided the following suggestions to another Colorado library dealing with a challenge to EBSCO. Consider them as talking points.

- Our library complies with the law. We use an "electronic protection measure," a filter, as required by Colorado Statute. That statute parallels the language in the United States Children's Internet Protection Act (CIPA). Legally, the library is required (either in order to receive certain federal funding, or as a consequence of state statute) to attempt to block only *visual imagery* that is obscene, child pornography, or harmful to minors. Of course, filters are imperfect; they both overblock (prevent access to content that does not fall into these categories), and underblock (fail to block illegal content). But the law requires only that we use them, not that they work as advertised.
- EBSCO is a longtime, well-respected aggregator of mostly mainstream, consumer magazine content. That content, like the content of magazines in a grocery store, will sometimes include human sexuality. In the post-internet world, there will inevitably be links to more explicit sites beyond the indexed magazines. But access to sexual content is neither the purpose nor the focus of EBSCO.
- Public libraries don't have to—nor should they—restrict all content, digital or physical, to what's fit for children. They serve all the public. Most libraries specifically do not limit access to materials by age. The purpose is not to push adult content on people too young for it. Rather, people tend to gravitate to information appropriate to their age. Libraries have children's rooms, but they allow children to check out books from the whole collection when they demonstrate interest in those resources.
- The goals of NCOSE are not those of the library. Over the past few months, NCOSE has adopted an approach of inflammatory and alarmist attacks against school and public libraries in Colorado. Why? "Libraries push porn" has a "man bites dog" feel; it sounds like surprising and even shocking news. The claim that EBSCO promotes access to "inappropriate content" is mainly a strategy for NCOSE to draw attention to its name and cause.
- ALA's Office for Intellectual Freedom office is aware of no reports of any minor seeking or finding illegal or even pornographic content through EBSCO. Thus



far, the searching is done by adults, usually employing relatively sophisticated searching techniques that involve multiple steps. Moreover, these searches are conducted at home, where the internet connection is not filtered. If minors were in fact seeking sexual content, it's unlikely that they would start with EBSCO. Nor would they start with filtered library catalogs. They would use their home computers or mobile phones and Google.

- Libraries are defenders of the First Amendment. EBSCO has a right to aggregate mainstream content and sell it to libraries. Adults have a right to read magazines, without being limited to magazines that are intended for children. Minors have a right to access information in the general marketplace. And of course, NCOSE has a right to protest sexual content, and to advocate for its elimination. Libraries also have a responsibility to listen to the concerns of their constituents. To that end, they adopt Request for Reconsideration policies. When a patron expresses concern about content, a thoughtful process calls for a committee to examine the challenged item or service, consider the policy framework of the library (including the *Library Bill of Rights* and the library's collection development policy), and make a recommendation to administration. Many reconsideration processes also allow an appeal to the governing body of the library. The decision of that authority is considered final, absent a court challenge, which is highly unlikely here.
- The board is the ultimate keeper of the library's values and purpose, as expressed in its adopted policy. Public libraries in America exist to provide the broadest possible access to the content of our culture. Sometimes that can be awkward, and it isn't unusual to find people who want libraries to suppress one view or another. But as stated in Article II of the *Library Bill of Rights*, "Materials should not be proscribed or removed because of partisan or doctrinal disapproval." As stated in Article III, "Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment."

Conclusions

Despite NCOSE's attempts to shame ALA, there are some points about which we surely agree. Sexual exploitation is bad. Sexual trafficking is wrong.

But there are more places where we disagree:

- Pornography is not a public health crisis. The indicators (of sexual assault and teen pregnancy) suggest that things are getting better, not worse. That change appears to be linked to greater, not lesser, access to sexual content.
- Minors are not spending too much time researching credible information resources at the library. In a time of "fake news," teaching students to examine and think critically about periodical content is a better strategy than trying to suppress the topics altogether.
- The elimination of curated collections is not better than random internet searches.
- Shame—a strategy to discredit motives rather than honestly examine the evidence—is corrosive and dishonest. To put it in a faith-based perspective, this technique bears false witness. It slanders knowledge-workers the better to privilege prudes.
- NCOSE's Dirty Dozen is disingenuous. NCOSE accuses libraries and periodical indexers of crimes. Yet it ignores the well-documented sexual abuse in religious organizations, such as the Catholic Church's abuse of young boys, or the estimated quarter-of-a-million child marriages that take place in the United States every year. In one highly publicized case, an 11-year-old girl was forced by her church elders to marry the man who raped her (Kristof 2017). An organization devoted to the elimination of sexual trafficking might have taken a stand about that. Is it libraries that are the issue? Is it the news? NCOSE's efforts are all about faux outrage and publicity stunts, not a serious attempt to deal with real issues.

Finally, then, I have read and thought deeply about the claims of NCOSE. I do not find them credible. I find, instead, an attempt to impose a narrow religious view, not supported by the evidence, on the entire American citizenry, young and old alike.

As is so often the case, there are people who believe that if we just stop talking about important problems—the abuse of children, for instance—the problem itself disappears. But talking about it is not the problem. NCOSE's view is that sexual content, of any description, is dangerous and should be proscribed. This is the perspective of censorship. Librarians oppose it, as we should.

We have a fundamental obligation. We are responsible for providing access to the intellectual content of our culture. It turns out that people talk and write about sex from many perspectives. We do not hide, we do not suppress, the evidence. We preserve and present it. The consensus of this moment is that sexual content does *not* cause or promote sexual crime. The facts matter.

NCOSE is but the latest in a string of campaigns to force us back into silence, a silence that always favors the perpetrators of abuse, not those who report it, or who seek new pathways to a more open and honest health. Silence is itself a form of false witness, a pretense, a lie. Let us instead dare to tell the truth.



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Evidence of the “Slippery Slope” to Censorship

The Story from Florida and Collier County

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Brandon Haught, founding board member of the science education advocacy group Florida Citizens for Science and author of *Going Ape: Florida’s Battles Over Evolution in the Classroom* (University Press of Florida, 2014), has been a ubiquitous voice in opposition to a 2017 Florida law allowing any county resident to challenge public K-12 classroom and library materials. He is concerned about the effect of the law—HB 989 Instructional Materials—on the teaching of essential science concepts like evolution and climate change. To justify his apprehensions, Haught (2017) highlighted the following claims about school textbooks found in the affidavits submitted to legislators by the Florida Citizens’ Alliance, the ultraconservative, Southwest Florida-based group that lobbied for the law: “Nowhere in the material is a balanced discussion of the biblical explanation” and “Man-made global warming is a hoax. . . . It is pure and unadulterated false propaganda.” Responding to Haught’s concerns and to similar anxieties expressed by the National Center for Science Education, HB 989 sponsor, Representative Byron Donalds (Republican) of Florida’s Hendry and Collier counties, argued that those who anticipate his bill’s detrimental impact on science curricula “are trying to read down a slippery slope that doesn’t exist” (quoted in Hammerschlag 2017).

Picking up on two threads in L. Bryan Cooper and A.D. Beman-Cavallaro’s (2017) essay “We’ve Come a Long Way (Baby)! Or Have We?”—which offers a detailed history of intellectual freedom issues in Florida’s

schools and a brief overview of censorship in Collier County—this paper documents the genesis of HB 989 and in doing so justifies trepidations about the future of education in science and other subject areas. Advocates for



history, literature, and social studies have not waded far into the debate around Florida's new instructional materials law, but as this paper shows, recent censorship efforts by individuals and groups in Collier who are celebrating HB 989 point also to an uncertain future for education in these disciplines. Contrary to Representative Donalds' assertion, there are plenty of reasons why supporters of intellectual freedom may read HB 989 as legislation that will lead to an upsurge of censorship throughout Florida.

The Bill and Its Predecessors

In early 2017, Representative Donalds, along with Senator Tom Lee (Republican) of Pasco, Hillsborough, and Polk counties, introduced an instructional materials bill to the Florida House and Senate, respectively. The first draft of the bill required Florida school boards to ensure "all textbooks, workbooks, and student materials and supplements necessary for a student to fully participate in coursework" meet six criteria (Act Relating to Instructional Materials for K-12 Public Education, Original Filed Version, 2017, lines 76–78). Among the criteria, instructional materials were to be noninflammatory, objective, and balanced—provisions in statute since 2014—as well as free of pornography. Even if adopted instructional materials were previously vetted by the state—the most common practice for Florida school districts, which review and select texts from a state-approved list—or vetted through a district's own instructional materials program, the bill specified the texts must remain open for further public review and challenge. Initiating such an instructional materials challenge, the bill mandated, would be "the right of a parent or any other person who pays ad valorem property taxes or sales taxes in the state," and school districts must develop a process to facilitate these objections (*ibid.*, lines 130–31). Additional provisions of the bill included permission for districts to adopt instructional materials standards equivalent to or better than state standards, and a requirement for public schools to give anyone who pays property or sales taxes in Florida full access to school libraries.

The 2017 bill marked the second attempt by the Florida Citizens' Alliance (FLCA) to clean up an instructional materials law it had successfully lobbied for during the 2014 legislative session: SB 864. That law defined the review and adoption of instructional materials as constitutional duties for local school boards, required districts to formalize processes for parental objections to textbooks, and permitted districts to forgo the state's vetting process for textbooks and instead implement their own instructional materials adoption programs. On the latter provision, the Senate sponsor of the eventual law, Alan Hays

(Republican), noted, "Local school districts, not the state or federal government, are the most qualified to determine what textbooks are appropriate for Florida's classrooms" (quoted in Florida Senate 2014). The 2014 Senate education committee chair repeated the sentiment: "Instructional materials should be tailored to the needs of our local classrooms" (*ibid.*). These assertions prompted Brandon Haught's Florida Citizens for Science (2014) to worry that some school districts might exclude key science concepts (especially evolution) from their curricula: "A couple of things concern me. First, Senator Hays was a sponsor of anti-evolution legislation back in 2008. Second, a few school boards back then revealed themselves to be dominated by anti-evolution advocates when they passed resolutions asking evolution to be downplayed in the state science standards."

Also weighing in on SB 864's local control intentions was American Muslim Democratic Caucus of Florida president Ghazala Salam. Salam (2014) connected the dots between the law and efforts in Volusia County the previous year to remove a World History textbook from classrooms because of its chapter on Islam:

Senator Hays has said that he decided to file SB 864 after some residents in his district complained that students were being taught pro-Islamic textbooks, i.e., the World History textbook published by Prentice Hall. The complaints in Senator Hays's district were provoked by groups like Citizens for National Security (CFNS) and ACT! For America (ACT), both organizations having been designated as hate groups by many including the Southern Poverty Law Center.

Complying with SB 864, in February of 2015 Collier County's school board—whose meetings are the primary locus for the FLCA's activism—approved Board Policy 2520. This policy reinforced instructional materials review and adoption as a constitutional duty for the district, created a process for parents and legal guardians of a student enrolled in a district school to contest materials used in the student's classroom, and defined the right of the school board to adopt materials whether or not they are on the state-approved list. The following year, the FLCA's managing director, Keith Flaugh (2016), published a guest commentary in the *Naples Daily News* informing readers that "Leaders from Florida Citizens Alliance . . . and Better Collier County Public Schools have been working on . . . a focused curriculum bill to fix the loopholes in Senate Bill 864." That curriculum bill was 2016's HB 899/SB 1018. In the piece, Flaugh described the FLCA as "a coalition of citizens and grassroots groups working



together through education, outreach and community involvement to advance the ideals and principles of liberty. These include but are not limited to individual rights, free markets and limited government” (ibid.). According to the FLCA website, the organization’s two chief initiatives are to end the Common Core State Standards and to protect the Second Amendment, and its featured supporters include The Report Card (n.d.), which “advocates teaching k-12 [*sic*] students about American history and American exceptionalism” and the Christian Family Coalition (n.d.), which “renounce[es] values that seek to destroy the infra-structure [*sic*] of the family and the future of our society.” Better Collier County Public Schools (BCCPS) is an anonymous Facebook group whose social media posts include transphobic rhetoric, climate science denial, and anti-Common Core propaganda, as well as support for a local, Hillsdale College-affiliated charter school.ⁱ

Board Policy 2520 no doubt exposed what the FLCA and BCCPS interpreted as loopholes in SB 864. First, the 2014 law did not require school districts to permit all Collier County taxpayers, whether or not they had children in public schools, to challenge instructional materials and library books. With Board Policy 2520, the FLCA and BCCPS instead saw the approval of an instructional materials objection process that limited such challenges to parents and legal guardians of students in the classrooms where the materials were being used. The FLCA and BCCPS, however, wanted the state to give “parents *and* taxpayers” the right to challenge these materials (Flaugh 2016; emphasis added). Second, and aligning with their desire to influence state standards, the organizations wanted the legislature to give districts “greater flexibility to buy instructional materials that meet or exceed current Florida standards” (ibid.). Finally, they hoped for “legal remedies” should a parent or taxpayer not be satisfied with the outcome of their formal instructional materials challenge (ibid.). HB 899/SB 1018 was the FLCA and BCCPS’s attempt to gain more state-sanctioned influence over public K-12 classrooms.

Absent from Flaugh’s *Naples Daily News* guest commentary was a fourth provision of his 2016 clean-up bill: “Parents and taxpayers shall have full access to all school library media services” (Act Relating to Instructional Materials, 2016, lines 180-1). As Cooper and Beman-Cavallaro

(2017, 22) observe, contextualized within the core substance of the 2016 bill, the library provision appeared “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.” If passed, the 2016 bill “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” (ibid.). The authors continue, the bill portended “reactionary forces using the courts to shore up mechanisms that challenge and undermine the longstanding Constitutional concept and rights of individuals,” including minors’ privacy (ibid.).

Much to the FLCA’s chagrin, HB 899/SB 1018 did not get scheduled for any committee hearings during the 2016 legislative session. In response, the FLCA (2016) posted a form email on its website urging the organization’s supporters to send the following message to legislators:

“Disappointed” only BEGINS to describe my reaction to your failure.

Why did you refuse to let parents, teachers and school boards have the tools they need to select their own instructional materials for their children?

You do not know what’s best for our children. They are our children and we know what’s best for them!

I urge you to change your mind and allow SB 1018 and HB 899 to move forward. The situation is critical and the time is now!

Disappointed? Absolutely.

Defeated? NEVER!

You MUST change your mind. This improvement is inevitable.

You should get on the right side of this issue now!

Delivering on the promise never to be defeated, the FLCA teamed up with Representative Donalds and Senator Lee to steward its new version of the instructional materials bill through the Florida legislature in spring 2017 and saw the bill signed into law by Governor Rick Scott on June 26.

i. Michigan’s private Hillsdale College once marketed its Barney Charter School initiative as an effort to “recover our public schools from the tide of a hundred years of progressivism that has corrupted our nation’s original faithfulness to the previous 24 centuries of teaching the young the liberal arts in the West” (quoted in Bryant 2017).



As evidenced by their unsuccessful, 2016 clean-up effort and Keith Flaugh's public commentary, the FLCA and BCCPS ultimately wanted five changes to the 2014 instructional materials bill: (1) the inclusion of "free of pornography" as a review criteria for instructional materials, (2) the expansion of the right to challenge materials to community members who do not have children in public schools, (3) the permission for school districts to develop their own education standards, (4) the ability for unsatisfied challengers to sue school districts, and (5) the right of non-parent taxpayers to enter any public school library. The 2017 version of the bill, HB 989, did not give the FLCA and BCCPS everything they wanted, but the enrolled bill illustrates the organizations' success in obtaining statutory consent for outside efforts to manage classroom and library content. Now, in addition to being "accurate, objective, balanced, noninflammatory, [and] current," instructional materials must be "free of pornography" (Act Relating to Instructional Materials, Enrolled, 2017, lines 282–84). Unlike the bill's first draft, the final law does not allow anyone who pays sales taxes to object to instructional materials. However, it does extend the right to challenge classroom and library materials from parents and legal guardians to any resident of the county whose public schools are using the materials. And while the initial filing gave full library access to all taxpayers, the final law allows access to library materials only through written request.

HB 989 verifies Cooper and Beman-Cavallaro's suspicion about the 2016 bill's impact on school libraries, and it also verifies any suspicions one might have about the FLCA and BCCPS's intention to target all additional types of public K-12 resources; for, the law's definition of challengeable instructional materials includes all materials "used in a classroom, made available in a school library, or included on a reading list, whether adopted and purchased from the state-adopted instructional materials list, adopted and purchased through a district instructional materials program . . . , or otherwise purchased or made available" (ibid., lines 101–5). With instructional materials so broadly defined, it seems even a box of donated *Scholastic News* or *Time for Kids* magazines is now subject to formal challenge by any resident of a county who finds a particular issue to be inflammatory, unbalanced, or pornographic.

On top of these new instructional materials review and challenge provisions, HB 989 requires the challenge process to include "at least one open public hearing before an unbiased and qualified hearing officer" (ibid., lines 148–9). The law itself is unclear on both the identity and role of the hearing officer, who simply cannot be an employee of the school district where materials are being

challenged, and who at minimum serves as a third-party presence at the public hearing. The law is similarly vague on the hearing process, specifying only that districts must give challengers an opportunity to present evidence that the instructional materials in question do not align with Florida's statutory requirements for textbooks and other educational resources.

Unlike 2016's HB 899, 2017's HB 989 did get scheduled for committee hearings, and it passed through its House meetings with little debate. The bill passed the full House in a vote of 94–25, but it did receive some critical questioning. One representative wondered why the instructional materials challenge process needed to be expanded to all residents of a county. Representative Donalds responded that the current process is too time-consuming for parents to follow through with, and in his estimation, parents often decide not to pursue challenges, because their child will be moving on to another grade soon anyway ("4/19/17 House Session Part 2," 2017, 37:41–38:33). Too, he argued, fewer instructional materials come home with students these days, so if non-parent community members "have the determination, the desire to go through that process" of acquiring and reviewing instructional materials, the new law "provides them access to bring a challenge" (ibid., 38:40–39:01). Collected together, Donalds' responses make clear the law's intention to shift the accepted culture of classroom and library materials challenges from parents who work with teachers and media specialists to accommodate their children during a specific academic year, to activist community members and groups like the FLCA who use the muscle of the state to effect cross-district censorship of targeted materials in one fell swoop.

Validating related concerns about local control initiatives voiced in regard to 2014's SB 864 by Florida Citizens for Science and Ghazala Salam, while on the House floor Donalds charged local school districts with interpreting several of his bill's key, but decidedly unclear, provisions. For example, individual districts will determine the necessary credentials required of the law's unbiased and qualified hearing officers, Donalds said (ibid., 39:06–39:26). Indeed, this benefits the FLCA in counties where the organization has a growing influence on regional politics (e.g., Collier, Lee, Manatee, Volusia). As Brandon Haught (quoted in Worth 2017) also anticipates, "financially strapped districts, reluctant to pay for a hearing officer, may cave to [instructional material] objections, regardless of their merits." Or, should hearing officers come with a price, such districts might seek cost-free options, and as reported by Katie Worth (2017) of PBS's *Frontline*, the



FLCA's Keith Flaugh said "members of his group would volunteer to be hearing officers." Given the law's similar ambiguity vis-à-vis the procedures of the challenge process's public hearing, districts under the sway of groups like the FLCA might develop hearing procedures that limit or even preclude public counter-testimony. A school board member who wants to resist censorship would thus have to do so against the headwind generated by the petitioner's cherry-picked and decontextualized assessment of the challenged material.

According to Donalds, districts will likewise determine the definition of pornography ("4/19/17 House Session Part 2," 2017, 39:31-40:00). As noted above, codifying "free of pornography" in the instructional materials review and challenge law was a primary goal for the FLCA, so the group likely sees a legislatively-sanctioned opportunity to scrub school libraries of books they feel are sexually obscene. However, as a quasi-judicial process, HB 989's challenge hearing must produce outcomes that abide by existing law. If an instructional materials challenge results in the removal of a book assessed by the petitioner and a majority of the school board to be pornographic, the school district will face costly litigation to determine if its grounds for banning the book align with state and federal laws. In Florida, as in federal law, this means the materials in question must "appeal to a prurient, shameful, or morbid interest"; be "patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors"; and be "without serious literary, artistic, political, or scientific value for minors" (Florida Statute).

HB 989 also travelled an easy road through its Senate committee stops as SB 1210, but it squeaked by the full Senate with a close, 19-17 vote. There, the Senate bill's sponsor, Tom Lee, was asked—for the purposes of demonstration—how someone might go about removing references to evolution or the Holocaust from instructional materials. His answer:

They would find provisions of those books ostensibly objectionable, they would raise the issue with the school district, but then they would be summarily dismissed, because the objections are really limited to things that contain pornography as defined by statute and that are not suited to the students' needs and their ability to comprehend the underlying subject matter. ("5/3/17 Senate Session Part 2," 1:21:56-1:22:32)

With this answer, Lee implied that protections exist in the law for students to learn about evolution, hideous past

events, and other controversial topics, because they are central to biology, history, and other curricula. However, given that anyone who lives in a school district can now bring forth challenges about anything they find objectionable, coupled with the ambiguity of the qualifications of the hearing officer—which Lee acknowledged (*ibid.*, 1:128:07-1:28:14)—and the fact that the law puts the fate of classroom and library materials in the hands of local officials, it is again reasonable to assume that conditions exist in certain Florida counties for groups like the FLCA to file complaints, volunteer their members as hearing officers, and then be heard by boards whose members they helped to get elected. This puts evolution and history in the crosshairs, but also climate change, world religions, noted literary texts, art books, and even classroom magazines covering topics these groups prefer not to be discussed.

Are there good reasons for such concerns about the impact of Florida's new law on intellectual freedom, or is Representative Donalds correct in asserting this is all "a slippery slope that doesn't exist"? Interestingly, Senator Lee's response to a question on the Senate floor leads to an answer. Presenting the bill, Lee argued that three years after SB 864, "there still seems to be some problems that are occurring in certain parts of the state, so this bill was drafted as an effort to close loopholes in the 2014 law" (*ibid.*, 1:11:36-1:11:47). Moments later, Lee fielded a question about why a state law was necessary if indeed the problems were confined to certain parts of Florida: "Is there nothing that can be done in that certain area of the state without enacting legislation throughout the entire state where the systems seem to be working just fine?" (*ibid.*, 1:29:38-1:29:49). In response, Lee referenced affidavits he saw presented in committee expressing the concerns of citizens from various school districts. These are the FLCA's affidavits cited in the introduction above, and of the twenty nine posted on the FLCA website, seventeen originate in the FLCA and BCCPS's home county: Collier.

Lessons from Collier County

The content of the FLCA affidavits is enough to justify concerns about HB 989. One complainant (Cash 2017) noted the Collier school district's denial of her request "to remove books in the Elementary libraries about Cuba, in which the Communist ideals of Fidel Castro are glorified and students are pictured as being happy and well adjusted individuals." Another complainant (Bolduc 2017) highlighted "a multitude of inaccuracies or misleading content contained within textbooks selected by the District Superintendent and District Staff," including an eighth-grade US History textbook that "teaches the children to



glorify 13th century Muslim Kings of West Africa because they made pilgrimages to Mecca with hundreds of slaves and riches extorted from local merchants.” Still another complainant (Clemons 2017) railed against what she saw as “pro-Marxist/anti-American themes and R-rated literature in K-12 schools.” The Collier affidavits lay bare what the challengers regard as the only educational outcome of encountering controversial ideas in texts: “indoctrination into a particular point of view” (Knox 2017, 14). They also display the great degree to which political and ideological factors motivate the FLCA’s promotion of a wide-open instructional materials law. But the affidavits constitute only one piece of evidence showing the prevalence of this “common sense interpretation of texts” (Knox 2017) and fear of indoctrination among Collier’s censorship advocates. Coupled with the affidavits, other news out of Collier County points to a rough road for intellectual freedom in Florida’s K-12 classrooms and libraries if groups like the FLCA and BCCPS have success populating school boards with likeminded candidates or influencing the development of HB 989’s public hearing processes throughout the state.

Indeed, the FLCA and BCCPS had success in Collier’s 2014 school board election. Although their candidates did not win a board majority, the election saw victories for Erika Donalds and Kelly Lichter. The former is the founding president of Parents ROCK—an ultraconservative and litigious school choice advocacy group—and the spouse of Representative Donalds. The latter is president of the Hillsdale College-affiliated charter school promoted by BCCPS, a school whose founding advisory board includes Erika and Byron Donalds. In the run-up to the election, Erika Donalds and Lichter signed a “Contract with Collier County, Florida Voters,” which was authored by Collier parent Doug Lewis and circulated on the FLCA website (Aronson 2014). A loyalty pledge, the contract signaled the candidates’ shared commitment to seven school district reforms, including the elimination of a district-wide, bring your own device program; a return to math flashcards and phonics education; and the cancellation of the superintendent’s most recent contract extension. Leading the list of reforms, however, was a censorship initiative:

FIRST, authorize the development and implementation of an external audit and review process (that takes into account public input) for all textbooks (including all newly purchased Common Core District textbooks and materials) to eliminate the use of all textbooks and materials that are factually inaccurate or politically indoctrinate our students at the taxpayer’s

expense and amend the FY14-FY16 Collier County Public Schools Strategic Plan to reflect this. (“Contract,” 2014)

Fresh off their successful campaigns, Donalds and Lichter delivered on their promise, opening school board offices over winter break to “a small conservative group of parents, some who belong to a group known as the [Florida] Citizens Alliance” (Buzzacco-Foerster 2015). Erika Donalds advocated getting “many different sides from the community involved in discussing instruction,” but the FLCA endorsed parent Deirdre Clemons as the informal textbook review committee’s coordinator (ibid.). As Cooper and Beman-Cavallaro (2017, 21) note, Clemons, “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.” Weeks earlier, Clemons (“ELA Materials,” 2014) presented her own textbook review to the school board. In it, she complained about the “Over abundance [*sic*] of opinion pieces about ‘victims’ of the American culture” collected in the district’s 11th-grade English textbook. Her accusatory summary of Richard Rodriguez’s “Blaxicans’ and Other Reinvented Americans” reads, “Mexican immigrant as a victim of American culture”; her summary of Upton Sinclair’s *The Jungle* reads, “citizens as victims of big business- food industry. Story seems to promote socialism” (ibid.). In Clemons’s assessment, the Seneca Falls Convention’s “Declaration of Sentiments” is regrettably “about women who feel victimized by the American system,” and she also laments that the textbook’s reading on *Tinker v. Des Moines* is about “Injustices of the Viet Nam era” (ibid.).

Anti-censorship groups in Collier County called foul on Donalds, Lichter, and the FLCA’s unsanctioned textbook review efforts, gathering in droves at a January 2015 school board meeting to share their concerns in over two hours of public testimony (“Group Protests,” 2015). One month later, the board passed Policy 2520 and the issue of who in Collier County may challenge classroom materials, and through what process, seemed to be resolved. But in May and June of 2015, local censorship advocates picked more battles, this time against a summer reading list and school library books. Regarding the former, Collier County Public Schools’ 2015 summer reading resource guide included a link to Goodreads.com’s middle school book list page. As reported in the *Naples Daily News* (“Collier County,” 2015), “One parent, Deirdre Clemons, said . . . that she was shocked to see the inclusion of a book called ‘Beautiful Bastard,’ which uses the



F-word and opens with a scene of a business executive having sex with an intern against a skyscraper window.” The district spokesperson reminded the public about the dynamic nature of Goodreads.com, a social media site that allows users to generate their own reading lists for public viewing. Nevertheless, to accommodate the concerns, the district removed the link within an hour of the complaint. It should be reiterated that Florida’s new law includes reading lists as challengeable instructional materials.

Weeks later, Clemons joined members of the FLCA for a press conference called by parent David Bolduc, who took over for Erika Donalds as president of Parents ROCK after Donalds won her school board seat. A dozen-and-a-half parents, grandparents, and other community members gathered outside the district administration building to question the availability of four books in some Collier County public school libraries: Toni Morrison’s *Beloved* and *The Bluest Eye*, Lois Duncan’s *Killing Mr. Griffin*, and Cristina Garcia’s *Dreaming in Cuban*. Why? According to Bolduc (quoted in “Parents,” 2015), “They have graphic and sexual content, graphic violence, violence with women both physically and verbally, bestiality.” Attempting to implicate Collier’s public school libraries in violating Florida’s prohibition on the distribution of pornography to minors, Bolduc (*ibid.*) went on to assert, “If I were standing across the street and handing out these books to middle school children . . . I’d probably have a big problem.” Bolduc concluded his press conference with a call for the district to involve parents in the process by which media specialists build their schools’ library catalogs.

Bolduc later admitted the motivation for the press conference: the district could blame crowdsourcing for *Beautiful Bastard*’s appearance on the Goodreads.com reading list, but it could only blame itself for providing “sexually explicit books” to public school students in its libraries (Batten 2015). “We just wanted to get out to parents these books are on the shelves,” he told Brent Batten (2015) of the *Naples Daily News*. The effort to inform parents about these books extended to another stunt, when parent Doug Lewis—author of the FLCA “Contract”—took to the podium at the June 9, 2015 school board meeting and asked if he could read an “obscene” passage from *Dreaming in Cuban* (“June 9, 2015,” 2:06:16–2:10:14). After some discussion of board rules and applicable laws, the school district attorney permitted him to proceed. Concluding his speech, Lewis argued, “it is disingenuous to use book banning allegations to promote obscene, pornographic, and non-rigorous materials in our schools” (*ibid.*, 2:10:31–2:10:39). As with Bolduc, who framed his censorship campaign as an effort to stop school libraries from

providing pornography to students, Lewis also attempted to define his agenda not as censorship but as a crusade to end what he saw as Collier County Public Schools’ endorsement of pornography and poor reading materials. A few weeks later, an anonymous Facebook group called Concerned Collier Parents Society (2015), which bears an acronym no doubt coordinated to reflect the school district’s acronym (i.e., CCPS), circulated a cartoon depicting three Collier County school board members handing children the aforementioned library books along with a “sex manual” and issues of *Playboy* magazine.

Anti-censorship advocates saw the school district offer mixed responses to Bolduc’s and Lewis’s choreographed performances. As reported by Maren Williams (2015) of the Comic Book Legal Defense Fund, shortly before the June 9 school board meeting, the district “posted to its website a letter sent by the American Library Association’s Office for Intellectual Freedom in support of keeping the books in school libraries.” The ALA letter, addressed to then-board chair Kathleen Curatolo, argued the high merit of the books in question and urged the school board to preserve students’ rights to access them. During the meeting, however, Erika Donalds asked the district to remove the letter, and with Lichter and Curatolo’s support, the superintendent complied (“June 9, 2015,” 6:08:43–6:10:03 and 6:31:17–6:32:40. *See also* Leonor 2015).

If the removal of the ALA letter wiped out any hope the district stood on the right side of intellectual freedom, then school district attorney Jon Fishbane’s partial validation of that freedom restored this hope somewhat. Speaking at the end of the August 11, 2015 school board meeting, Fishbane offered a concise history lesson on court decisions surrounding issues of classroom and library censorship (e.g., 1982’s *Board of Education v. Pico*, 1988’s *Hazelwood v. Kuhlmeier*, and 1998’s *Monteiro v. The Tempe Union High School District*). The case law led the attorney to argue, “We’re always best not to head down the path of isolating books, or banning them certainly,” and given his analysis of *Dreaming in Cuban*, it became clear what Fishbane saw as the better path (“August 11, 2015,” 5:39:46–5:39:56). Over the summer, he had read the novel in full and found it to be an “extraordinary” book about the Communist revolution’s impact on Cuban families (*ibid.*, 5:35:31–5:35:47).

Fishbane assessed the book to have an educational value that cannot be dismissed because of a passage some parents and community members find inappropriate—a passage, he argued, that serves a purpose in the story Garcia is telling. The better path is for parents and community members to be cognizant of the educational suitability of texts



that sometimes do purposely contain controversial words, ideas, and passages. Fishbane also asserted, “the court sees the library almost as a sacred place for a kid to learn, be left alone, read, and so on” (ibid., 5:37:44-5:37:54) Board member Lichter retorted, “as a parent knowing what’s in our media centers . . . it’s not a sacred place, not for my kids” (ibid., 5:51:31-5:51:36). She invited parents to read passages of objectionable texts at school board meetings, proposing as a litmus test, “if it’s not appropriate for adults here,” it should not be deemed appropriate for children (ibid., 5:51:43-5:51:48). While Fishbane’s testimony and opinions seemed to indicate the district would carry the torch for intellectual freedom and student privacy—indeed, for the “sacred place” of libraries in education—the *Dreaming in Cuban* controversy led Collier schools to an invasive compromise position. The challenged books were not removed from libraries, but as Cooper and Berman-Cavallaro (2017, 21) note, in late 2015 Collier County Public Schools “developed a new web portal allowing parents to view online any materials checked out by the minors in their charge” (See also Barack, 2015). Now, parents can log in to a student record portal to access their children’s library history.

Following the 2014 passage of SB 864 and the election of Erika Donalds and Kelly Lichter to Collier County’s school board, 2015 was an active year for ideologically-motivated censorship efforts in the county. These efforts produced Policy 2520 and opened student library records to parents. But the new policies did not solidify the right for groups like the Florida Citizens’ Alliance, Better Collier County Public Schools, and Parents ROCK to act *in loco parentis* for all Collier public school students. The FLCA had tried to correct this deficiency with 2016’s HB 899/SB 1018, and it succeeded with its 2017 effort.

While ambiguous in some areas, Florida’s new instructional materials law does grant local school boards the final say in retaining or removing challenged classroom and library materials. As with the 2014 election, the FLCA, BCCPS, and Parents ROCK knew they would need a sympathetic majority to be elected to Collier County’s school board in August of 2016 for their censorship efforts to eventually yield results. While the FLCA claims to be non-partisan and resists making political endorsements, BCCPS and Parents ROCK—the FLCA’s ideological affiliates—did not shy away from campaigning for two pro-censorship candidates during the 2016 election. Candidate Lee Dixon, a member of Parents ROCK’s leadership team, signed the FLCA’s “2016 Contract with Collier County, Florida Voters,” which updated the organization’s 2014 reform agenda to account for SB 864:

FIRST, in compliance with SB864 and Section 1003.42, Florida Statutes, the creation of a Board level (in the Sunshine and fully-transparent) committee and review process (that takes into account parent and other public input) of all instructional materials to eliminate use of materials that, at taxpayer expense, politically indoctrinate students or are factually inaccurate and age inappropriate. (“2016 Contract,” 2016)

The other candidate, Louise Penta—who is now a director in the FLCA organization—argued in a public relations piece, “Teaching that surrounds itself with global warming, economic systems and indoctrination to become well rounded, college and career ready students has not materialized [*sic*]” (quoted in Conric PR 2016). When asked about the Sunshine State Young Readers Award Program book list at a school board candidate forum, she replied, “I think the list needs to be thrown out absolutely. I think there’s a lot of things on there that I wouldn’t want my children reading” (“SWFLCA Presents,” 37:54-37:59). Dixon and Penta lost their respective elections to decidedly anti-censorship candidates, and as of this writing Erika Donalds and Kelly Lichter remain the only censorship advocates on the five-member board.

Another reason to suspect an imminent increase in censorship pressures throughout Florida emerged during the summer of 2017, when the FLCA announced it was joining three parents—including Doug Lewis of the *Dreaming in Cuban* controversy—in suing Collier County’s school board over its process for reviewing and adopting a new batch of social studies textbooks. While the lawsuit claimed Sunshine Law and other process violations, the FLCA and others’ public rhetoric on the adopted textbooks and the suit indicated a familiar ideological undercurrent; “Did your School Board approve buying these books?” reads a June 8, 2017 FLCA Facebook post (Florida Citizens’ Alliance 2017), which ends, “Join us in our fight against textbook political bias, religious indoctrination, revisionist history, and pornography.” At a June 1, 2017 special board meeting, parents challenging several of the new social studies books likewise signaled the lawsuit’s ideological motives. David Bolduc of the *Beloved*, *The Bluest Eye*, *Killing Mr. Griffin*, and *Dreaming in Cuban* complaint accused members of the American history textbook selection committee of “Anti-Christian, Anti-White, Anti-American Cultural Marxist Hate Speech” (“June 01, 2017,” 1:31:41). Challenging a proposed high school economics textbook, another parent offered a comment about “the general feeling that a lot of the critics of the book have, which is we have a sense that there is an indoctrination taking place in the classroom not just in Collier County but in all the high schools and government-run



schools in the country” (ibid., 1:41:43-1:41:57). His specific complaint about the book: It doesn’t make an explicit value judgment regarding which type of economy is the best option (ibid., 1:43:29-1:43:58). Finally, as reported in *Time* magazine (Weyrauch 2017), the FLCA recently

urged its 20,000 supporters to become “textbook reviewers” by taking a three-month, mostly online training course run by Truth in Textbooks, a Texas-based conservative group that encourages its volunteers to oppose what it calls a “pro-Islam/anti-Christian” bias in history books. The Truth in Textbooks course doesn’t officially give participants a leg up in textbook objections, but the Florida Citizens’ Alliance hopes the training will add credibility to members’ challenges to school boards this fall.

Conclusion

Training for Truth in Textbooks certification, labeling textbook reviewers as anti-American Marxists, pledging to eliminate “indoctrinating” materials, forcing an anti-privacy policy, tagging noted literary works as pornography—groups and individuals in Collier County, the point of origin for HB 989, have done more than enough to justify concerns about ideologically-motivated censorship. The

genesis of HB 989 likewise validates anxiety about a forthcoming wave of content-banning efforts in Florida leading to an uncertain future for intellectual freedom in K-12 education; for, despite Representative Donalds’ assertion to the contrary, Florida’s new instructional materials law is unambiguously the work of the FLCA and its partner organizations in Collier County. In a July 12, 2017 interview, Donalds claimed “the work product that [the FLCA] provided in the beginning is not what is law today” (“Naples Rep’s,” 15:26-15:30). But as has been demonstrated in this paper, Florida’s HB 989 statutorily formalizes for the FLCA, BCCPS, Parents ROCK, and other censorship advocates the content policing powers they have coveted but have so far been able to mobilize only through informal textbook reviews, press conferences, school board meeting speeches, and newspaper opinion pieces. In October of 2017, the FLCA reported its efforts to pitch a new instructional materials bill to state legislators for the 2018 session. Pleased with the influence they now wield over school districts, they hope to extend this influence to the state-level textbook selection process (“Lee County,” 5:47:45-5:52:12 and “Legislative Delegation,” 50:07-53:02).

[Editor’s Note: For news of specific challenges since the Florida law was passed, see page 66.]

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Public Library Collections in the Balance: Censorship, Inclusivity, and Truth

Author _ Jennifer Downey

Publisher _ Libraries Unlimited, 2017. 203 p. Paper. \$55. ISBN 978-1-4408-4964-0. E-book available

Reviewer _ Amy Leota Shropshire, Graduate of the MLIS program at the University of Alabama

Public Library Collections in the Balance: Censorship, Inclusivity and Truth, by Jennifer Downey, focuses tightly on issues of self-censorship in collection development, as well as community challenges. It features constant reminders of the First Amendment and Library Bill of Rights as guides for appropriate policy and institutional framework, particularly in collection development. The author also presents some unique and multi-faceted challenges and examples of situations of censorship, to aid librarians involved in collection development and policy making.

First, the author gives a detailed account of the history of library censorship. Self-censorship, in the name of good taste and public value, was the traditional role of librarians, but has since become a point of struggle and contention. Librarians are no longer the arbiters of what is considered appropriate material. So-called “bad” fiction such as romance novels and street lit can be gateways to other literature, and some patrons simply prefer this style of literature aesthetically. Public libraries have a responsibility to cater to the entertainment as well as educational needs of their patrons. The strong stance of the American Library Association (ALA) against all forms of censorship often causes contention with the library’s overwhelming need to serve its community when challenges are issued. With self-censorship being the previous norm for libraries, patrons and communities can often misunderstand the library’s current place in the community. The place of the public library in its community is clearly delineated by the First Amendment and Library Bill of Rights. The author offers strong and grounded stances on several controversial points. Rating systems are often used to determine the appropriateness of material for juveniles, as well as juvenile-only cards. However, the ratings systems often used to make determinations are created and maintained by groups with no official legal authority, in often problematic ways. Additionally, the CIPA requirements to filter public computers to receive economic

benefits are optional, but non-compliance is economically untenable for many libraries. Over- and under-blocking have plagued filtration software, and CIPA puts forth few guidelines on what types of material should be blocked by filters.

These policies are a legal and ethical slippery slope, as the Library Bill of Rights clearly opposes any form of censorship and affirm the rights of minors to choose and access materials in conjunction only with parents. The library does not operate *in loco parentis*, or stand as arbiter of juvenile materials. For example, some parents may encourage their children to view educational material on sexual health, whereas other parents may find the material obscene and inappropriate. Only parents and minors themselves may determine what is appropriate for them, and the public library must represent the full spectrum of community needs.

Community assessments and proactive policy creation and maintenance are each given their own chapter. Policies should be multitudinous and clearly written with the ideals of intellectual freedom in mind. Policies should be in place for collection development and how to handle challenges, among other subjects. The text outlines and gives samples for many such policies and handouts. Frequent community conversations on the importance of intellectual freedom and the priorities of the library are also necessary to avoid challenges and gain community support. Community assessments can provide information both on the majority of patrons, as well as snapshots of the needs of minority groups of library users.

The majority of challenges come with multiple reasons, but certain patterns are easy to identify. Librarians should be prepared for challenges on materials featuring sexual health education, those featuring LGBT characters, books with violence and explicit language, and especially materials aimed at children and young adults containing these and other controversial themes. However, librarians



should be careful to avoid self-censorship of such materials, as they are essential to a vibrant collection. Placing materials in a different section, limiting the ability of minors to check out certain materials, and placing other barriers between a patron and any material goes against the grain of inclusive libraries and can be considered forms of censorship.

The author also takes a strong stance on disreputable information. Librarians are not arbiters of information, merely providers. Ahistorical texts, pseudo-science, and disreputable self-help varieties of literature should also be included. As difficult as this is for librarians accustomed to providing the most accurate information available, the principles of inclusivity require that these popular but often inaccurate books be represented so that the readers can judge for themselves their accuracy and merit. This is perhaps the most difficult inclusivity requirement for librarians. The passion for accuracy and repute of sources that pervades the profession makes the acquisition of obviously untrue materials extremely difficult but necessary.

Inclusive collection development also requires proactively seeking out resources, book lists, and collection

development materials that represent the interests of minority groups of the community. Resources for handling collection challenges are provided in the text, with multiple references to the ALA Office for Intellectual Freedom (OIF) and the Freedom to Read Foundation (FTRF). Two appendices are also included to aid in proactively locating LGBT materials and small and alternative presses for a full and varied collection. The constant reiteration of the same standards of intellectual freedom as they apply to every scenario is slightly tedious. However, given the focus of the book, this repetition is instructive rather than arbitrary. It serves to center each issue in terms of the priorities of the Library Bill of Rights and the First Amendment quite clearly in each section. For students intending to work in public libraries and studying intellectual freedom, this is a great textbook. Additionally, for administrators and other librarians involved in collection development and the creation of policy this is an intensely grounding resource. The appendices are especially relevant for the purposes of affirming and proactively inclusive collection development.

Free Speech on Campus

Authors _ Erwin Chemerinsky and Howard Gillman

Publisher _ Yale, 2018. 208p. Paper. \$26.00. ISBN 978-0-300-22656-0

Reviewer _ Rosanne M. Cordell, Northern Illinois University, retired

Free speech on college and university campuses in the United States is a complex topic with competing and conflicting rights, governing body responsibilities, goals, legal precedents, popular views, and purposes. To untangle all of this requires both attention to fine legal points and a broad view of societal needs. Chemerinsky and Gillman have the expertise and experience to bring both these characteristics to bear on discussions of this topic, but they do much more: they outline specific policies that can and should be followed by universities and colleges in seeking to provide the best of higher education. Chemerinsky (*The Conservative Assault on the Constitution, The Case Against the Supreme Court, Closing the Courthouse Door: How Your Constitutional Rights Became Unenforceable*) and Gillman (*American Constitutionalism: Structures of Government, The Votes that Counted: How the Court Decided the 2000 Presidential Election*) have distinguished positions at the University of California, Irvine, School of Law and taught an undergraduate seminar on Free Speech on College Campuses in 2016. Their combined voices bring a clarity and, surprisingly, brevity to this topic that are rare.

Chapter One lists very recent events and court cases related to free speech on campuses, explaining the contradictions and legal problems involved. The tension between providing supportive educational environments for minorities and underrepresented populations and the critical need for free speech in democracies is presented in a compelling and sympathetic manner. The current population of students is not denigrated as overly sensitive or cushioned, but the critical place of First Amendment rights is also clearly demonstrated. The authors believe that the principles of free speech and the associated constitutional rights are at risk, in part, because the Office of Civil Rights (OCR) in the US Department of Education have muddled the issues involved and have initiated investigations when none should have occurred. The authors believe that both inclusive educational environments and defense of free speech are possible if their guidelines are followed.

Chapter Two details the primacy of free speech in constitutional law and provides a brief history of First Amendment rights in the United States. The distinction



between past attempts to censor speech by the government and current calls for censorship by the very student bodies that demanded free speech in the 1960s is explored in ways that will make the Vietnam War era much more real than recitations of dates and events typically do. The Berkeley Free Speech Movement is placed in the legal context that gives it meaning beyond background color; it demanded that university administrators provide two different types of speech zones, an arrangement that has had lasting effects on the free speech rights of post-secondary students.

Chapter Three explores the role of colleges and universities in American society and how it has changed significantly from keepers of known truth to havens of continuous discovery of truth. This essential role is the basis for requiring free speech to thrive on campuses, but it seems little understood by today's students or citizens. Chapter Four delves into the legal definition of hate speech and its status in American law. This critical area of law is relevant to free speech on campuses because it is hate speech that is under attack when calls for censorship of speech are heard on today's campuses. What constitutes hate speech, and what must be tolerated for inquiry to flourish? In many ways, this is the heart of the authors' arguments for greater protection for First Amendment rights on campuses.

Chapter Five outlines clearly what campuses can and cannot do in controlling (and censoring) speech. Given the previous chapters, one should be able to follow this delineation easily, but legal arguments and precedents are complex. This book cries to be used as a textbook in an undergraduate course where students trace these precepts

back to the authors' reasoning in previous chapters, or as a launching pad for graduate student research on any of these distinctions.

Chapter Six draws the necessities of both free speech and inclusive education together to demonstrate how they can and should work in tandem to fulfill the role of American colleges and universities. This, of course, would require a clear understanding by those in the Department of Education's OCR to clarify institutions' responsibilities and OCR's own working model. Dare we hope that the publisher provides OCR with numerous copies?

Although other books on First Amendment rights in academia exist, none is as up-to-date nor as accessibly written as this one. Every academic librarian should have this book as required reading, since we so often find ourselves lonely voices defending First Amendment rights on our campuses. These are not theoretical situations that are presented; the authors' experiences teaching an undergraduate seminar on free speech are echoes of this reviewer's experiences attempting to help our Affirmative Action office navigate the fraught climate on campus after the 2016 presidential election. However, it is never enough for librarians to speak only among themselves; the authors are eminent academic scholars and administrators, and their voices should be heard by all in the American academic community. This reviewer examined an advanced copy of *Free Speech on Campus*, which lacked a planned index. Even without an index, this title would be essential for all academic libraries and should be considered for Big Read or One Book programs.

Creditworthy: A History of Consumer Surveillance and Financial Identity in America

Author _ Josh Lauer

Publisher _ Columbia University Press, 2017. 368 p. including notes and bibliography. Cloth. \$35.00.

ISBN: 978-0231168083. E-book available

Reviewer _ Lisa Glover, MLIS Student, University of Wisconsin-Milwaukee

In September of 2017 Equifax, one of the three major consumer credit reporting agencies in the United States, announced its system security had been breached and confidential consumer information may have fallen into the hands of hackers. Although reports of system intrusions are released almost daily, this breach was of particular significance: sensitive data, including personal, identifying and financial data, was compromised for an estimated 143 million consumers in the United States. Just this

week, Equifax further disclosed another 15 million client records were breached in the United Kingdom. Any consumer who has received credit of any kind is familiar with the big three credit reporting agencies—Equifax, TransUnion, and Experian—as these agencies house the financial identities American consumers. With such vast data stores, credit reporting agencies are prime and potentially profitable targets for hackers. All the information a hacker needs to steal a financial identity of a victim resides



in the agencies' files. Clearly, credit reporting agencies play a critical role in the financial marketplace. How these agencies became the powerful guardians and suppliers of consumer financial information is the topic of Josh Lauer's book, *Creditworthy: A History of Consumer Surveillance and Financial Identity in America*. This is the first book authored by Lauer, who is an associate professor of media studies at the University of New Hampshire with specialties in media history and theory, communication technology, consumer and financial culture, and surveillance. Lauer relates in great detail how we moved from a society of relationships and human interaction to one of faceless data designed to symbolize character and reputation. Lauer's history takes us from a time when Americans desired access to goods and services more than they valued confidentiality, to the financial privacy concerns of these surveillance systems today.

Lauer traces the roots of credit reporting agencies back to 1841, when Lewis Tappan launched the Mercantile Agency, an "organization devoted to compiling detailed information about business owners in every corner of the nation" and the predecessor of today's Dun and Bradstreet. He chronicles the importance of the "three Cs"—character, capacity, and capital—to the earliest credit agencies, providing entertaining excerpts from typical reports, describing subjects as having "a poor reputation as a man, but suppose to have money" and reports that included rumors concerning marital infidelity and gambling habits. Lauer pays considerable attention to the effect credit agencies had on society and how the presence of an agency or rumor of a credit agent visiting an area drove consumers to pay their debts lest their report be deemed derogatory. Lauer meticulously traces the history of the agencies from the beginning in 1841 through the agencies' first attempts at coding information, the development of rating books and ledger systems and the evolution of the "credit man" as a profession. As the introduction of credit files and the telephone made access to information convenient and widespread, he tracks the origins of data mining for marketing purposes using agency records to target sales

promotions. He also explores the roots of what we today term redlining, detailing how an experienced credit man was expected to "possess a complete and accurate mental map of his community to recall blacklisted neighborhoods and sections" along with the racial discrimination that justified low credit ratings based on skin color and nationality. The industry exploded after World War II as the economy boomed. The agencies had vast records that provided not only financial, but other personal information on consumers, and they capitalized on this fact by selling consumer information to third parties. Lauer's details on the information collected and reported by the agencies is mind-boggling, and he provides an excellent history of the race into the computer age, the impact of credit cards, the roots of today's mega-agencies, and the advent of credit scores, such as the Fair Isaacs still in use today.

Lauer hits his stride in the final chapters, which detail the fallout from the public awakening to consumer credit surveillance. The Congressional hearings on the bureaus and their data collection of the mid-1960s, the introduction of the Fair Credit Reporting Act of 1970, and the implications of the Equal Credit Opportunity Act of 1968 are skillfully presented in a way that paves the way to a discussion of credit surveillance in today's digital world. By taking us on a journey through the history of credit surveillance, Lauer drives home the repercussions that are concerning today. With vast amounts of personal data and lax privacy policies, companies are able to classify consumers using algorithms that Lauer says, "threaten to produce—and reproduce—new data-driven classes of socially and economically powerful 'haves' and disempowered 'have-nots.'"

Through his thorough analysis of the history of this industry, the seemingly harmless gathering of detailed consumer financial information throughout the years has led us to a point where our privacy is compromised and our financial identity has been reduced to algorithms and ratings. This book is appropriate for anyone interested in financial privacy, consumer profiling, the history of credit reporting and issues around financial identity.



The Death of Expertise: The Campaign Against Established Knowledge and Why It Matters

Author _ Tom Nichols

Publisher _ Oxford University Press, 2017. 272p. Hardcover \$24.95.

ISBN: 978-0-1904-6941-2. E-book available

Reviewer _ Melodi Pulliam, graduate of the University of Kentucky's School of Library and Information Science Masters program, and currently on the hunt for her permanent library home

When hearing the phrase “The Death of Expertise,” one must consider what type of book they are reading a review about. In this case, we must also look to the subtitle to begin to gain an understanding into Tom Nichols’ current work. His newest book, which details attacks from all sides on established knowledge from experts, professionals, and the entities who take this expertise and use it on a day to day basis, is prescient in the fact that he describes the exact conditions happening in America today. Using only six chapters, Mr. Nichols pulls from his own area of expertise (the Soviet/Russian government and its military) and existing examples that have happened since the beginning of the 20th century (from the Industrial Revolution to the internet) to detail the dearth and lack of education of most of the American people when it comes to what, who, and why the experts are what they are and what they do to help us.

Nichols describes, in intimate detail and blunt phrasing, exactly where the fault lies with our current “*death of expertise*”: you, me, your families, your friends, your doctors, even your government. We are asking experts to take on the monumental task of predicting the future. Nichols details how this lack of understanding by average citizens (who, he rightfully points out, are less civically literate and more inclined to want results now, that are in line with their own views and beliefs, than the last couple of generations), and the fact that we are awash in more information than we can ever hope to process, is also a main contributing factor to the reason why we distrust, dislike, and overall do not like to rely on experts/professionals for any information, let alone the correct information needed to make the decisions that rule our lives (be it simple ones or life/death issues; he expands on this more in the entire book).

Nichols also tries his hardest to make sure that we understand that our own inherent confirmation bias, our tendencies to be in our own information bubble (not reaching out and reading information that does not concur with our own thoughts and beliefs), the internet, and the mass glut of information available to us has also had a lasting (and unknown) impact on America’s public discourse with each other and others. The author uses many examples from his

own life (his incorrect position that the USSR would not fall) to well-known cases where experts have caused real, physical harm (Andrew Wakefield and Linus Pauling) to rightfully point out that even the experts are sometimes wrong and this happens to all of us; we are human beings and make mistakes. Combine this with the fact that the last few generations have shown to be less educated about civics—politics being the cornerstone of Nichols’ argument for why expertise is dying—one must wonder what will happen if expertise is truly dead.

The author dedicates the entire third chapter to his own realm: the academy. He is quick to point out that not many in the world of academe are willing or able to point out that even though college is where we learn valuable critical thinking skills and learn fields of study and the knowledge needed to be contributing members of society, colleges have become like businesses: owning and selling trademarks, huge athletic industries, and embracing the one main tenet of the customer service industry; “the customer is always right.” As Nichols points out, this is hurting the very places that are dedicated to advanced learning and is where we most of our experts have historically come from (distinguishing these experts from laypersons that have what we have known as “common knowledge/sense experts”).

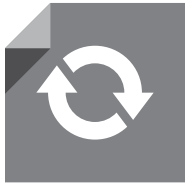
Throughout the entire book, Nichols calmly points out—and dedicates the last chapter to—the fact that even the experts are wrong. This is an important part of his entire thesis and argument into why we are traveling down a dangerous path, when the common person no longer listens to those people upon whom history, religion, and society has bestowed the power to be experts in their fields in the first place. Of course, bringing the information up to the current times, with his examples and complete Chapter 4 dedicated to “*letting me Google that for you*,” Nichols also reminds us in clever and accurate ways that there is no going back, and we must learn that the current path of misinformation, fake media, even the internet itself, is the one most dominating and useful resource that humanity has ever known. It has expanded and benefitted the lives of billions of people around the world, but when everyone can be “an expert” solely based on what they



Google, Nichols states that they have no underlying understanding of what they are reading/learning to combat their non-knowledge of what they are talking about (the Dunning-Kruger Effect, Chapter 2); this means that the less they know, the more they think they know.

All of this has led to what Nichols has stated throughout the book: a lack of knowledge and competence, and apathy

in more people than ever before about our society and its inner workings, has led to an “I don’t care, I can’t change anything” attitude that is slowly eroding our personal, political, and economic norms. While Nichols can’t predict what will happen next, he is hopeful that something good will survive, and in his own words, in closing, “*That, at least, is my expert opinion on the matter. I could be wrong.*”



ALA INTELLECTUAL FREEDOM TO READ FOUNDATION REPORT TO COUNCIL: 2017 ALA ANNUAL MEETING, CHICAGO

The following is the text of the Freedom to Read Foundation's report, delivered by FTRF President Martin Garner June 26 at the ALA Annual Conference in Chicago.

The ALA Intellectual Freedom Committee (IFC) is pleased to present this update of its activities.

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2017 Midwinter Meeting:

The 20th Anniversary of the Internet's "Legal Birth Certificate"

Today, June 26, 2017, marks the twentieth anniversary of one of the signal legal achievements of the Freedom to Read Foundation and the American Library Association: the unanimous Supreme Court decision striking down the Communications Decency Act (CDA). The court's opinion in *Reno v. ACLU* established two principles: first, that speech on the internet is entitled to the highest level of First Amendment protection, identical to the First Amendment protections provided to books and newspapers; and second, that the government could not suppress speech that adults have a constitutional right to receive and speak to one another in order to deny minors access to speech that might possibly be harmful to minors. As Bruce Ennis, the legal counsel for FTRF and the ALA observed, the court's opinion was nothing less than "the legal birth certificate for the internet." The Court's conclusion that "the vast democratic fora of the internet" merits full constitutional protection has meant that libraries can make content available on the internet

knowing that their digital materials enjoy the same constitutional protections that apply to the books on their shelves, and that their patrons have a right to freely and fully access online content.

Current Litigation

It is my distinct pleasure to report that FTRF's litigation efforts have resulted in a series of legal victories that vindicate an array of First Amendment rights, including the right to speak, the right to publish, and the right to receive information.

The first of these victories is the Supreme Court's decision in *Packingham v. North Carolina*, handed down just last week on June 19, 2017. The lawsuit challenged a North Carolina law that makes it a felony for any person on the State's registry of former sex offenders to access a wide array of websites, including Facebook, YouTube, and the *New York Times*, simply because those sites also permit minors under the age of 18 to have accounts on those sites. Under the law, the government need not prove that the accused had contact with, or gathered information about, a minor; the accused can be punished for simply engaging in an activity fully protected by the First Amendment—accessing a website. The plaintiff, Lester Packingham, a registered sex offender, was arrested and convicted for posting on Facebook to thank God for having a traffic ticket dismissed.

Concluding that the statute swept too broadly, FTRF joined over 30 other individuals and civil liberties organizations in filing an *amicus curiae* brief in support of fundamental First Amendment principles. The brief argued that the North Carolina statute violated the First Amendment by severely restricting the right to read and access information that is constitutionally protected.

The Supreme Court agreed. Justice Anthony Kennedy, writing on behalf of a unanimous court, held that "to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights." Expressing concern that the law barred sex offenders from accessing the principal online resources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring human thought and knowledge, Kennedy held that North Carolina's law must be overturned because it stifles "lawful speech as the means to suppress unlawful speech."

A second lawsuit, *Tobinick v. Novella*, also ended successfully this past February. In that case, Tobinick, a dermatologist, sought damages from Dr. Steven Novella, a Yale professor of neurology, after Novella published a blog post criticizing Tobinick's off-label use of a drug to treat Alzheimer's Disease. Tobinick argued that because Novella's blog includes advertising, Novella's blog post is a form of commercial speech subject to federal and state unfair competition claims under the Lanham Act. But if a blog post with advertising is "commercial speech," then every book, newspaper and magazine that contains advertising or is offered for purchase would be subject to a threat of litigation, effectively chilling the commercial publication of both news and opinion.

FTRF joined an *amicus* brief in support of Dr. Novella that argues that the Lanham Act only applies to commercial speech and that Novella's blog post is no more commercial speech than articles in the *New York Times* (which are for-profit but nevertheless not commercial speech). On February 15, 2017, the Eleventh Circuit Court of Appeals ruled in favor of Dr. Novella, holding that Dr.



Novella’s critique was clearly educational discourse on a matter of public concern entitled to the full protection of the First Amendment.

A third victory was achieved in the case of *Noah Gonzalez, et al., v. Diane Douglas, et al.* (formerly *Arce v. Douglas*). The lawsuit, filed by students in the Tucson Unified School District (TUSD) to challenge the constitutionality of the Arizona statute that forced TUSD to cease its Mexican-American Studies program and remove certain books from its classrooms, is back in the trial court after the Ninth Circuit Court of Appeals remanded the case for a new trial on the plaintiffs’ equal protection and First Amendment claims. Earlier this year, the defendant state and its officials asked the trial court to dismiss the students’ First Amendment claim, arguing that because the state’s justification for the statute was to eliminate racism, a legitimate pedagogical objective, the state could require TUSD to halt the program and remove books from the classroom. The students argued that the statute was actually enacted for narrowly political, partisan, and racist reasons, and that the state’s claimed justification was false, and offered to cover up its true motives. Relying on the Supreme Court’s decision in *Board of Education v. Pico*, the court agreed with the students that such pretext can support a First Amendment claim and ruled that the students had the right to have a trial to establish that the Arizona statute was enacted with impermissible motivations. The trial is scheduled to start on June 26, 2017. [For an update, see page 58.]

New Litigation

FTRF has joined an *amicus curiae* brief filed in the case of *Higginbotham v. City of New York*, a lawsuit filed by Doug Higginbotham, a photojournalist who was arrested while shooting

video of a 2011 Occupy demonstration in New York City from his vantage point on top of a phone booth. He was arrested and charged with disorderly conduct, and the charges were later dismissed. Higginbotham subsequently filed his lawsuit, alleging that he was arrested in retaliation for exercising his First Amendment right to record police activity in a public space.

The defendant police officers moved to dismiss Higginbotham’s First Amendment claim, arguing, in part, that Higginbotham’s action of recording their activity was not “expressive conduct.” The trial court disagreed, holding that the First Amendment protects the right to record police officers performing their duties in a public space, subject to reasonable time, place and manner restrictions. Nonetheless, the judge granted the defendants’ motion for summary judgment on other grounds, and dismissed Higginbotham’s claims. Higginbotham has appealed that decision to the Second Circuit Court of Appeals.

The Second Circuit Court of Appeals is the only circuit court of appeals that has not ruled that the public has a First Amendment right to record the actions of police and other government employees when they are at work and in public. FTRF has joined an *amicus curiae* brief written by attorneys for the National Press Photographers Association urging the Second Circuit to expressly recognize that journalists have a First Amendment right to record police activity in public. The brief does not take a position on the facts of the case.

Developing Issues

Members of the Foundation’s Developing Issues committee reported on several important developing issues

that raise significant Constitutional issues for libraries. These include:

- the disappearance of online government information and publications under the new administration;
- the new administration’s repeal of the FCC broadband privacy rules and its effort to repeal net neutrality;
- the privatization of essential government functions;
- “fake news” displacing facts and truthful reporting;
- open carry and guns in libraries;
- efforts in the states to criminalize and punish public protest.

Strategic Planning

Since 2012, the trustees of the Freedom to Read Foundation have engaged in a deliberative process to develop and advance a strategic plan for FTRF that would allow FTRF to achieve its goal of enlarging its role as a national leader in the defense of the freedom to read, speak, and publish. The plan requires the Board of Trustees to evaluate and revise the plan on a periodic basis. During our meeting here in Chicago, the trustees began that process of review and evaluation, examining the plan’s objectives to confirm that they are the goals the Foundation should pursue for the next few years. The trustees plan to complete the review process in Denver during the next ALA Midwinter Meeting.

The Judith F. Krug Memorial Fund

Established by the family, friends, and colleagues of Judith F. Krug, the Judith F. Krug Memorial Fund supports projects and programs that carry on Judith’s mission to educate both librarians and the public about the First Amendment and the importance of defending the right to read and speak freely.



Banned Books Week Grants

On June 20, FTRF announced the recipients of the 2017 Krug Fund Banned Books Week grants, which provide financial support and guidance to libraries, schools, and community organizations planning Banned Books Week celebrations. The seven grantees for 2017 are:

- Tolowa Dee-ni' Nation, Smith River, California
- Rutgers University Libraries, New Brunswick, New Jersey
- Carrol County Library, Huntingdon, Tennessee
- The University of Northern Florida's Thomas G. Carpenter Library, Jacksonville, Florida
- Alhambra Civic Center Library, Alhambra, California.
- Thorntown Public Library, Thorntown, Indiana
- City Lit Theater Company, Chicago, Illinois

Each of the grantees are planning unique observances for Banned Books Week. The proposals include a collaboration with a local school of visual arts that will provide students with an opportunity to explore the ideas of intellectual freedom, censorship and banned books through the creation of original art; a town square event featuring local citizens portraying characters from popular banned books; a Banned Books Story Hour and parade float that will be featured during the community's annual festival; and month-long series of events focused on graphic novel censorship. We look forward to sharing the grantees' photos, videos, and written reports with the FTRF community. To learn more about the grantees and their events, please visit www.ftrf.org/?Krug_BBW.

LIS and Professional Education

I want to recognize and thank Professor Emily Knox of the University of Illinois' School of Information Sciences, who continues to ably teach "Intellectual Freedom and Censorship," under the auspices of the Krug Fund's joint education initiative with the School of Information Sciences. Her online, graduate-level course on intellectual freedom and privacy is highly rated and well-received by her students, and the leadership of the School of Information Sciences is interested in renewing our agreement for another three years. Drawing on Prof. Knox' success, we are now seeking to expand the reach of this initiative to other Library Information Science programs.

Under the auspices of the Krug Fund, FTRF has also co-hosted continuing education webinars for library professionals. Two webinars were presented during the last six months. "Libraries in the Jim Crow South and A Conversation with One of the Tougaloo Nine," with speakers Cheryl Knott, Geraldine Hollis, Michael Crowell and Susan Brown took place on February 23, 2017, and "Do They Still Teach That in School? Ethics in LIS Curricula," with speaker Martin Garnar, was presented on May 25, 2017. These webinars are offered at no charge to members of the Foundation as a perk of FTRF membership.

None of these educational initiatives would have been possible without the dedication of FTRF's education consultant Joyce Hagen-McIntosh. Her thoughtful and caring work in support of FTRF's education programs assures that these intellectual freedom trainings remain available to LIS students and professionals.

2017 Roll of Honor Award Recipients Joan Bertin, Robert Holley and Martha Spear

It is my pleasure and privilege to introduce this year's recipients of the 2016 Freedom to Read Foundation Roll of Honor Award, Joan Bertin, Robert (Bob) Holley, and Martha Spear.

Joan Bertin, who is retiring this year as the executive director of the National Coalition Against Censorship (NCAC), has advocated on behalf of First Amendment rights since 1997. During her tenure at NCAC, she launched the Kids' Right to Read Project (KRRP), which offers support, education, and direct advocacy to people facing book challenges or bans in schools and libraries.

Robert (Bob) Holley is a recently retired professor of library science at Wayne State University and an active leader in the ALA's intellectual freedom community. His spouse, Martha Spear, is also a longtime intellectual freedom fighter, working in the Michigan Association for Media in Education. In their wills, Holley and Spear have designated FTRF as a recipient of a several million-dollar bequest from their estates to support student memberships and FTRF's litigation efforts. Bob is also a newly elected trustee of the FTRF. The foundation deeply appreciates the work Holley and Spear have already accomplished on behalf of intellectual freedom as well as their commitment to the future of the Freedom to Read Foundation.

We are delighted to celebrate their accomplishments and their steadfast devotion to intellectual freedom.

2017 Conable Conference Scholarship

I am also pleased to announce that FTRF has named Kate Davis as the



2017 recipient of the Conable Conference Scholarship. Davis recently received her Master of Library and Information Science from the University of Denver, and received a Master of Education from the University of Florida after completing a Bachelor of Arts in English and History at Rutgers University. She looks forward to working as a solo librarian at a school in Nigeria after teaching in Denver, Colorado and the United Arab Emirates.

The scholarship committee was particularly impressed with Davis' graduate studies and internship work that demonstrated Davis's commitment to intellectual freedom, teaching, and international librarianship and her enthusiasm for advancing key areas of the Foundation's work in advocacy and education.

The Conable Scholarship honors the memory of Gordon Conable, a past president of the Freedom to Read Foundation, an ALA Councilor, and a tireless champion of intellectual freedom. The Conable Scholarship provides financial assistance to a new librarian or library student who shows a particular interest in intellectual freedom and wishes to attend the ALA Annual Conference. Mentoring was an important undertaking for Gordon, and the board is pleased to be able to honor his memory in this way. If you would like to donate to the Conable Scholarship, please contact FTRF at ftrf@ala.org or 800-545-2433 ext. 4226.

FTRF Membership

Membership in the Freedom to Read Foundation is the critical foundation for FTRF's work defending First Amendment freedoms in the library and in the larger world. Your support for intellectual freedom is amplified when you join with FTRF's members to advocate for free expression and

the freedom to read freely. I strongly encourage all ALA Councilors to join me in becoming a personal member of the Freedom to Read Foundation, and ask that you please consider inviting your organization or your institution to join FTRF as an organizational member. Please send a check (\$50+ for personal members, \$100+ for organizations, \$35+ for new professionals, and \$10+ for students) to:

Freedom to Read Foundation
50 E. Huron Street
Chicago, IL 60611

Alternatively, you can join or renew your membership by calling 800-545-2433, ext. 4226, or online at www.ftrf.org.

Respectfully submitted,
Martin Garnar
President, Freedom to Read Foundation

ALA INTELLECTUAL FREEDOM COMMITTEE REPORT TO COUNCIL: 2017 ALA ANNUAL MEETING, CHICAGO

The following is the text of the Intellectual Freedom Committee's report, delivered by IFC Chair Pam Klipsch June 27 at the ALA Annual Conference in Chicago. Appended to the end of this report are two "Interpretations of the Library Bill of Rights" that were proposed by the committee and adopted by the ALA at the Annual Meeting: one on "Politics in American Libraries," [see page 45] and the other on "Equity, Diversity, Inclusion" [see page 45].

The ALA Intellectual Freedom Committee (IFC) is pleased to present this update of its activities.

Information

ONLINE LEARNING

This winter and spring, the Office for Intellectual Freedom partnered with intellectual freedom organizations, offices and committees to offer engaging, monthly webinars. In "Libraries in the Jim Crow South and a Conversation with One of the Tougaloo Nine," sponsored by the Freedom to Read Foundation, one of the Tougaloo Nine students, Geraldine Hollis, discussed her part in the protest that sparked the civil rights movement in Mississippi. She was joined by Chapel Hill Library Director Susan Brown and artist Michael Crowell.

IFC Privacy Subcommittee Chair Michael Robinson, Library Technology Guides Editor Marshall Breeding, and Library Freedom Project Founder Alison Macrina discussed practical tactics libraries can use to install free HTTPS certificates and provide anonymous web browsing in the webinar "Practical Privacy Practices."

In "Do They Still Teach That in School? Ethics in LIS Curricula," Freedom to Read Foundation President Martin Garnar outlined the results of the Committee on Professional Ethics survey about how, and if, intellectual freedom is being discussed in library courses.

JOURNAL OF INTELLECTUAL FREEDOM AND PRIVACY

Publication of the redesigned and repurposed *Journal of Intellectual Freedom and Privacy* continues under the able leadership of editor Michael Zimmer. In addition to the latest censorship news and book reviews, the Winter 2017 issue features Sylvia Turchyn's account of Gordon Conable's steadfast defense of Madonna's *Sex*, when he served as the director of the Monroe County (Michigan) Public Library, and the consequences that followed from his decision to stand up for a



controversial book in accordance with library policy and federal law. A second feature offers original research by L. Bryan Cooper and A.D. Beaman-Cavallaro that analyzes a shifting landscape of intellectual freedom in and outside Florida for children, adolescents, teens, and adults.

Currently in press is a special privacy issue of the *Journal of Intellectual Freedom and Privacy* edited by Michael Zimmer. It will be published in July 2017.

OIF'S 50TH ANNIVERSARY

OIF celebrated its 50th anniversary at the Intellectual Freedom 101 session on Saturday, June 24. The office's mission remains the same since its 1967 founding: defending intellectual freedom in libraries as embodied in the Library Bill of Rights. But its tactics are ever-evolving. The office continues to found new initiatives (Our Voices); inform a diverse range of readers on IF issues with a variety of platforms (*Journal of Intellectual Freedom and Privacy*, Intellectual Freedom News, Intellectual Freedom Blog); collaborate with ALA offices (Advocacy Boot Camps and monthly co-sponsored webinars); and support the Intellectual Freedom Committee in creating library resources.

At the celebratory session, the outgoing Intellectual Freedom Committee Chair Pam Klipsch reviewed committee opportunities, stating that once you're a part of the Intellectual Freedom Committee, "we have you for life." The Intellectual Freedom Committee will be featured in an *American Libraries* piece about the history of OIF.

PRIVACY SUBCOMMITTEE AND CHOOSE PRIVACY WEEK

This year's Choose Privacy Week (May 1-7) featured the theme "Practical Privacy Practices," and focused on

practical, achievable steps libraries can take to protect library users' privacy. The Privacy Subcommittee organized a number of events to observe Choose Privacy Week (CPW) that included an April 13 webinar on encryption, ILS security, and Tor browsers and a week-long series of blog posts on protecting patron privacy.

For this year's observance of the week, the CPW website received a substantial redesign featuring updated graphics. The new graphics are also featured on CPW's Twitter and Facebook accounts, and a new line of buttons and bookmarks are available through the ALA store. The subcommittee also completed a substantial reorganization of the website's content and resources that includes a new weekly privacy news roundup.

At its meeting, the subcommittee agreed to co-sponsor and plan a privacy-themed program for next year's Annual Conference with the Intellectual Freedom Round Table. The subcommittee will also begin work on a series of new library privacy guidelines that will outline steps libraries can take to protect patron privacy when employing mobile applications, assistive technologies, RFIDs, biometrics, and data mining analytics.

Michael Robinson is stepping down as Chair of the Privacy Subcommittee after ably leading the subcommittee over the last three years. We thank him for his dedication, insight, and thoughtful service.

RECOGNITION OF INTELLECTUAL FREEDOM COMMITTEE MEMBERS

IFC Chair Pam Klipsch and members Doug Archer, Danita Barber-Owusu, Mack Freeman and Jean McFarren are concluding their terms on the Intellectual Freedom Committee. We would like to thank Pam Klipsch for championing intellectual freedom through crafting accessible, effective

resources for all librarians and partnering with other divisions and offices to strengthen ties within the intellectual freedom community. We would also like to thank the outgoing Intellectual Freedom Committee members for their dedication, perspectives, and advocacy.

Issues

HATE CRIMES AND CHALLENGES TO LIBRARY MATERIALS

Since offering its updated challenge reporting form, which includes permission to publicly discuss the challenge, the Office for Intellectual Freedom has noted a significant increase in public cases. From March 20-June 1, there have been 68 challenge reports documented in the office database. The office estimates that 82-97 percent of challenges remain unreported.

Since OIF began documenting library hate crime incidents in November 2017, the office has logged 30 reports. The office partnered with the ALA Office for Diversity, Literacy, and Outreach Services to ensure those who request help with these hate crime challenges find the support they need.

All reports submitted to the Office for Intellectual Freedom are kept confidential unless the challenge is reported in the media or if the person reporting the challenge has given permission to share information about the challenge. The following are a few notable cases of public challenges OIF has documented since Jan. 24, 2017.

MATERIAL CHALLENGES

The Charlotte-Mecklenburg Schools (N.C.) system planned to use *Jacob's New Dress* as part of an anti-bullying lesson for first graders during Child Abuse Prevention Month. It was replaced with *Red: A Crayon's Story* because of complaints about LGBT content.



This year Netflix released a TV series based on the 2007 young adult (YA) novel, *Thirteen Reasons Why*. While many schools sent home letters of warning to parents about the TV series, a few schools pulled the book preemptively to avoid any controversy. In Colorado, a school district official ordered librarians to temporarily stop circulating the novel, which some critics say romanticizes suicide. The book has been returned to the library collections after librarians expressed their concern about censorship. In Utah, two superintendents removed the book from the school libraries even though the librarians have shared their district selection policy and reconsideration forms. In Indiana, the book has been retained in the school library following a parental concern in the local newspaper. In February, a high school teacher from Wisconsin reported that teachers are no longer able to teach or recommend books that mention suicide.

A first-year Florida teacher contacted OIF requesting help after a number of parents expressed concern over their children reading Neil Gaiman's *Coraline*, citing the book was too "demonic" and "scary" for seventh graders.

An Arizona school district removed Khaled Hosseini's *The Kite Runner* from the English curriculum. Students were confused when they found out about the book ban, and even more confused when the book was planned to be replaced by another banned and challenged book, *Of Mice and Men*. Since then, the student newspaper that first reported the book's removal has been disbanded. No full novels will be taught in the Advanced English classes; the curriculum will now be wholly dependent on a Houghton Mifflin Harcourt database of literature excerpts.

Sherman Alexie's award-winning novel *The Absolutely True Diary of a Part-Time Indian* has been the subject of two very public challenges in Wisconsin and Minnesota. In Sauk Prairie (Wisconsin), the request to remove the book from the curriculum was initiated by a vocal religious group. While the reconsideration committee and superintendent have formally approved the book, their decision is currently being appealed to the school board. In New London-Spicer School District (Minnesota), the request from parents was to remove the book from the curriculum and replace it with material that "does not contain passages that conflict with the traditional family values held by many in this community." Earlier this month, the school board voted 4 to 2 in favor of allowing *The Absolutely True Diary of a Part-Time Indian* to be used in the curriculum as an option.

A proposed Arkansas bill would have banned all books or articles by Howard Zinn between 1959-2010 from public schools, which would have included the bestseller *A People's History of the United States*. In response, the Zinn Education Project offered to send copies of *A People's History* to Arkansas teachers and received more than 700 requests. The bill was not adopted by the Arkansas legislature.

HATE CRIMES

Twenty-one hate crimes have been reported since our last Report to Council at Midwinter. These reports include defacing *Driving While Black* with handwritten subtitle "in a stolen car" in a Colorado public library; swastikas etched into a table at a Colorado public library; the flushing of two Korans in the toilet at the University of Texas at Dallas; and racist graffiti in the men's bathroom of a New York school library lobby.

DISPLAYS

OIF received many LGBT display challenges, including a display featuring *Two Boys Kissing* in Montana and a patron removing the book *Being Jazz: My Life as a (Transgender) Teen* from a display and hiding it in the stacks of a Michigan public library.

A Connecticut public librarian was told to take down a "#BlackLivesMatter" display sign that was next to a collection of books culled from various Black Lives Matter reading lists.

PROGRAMS

In a Massachusetts public library, a resident complained about the appropriateness of a theatrical program that encouraged children to explore gender stereotypes. The program was developed by QueerSoup Theater. In response to the challenges to library programs that spotlight drag queens, OIF Director James LaRue published a piece on the Intellectual Freedom Blog about the history of drag shows.

County commissioners ordered a Maryland public library to cancel a program called "Straight-Talk Sex Ed for Teens" after receiving complaints from residents. Bianca Palmisano, the scheduled speaker, reported to *The Enterprise*, "I'm no stranger to a little bit of disagreement around sex ed because people have very strong feelings about it. Most of the pushback is in regard to me being a lesbian, and a stranger teaching sex education to kids in the community."

Trends and IFC Response

Several issues are emerging in the IF landscape that will likely spur the development of future interpretations, guidelines, and Q&A documents. Among these issues are the following:

- Speakers invited to universities, schools and public libraries, who are then disinvited after protests



- Self-censorship, both within schools (driven by the still-falling numbers of school librarians) and by public and university administrators intervening in controversial displays
- Public school textbooks and curricular challenges, extending the idea of parental notification (in Virginia) to curricular selection by outside pressure groups (Florida)
- A raft of new issues related to social media: What public comments must be accepted in library Facebook and Twitter feeds? What are the limits of employee free speech on their own Facebook page, or on the library's?
- Increased restrictions on government information, both on government websites (which IFC has addressed in previous Council resolutions) and in the relocation of government deposits to less accessible library spaces
- Legislative trends in the states include efforts to incorporate prayer and religious expression into the curriculum and life of public schools; mandatory filtering initiatives; proposals to suppress public protests; and state privacy legislation. Net Neutrality

Projects

NATIONAL LIBRARY WEEK—TOP TEN CHALLENGED BOOKS OF 2016

Every year during National Library Week, the Office for Intellectual Freedom publishes its list of the Top Ten Most Challenged Books, tabulated from public media articles of challenges and censorship reports submitted through the office's reporting form. The annual list is published in the State of America's Libraries report, along with a shareable infographic.

Out of the 323 challenges reported to OIF—which includes book, filtering, display and speaker challenges—the Top Ten Challenged Books of 2016 are:

1. *This One Summer* written by Mariko Tamaki and illustrated by Jillian Tamaki
2. *Drama* written and illustrated by Raina Telgemeier
3. *George* written by Alex Gino
4. *I Am Jazz* written by Jessica Herthel and Jazz Jennings, and illustrated by Shelagh McNicholas
5. *Two Boys Kissing* written by David Levithan
6. *Looking for Alaska* written by John Green
7. *Big Hard Sex Criminals* written by Matt Fraction and illustrated by Chip Zdarsky
8. *Make Something Up: Stories You Can't Unread* written by Chuck Palahniuk
9. *Little Bill* (series) written by Bill Cosby and illustrated by Varnette P. Honeywood
10. *Eleanor & Park* written by Rainbow Rowell

Five of the ten titles were removed from the location where the challenge took place. On average, OIF finds that 10 percent of challenges result in the removal of the book. Also notably, in the first time in Top Ten history, a book was challenged solely because of its author: Bill Cosby's *Little Bill* series was challenged because of sexual allegations against the author.

During National Library Week, the office also unveiled its 2017 Banned Books Week theme: "Words have power." The goal of this year's Banned Books Week is to reinforce the message of the power of words in banned books, as well as the power of the words of readers who voice their opposition to censorship. Banned Books Week products, such as the Field Report, buttons and totes, are offered on the ALA Store.

OUR VOICES

Our Voices, founded in 2016 by OIF and ALA Office for Diversity, Literacy, and Outreach Services, continues to build a foundation of publishers, authors, and partnerships to bring diverse, quality content to library shelves. The goal of Our Voices is to provide librarians with "diverse content with one click." It will connect libraries with electronic and in-print content from small, independent publisher and authors. The Our Voices Council will use BiblioLabs as the platform to submit, review, and gather metadata on diverse literature. The books will be distributed through Independent Publisher's Group. Our Voices is now recruiting librarians to review small, independent publisher and author content.

INTELLECTUAL FREEDOM ADVOCACY BOOT CAMP

First piloted in the fall of 2016, the Office for Intellectual Freedom and the Office for Library Advocacy continue to offer Intellectual Freedom and Advocacy Boot Camp at pre-conferences around the country in cooperation with library chapters. Four Advocacy Boot Camps have taken place in 2017, and five are slotted for the fall of 2017. Led by OIF Director James LaRue and OLA Director Marci Merola, the training sessions present the four new, key messages of ALA:

1. Libraries transform lives.
2. Libraries transform communities.
3. Librarians are passionate advocates for lifelong learning.
4. Libraries are a smart investment.

Attendees craft the beginning of an advocacy plan and are given practical tips on messaging, networking, community engagement, and



Intellectual Freedom as the core value and brand of librarianship.

NEW IFC CONFERENCE PROGRAMMING WORKING GROUP

The Intellectual Freedom Committee organized a three-person working group that will research and propose program ideas to submit to the 2018 ALA Annual Conference in New Orleans. The committee discussed possible formats for programs and decided to pursue a debate format on a relevant intellectual freedom issue, such as hate speech vs. free speech, and social justice vs. intellectual freedom.

VISUAL AND PERFORMING ARTS

The IFC continues to work on a draft interpretation on Visual and Performing Arts in libraries. It anticipates bringing the final draft before Council at the 2018 Midwinter Meeting.

SELECTION POLICY WORKING GROUP

The working group is very pleased with the progress of the new “Selection & Reconsideration Policy Tool Kit for Public, School, & Academic Libraries” over the last few months. At conference, they met and decided to provide an online version of the toolkit, a PDF version, and the option of purchasing bound copies on demand. A program proposal will be submitted for ALA’s Annual Conference in 2018 that will include a panel of the working group members. The group will provide print copies of the tool kit with a creative, professionally designed cover. The working group has an outside volunteer who will edit the document before final publication.

A TRIBUTE CELEBRATING THE 20TH ANNIVERSARY OF VICTORY IN THE CDA CASE

Twenty-one years ago, the American Library Association and the Freedom

to Read Foundation joined together to file a lawsuit challenging the constitutionality of the Communications Decency Act (CDA). This week marks the 20th anniversary of the Supreme Court’s decision to strike down the CDA as an unconstitutional infringement on the right to read and access the internet. To mark this occasion, the IFC has submitted a Tribute Resolution marking the decision and recognizing Bruce J. Ennis, Jr., our attorney who persuaded the Supreme Court to apply the First Amendment without restriction to the internet. We encourage you to read and share the Tribute Resolution in remembrance of this significant legal victory.

POLITICS IN AMERICAN LIBRARIES: AN INTERPRETATION OF THE LIBRARY BILL OF RIGHTS

The “Politics in American Libraries” interpretation to the Library Bill of Rights touches on balanced collections, designated public spaces and unfettered access to ideas. Drafts and revisions have been distributed to the library community and posted on the Council’s ALA Connect page for feedback. The working group has taken each comment into consideration. [See page 45.]

EQUITY, DIVERSITY, INCLUSION: AN INTERPRETATION OF THE LIBRARY BILL OF RIGHTS

The “Equity, Diversity, Inclusion” interpretation to the Library Bill of Rights reinforces core values that are crucial to the promotion of intellectual freedom; identifies policy approaches that may exclude some community members; and encourages libraries to foster an “inclusive environment where all voices have the opportunity to be heard” by challenging censorship. The document uses the terms “origin,” “age,” “background,” and “views” as defined by the IFC, and

definitions “equity,” “diversity,” and “inclusion,” authored by the Diversity Task Force, as its foundation. Drafts and their revisions have been posted to ALA Connect and distributed to ALA Council for comment. The working group has taken each comment into consideration. [See page 45.]

Action Item

The Intellectual Freedom Committee moves the adoption of the following action items:

- CD # 19.12, “Politics in American Libraries: An Interpretation of the Library Bill of Rights”
- CD # 19.13, “Equity, Diversity, Inclusion: An Interpretation of the Library Bill of Rights”

In closing, the Intellectual Freedom Committee thanks the division and chapter intellectual freedom committees, the Intellectual Freedom Round Table, the unit liaisons, and the OIF staff for their commitment, assistance, and hard work.

Respectfully Submitted,
ALA Intellectual Freedom Committee

- Pam Klipsch (Chair)
- Helen Adams
- Doug Archer
- Danita Barber-Owusu
- Hannah Buckland
- Teresa Doherty
- John Mack Freeman
- Clem Guthro
- Jean McFarren
- Jo Rolfé
- Keila Zayas-Ruiz
- Melissa Butler (intern)
- Johana Orellana (intern)



Politics in American Librarians: An Interpretation of the Library Bill Of Rights

[Presented by the Intellectual Freedom Committee, and adopted by the American Library Association at its 2017 Annual Conference.]

The First Amendment to the United States Constitution states that “Congress shall make no law . . . abridging the freedom of speech, or of the press . . .” The Library Bill of Rights specifically states that “all people” and “all points of view” should be included in library materials and information. There are no limiting qualifiers for viewpoint, origin, or politics. Thus there is no justification for the exclusion of opinions deemed to be unpopular or offensive by some segments of society no matter how vocal or influential their opponents may be at any particular time in any particular place.

Associate Justice William J. Brennan, Jr. observed in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), “[There exists a] profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” Therefore, libraries should collect, maintain, and provide access to as wide a selection of materials, reflecting as wide a diversity of views on political topics as possible, within their budgetary constraints and local community needs. A balanced collection need not and cannot contain an equal number of resources representing every possible viewpoint on every issue. A balanced collection should include the variety of views that surround any given issue.¹

If a library has designated a space for community use, it must make that

space available to all community organizations and groups regardless of their views or affiliations.² Libraries should rely on appropriate time, place, and manner regulations to guarantee equitable access and to avoid misuse of library space. These may include regulations governing the frequency and length of meetings and penalties on disruptive behavior.³ Libraries should establish similar regulations if they make library space available for public exhibits or the public distribution of literature.⁴

The robust exchange of ideas and opinions is fundamental to a healthy democracy. Providing free, unfettered access to those ideas and opinions is an essential characteristic of American libraries. Therefore, libraries should encourage political discourse as part of civic engagement in forums designated for that purpose. Libraries should not ignore or avoid political discourse for fear of causing offense or provoking controversy.

Special limitations may apply to workplace speech (including political advocacy) by library employees.⁵ When libraries are used as polling places, state statute or local ordinance may mandate temporary time, place, and manner restrictions on the political expression of members of the public, poll workers, and library employees while polling places are open.

This interpretation is most clearly applicable to public libraries. School, academic, and private libraries, including those associated with religious institutions, should apply these guidelines as befits or conforms to their institutional mission.

Endorsed by the ACRL Professional Values Committee.

1. “Diversity in Collection Development: An Interpretation of the Library Bill of Rights,” Adopted

July 14, 1982, by the ALA Council; amended January 10, 1990; amended July 2, 2008; amended July 1, 2014.

2. “Meeting Rooms: An Interpretation of the Library Bill of Rights,” Adopted July 2, 1991, by the ALA Council.
3. “Guidelines for the Development of Policies and Procedures Regarding User Behavior and Library Usage,” Adopted January 24, 1993, by the Intellectual Freedom Committee; revised November 17, 2000; revised January 19, 2005.
4. “Exhibit Spaces and Bulletin Boards: An Interpretation of the Library Bill of Rights,” Adopted July 2, 1991, by the ALA Council; amended June 30, 2004.
5. “Questions & Answers on Speech in the Workplace: An Explanatory Statement of the ALA Code of Ethics,” Adopted by the Committee on Professional Ethics, July 2001; amended January 2004; amended June 26, 2006; amended January 24, 2007; amended July 1, 2014.

Equity, Diversity, Inclusion: An Interpretation of the Library Bill of Rights

[Presented by the Intellectual Freedom Committee, and adopted by the American Library Association at its 2017 Annual Conference.]

The American Library Association affirms that equity, diversity, and inclusion are central to the promotion and practice of intellectual freedom. Libraries are essential to democracy and self-government, to personal development and social progress, and to every individual’s inalienable right to life, liberty, and the pursuit of happiness. To that end, libraries and library workers should embrace equity,



diversity, and inclusion in everything that they do.

“Equity” takes difference into account to ensure a fair process and, ultimately, a fair outcome. Equity recognizes that some groups were (and are) disadvantaged in accessing educational and employment opportunities and are, therefore, underrepresented or marginalized in many organizations and institutions. Equity, therefore, means increasing diversity by ameliorating conditions of disadvantaged groups.

“Diversity” can be defined as the sum of the ways that people are both alike and different. When we recognize, value, and embrace diversity, we are recognizing, valuing, and embracing the uniqueness of each individual.

“Inclusion” means an environment in which all individuals are treated fairly and respectfully; are valued for their distinctive skills, experiences, and perspectives; have equal access to resources and opportunities; and can contribute fully to the organization’s success.

To ensure that every individual will feel truly welcomed and included, library staff and administrators should reflect the origins, age, background, and views of their community. Governing bodies should also reflect the community. Library spaces, programs, and collections should accommodate the needs of every user.

I. Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, age, background, or views of those contributing to their creation.

Library collections, in a variety of material formats, should include a full range of viewpoints and experiences,

servicing the needs of all members of the community. Historically, diverse authors and viewpoints have not been equitably represented in the output of many mainstream publishers and other producers. It may require extra effort to locate, review, and acquire those materials. Therefore, libraries should seek out alternative, small press, independent, and self-published content in a variety of formats. Libraries may benefit from cooperative arrangements and other partnerships to share in the work of locating and acquiring diverse materials. Interlibrary loan may complement but not substitute for the development of diverse local collections.

All materials, including databases and other electronic content, should be made accessible for people who use adaptive or assistive technology. To provide equitable and inclusive access, libraries must work closely with diverse communities to understand their needs and aspirations, so that the library can respond appropriately with collections and services to meet those needs. All community members will feel truly welcomed and included when they see themselves reflected in collections that speak to their cultures and life experiences.

II. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.

Beyond merely avoiding the exclusion of materials representing unorthodox or unpopular ideas, libraries should proactively seek to include an abundance of resources and programming representing the greatest possible diversity of genres, ideas, and expressions. A full commitment to equity, diversity, and inclusion requires that

library collections and programming reflect the broad range of viewpoints and cultures that exist in our world. Socially excluded, marginalized, and underrepresented people, not just the mainstream majority, should be able to see themselves reflected in the resources and programs that libraries offer.¹

III. Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.

By challenging censorship, libraries foster an inclusive environment where all voices have the opportunity to be heard. Inclusive materials, programs, and services may not be universally popular, but it is the library’s responsibility to provide access to all points of view, not just prevailing opinions. Libraries should prepare themselves to deal with challenges by adopting appropriate policies and procedures. Libraries should respectfully consider community objections and complaints, but should not allow controversy alone to dictate policy. Governing bodies, administrators, and library workers must discourage self-censorship. Fears and biases may suppress diverse voices in collections, programming, and all aspects of library services.² Libraries should counter censorship by practicing inclusion.

IV. Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.

American society has always encompassed people of diverse origin, age, background, and views. The constitutional principles of free expression and free access to ideas recognize and affirm this diversity. Any attempt to limit free expression or restrict access



to ideas threatens the core American values of equity, diversity, and inclusion.

Libraries should establish and maintain strong ties to organizations that advocate for the rights of socially excluded, marginalized, and underrepresented people. Libraries should act in solidarity with all groups or individuals resisting attempts to abridge the rights of free expression and free access to ideas.

V. A person’s right to use a library should not be denied or abridged because of origin, age, background, or views.

In the Library Bill of Rights and all of its Interpretations and supporting documents, the principle of inclusion is clear and unambiguous.

“Origin” encompasses all of the characteristics of individuals that are inherent in the circumstances of their birth.

“Age” encompasses all of the characteristics of individuals that are inherent in their levels of development and maturity.

“Background” encompasses all of the characteristics of individuals that are a result of their life experiences.

“Views” encompass all of the opinions and beliefs held and expressed by individuals.

Libraries should regularly review their policies with the goal of advancing equity of access to the library’s collections and services. Identification requirements, overdue charges and fees, or deposits for service are examples of traditional approaches that may exclude some members of the community.³

VI. Libraries which make exhibit spaces and meeting rooms available to the public they serve should make such facilities available on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use.

Libraries should not merely be neutral places for people to share information, but should actively encourage socially excluded, marginalized, and underrepresented people to fully participate in community debates and discussions.

Libraries should welcome diverse content in their exhibit spaces and diverse ideas, individuals, and groups in their meeting rooms, even if some

members of the community may object or be offended.⁴

Conclusion

To uphold the Library Bill of Rights and serve the entire community, governing bodies, administrators, and library workers should embrace equity, diversity, and inclusion.

1. “Library-Initiated Programs as a Resource: An Interpretation of the Library Bill of Rights,” Adopted January 27, 1982, by the ALA Council; amended June 26, 1990; July 12, 2000
2. “Diversity in Collection Development: An Interpretation of the Library Bill of Rights,” Adopted July 14, 1982, by the ALA Council; amended January 10, 1990; July 2, 2008; July 1, 2014
3. “Economic Barriers to Information Access: An Interpretation to the Library Bill of Rights,” Adopted June 30, 1993, by the ALA Council
4. “Meeting Rooms: An Interpretation of the Library Bill of Rights,” Adopted July 2, 1991, by the ALA Council



BOOKS

The creator of Pepe the Frog—a cartoon character hijacked as a mascot by white nationalists—has successfully forced the withdrawal of an alt-right children’s book that depicted Pepe as an Islamophobe.

Lawyers acting for Matt Furie, creator of the character, reached a settlement with Eric Hauser, author of *The Adventures of Pepe and Pede*, barring further sales of the book and compelling Hauser to donate all profits from the title to the Council on American-Islamic Relations (CAIR), an advocacy group for American Muslims, reported Motherboard.

Furie’s lawyers, from the firm Wilmer Cutler Pickering Hale and Dorr LLP, contacted Hauser after the controversial book made headlines.

In the book the Pepe character, echoing President Trump’s rhetoric, sets out to make his farm “great again,” and battles a bearded alligator villain called Alkah, regarded as a reference to Allah, the Muslim name for God.

Lawyer Louis Tompros told Motherboard that Hauser admitted copyright infringement.

“There’s no question it was copyright infringement. [We] were able to negotiate [settlement] over the course of just a few days.” He added that the book’s \$1,521.54 profits will be handed over to the CAIR.

“Furie wants one thing to be clear: Pepe the Frog does not belong to the alt-right,” read a statement by Wilmer Cutler Pickering Hale and Dorr LLP. “As this action shows, Furie will aggressively enforce his intellectual property, using legal action if necessary, to end the misappropriation of Pepe the Frog in any way that espouses racism, white supremacy, Islamophobia, anti-Semitism, Nazism, or any other form of hate.”

Hauser told the *Dallas News* that he knew that Pepe was a common conservative meme, but claimed he was ignorant of its use by white supremacists. He said that he wrote the book because there was a lack of children’s stories told from a conservative viewpoint, and he hoped to promote national unity and patriotism with the story. The book’s Ukrainian illustrator Nina Khalova also told the publication she was not aware of the racist use of the character. Reported in newsweek.com, August 29.

SCHOOLS Chandler, Arizona

In two separate incidents this school year, parents objected when schools within the Chandler Unified School District (CUSD) taught lessons using media that used the N-word.

In September, parent Amber Hutchinson, whose child attends Santan Junior High School, said the school was wrong to show junior high students *A Race to Freedom*, a movie about slavery and the Underground Railroad. She complained that the N-word used throughout the movie made her child uncomfortable and physically upset. She called on the school to “retire this outdated, culturally insensitive” film, which was released in 1994.

A representative of the school district said the film has been shown in the district for years and does not use the racial slur. Many characters in the film pronounce it “niggra.”

But Hutchinson disagreed with this defense of the film. “I don’t care how you say it. That word hurts. You’re referring to an African-American person in a very demeaning and disrespectful manner,” she told Republic Media (publisher of azcentral.com and *The Arizona Republic*).

Hutchinson raised the issue in a Facebook post, and later spoke at a

school board meeting on September 13. At that meeting, she was joined by several members of the Chandler-based Black Mothers Forum.

After the meeting, Robert Rice, president of the school district’s governing board, told *The Arizona Republic* that public reviews take place whenever new material is introduced, but that not every movie is accounted for. “We just always need to be sensitive to other cultures, races,” he said. “I have blind sides. We all do. I think that’s when we can have other groups help us understand where we’re missing those sensitivities.”

Just over a month later, another lesson involving the N-word upset at least two parents at a different CUSD school. A lesson tied to Mark Twain’s classic *Huckleberry Finn* (but not the book itself) was challenged at Hamilton High School. Twain’s book uses the N-word more than 200 times, but the parents were upset by a lesson taught before students began reading the book. To prepare the class to discuss Twain’s historically accurate dialogue, the teacher shared an article that quotes Arizona State University Professor Neil Lester, who teaches a class on the word.

Ernest Russell, who has a son at Hamilton High School, called the lesson “just totally inappropriate for a 13-14-year-old audience.” He especially took issue with what the lesson said about a new version the word that did not exist in Twain’s era. “The most shocking part of the assignment was the concept that the term ‘nigga’ means friend,” he said.

Another Hamilton parent, Khadijah Abdul-Ghane, said: “The most shocking part for me was the fact it was even brought up in the classroom without our knowledge.”

Terry Locke, a spokesperson for CUSD, told KPNX-TV (Phoenix channel 12) that the assignment is



not part of its mandatory curriculum, but it is part of a “curriculum used by high schools all over the state and country, not just Hamilton.”

CUSD statistics show that approximately 5 percent of the Chandler school district’s students are African-American. Reported in: *azcentral.com*, September 14; *12news.com*, October 17.

Scottsdale, Arizona

Middle schools in the Scottsdale Unified School District (SUSD) have pulled *18r, g8r* by Lauren Myracle from library shelves. The book, in which three girls send text messages to each other, was challenged by the mother of an 11-year-old girl who is a student at Mohave Middle School.

“The explicit sexual content in it and detail in it, it’s pornographic basically,” said the mother, who is identified in reports only as Elle. “It really is the things they talk about. I was angry. I was like, ‘you’re kidding me.’ This is what they’re exposing our kids to, and you think the library is going to be a safe place for your child to go check out a book.” The mother objected to text messages in the book that suggest ways to use social media to get more sexual partners, when to use and not use contraceptives, and other sexually explicit matters.

Elle said the school principal apologized to the parents. Erin Helm, SUSD’s public information and marketing officer, sent an e-mail to the Fox-TV channel 10 Phoenix newsroom, saying the book has been pulled from the library. If the book is found in any other SUSD middle school libraries, Helm’s e-mail said, it will be pulled from those libraries as well. Reported in: *fox10phoenix.com*, September 27.

Cross City, Florida

At Dixie County High School, first a parent complained about students reading *A Lesson Before Dying* by Ernest Gaines, because the book contains sexual references. Then the student of the parent who complained was given a substitute book, and a committee of educational leaders met to discuss whether the book should be removed from the curriculum. But classes had moved past the reference in the book, and the committee decided not to remove the book, saying doing so would give more attention to the questionable material, according to Lindsey Whittington, media specialist at the school.

Then, on September 8, Dixie District Schools Superintendent Mike Thomas issued a directive banning instructional materials that contain “profanity, cursing or inappropriate subject matter.”

In an interview, Thomas didn’t know how the ban would affect Dixie schools’ curricula. He said a committee will be formed to review instructional materials, but he didn’t know when the committee would be formed or who would be on it.

He also said he doesn’t know what will happen to the current school district policies that call for public hearings to discuss challenged books and give teachers the right to present controversial materials if they are related to the subjects being taught. Reported in: *Gainseville Sun*, October 31.

Pinellas County, Florida

Is a book about racism that includes the N-word appropriate for fifth graders? A Pinellas County mother says it’s not, but district leaders have approved the book.

Entitled *The Liberation of Gabriel King*, the book is described by its author, K.L. Going, as a fictional story about courage in 1976. One of the

characters in it is an African American girl facing her fear of the KKK, according to the author’s website.

That’s the book that 10-year-old Cerenity Whiting said her teacher read out loud to her fifth grade class on August 24. In the book there’s a line that reads, “You got beat up by an N-word girl?”

Like many who confront the legacy of white supremacy and racism in America, Whiting was unsettled by the derogatory word. And after her mother found out what happened, she called for the book to be removed from classrooms.

The National Coalition Against Censorship questioned such censorship, asking, “But can the implications of the KKK’s hateful views be accurately taught without first acknowledging that such views exist? Can derogatory words have educational value?”

Cerenity said she was shocked when she heard the word read out loud by her teacher, and was saddened by her classmates’ response. “They started laughing and then I said that wasn’t funny. And he didn’t do anything. He just kept on reading while they were laughing,” she said. “It made me feel like the word wasn’t right, and I got uncomfortable.”

She said out of all the children in her class there are only three African American children, including herself.

Her mother, Marquita Oseji, says she found out about the book when Cerenity said she didn’t want to go to school because of it.

“I’m upset. I’m upset that the school board would allow this because there’s many ways that you can teach a child about bullies and different situations without using derogatory words,” she said. “This word is a useless word and I feel like they can get their point across without using this word.”



Oseji said she asked the principal why she wasn't alerted about the content of the book.

"She told me that it was supposed to be a shared learning time. They were supposed to send home the letters that never went out and that the teacher stated that they weren't aware of it. She did tell me she was going to pull the book from the classrooms and the teachers, however, I spoke to my daughter after school and the books were still in the book cases when she left after school," Oseji said.

Despite *Gabriel King's* use of the N-word, the Pinellas County School District found educational value in the book, which *The Kirkus Review* praises as a tale in which "friends and their community come together to stand up against the evil within."

The Pinellas County School District released this statement: "*The Liberation of Gabriel King* is an approved text for fifth grade. Pinellas County Schools are reviewing whether policies related to sensitive materials were followed. The principal has spoken with the parent and the matter is being addressed." Reported in: baynews9.com, August 26; nca.org, September 8.

Fishers, Indiana

A same-sex gang rape scene in *The Kite Runner* by Khaled Hosseini has drawn the ire of a parent at Fishers High School. The parent is also a school board member at the Hamilton Southeastern School District, which includes Fishers, in suburban Indianapolis.

Board member Amanda Shera said the novel was a summer reading assignment for her daughter's AP Literature and Composition class. Shera said she was shocked by a "graphic" question her daughter asked after reading the book. Along with the rape scene, Shera said she is concerned about the

lying and distrust of adults she found in the book.

Hamilton Southeastern's director of secondary education, Phil Lederach, said the "beautifully told" story has "much to offer," including essential literary devices, for students in the college-level course. "The theme of redemption . . . fits nicely with the other works used throughout the school year," Lederach said in an email. "Instructors have found *The Kite Runner* to be very accessible to students, to deepen their understanding of the impact of historical context on literature, and has led to excellent classroom discussions."

He pointed out *The Kite Runner* received critical acclaim by both the Young Adult Library Services Association and the American Library Association.

The Kite Runner is the story of the unlikely friendship between a wealthy boy and the son of his father's servant, according to author Khaled Hosseini's website. Set in Afghanistan, a country that is in the process of being destroyed, the story is about "the power of reading, the price of betrayal and the possibility of redemption."

In a letter addressed to parents at the end of the school year, teachers said they would provide a "comparable alternative" if parents or students prefer.

But Shera is worried students wouldn't pick the alternative, in order to fit in. "The kids are ashamed that pick the alternate book," she said. "They're the ones that have the moms that are the prudes."

She also pointed out that *The Kite Runner* is not included in an overview of the course provided by College Board, the national organization that oversees AP coursework. The College Board website provides a 2014 course description that does not list Hosseini under "representative authors."

Spokeswoman Marie Alcon-Heroux said the College Board does not give schools a reading list. Authors are suggested, to show the "range and quality of reading expected," she said, but teachers choose which books to study. *The Kite Runner* was listed in 2016 as a text that could be used to respond to an open-ended essay question on the AP test, she said.

Shera wants the book removed from the reading list, but said she did not receive a response from Fishers High School's English department, which she contacted because district policy prohibits board members from contacting teachers directly.

She brought up the issue during a board meeting on August 9, as part of the discussion about the policy for selecting curriculum.

When asked if the district will make changes after Shera's comments, Lederach said the high school has not received a request to reconsider the use of the book.

"The goal of AP Literature and Composition is for students to read carefully, write thoughtfully and think deeply," Lederach said, pointing out the novel has been used on previous tests. "The literary elements of this novel fit well with many of the open-ended questions on the exam."

Teachers will review the course this year, he said, as they do every year following requirements from the College Board. Reported in: indystar.com, August 17.

Baltimore, Maryland

A memoir about a teenager who transformed his life and transcended inner-city obstacles has been removed from a Baltimore City high school, even though the author said he wrote the book years ago with the kids of Baltimore City in mind. After many parents objected to a racy chapter, *Buck* by M.K. Asante was stripped



from the lesson plans at Digital Harbor High School.

A parent posted excerpts on Facebook and hundreds responded, calling the content “extremely graphic,” and “very disturbing.” One parent said “there is no reason any child should be reading stuff like that.” The few pages are riddled with profanity. They describe things in graphic detail, like women stripping, drinking, even participating in sex games for cash.

Asante, who is a Morgan State professor, said his book shouldn’t be judged by just a few pages. He said teachers across the city have been teaching with the text for years. “I think in the context of a classroom, with these brilliant educators we have in Baltimore City who are using this material as springboards to talk about misogyny, objectification, violence in our communities,” he said. “Let’s use this as a springboard! That’s what literature does.”

Parents got a call that the book was being pulled from the classroom. Baltimore City Schools released the following statement: “*Buck* is not part of the approved curriculum, and it will be replaced with a different, approved text for subsequent lessons at Digital Harbor High School. Administrators at the school have met with the teaching staff to reinforce requirements around use of approved resources.”

Baltimore City Schools said the district provides a list of approved books for teachers to implement into their English classes.

Asante said he has held at least 75 events where he talked about the book’s content with city students, and he hopes parents concerned with the content will give it a read. Reported in: baltimore.cbslocal.com, November 30.

Biloxi, Mississippi

Biloxi school administrators pulled Harper Lee’s classic novel *To Kill a Mockingbird* from the eighth grade English curriculum after receiving complaints about the book’s language. Kenny Holloway, vice president of the Biloxi School Board said, “There were complaints about it. There is some language in the book that makes people uncomfortable, and we can teach the same lesson with other books. It’s still in our library. But they’re going to use another book in the 8th grade course.”

The school board’s decision came to light after the *Biloxi Sun Herald* investigated an email it received from a concerned reader who alleged that students would not be allowed to finish the reading of *To Kill A Mockingbird* due to the use of the N-word.

After the newspaper raised questions about whether the school board had followed its own reconsideration policy in removing the book, the Biloxi School Board held a meeting on October 17 to discuss the book’s removal. During the meeting, Yolanda Williams and her mother, Jessica Williams, told the Biloxi School Board that it wasn’t just *To Kill A Mockingbird* that was offensive about the curriculum for the eighth grade but other things, including the study of ammunition used in the Civil War. The two women said they complained to the school after Yolanda’s child was assigned to read *To Kill a Mockingbird* and students were saying the N-word and laughing in the classroom, and it was offensive.

The news report sparked a national outcry against the removal of the book, and the Biloxi School District became the focus of commentaries published by several national news outlets and anti-censorship organizations defending *To Kill A Mockingbird* and supporting use of the book in the

curriculum. The school board received letters from across the country, including one from an 11th-grade Advanced Placement language class in Tenafly, New Jersey, that urged Biloxi to continue teaching the book and one from the director of the Mark Twain House & Museum in Hartford, Connecticut.

Administrators subsequently restored *To Kill A Mockingbird* to its eighth-grade classrooms on October 23 as an optional assignment. In a letter sent home to eighth-grade parents, Principal Scott Powell said “As has been stated before, *To Kill A Mockingbird* is not a required read for 8th Grade ELA (English Language Arts) students. However, 8th Grade ELA teachers will offer the opportunity for interested students to participate in an in-depth book study of the novel during regularly scheduled classes as well as the optional after school sessions.” Students wanting to read and study the book were required to return a permission slip signed by a parent to their school and their English Language Arts teacher. Students who did not want to read *To Kill A Mockingbird* were given another assignment. Reported in: *Biloxi Sun-Herald*, October 12; October 17; and October 25.

Asheville, North Carolina

North Buncombe High School removed *The Bluest Eye* by Toni Morrison from the curriculum, after a parent objected to sexually explicit scenes in the best-selling book. The novel’s main character survives child abuse by her father.

“It’s astounding really that somebody thinks it’s OK for kids to be reading this in school,” Tim Coley, a North Buncombe parent, told WLOS-TV channel 13 news. “As a Christian single dad, that’s not the values I teach my kids, and it’s



certainly not OK for them to have to read a book like that.”

In accordance with established policy at Buncombe County Schools, the entire book (not just certain passages) was referred to the school’s Media & Technology Advisory Committee. According to the school board’s online monthly “Board Briefing,” report, “The decision and subsequent recommendation from the committee was that *The Bluest Eye* will no longer be used as an instructional material for 11th grade English courses at any academic achievement level—Standard, Honors, or Advanced Placement; however, the committee provided a non-binding opinion that the book could be considered for use as an instructional resource for 12th grade Advanced Placement, as deemed appropriate by that particular teacher.”

Dr. Tony Baldwin, superintendent of the school board, said the policy for reviewing book challenges is a valuable process “to provide the student and/or parent an opportunity to either opt for a substitute resource or express an objection to the initial selection.” Reported in: wlos.com, September 21; buncombeschools.org, October 5.

Blum, Texas

Malcolm X: By Any Means Necessary by Walter Dean Myers was challenged at Blum Middle School, part of the Blum Independent School District. Because of complaints that the book is offensive to religious sensitivities, and politically, racially, or socially offensive, an alternative book was assigned. This was one of eighteen book challenges in Texas schools during the 2016-17 school year that were uncovered in an annual survey conducted by the Texas chapter of the American Civil Liberties Union. The ACLU Texas chapter said 44 percent of Texas schools responded to this year’s

request for information about banned and challenged books. Reported in: aclutx.org, September 27.

Franklin, Texas

Drama by Raina Telgemeier was banned at Franklin Middle School, part of the Franklin Independent School District. This was the only book (out of eighteen reported book challenges) to be banned in more than one school district in Texas schools during the 2016-17 school year, according to an annual survey conducted by the Texas chapter of the American Civil Liberties Union. At Franklin Middle School, *Drama* was cited as “inappropriate for all ages on this campus.” A major issue with the book was an illustration that shows two boys kissing.

Also at Franklin Middle School, *True Colors*, a series of books by Melody Carlson, was challenged for depicting “inappropriate situations for age” of the students reading the books. The series was retained, but restricted for certain age groups.

At the same school, *Maximum Ride Manga Series* by James Patterson was challenged for “inappropriate language” for the age group. The series was restricted to certain age groups. Reported in: aclutx.org, September 27.

Georgetown, Texas

The Stranger by Albert Camus was challenged but retained at Gateway College Preparatory School, part of the Orenda Charter Schools network in central Texas. The novel was challenged at the K-12 school because of its violence or horror, and for being “offensive to religious sensibilities.” This was one of eighteen book challenges in Texas schools during the 2016-17 school year that were uncovered in an annual survey conducted by the Texas chapter of the American

Civil Liberties Union. Reported in: aclutx.org, September 27.

Houston, Texas

Black Butler, vols. 5 and 6 by Yana Toboso was challenged but retained at Harmony School of Advancement, which is a public charter school for grades 9-12, affiliated with the statewide Harmony charter network. The two books in the manga series were cited as offensive to religious sensitivities and for including witchcraft, satanic, and occult themes. This was one of eighteen book challenges in Texas schools during the 2016-17 school year that were uncovered in an annual survey conducted by the Texas chapter of the American Civil Liberties Union. Reported in: aclutx.org, September 27.

Irving, Texas

Two books were challenged at Uplift North Hills Preparatory, a K-12 charter school that is part of the Uplift Charter Schools network in Texas: *Like Water for Chocolate* by Laura Esquivel, and *The Bluest Eye* by Toni Morrison. These were among eighteen book challenges in Texas schools during the 2016-17 school year that were uncovered in an annual survey conducted by the Texas chapter of the American Civil Liberties Union.

After the challenges, *The Bluest Eye* was retained, and excerpts from *Like Water for Chocolate* are still used in an 11th-12th grade Spanish International Baccalaureate class.

The survey respondent did not tell the ACLU what was the reason for the challenge to *The Bluest Eye*, but the title frequently appears on the American Library Association’s lists of challenged books. Most of the challenges to Toni Morrison’s coming-of-age story cite the book’s sexual content and language.



Like Water for Chocolate was challenged at Uplift North Hills on the grounds that the text was too complex for the grade level assigned. Reported in: aclutx.org, September 27.

Katy, Texas

After a controversial decision to pull *The Hate U Give* by Angie Thomas off the shelves at schools in the Katy Independent School District, the critically acclaimed novel about a black teen dealing with the aftermath of witnessing a police shooting that killed her unarmed friend was returned to the district's high school libraries on February 6.

"The book is back on shelves at all of our high schools, but it includes a parental consent—that can be given by a phone call, email or an in person consent by the parent," said Maria DiPetta, manager of media relations for Katy ISD.

The book's ultimate fate in the district is pending a committee review of the original challenge.

The Hate U Give, Thomas' debut novel, is the *Boston Globe-Horn Book Award* winner for fiction and a National Book Award Longlist and Morris Award Finalist title.

After a parent complained about the book to the board of education in November, members of the board and superintendent Dr. Lance Hindt read the book, according to DiPetta. Hindt then made the decision to pull the book "because of the pervasive vulgarity," DiPetta said.

Despite local district policy that requires a committee review before removing challenged material, Hindt had legal authority to make the decision and override that local policy, according to DiPetta. The ALA's Office of Intellectual Freedom and others have argued that is not true.

For their part, the Katy ISD administration said it is not true that the

book was banned, as media reports and social media posts indicated.

"It was just temporarily removed, it was not ever, ever banned," said DiPetta, noting that students were free to bring the book to school or use it for reports or homework.

The book's return might only be temporary, as well. It is back with parental consent pending the committee review to the original challenge. The committee, which can include librarians and teachers, has not yet been finalized. The process can take from a couple of days to months, according to DiPetta.

People in the book community didn't wait for the district to correct the issue, instead quickly working through social media and connections to get the book to kids in Katy as quickly as possible. Stackedbooks.org sent out the call for donations of the book and people to deliver it to Little Free Libraries in the area. Reported in: *School Library Journal*, February 6.

Kirbyville, Texas

Drama by Raina Telgemeier was banned at Kirbyville Junior High School in the Kirbyville Consolidated Independent School District. The reason given is that the book was deemed "politically, racially, or socially offensive." This was one of eighteen book challenges (and the only book that was banned in two different school districts) in Texas schools during the 2016-17 school year, according to an annual survey conducted by the Texas chapter of the American Civil Liberties Union. The book has been frequently challenged across the nation. A major issue with the book is an illustration that shows two boys kissing. Reported in: aclutx.org, September 27.

Lake Travis, Texas

George Orell's novel *1984* was challenged at Lake Travis Middle School

because some parents felt the book was not age-appropriate. The Lake Travis Independent School District (LTISD) removed the classic novel from a required reading list, and allowed students to read an alternate book instead. This was one of eighteen book challenges in Texas schools during the 2016-17 school year that were uncovered in an annual survey conducted by the Texas chapter of the American Civil Liberties Union.

In another LTISD school, *More Scary Stories to Tell in the Dark* by Alvin Schwartz was removed (at least temporarily) from the library at Lake Travis Elementary School. A final decision on the book was still pending at the time of the Texas ACLU survey. The book was challenged because of its "violence or horror." Reported in: aclutx.org, September 27.

Leander, Texas

Boxers by Tammy Gagne was challenged but retained at the Camacho Elementary School, part of the Leander School District (LSD). The complaint against the book about the boxer breed of dogs was that its depiction of bull-baiting, bull-docking, and bull-cropping was not appropriate for elementary school. This was one of eighteen book challenges in Texas schools during the 2016-17 school year that were uncovered in an annual survey conducted by the Texas chapter of the American Civil Liberties Union.

At another school within the LSD, *Beyond the Grave* by Judith Herbst was challenged at the River Place Elementary School, on the grounds that its "photographs will scare children and give them nightmares." Reported in: aclutx.org, September 27.

Montgomery, Texas

The Highwayman, an illustrated version of a famous poem by Alfred Noyes,



was challenged at Montgomery Junior High School, part of the Montgomery Independent School District, because the book was said to contain “profanity; sexual content or nudity; violence or horror.” The outcome of the challenge was not reported to the ACLU of Texas, which gathered the information in an annual survey of Texas schools for the 2016–17 school year. Reported in: aclutx.org, September 27.

New Braunfels, Texas

I Survived (The Attacks of September 11, 2001) by Lauren Tarshis was challenged but retained at Memorial Elementary School in the New Braunfels Independent School District. The book drew objections for its use of the word “terrorist.” This was one of eighteen book challenges in Texas schools during the 2016–17 school year that were uncovered in an annual survey conducted by the Texas chapter of the American Civil Liberties Union. Reported in: aclutx.org, September 27.

Poth, Texas

The Tell Tale Heart by Edgar Allan Poe was challenged and an alternate book was assigned at Poth Junior High School, in the Poth Independent School District. The challengers cited the story for “violence or horror; offensive to religious sensibilities.” This was one of eighteen book challenges in Texas schools during the 2016–17 school year that were uncovered in an annual survey conducted by the Texas chapter of the American Civil Liberties Union. Reported in: aclutx.org, September 27.

Taylor, Texas

To Kill a Mockingbird by Harper Lee was challenged but retained at Taylor Middle School, part of the Taylor Independent School District. Objections

said the book was “politically, racially, or socially offensive.” This was one of eighteen book challenges in Texas schools during the 2016–17 school year that were uncovered in an annual survey conducted by the Texas chapter of the American Civil Liberties Union. Reported in: aclutx.org, September 27.

Cody, Wyoming

Tanya Stone’s *A Bad Boy Can Be Good for a Girl* was challenged at Cody High School. A parent complained about sexual content in the book, demanding its removal from the school library. Cody District Public Schools convened an eight-person review committee to consider the book.

A Bad Boy Can Be Good for a Girl focuses on three girls and their decisions regarding a single boy who has made it his goal to seduce all of the girls in school. The book has been widely praised as a frank and relevant take on how teenagers handle sexuality. Ultimately, the girls in the book stand up to the predatory behaviors of the boy—and for themselves in the process—but those who oppose to the book focus on sexual content as a reason to censor it.

In defense of the book, the Freedom to Read Foundation, the Comic Book Legal Defense Fund, the American Booksellers Foundation for Free Expression, the National Council of Teachers of English, the Association of American Publishers, and the Society of Children’s Books Writers and Illustrators all signed on to a letter from the Kids’ Right to Read Project, addressed to assistant superintendent Tim Foley, urging the district to keep the book available and reminding the district of its responsibility to protect the First Amendment rights of students in the community, stating: “While not every book is right for every reader, the role of school libraries

is to allow students and parents to make choices according to their own interests, experiences, and family values. However, no parent, student or community member may impose their views, values and interests on others by restricting an entire community’s access to particular books. While parents are within their rights to make decisions for their own children, letting a single parent determine what is available to all children in the community raises significant First Amendment concerns.”

The letter also expressed concern about how the school district reviews book challenges: “We recommend that you revise your learning resources complaints policy to ensure that Complaints Committee decisions are based primarily on pedagogical principles and the professional expertise of education and media specialists.” Currently, district policy gives a greater number of seats on the committee to parents/patrons (5) than to educators (3) in the district. Further, the committee does not include librarians, who best know the range of materials that should be in the library’s collection to support the educational programs of the school. Reported in: cblfd.org, December 1.

INTERNATIONAL United Kingdom

One mother is calling for the classic fairy tale *Sleeping Beauty* to be removed from her six-year-old son’s school curriculum, based on fears that the story may be giving young children the wrong message about consent. Sarah Hall from Tyneside, England, says the story, in which a prince kisses the unconscious Sleeping Beauty to wake her from a curse, features an “inappropriate sexual message” and has contacted the school to request that the book be removed from younger classes.



The mother of two raised the issue after reading the story with her son, who brought an illustrated version of the book home from school. She believes that, “In today’s society, it isn’t appropriate—my son is only six, he absorbs everything he sees.”

She is not seeking a complete ban on the story, saying the tale could be a “great resource for older children” to encourage discussions on consent and “how the Princess might feel.”

The mother, who runs a PR consultancy, said she was prompted to take action by the recent sexual harassment controversy in Hollywood. In her original tweet, she used the #MeToo hashtag, which has served as the rallying cry for women and men to share their experiences of sexual harassment. Reported in: BBC, November 28.

THEATER New York, New York

The American Jewish Historical Society is facing a backlash over its decision on October 10 to cancel a reading of *Rubble Rubble*, a play by Dan Fishback, after a campaign by

right-wing activists who had criticized it as anti-Israel.

The society, which is based at the Center for Jewish History in Manhattan, had made plans months earlier for the play reading and a panel about the founding of the state of Israel, which was co-sponsored by the group Jewish Voice for Peace. The playwright is also a member of the group, which is part of the broader movement calling for boycott, divestment and sanctions against Israel, known as BDS.

His play, which was to get its first full public reading at the historical society on December 14, tells the dual stories of a modern-day settler family in the West Bank and a Jewish family caught up in revolutionary politics in early-20th-century Russia. While it explores “how Jewish families are broken over the politics of Israel-Palestine,” he said in an interview, the cancellation was not about the play’s substance.

“The people who made this decision had no access to my script,” he said. “This was about my beliefs.”

The two events, planned months ago, came under criticism from

right-wing activists, as the latest salvo in a wider campaign against the new executive director of the Center for Jewish History, David Myers, over his involvement in groups like New Israel Fund, which promotes human rights and social justice. The decision drew strong criticism from some in the arts, including the theater director Rachel Chavkin, who described it on Twitter as “right-wing censorship.” And Ofri Cnaani, an Israeli-American artist, removed an installation exploring the life of Emma Goldman that she had created in the lobby of the group’s building. Ms. Cnaani, in a telephone interview, said while she was not a supporter of BDS, the cancellation of the events demanded a response, especially given that her installation, “For Her Own Good,” explores Goldman’s defense of freedom of speech.

“When I heard about it, I was shocked,” Ms. Cnaani said. “I immediately thought that to not do anything would amount to supporting this decision.” Reported in: *New York Times*, October 11.



US SUPREME COURT

During oral arguments in *Timothy Carpenter v. United States* on November 29, a majority of Supreme Court justices appeared ready to place new limits on the ability of investigators to track the location of cell phone users.

Carpenter was convicted of masterminding a series of armed robberies (ironically, stealing new smart phones) in Ohio and Michigan. Officials investigating the case sought records from cell phone providers for 16 different phone numbers, including Carpenter's. In so doing, they relied upon the Stored Communication Act. This 1986 law allows phone companies to disclose records when the government can establish "specific and articulate facts showing that there are reasonable grounds to believe" the records "are relevant and material to an ongoing criminal investigation." Such a request, without benefit of a search warrant, allowed the government to obtain Carpenter's historical cell-site records, indicating which cell towers his cell phone was connected with while in use. Through those records, investigators were able to determine that Carpenter's cell phone connected with cell towers in the vicinity of a number of different robberies.

Following his arrest, Carpenter sought to suppress the cell phone/cell tower evidence collected without a warrant, arguing the records should be suppressed because they had been obtained in violation of the Fourth Amendment. The trial court denied his request, and the US Court of Appeals for the Sixth Circuit affirmed. Carpenter was convicted on eleven of twelve charges and sentenced to almost 116 years in prison.

Before the Supreme Court, Carpenter asserts that disclosure of his cell phone records was a "search" requiring a warrant.

Two Supreme Court cases from the 1970s are at the center of arguments tendered by the parties to this case. In *United States v. Miller* (1976), the court held that seizure of bank records without a warrant did not violate the Fourth Amendment because those records contained "only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business." In *Smith v. Maryland*, (1979), the court found no Fourth Amendment violation when a phone company installed a device to record phone numbers a robbery suspect called from his home when so requested by police who failed to have a warrant. These decisions are often referred to as "third-party doctrine," standing for the proposition that the Fourth Amendment fails to protect records or information voluntarily shared with someone or something else.

One of the central issues for the Supreme Court in *Carpenter* is whether or not the third-party doctrine applies in the same manner to cell phones, the technology for which was not even available at the time of the *Miller* and *Smith* decisions. Justice Sonya Sotomayor recently suggested in *United States v. Jones* (2012) that it should not. She wrote that the third-party doctrine is "ill-suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks" (concurring in a unanimous decision finding that evidence obtained by warrantless use of GPS device on an automobile violated the Fourth Amendment).

A unanimous court in *Riley v. California* (2014) found the warrantless search and seizure of a cell phone's digital contents during an arrest to be unconstitutional. In so ruling, Chief Justice John Roberts found that cell phones are "based on technology

nearly inconceivable just a few decades ago" and that they "are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy."

During oral argument in *Carpenter*, justices both conservative and liberal voiced reservations about the warrantless invasion of cell phone user locations.

Justice Sotomayor expressed concern over such an invasion of privacy by commenting, "Most Americans, I think, still want to avoid Big Brother."

Justice Department lawyer Michael Dreeker attempted to sway the justices by claiming cell phone owners voluntarily give up any claim of privacy when they contract with cell phone companies, knowing the companies will keep records of their calls.

Chief Justice Roberts, however, questioned this argument asserting, "You really don't have a choice these days if you want to have a cell phone."

The Supreme Court will grapple with whether or not access to information regarding where a particular cell phone has been is analogous to the kind of "detailed personal facts" available on the phone itself. Whatever the result, the court's ruling should continue to advise on the interaction between constitutional limitations and the technological advances of the past few decades. Reported in: *National Law Review*, January 2.

The Supreme Court on November 27 declined without comment to hear an appeal of *American Humanist Association v. Birdville Independent School District*, a case about prayers before school board meetings. This leaves continuing uncertainty over the constitutionality of the practice.

In this prayer case, a former student from the Birdville, Texas, district



and the Washington-based humanists' group sought review of a decision by the US Court of Appeals for the 5th Circuit, in New Orleans, which upheld the district's policy of permitting students to lead prayers before board meetings.

The appeals court had said in its March decision that the key question was "whether this case is essentially more a legislative-prayer case or a school-prayer matter."

In 2014, the Supreme Court upheld a New York state town's practice of opening its municipal meetings with prayers. Justice Anthony M. Kennedy wrote for the court in *Town of Greece v. Galloway* that the town does not violate the First Amendment's prohibition of government establishment of religion by having a prayer "that comports with our tradition and does not coerce participation by nonadherents."

The key question since that decision has been whether school boards that open their meetings with prayers are just like general municipal bodies such as town councils and county boards, or whether their involvement as part of the educational process, with students frequently present at such meetings, make school boards similar to schools, implicating a separate line of church-state decisions.

The 5th Circuit court held that Birdville's practices fell under the *Town of Greece* line of cases allowing legislative prayers.

"The BISD board is a deliberative body, charged with overseeing the district's public schools, adopting budgets, collecting taxes, conducting elections, issuing bonds, and other tasks that are undeniably legislative," the court said. "In no respect is it less a deliberative legislative body than was the town board in *Galloway*."

In their high court appeal, the former student, Isaiah Smith, and the humanists' group said the federal appeals

courts were split on whether school board prayers should be viewed the same as prayers in state legislatures and town councils.

"This case presents a recurring question of exceptional constitutional importance, affecting millions of students nationwide, that is ripe for this court's review," said the appeal.

The challengers say the school district allowed students to lead "invocations" at its meetings from 1997 to 2015. That year, the school board changed the policy to one of "student expression," but made clear that students chosen for the task could still deliver a prayer. In practice, most students have delivered prayers or religious poems, court papers say.

In a brief urging the justices not to take the case, the 24,000-student Birdville school district argued that the 5th Circuit court was correct, and that school board meetings are not the same as school events such as graduation ceremonies and football games where the Supreme Court has struck down clergy- or student-led prayers.

"Although school boards deliberate and adopt policies that govern their school district, board meetings are not student-centered activities like graduation and football games," the district's brief said. "Prayer to open a school board meeting which is brief, solemn and respectful in tone, and which does not proselytize or denigrate other beliefs or non-beliefs fits within the historical tradition of legislative prayer."

The justices declined the appeal after it had appeared on their conference list just one time. Reported in: *Education Week*, November 27.

The Supreme Court on November 27 refused to take up *Moore v. Bryant*, a black Mississippi man's challenge to his state's flag, which incorporates the Confederate battle flag, and his

challenge to state laws that require the flag to be "displayed in close proximity" to public schools.

In the Mississippi case, the justices declined without comment to hear the appeal of Carlos E. Moore, an African-American lawyer and a descendant of slaves, whose lawsuit under the 14th Amendment's equal-protection clause challenged the design of the flag and another state law that students be taught "proper respect" for it.

"The message in Mississippi's flag has always been one of racial hostility and insult and it is pervasive and unavoidable by both children and adults," said the appeal by Moore's lawyer. "The state's continued expression of its message of racial disparagement sends a message to African-American citizens of Mississippi that they are second-class citizens."

Both a federal district court and the US Court of Appeals for the 5th Circuit, in New Orleans, held that both Moore and his 6-year-old daughter lacked legal standing to challenge the state flag.

Moore's appeal to the Supreme Court was pending in August when the violent clashes in Charlottesville, Virginia, fueled renewed debate over Confederate symbols and memorials. In late August, after that event, the high court sought a response from the state of Mississippi to Moore's appeal, an indication that the case had drawn the interest of at least one justice.

In their response, state officials did not explicitly defend the Mississippi flag, which was adopted in 1894, or the laws about its display at schools. But they say the lower courts correctly ruled that the Moores suffered no real injuries from their exposure to the flag.

"If [Moore] has standing here, virtually any litigant could challenge any government action display, monument, or speech he or she views as



offensive,” the state’s brief says. “Equal protection would go from being a prohibition on the denial of equal treatment to an embargo on being offended.”

Meanwhile, Moore drew friend-of-the-court briefs on his side by several groups, including the Congressional Black Caucus and the Southern Poverty Law Center.

“The Confederate battle flag is a divisive and harmful symbol of racism that some governments nonetheless continue to embrace,” says the brief signed by 48 members of the CBC. “Ending government endorsements of racism is essential to our nation’s continued progress toward ending racism itself.” Reported in: *Education Week*, November 27.

SCHOOLS Tucson, Arizona

A federal judge in the **US District Court for Arizona** has blocked an Arizona state law that led to the shuttering of a popular Mexican-American history course in the Tucson Unified School District.

In *González et al. v. Douglas*, Judge Wallace Tashima on December 27 declared the law unconstitutional, putting an end to state education officials’ efforts to restrict ethnic studies programs, or to require district officials to provide information about what is being taught in the classes.

Tashima said in the injunction that the ban was “not for a legitimate educational purpose, but for an invidious discriminatory racial purpose, and a politically partisan purpose.”

In 2013, Tashima had largely upheld the controversial law, which aimed to bar courses that “promote resentment against a race or class of people or advocate ethnic solidarity.” Tashima at that time said the law was not passed with discriminatory intent, but did admit to seeing some “red flags.”

“Although some aspects of the record may be viewed to spark suspicion that the Latino population has been improperly targeted, on the whole, the evidence indicates that defendants targeted the MAS [Mexican American Studies] program, not Latino students, teachers, or community members who supported or participated in the program,” the judge said in 2013.

But in 2015, a federal appeals court in San Francisco ordered the case back to the Arizona district court to determine if the ban was enacted with racist intent. Finally, this past August, Tashima ruled the ban did have discriminatory intent.

The rise in ethnic studies course offerings in K-12 schools came about, in part, as a response to the ban on the Mexican-American course in Tucson public schools. The program, which teaches the contributions of Mexican Americans, was first launched in 1998 and later expanded under the district’s desegregation plan. More than 60 percent of Tucson’s enrollment is of Mexican or other Hispanic descent.

Since the ban was first enacted, more and more educators across the country have advocated for offering courses that present the history of communities of color as one way to engage diverse student bodies. The school board in Bridgeport, Connecticut, unanimously approved a requirement in October to make ethnic studies a high school graduation requirement, making the district one of just a few in the country that have raised ethnic studies courses above the status of an elective.

Studies show that the courses provide students with several benefits. A 2016 study out of Stanford University revealed that taking a course examining “the roles of race, nationality, and culture on identity and experience” improved grades, attendance, and graduation rates. A study by the

University of Arizona of Tucson’s controversial Mexican-American studies program showed similar positive academic benefits for students.

All eyes are now on Tucson’s school board members to see how they react to the ruling and what changes, if any, they will make as a result. Reported in: *Education Week*, December 28.

San Pasqual Valley, California

A federal judge in the **US District Court for Southern California** has granted a preliminary injunction blocking a California school district’s rules requiring students to stand during the National Anthem at sporting events.

The case, *V.A. v. San Pasqual Valley Unified School District et al.*, was prompted by a varsity football and basketball player at San Pasqual Valley High School, who kneeled during the anthem at two games in the fall. The student, identified as V.A., engaged in the protest to express his “personal feelings and concern about racial injustice in our country,” he said in a court declaration.

Similar protests have occurred at high schools across the country, similar to protests carried out by National Football League players this season. The high school incidents have led some districts to adopt rules against kneeling during the anthem.

V.A.’s silent protest occurred without incident at a September 29 home game, but the next week, when he took a knee during the anthem played in Mayer, Arizona, some students from Mayer High School approached V.A. after the game and threatened to “make him stand,” court papers say. Court papers also allege that the students made racial slurs and sprayed a San Pasqual High cheerleader with water.



After that game, Superintendent Rauna Fox of the San Pasqual Valley Unified School District, which borders Arizona in the very southeast corner of California, issued “initial rules” requiring students and coaches to stand during any playing of the anthem.

“Kneeling, sitting or similar forms of political protest are not permitted during athletic events at any home or away games,” the rules said. “Violations may result in removal from the team and subsequent teams during the school year.”

The district decided not to play the anthem at San Pasqual High’s subsequent final football game of the season, and it does not play the anthem at basketball games. When the anthem was played at an away basketball game on November 28, V.A. left the basketball court and waited outside.

The school board has considered a draft permanent policy, but has not taken any action.

V.A. filed a lawsuit challenging the initial rules as violating his free speech rights.

In a December 21 decision granting V.A.’s request for the preliminary injunction against the rules, US District Judge Cynthia Bashant of San Diego agreed that the rules appear to violate the First Amendment rights of students.

“The court finds that plaintiff’s kneeling during the National Anthem is speech,” Bashant wrote. “This action is closely linked to the similar, well-known protests performed throughout the country, started by former National Football League quarterback Colin Kaepernick.”

Bashant said that by kneeling, rather than standing, during the National Anthem, V.A. was expressing a similar protest to, in the student’s words, “racial injustice in our country.”

The judge said V.A.’s silent protest would be easily interpreted as his own speech and not bearing the “imprimatur” of his school. She also held that V.A.’s protest was not likely to cause substantial disruption at school, despite the reaction at Mayer High School. Bashant based most of her decision on the US Supreme Court’s landmark 1969 ruling in *Tinker v. Des Moines Independent Community School District*, which upheld students who wore black armbands to protest the Vietnam War.

“The court finds that, when applying *Tinker*, plaintiff is likely to succeed on the merits because the initial rules, as well as the proposed draft policy, are aimed at regulating students’ speech that is unlikely to cause a substantial disruption of or material interference with school activities or interfere with other students’ rights,” the judge wrote. Reported in: *Education Week*, January 2.

Palatine, Illinois, and Kenosha, Wisconsin

A federal district judge has denied a preliminary injunction to a group of students who challenged an Illinois school district’s policy of allowing a transgender student to use the restrooms and locker rooms corresponding to her gender identity. The ruling came in *Students and Parents for Privacy v. US Department of Education*, in **US District Court for Northern Illinois, Eastern Division**, on December 29.

Meanwhile, a case involving a Wisconsin school district seeking to keep a transgender boy from using the restrooms of his gender identity that has been pending at the US Supreme Court may soon be settled. *Kenosha Unified School District v. Whitaker* is a petition to appeal a decision by the **US Court of Appeals for the 7th Circuit** in Chicago.

The cases from Wisconsin and a suburban Chicago high school district are among several long-running, high-profile lawsuits around the country dealing with transgender student rights in school.

In 2015, Township High School District No. 211, based in Palatine, Illinois, agreed to allow a transgender girl identified in court papers as Student A to use the girls’ locker room only after the intervention of the US Department of Education’s Office for Civil Rights during President Barack Obama’s administration.

But the district was soon sued by a group of students backed by the Alliance Defending Freedom (ADF), a group based in Scottsdale, Arizona, that has taken the lead in the fight to keep transgender students from using school restrooms and locker rooms that correspond to their gender identity.

Those Illinois challengers, whose ADF-supported group is called Students and Parents for Privacy, argue that allowing transgender students into their gender-corresponding restrooms and locker rooms infringe the challengers’ right to privacy. They lost before a federal magistrate judge in 2016 when that judge recommended against the injunction they sought.

They lost again on December 29, when in US District Judge Jorge L. Alonso of Chicago adopted the recommendations of the magistrate. (The federal Education Department was dismissed as a defendant after President Donald Trump’s administration early this year withdrew Obama administration guidance that a Title IX regulation under the federal statute against sex discrimination covers bias against transgender students.)

But Alonso made clear that even though the Obama administration guidance is off the table, a number of court rulings, including one binding on him by the US Court of Appeals



for the 7th Circuit, in Chicago, have held that Title IX itself is now interpreted to prohibit a school district from treating a transgender student differently from a non-transgender student.

Alonso noted some of the privacy protections added by District 211 during the case, saying “the restrooms at issue here have privacy stalls that can be used by students seeking an additional layer of privacy, and single-use facilities are also available upon request. Given these protections, there is no meaningful risk that a student’s unclothed body need be seen by any other person.”

In a statement, ADF Senior Counsel Gary McCaleb said, “Because the court should have suspended the district’s privacy-violating policies, we will likely appeal.”

Meanwhile, one of those cases in which the 7th Circuit has taken a broad view of Title IX’s protections involves a transgender boy named Ashton Whitaker and the Kenosha, Wisconsin, Unified School District. Whitaker graduated from high school last spring, but the parties contend the case is not moot.

The Kenosha school district’s appeal of the 7th Circuit decision has been pending at the Supreme Court, with both sides having sought extensions for the filings of their briefs.

Now, in a filing with the court, the lawyer for Whitaker told the justices that the case may soon be settled.

“At this time, the parties are in advanced settlement negotiations and expect a final resolution of this case in the near future,” the lawyer, Sasha Samberg-Champion, said in the letter asking for another 30-day extension of time to file his brief for Whitaker. Samberg-Champion said the lawyer for the school district “consents to this request.”

Last term, the high court dismissed the appeal in the *Gloucester County School Board v. G.G.* case, which as it stood before the justices was based on the informal Education Department Title IX guidance that was withdrawn by the Trump administration.

Now, the latest transgender case before the justices appears unlikely to be taken up by them. Reported in: *Education Week*, January 4.

CHURCH AND STATE Bremerton, Washington

A high school football coach was speaking as a public employee when he kneeled and prayed on the field after games, and a Washington state school district did not violate his First Amendment rights when it disciplined him, the **US Court of Appeals for the 9th Circuit** in San Francisco ruled on August 23.

In *Kennedy v. Bremerton School District*, a unanimous three-judge panel of the federal appeals court said, “By kneeling and praying on the 50-yard line immediately after games,” the coach was communicating “demonstratively to students and spectators” and he “took advantage of his position to press his particular views upon the impressionable and captive minds before him.” The ruling came in the case of Joseph A. Kennedy, who was the assistant varsity football coach and chief junior varsity coach at Bremerton High School in Bremerton, Washington, in the fall of 2015 when his post-game prayers became the center of controversy. (Kennedy won support from then-candidate Donald J. Trump last fall, and from US Secretary of Housing and Urban Affairs Ben Carson.)

Kennedy says in court papers that his Christian faith calls on him to give thanks at the end of each football game for the players’ accomplishments and his opportunity to be a part

of their lives. Kennedy was sometimes joined by players for his post-game prayer, and he would sometimes give short motivational talks.

In September 2015, Bremerton district officials advised Kennedy that he could continue to give inspirational talks, but could not lead nor encourage student prayers. The superintendent informed Kennedy that he was free to pray while on the job if it did not interfere with his job responsibilities, and if it was “non-demonstrative” if students were also engaged in religious conduct.

The coach complied for several weeks but, aided by the First Liberty Institute and other lawyers, sought an accommodation from the district to continue his post-game prayers. The school district rejected his argument that his job responsibilities ended when the football game ended.

“Any reasonable observer saw a district employee, on the field only by virtue of his employment with the district, still on duty, under the bright lights of the stadium, engaged in what was clearly, given your prior public conduct, overtly religious conduct,” the district wrote to Kennedy. When the coach continued to pray at the end of two more games, the district placed him on administrative leave. Kennedy did not seek the renewal of his year-to-year contract the next season.

The coach sued the school district in 2016, arguing that his rights under the First Amendment free speech clause and the Civil Rights Act of 1964 were violated. He sought reinstatement as a coach and a ruling that he had the right to pray on the field after games.

A federal district court denied a preliminary injunction for Kennedy. In its August 23 decision, the 9th Circuit court panel upheld that ruling. The panel held that the key factor in the coach’s case was that he was



speaking as a public employee and not as a private citizen when he prayed on the field.

The court said Kennedy seemed intent on praying immediately after games when he would be viewed by students and spectators.

“Kennedy spoke at a school event, on school property, wearing [Bremer-ton High School]-logoed attire, while on duty as a supervisor, and in the most prominent position on the field, where he knew it was inevitable that students, parents, fans, and occasionally the media, would observe his behavior,” the court said.

The panel cited several other federal appeals court rulings that have upheld restrictions on public school coaches praying in locker rooms or after practices.

“While we recognize the important role that public worship plays in many communities, as well as the sincere desire to include public prayer as a part of these occasions, such activity can promote disunity along religious lines, and risks alienating valued community members from an environment that must be open and welcoming to all,” US Circuit Judge Milan D. Smith Jr. wrote. Reported in: *Education Week*, August 24.

FREEDOM OF THE PRESS Idaho

In a blow to “ag-gag” rules intended to hobble journalistic efforts to expose animal cruelty, the **Ninth Circuit Court of Appeals** on January 4 ruled in *Animal Legal Defense Fund v. Wasden*, that parts of an Idaho statute are unconstitutional.

The 2014 law was drafted by the Idaho Dairymen’s Association, which was unhappy when video taken by an animal rights group, Mercy for Animals, revealed abominable mistreatment of dairy cows in Idaho. A person convicted of violating the law faced

up to one year in prison and a fine of up to \$5,000.

Gag laws protecting the agriculture industry from scrutiny are on the books in seven states—Kansas, North Dakota, Montana, Iowa, Utah, Missouri and North Carolina. Legal challenges are pending in Utah and North Carolina. As the Ninth Circuit explained in its decision, these laws “target undercover investigation of agricultural operations [and] broadly criminalize making misrepresentations to access an agricultural production facility as well as making audio and video recordings of the facility without the owner’s consent.”

In a 56-page ruling, US Circuit Judge M. Margaret McKeown wrote that the law violated the First Amendment because it “criminalized innocent behavior, was staggeringly overbroad, and that the purpose of the statute was, in large part, targeted at speech and investigative journalists.”

Several free-speech groups, including the Freedom to Read Foundation and the American Civil Liberties Union, joined with animal-rights groups such as the Animal Legal Defense Fund in the lawsuit to overturn the Idaho law. The court found that two key parts of the Idaho law—one prohibiting anyone from misrepresenting themselves to enter an agricultural production facility, the other banning a person from making audio or video recordings of a production facility—are unconstitutional. But the Ninth Circuit reversed the lower court, upholding the part of the Idaho law that criminalizes the act of obtaining agricultural production facility records by misrepresentation. Reported in: Associated Press, January 4; *Reason*, January 13.

PUBLIC SPEECH Syracuse, New York

The **US District Court for Northern District of New York**, in *Deferio v. City of Syracuse*, in January offered the most recent example what restrictions can (and can’t) be placed on protests held at private events in public places. As Eugene Volokh notes in his “Volokh Conspiracy” column in *Reason* magazine, private organizations often get a permit to put on events on public streets or in a public park, and open the event to the public generally. Courts generally don’t let the police eject people who go to the event to express their own political views, even when the views criticize the organization or its patrons, and even if the organization wants the speakers ejected. The police can enforce content-neutral speech restrictions, such as limits on sound amplification. And if a group gets a permit to have a closed event, which only ticketholders can attend (especially common for events in government-run convention centers, but in principle possible even in parks or on sidewalks), the organization can select who gets the tickets. But if the event is generally open to all comers, people who come to speak can’t be ejected.

Here is the court’s introduction:

“The First Amendment reflects ‘a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open’” [*Snyder v. Phelps* (2011), quoting *New York Times Co. v. Sullivan* (1964)]. “The First Amendment offers sweeping protection that allows all manner of speech to enter the marketplace of ideas. This protection applies to loathsome and unpopular speech with the same force as it does to speech that is celebrated and widely accepted” [*Bible Believers v. Wayne County* (2016)].



“First Amendment jurisprudence is clear that the way to oppose offensive speech is by more speech, not censorship, enforced silence or eviction from legitimately occupied public space [*Gathright v. City of Portland* (2006), citing *Terminiello v. City of Chicago* (1949)].”

These principles are by no means new. *E.g.*, *Whitney v. California* (1927) (Brandeis concurring). Yet they are strangely absent from the papers submitted by defendants in defense of their actions toward plaintiff James Deferio, a Christian evangelical who regularly proselytizes at the Central New York Pride Parade and Festival. . . .

While the dispute in this case may seem parochial—defendants Sergeant Jamey Locastro and Captain Joseph Sweeny forced Plaintiff to move approximately forty feet from the north to the south side of West Kirkpatrick Street—the issues presented here affect the heart of the First Amendment’s purpose. As the Supreme Court recently stated, “Even today, [public streets and sidewalks] remain one of the few places where a speaker can be confident that he is not simply preaching to the choir. With respect to other means of communication, an individual confronted with an uncomfortable message can always turn the page, change the channel, or leave the web site. Not so on public streets and sidewalks. There, a listener often encounters speech he might otherwise tune out [*McCullen v. Coakley* (2014)].”

This [decision] affirms the importance of public sidewalks in the development of the marketplace of ideas and reminds state actors of the requirements they must meet in order to place restrictions on individuals’ right to speak from traditional public fora. . . .

And here are the facts, and the court’s analysis of the defendants’ argument that plaintiff’s speech was constitutionally unprotected “fighting words”:

Plaintiff is a Christian evangelical who attends public events in Syracuse and elsewhere in order to spread his religious beliefs. At the 2014 Pride Event, plaintiff held a large sign that displayed a verse from the Bible regarding “the unrighteous.” [*The full text, which the court noted elsewhere in the opinion, was, “WARNING: Do you not know that the unrighteous shall not inherit the Kingdom of God? Do not be deceived; neither fornicators, nor idolators, nor adulterers, nor homosexuals, nor sodomites, nor thieves, nor covetous, nor drunkards, nor revilers, nor extortioners shall inherit the Kingdom of God. 1 Corinthians 6:9-10.” -EIV*] At the 2015 Pride Event, he held a different large sign that stated, “Thousands of Ex-Homosexuals Have Experienced the Life-Changing Love of Jesus Christ,” which also provided links to relevant websites. He also used a sound amplification device to propagate messages regarding sin, judgment, and redemption. . . .

Attendees at both festivals were unsurprisingly offended by plaintiff’s religious beliefs, which advocate for “homosexuals” in particular “to repent.” But “offense” is not the standard by which First Amendment protections end. In fact, “if it is the speaker’s opinion that gives offense, that consequence is a reason for according it constitutional protection” [*Hustler Magazine Inc. v. Falwell* (1988)]. “After all, much political and religious speech might be perceived as offensive to some.” [*Morse v. Frederick* (2007)] . . .

Defendants . . . [argue] that plaintiff’s speech at the 2015 Pride Event

constituted “fighting words” and is therefore not protected by the First Amendment. . . . The “fighting words” exception to the Free Speech Clause is narrow and consists of a “small class” of expressive conduct [*Texas v. Johnson* (1989)]. Fighting words “instantly ‘inflict injury or tend to incite an immediate breach of the peace’” [*Bible Believers*, quoting *Chaplinsky v. New Hampshire* (1949)]. “Offensive statements made generally to a crowd are not excluded from First Amendment protection; the insult or offense must be directed specifically at an individual” [*Bible Believers*, citing *Cohen*]. To determine whether such words are “inherently likely to provoke violent reaction” [*Williams*], the Court must use an “objective standard”—whether “it is ‘likely to provoke the average person to retaliation’” [*Bible Believers*, quoting *Street v. New York* (1969)].

First, the Court must note that defendants spend the majority of their Statement of Material Facts, and almost all of their deposition of plaintiff, cataloging plaintiff’s controversial comments regarding religion, politics, and homosexuality over the course of many years. Defendants use these facts to gesture at the disturbing argument that *all* of plaintiff’s proselytizing, potentially forevermore, constitutes “fighting words.” After citing to comments that plaintiff published on Facebook, defendants state, “While it is undisputed that religious expression is protected, plaintiff’s speech constitutes ‘fighting words,’ which by their utterance inflict injury or tend to incite an immediate breach of the peace.” Defendants make no effort to distinguish between plaintiff’s speech on Facebook, at the relevant Pride Events, or at other events that defendants catalogued. The Court hopes that this sentence was merely sloppy writing, though



defendants' focus on plaintiff's speech outside of the events at issue in this lawsuit is worrisome.

Turning to the 2015 Pride Event, about which defendants argue with more specificity, the video evidence and Captain Sweeny's deposition do not indicate that plaintiff used fighting words. Plaintiff attended the 2015 Pride Event with a large sign that stated, "Thousands of Ex-Homosexuals Have Experienced the Life-Changing Love of Jesus Christ," and provided links to relevant websites. In the limited time that he spoke from the intersection of West Kirkpatrick Street and the driveway into Inner Harbor Park, he made generally applicable statements regarding sin and religion. (E.g., "Time to repent people. You are not guaranteed tomorrow. No one is. Where's your love for God?") Such generally applicable statements cannot constitute fighting words.

Plaintiff did direct at least one insult at an individual: He called a woman a "homofascist," after she said, "Nobody talk to him. Do not feed the monkey." Given the context of their conversation, the Court must view this comment "as unpleasant but petty, and not sufficiently provocative to constitute fighting words" [Gilles]. The term "homofascist" is frequently used to accuse individuals of trying to silence those who do not support the LGBT community. By combining "homosexuality" and "fascist," the user of "homofascist" invokes the "exceedingly common—arguably hackneyed—rhetorical device" of "comparing a disliked authority figured to a fascist leader" [Williams, holding that, "as matter of law, 'comparing the manager of a recreational center to a fascist dictator . . . does not rise to the level of so-called fighting words'" (quoting *Cohen*)]. While there is no indication that the woman

who received plaintiff's insult was a traditional "authority figure," such as the deputy commissioner at issue in *Williams*, Plaintiff's comment had the same meaning in the situation he faced, since multiple people were asserting the authority allegedly provided by the City to move plaintiff across the street.

The video evidence also indicates that the vast majority of the hundreds of attendees near plaintiff ignored him. While a handful of attendees verbally accosted plaintiff, and one attendee physically assaulted plaintiff, the question is whether "the average individual" would be incited to violence by plaintiff's words. Here, it is clear that the average individual was not incited to violence by plaintiff's words.

The Court notes that Captain Sweeny—the commanding police officer at the Pride Event—never once indicated that defendants' words were likely to elicit a violent response. When asked by plaintiff's lawyer, "Was there anything about [plaintiff's] conduct that concerned you?", Captain Sweeny said, "His conduct, no." Captain Sweeny's affidavit even takes pride in the fact that "plaintiff was neither arrested nor charged with a crime, and, in fact, upon information and belief, [the Syracuse Police Department] pursued charges against [plaintiff's] assailant." Defendants do not grapple with or even acknowledge these facts in their papers, which directly contradict their argument that plaintiff's speech constituted fighting words.

In sum, plaintiff's speech at the 2015 Pride Event did not constitute fighting words, and therefore was entitled to First Amendment protection. As noted above, defendants have not seriously argued that plaintiff's speech at the 2014 Pride Event did not merit First Amendment protection. . . .

And here is the court's analysis of the defendants' argument that moving plaintiff was justified because of the Pride Event's permit:

In his deposition, Locastro [the sergeant assigned to supervise the police officers at the 2014 Pride Event] presented two reasons for demanding that plaintiff move to the south side of West Kirkpatrick Street: First, because plaintiff was in violation of CNY Pride's permit, and second, because Locastro was concerned for Plaintiff's safety. Neither of these justifications—as portrayed in the deposition and video evidence—was content-neutral.

With regard to the permit, Sergeant Locastro interpreted the permit as providing CNY Pride with the right to "close the sidewalk to anyone they view as a protester. So someone similar to [plaintiff]." When asked what was the distinction between plaintiff and the many other people near him, Locastro said, "Nobody else was holding a large anti-gay sign, standing in the middle of the sidewalk, upsetting people." Finally, in response to plaintiff's question as to whether CNY Pride "could keep anybody they want to off of that sidewalk," Locastro said, "They could, yes."

These facts are similar to those analyzed by the Sixth Circuit in *Parks v. City of Columbus* (6th Cir. 2005). There, Douglas R. Parks attended the 2002 Arts Festival in Columbus, Ohio, wearing a sign bearing a religious message. The event was free and open to the public, yet the police forced Parks to move outside the area reserved for the festival because "the event sponsor did not want him there." The Sixth Circuit held that "under these circumstances we find it difficult to conceive that Parks's removal was based on something other than the content of his speech." *Cf.*



McMahon v. City of Panama City Beach (N.D. Fla. 2016): “The City’s stated policy of unquestioning deference to the whims of the permit holder . . . at a free and open-to-the-public event is, to put it gently, troubling.”

Locastro’s second justification—plaintiff’s safety—was also content-based. It is a fundamental principle of First Amendment jurisprudence that “listeners’ reaction to speech is not a content-neutral basis for regulation” [*Forsyth County v. Nationalist Movement* (1992)]. Speakers of protected speech—even speech that is offensive to many listeners—may not be punished because their critics “might react with disorder or violence.” . . .

Defendants do not argue, as many jurisdictions in similar situations have, that Locastro’s enforcement of the permit was necessary to protect CNY Pride’s own message. . . . [*The court cites here a case that rejected such an argument, on the grounds that “there is a distinction between participating in an event and being present at the same location. Merely being present at a public event does not make one part of the organizer’s message for First Amendment purposes.”-E.V.*]

Reported in: reason.com/volokh, February 5.

TEXTING Jesup, Iowa

The **Iowa Supreme Court** ruled on February 2 that text messaging a photo of one’s genitals to another person is not indecent exposure under state law.

In *Iowa v. Lopez*, the court found that to meet the definition of the Iowa law as written, such an offensive display must be done in the physical presence of the offended person.

“While we acknowledge that one can be offended by a sexually explicit

image transmitted via text message, it is much easier to ‘look away’ from that image than it is to avoid an offensive in-person exposure,” the court said.

Sending an unwanted photo of one’s genitals to another adult who finds it offensive could still lead to a harassment charge, but that is a simple misdemeanor under Iowa law.

The ruling dismisses an indecent exposure charge against a 55-year-old Jesup man who stalked a woman for months after meeting her at her workplace in 2014.

Jose Willfredo Lopez continued to contact the woman although she resisted him. She eventually agreed to meet him at restaurants for food and drinks several times but asked him to stop contacting her after rejecting his offers to meet at hotels.

She obtained a no-contact order in April 2015, after Lopez entered her home twice without her permission and persistently texted and called her. Two months later he texted to her a picture of his hand around his erect penis with the message “me in my glory” and said he would visit her at home in Independence on August 1. She contacted the sheriff’s department, and a deputy arrested Lopez at her home peering through a window.

Lopez was charged with stalking and indecent exposure related to the text message photo. After conviction, a judge sentenced him to up to five years in prison for stalking. On the exposure charge he was given a year in jail and was required to serve ten years of parole or work release, at the discretion of the Iowa Department of Corrections, after his release from custody. Since the court ordered the indecent exposure charge dismissed, he will not serve the sentences for that offense.

Iowa Department of Corrections records show he is in prison for the

stalking conviction, with eligibility for release as early as this spring.

Lopez appealed his conviction, saying his attorney inadequately represented him by failing to challenge the indecent exposure conviction. The court agreed and considered the case, saying it has never before addressed whether indecent exposure can apply to electronic communication.

The court concluded that if the Iowa legislature intended electronic images to fall under the indecent exposure statute it would have said so.

The justices specified that their ruling applies only to the electronic transmission of still images and does not address video transmission through programs like Skype and FaceTime.

A spokesman for the Iowa attorney general’s office said it wasn’t immediately clear how many other similar cases may be affected by the ruling, and it will likely change the way future indecent exposure cases like this are prosecuted.

States vary in their application of indecent exposure laws.

The Missouri Court of Appeals in 2004 concluded that indecent exposure can be committed through transmission of an electronic image. The Montana Legislature in 2015 updated that state’s indecent exposure law to include electronic transmission of images.

The Maine Supreme Court found in October that a man who sent five teen-age girls images of his genitals could not be convicted of indecent conduct. Reported in: Associated Press, February 2.

FOREIGN India

The **Supreme Court of India** on August 25 held that the right to privacy is a fundamental right and is an integral part of the right to life and



liberty. The ruling by a nine-judge bench headed by Chief Justice J. S. Khehar will have a bearing on challenges to the validity of the Aadhaar ID scheme.

Just like the US constitution, the Indian constitution also does not contain an expressly stated right to privacy. But the US Supreme Court has interpreted several amendments to argue that such a right does exist. With its new ruling, the Supreme Court of India has likewise confirmed that it is a fundamental right under the Indian constitution. The verdict only decided the limited point of whether privacy is a fundamental right or not. Its ruling does not affect any other case automatically.

Aadhaar, the subject of this case, is a system that offers all Indian citizens a unique, numerical identification that can be used for many purposes, similar to how Social Security numbers are used in the United States. According to an Indian government website, “Aadhaar number is a 12-digit random number issued by the UIDAI Authority to the residents of India after satisfying the verification process. . . . Any individual, irrespective of age and gender, who is a resident of India, may voluntarily enroll to obtain Aadhaar number.” Because each person who enrolls must provide some biometric information

(ten fingerprints, two iris scans, and a facial photograph), Aadhaar “is unique and robust enough to eliminate duplicates and fake identities,” the government claims. One goal of the program is to provide government services without discrimination, because Aadhaar “does not profile people based on caste, religion, income, health and geography.”

Various petitioners had argued before the Indian Supreme Court that Aadhaar was an invasion of an individual’s privacy as biometric data were collected. The government argued that privacy was not a fundamental right, and it became necessary for the Supreme Court to decide whether privacy was a fundamental right or not. A nine-judge bench was formed in order to overcome conflicting precedents from previous cases that had been decided by six- and eight-judge benches.

The August 25 ruling only decides the fundamental constitutional question. Its actual impact will depend on how the Supreme Court rules in separate cases.

What did the Union government argue in the Supreme Court? The government argued that privacy was the concern of an “elite view,” and that the right to privacy was not expressly stated in the Indian constitution. The attorney general argued that

this was a deliberate omission. Additionally, the solicitor general, representing UIDAI, argued that privacy might be considered a fundamental right, but all aspects of privacy could not be put under the fundamental rights category.

Four states, West Bengal, Karnataka, Punjab, Himachal Pradesh and one Union Territory, Puducherry, have argued in the Indian Supreme Court that they support a constitutional right to privacy. The lawyer representing these states and the Union Territory argued that “the right to privacy cannot be absolute, but the court needs to strike a balance between the rights of the state and citizens on the one hand and the rights of citizens and non-state actors on the other.”

What did the petitioners argue against Aadhaar’s collection of biometric data? One of the lawyers representing the petitioners, Shyam Divan, argued “my body belongs to me; invasions of my bodily integrity can only be allowed under a totalitarian regime.” They argued that without privacy and a private life, no person could be meaningfully free. A world without privacy is a world with unchecked surveillance, and constant surveillance is antithetical to human dignity. Reported in *Business Standard* (India), August 25; uidai.gov.in/your-aadhaar.



SCHOOLS Florida

After the Florida legislature changed state law to allow any resident to challenge their school district's textbooks and curricula and get a hearing before an outside mediator, The Associated Press attempted to gauge the effect. The AP filed public records requests with Florida's 67 countywide school districts, seeking all challenges since January 1, 2017. Seven districts reported at least one challenge.

Under the new version of the Florida law, the mediator advises the local school board, and the board's decision is final. Previously, challenges could only be made by parents to the school or district. There was also no mediator and fewer mandates. Districts must now also post online a list of all new books and material by grade level, to make monitoring easier.

The Florida Citizens' Alliance, a conservative group, pushed for the change, arguing that many districts ignored challenges or heard them with stacked committees, and didn't consider residents who don't have children in the schools. Its members say boards rejected complaints over sexually explicit novels like Toni Morrison's *The Bluest Eye* being issued to middle school students. They also don't believe evolution and global warming should be taught without students hearing counterarguments.

Keith Flaugh, a managing director of the alliance, said schools are using pornographic materials and textbooks that "totally distort our founding values and principles. They are teaching our kids socialism versus free markets. They are teaching our kids that the government is our nanny, the government is supposed to protect them." He also said children receive a biased

presentation against freedom of religion and gun rights.

Brandon Haught, spokesman for Florida Citizens for Science, which opposed the bill, said his group is prepared to fight any challenges made against the teaching of evolution and climate change, which nearly all biologists and climatologists agree are proven facts. Haught, a high school environmental science teacher, said he is surprised social studies and English teachers have not formed similar coalitions to defend their courses.

"The alliance is pushing their narrow ideology on the public schools in any way they can, and so far they're meeting with success. I can't speak for the other academic subjects they're targeting, but I know beyond a doubt that their ideology when it comes to science is grossly ignorant and doesn't belong anywhere near a classroom," Haught said.

Broward County Superintendent Robert Runcie, who is president of the state superintendents association, said the changes, which took effect July 1, are "cumbersome." Districts have always encouraged parents and residents to voice concerns about materials and curricula, he said, and the mediator is an unnecessary step. The new law "creates a level of bureaucratic hurdle that could be disruptive to some good processes that are already in place," he said.

In challenges reported to the AP, some challengers think public schools use biased history textbooks, while others believe they push literature that's too sexually explicit. Some assert the danger posed by Muslim terrorists is underexposed.

The AP listed a number of "notable complaints," including the following:

In Brevard County, home of the Kennedy Space Center, a Citizens'

Alliance couple filed challenges against elementary school social studies textbooks, alleging each has dozens of inaccuracies. They say authors frequently ignore American exceptionalism and the books' assertion that global warming is caused by human activity is "blatant indoctrination." The district says no changes were made.

In Santa Rosa County, in the western Panhandle, a parent wants to ban Ray Bradbury's 1953 novel *Fahrenheit 451*, which Bradbury wrote as a cautionary tale on the banning of books, because the parent found profanity and violence in the book. [For more details on this challenge, see page 75.]

In Nassau County, north of Jacksonville, a resident challenged the teaching of evolution, arguing that life was created and perhaps planted by space aliens. A hearing was held and the mediator is preparing a report.

In Seminole County, north of Orlando, two parents complained that a middle school ancient history textbook had no chapter on Islamic civilization while mentioning Christianity, Judaism, Buddhism and Hinduism. The district replied that Islam was emerging during the timeframe taught and is covered in 10th grade.

In Duval County, which covers Jacksonville, the parent of a sixth-grade girl complained that an assigned novel, *Bad Boy* by Walter Dean Myers, is too explicit for that age group because it uses "penis" and a homophobic slur. The parent also criticized its description of heroin use, gang violence and the protagonist's questioning of religion. The district agreed to warn parents before it is assigned. Reported in: Associated Press, November 26.



COLLEGES AND UNIVERSITIES

Berkeley, California; New Haven, Connecticut; Chicago, Illinois, Columbia, Missouri; Middlebury, Vermont

Free speech on campus, and attempts to block unpopular speakers, was a recent Cover Story on CBS-TV's "Sunday Morning" news magazine. CBS said, "A war of words is raging on many a college campus . . . a debate in which the right of free speech itself is under fire." CBS reporter Rita Braver offered a number of examples.

At Yale University in New Haven, Connecticut, a faculty member was yelled at by students, because his wife (also a Yale instructor) had suggested students should be free to wear any Halloween costume they choose, even if slightly offensive. A month later, the teacher resigned.

At the University of Missouri in Columbia, students and faculty members tried to stop a student reporter from covering their protest. "This is a First Amendment that protects your right to stand here, and protects mine!" the photographer said. At the University of California at Berkeley, when conservative commentator Ben Shapiro showed up to speak, there were multiple arrests. The school was on virtual lockdown, and more than half a million dollars was spent on security. Also at Berkeley, students wanted comedian Bill Maher to cancel his commencement address, in part because he had made jokes about Islam.

"Whoever told you, you only had to hear what didn't upset you?" Maher quipped. But at campuses around the country, Braver said, some speakers were dis-invited, or simply backed out in the face of student opposition, such as former Secretary of State Condoleezza Rice,

head of the International Monetary Fund Christine Lagarde, and the rapper and actor Common.

President Barack Obama has commented on the trend. In September 2015, speaking to young people in Des Moines, Iowa, he said, "I've heard some college campuses where they don't want to have a guest speaker who, you know, is too conservative. Or they don't want to read a book if it has language that is offensive to African Americans. Or somehow sends a demeaning signal towards women . . . I don't agree with that, that you as students at colleges have to be coddled and protected from different points of view." Some of the protests are in reaction to deliberately provocative figures, like white nationalist Richard Spencer. But what happens when the speaker says he is just reporting on his academic research?

"I think what I'm saying is important for college kids to hear," said Charles Murray, a libertarian political scientist with the American Enterprise Institute. His 2012 book *Coming Apart* explores the growing divide between rich and poor white Americans. "Most of my lectures are going after them as members of a new elite that [is] out of touch with mainstream America," Murray said. But when he came to talk about it at Middlebury College in Vermont last March, there were protests, as chanting and yelling students shouted him down. Phil Hoxie, a member of the student wing of the American Enterprise Institute, helped bring Murray to campus. He told Braver he knew that Murray would be controversial: "It wasn't a surprise to us that some people might not like *The Bell Curve*. But we were not at all hoping that he would discuss *The Bell Curve*. We were hoping that he would give a lecture on *Coming Apart*."

The Bell Curve is a previous book of Murray's which suggested race may play a part in determining intelligence, and asserted that blacks do less well than whites on IQ tests. That set off a firestorm when it was published in 1994—a firestorm reignited at Middlebury.

Murray was set to be interviewed by political science professor Allison Stanger. But seconds after they took the stage, students drowned them out with a tirade of shouts. "We really lost an education opportunity," Stanger told Braver.

"We didn't actually prevent him from speaking," said student Liz Dunn. "He still wrote plenty of articles before and after the talk. It was just saying in this specific time on this specific stage, we're sending you a message that we do not support your ideals."

Students like Dunn insist that just letting someone like Murray be heard increases the likelihood of violence against minorities. In fact, Murray's appearance did result in violence, of a different kind. When professor Stanger was escorting Murray out, they were attacked by a mob that included outside activists, and she was left with a concussion and whiplash. Ironically, Stanger was selected to moderate the event because she was seen as a respected professor with liberal credentials.

"I actually went back and reviewed *The Bell Curve* and prepared really tough questions that I never really got to ask in front of an audience that was listening," she told Braver. "It was this real group-think mob mentality where people weren't reading and thinking for themselves, but rather relying on other people to tell them what to think."

And it isn't just Middlebury; Murray was shouted down at the University of Michigan this past fall as well.



Braver asked, “What do you think is different [on college campuses]? Have students changed?”

“Well, the identity politics is way more intense,” Murray replied. “You are getting this, ‘You can’t talk to me about any of my life experiences because you aren’t a woman, and you aren’t black, or you aren’t poor,’ and therefore it’s almost as if they’re saying we have no common humanity.”

In fact, some critics say too many college campuses today aren’t places for a civil exchange of ideas, but an intolerant world of political correctness. A recent Gallup poll finds that 54 percent of college students say people on campus are afraid to say what they believe.

And if you visit a campus these days, Braver said, you may feel like you need a dictionary for a whole new set of phrases . . . terms like “safe space” (a place where students can go where they won’t be exposed to topics that make them uncomfortable), or “trigger warnings” (when a professor cautions students that upcoming material could be distressing).

But now, there are some signs of a backlash. Robert Zimmer, president of the University of Chicago, told Braver, “Discomfort is an intrinsic part of an education.”

Last school year, the university sent a letter to incoming freshman that said, in part:

“We do not support so-called ‘trigger warnings,’ we do not cancel invited speakers because their topics might prove controversial, and we do not condone the creation of intellectual ‘safe spaces’ where individuals can retreat from ideas and perspectives at odds with their own.”

Braver asked, “Why did the university have to put out a letter like that in the first place?”

“Part of the way we operate is that we’re a place where there’s constant

open discourse, constant expression and constant argument,” Zimmer replied. Reported in: www.cbsnews.com, January 21.

NET NEUTRALITY

Now that the Federal Communications Commission has rolled back “net neutrality” rules, what’s next? With new appointees by President Trump, the FCC voted on December 14 to end rules that had been instituted in 2015, during the administration of President Obama, which had prevented internet service providers (ISPs) from discriminating against web content or from creating separate internet fast and slow lanes.

To try to change the new policy, a number of lawsuits are challenging the FCC. Other changes may come if Congress takes on the issue of net neutrality through legislation. Some states are making their own attempts to enforce net neutrality. And some cities may create their own internet networks.

To learn what might happen under the new FCC policy, the Associated Press queried seven major internet providers about their post-net-neutrality plans. The AP summary of the current situation said that with the repeal of net neutrality, it may be time to brace for the arrival of internet “fast lanes” and “slow lanes.” The 2015 net neutrality rules prohibited such “paid prioritization,” as it’s technically known. That’s when an ISP such as Verizon or Comcast decides to charge services like YouTube or Amazon for faster access to users. Firms that decline to pay up could wind up in low priority slow lanes.

The Associated Press said all of the ISPs it contacted “equivocated” when asked if they might establish fast and slow lanes. None of the seven companies—AT&T, Charter, Comcast, Cox, Sprint and T-Mobile,

Verizon—would rule out the possibility. Most merely said they had “no plans” for paid prioritization, and a few declined to answer the question at all.

By contrast, several of these firms promised not to block or slow down specific internet sites and services, two other practices prohibited by the expiring net-neutrality rules. (Those rules won’t formally end until sometime in early 2018.) Any such move could set off a public uproar and might even trigger an antitrust investigation.

Here are the net-neutrality promises from the country’s biggest wireless and cable companies.

- **AT&T**—*Fast lanes?* No specific response. *Block or slow down sites?* Says it “will not” do so.
- **Charter**—*Fast lanes?* Says there are no plans to create them. *Block or slow down sites?* Says it doesn’t do so and has “no plans” to change that.
- **Comcast**—*Fast lanes?* Has “no plans” to create them. *Block or slow down sites?* Says it “will not” do so.
- **Cox**—*Fast lanes?* Does not plan to create them. *Block or slow down sites?* Says it doesn’t do so and has no plans to.
- **Sprint**—*Fast lanes?* No specific response. *Block or slow down sites?* Says it doesn’t block sites, but declined to address the future.
- **T-Mobile**—*Fast lanes?* No response about future plans. *Block or slow down sites?* No response about future plans.
- **Verizon**—*Fast lanes?* No specific response. *Block or slow down sites?* Says it doesn’t do so, but declined to address the future.

Meanwhile, attorneys general from 21 states have sued to block the federal changes to the Obama-era internet rules that had barred ISPs from



interfering with internet traffic and favoring their own sites and apps.

At the same time, several states have introduced bills to protect net neutrality, even though the FCC's order bars state laws from contradicting the federal government's approach.

For example, in New Mexico, two Democratic state lawmakers in late January proposed consumer protection legislation for internet users in the state. State Senator Howie Morales of Silver City and Representative Bill McCamley of Mesilla Park said that their bill would prohibit paid prioritization of internet traffic as an unfair and deceptive trade practice under the state's Unfair Practices Act, and provide funding to state prosecutors for enforcement. They say the legislation would protect small businesses, schools and families from price gouging and unequal internet access.

And will Congress take action? Even one of the ISPs has raised that possibility.

AT&T is calling on Congress to pass a net neutrality law that would cover not only ISPs but also platforms like Facebook and Google. The telecom giant took out full-page ads in major newspapers including the *New York Times* and the *Washington Post* on January 24, calling for an "internet bill of rights."

In the ad, AT&T CEO Randall Stephenson wrote, "Legislation would not only ensure consumers' rights are protected, but it would provide consistent rules of the road for all internet companies across all websites, content, devices and applications." AT&T had been an outspoken champion of the FCC's decision to repeal its 2015 net neutrality rules. The company also pushed Congress last year to eliminate a set of FCC privacy rules that would have required broadband companies to obtain permission from consumers

before using their data to sell targeted ads.

AT&T and most Republicans argue that the FCC's net neutrality rules were too heavy-handed and there are sufficient laws on the books to preserve an open internet. When Congress overturned the FCC privacy rules, AT&T argued that the laws unfairly subjected internet service providers to restrictions that didn't cover companies like Facebook and Google, which provide more targeted advertising.

Net neutrality supporters largely reject any attempt to legislate open internet protections, arguing that a GOP-controlled Congress would not produce rules as strong as what the FCC had in place.

"It would be a lot easier to take AT&T at their word if they hadn't spent more than \$16 million last year alone lobbying to kill net neutrality and privacy protections for internet users," said Evan Greer, an activist with the pro-net neutrality group Fight for the Future. "Internet activists have been warning for months that the big ISPs' plan has always been to gut the rules at the FCC and then use the 'crisis' they created to ram through bad legislation in the name of 'saving' net neutrality."

On January 24, after the company's ads appeared, an AT&T spokesman released a statement saying that the open letter was meant to start a dialogue and that the company had not staked out a position on fast lanes: "We want to have a dialog about it with other internet companies and consumer groups, so that Congress is considering all angles as they begin to write the rules of the road on how the internet works, particularly for new innovation and invention, like self-driving cars or augmented reality." On the local level, some cities are

looking to have new ISPs that would provide net neutrality.

For example, San Francisco is trying to find a network to build a city-wide, gigabit fiber internet service with mandated net neutrality and consumer privacy protections. It would be an open-access network, allowing multiple ISPs to offer service over the same lines and compete for customers.

The city on January 31 issued a Request for Qualifications (RFQ) to find companies that are qualified "to design, build, finance, operate, and maintain a ubiquitous broadband fiber-to-the-premises network that permits retail service providers to lease capacity on the network." The project would also involve a free Wi-Fi service for city parks, city buildings, major thoroughfares, and visitor areas. Low-income residents would qualify for subsidies that make home internet service more affordable.

ISPs offering service over the network would not be allowed to block or throttle lawful internet traffic or engage in paid prioritization. ISPs would also need customers' opt-in consent "prior to collecting, using, disclosing, or permitting access to customer personal information or information about a customer's use of the network."

San Francisco started considering the network even before the federal government repealed broadband privacy rules and net neutrality rules. In the eyes of city officials, a city-wide fiber network would benefit residents and business regardless of whether those federal rules exist, but the latest FCC action adds urgency to the project.

The city says it will cover a portion of the costs for the multi-billion dollar project and provide or lease access to necessary city property and infrastructure. But San Francisco isn't planning



to build the network itself, a step that hundreds of smaller cities and towns have taken.

The winning bidder is “expected to assume the full performance risk,” so the biggest challenge may be finding companies willing to meet all of San Francisco’s demands. The city estimates construction would take three to five years.

On the plus side for bidding entities, San Francisco would provide payments to the builder when construction milestones are reached. The private builder would also get a share of the network’s revenue.

San Francisco says it will also “provide or lease access to City fiber, communication assets, and conduits to reduce capital costs and construction; [and] provide or lease space on City properties suitable for placement of data centers, fiber hubs, or central offices at a reasonable rate.”

The RFQ seeks up to three qualified consortia or joint ventures. The RFQ deadline is March 26. The RFQ anticipates that the city would sign a 15-year agreement with the winning bidder. Los Angeles issued a similar Request for Proposals in 2013. Another request followed in 2015, but “the city never received a workable proposal from a private company to build out the network,” according to an article last month in *Curbed Los Angeles*. The LA project may have been doomed by LA’s decision to discourage proposals that required any financial support from the city. By contrast, San Francisco is willing to chip in some money. Reported in: *Associated Press*, December 20, January 30; *The Hill*, January 24; *arstechnica.com*, February 1.

ELECTRONIC PUBLISHING

A new content policy instituted by Nook Press has resulted in the termination of the accounts of numerous

self-published authors, and thus the removal of their e-books.

In August, authors began receiving notices from Nook, which is owned by Barnes & Noble, informing them that their titles are in violation of Nook’s updated content policy. The authors have been told that their titles have been removed from sale, and their accounts have been terminated.

The content policy in question states that titles subject to removal include “works portraying or encouraging incest, rape, bestiality, necrophilia, paedophilia or content that encourages hate or violence.” The policy also stipulates that it is the responsibility of authors to keep up-to-date on any changes to the policy.

A number of authors who have received the notices have taken to social media to vent their frustrations. In a blog post about the situation, author Georgette St. Clair said she would have acted to conform to the content policy, had she known it was needed. She writes: “I have never gotten a single warning or complaint from B&N about any of these titles; if I had, I would have taken it down immediately.”

Selena Kitt, another author who complained publicly about the situation, said B&N acted “without warning” in canceling her account, and the accounts of other authors. She added that B&N’s claims that she and others had violated Nook’s content guidelines rung hollow as those guidelines were “non-existent until August 16 or so. We’ve had the same content published on their site for years.”

Other authors have taken to social media to express their dismay over B&N’s move. Like St. Clair and Kitt, many complained that they were not alerted that their books had run afoul of the updated content policy, nor were they told why their books no longer conformed to new content

standards. A number of the authors also echoed Kitt’s sentiment about being puzzled why content they had sold via Nook for years was suddenly deemed inappropriate.

When asked why B&N moved so swiftly to drop titles and delete accounts, a spokesperson for the company said it was simply following procedure. “We have a policy,” the spokesperson said via email. The authors “are aware of it. We terminate when there is a violation.”

Update: Since this story was originally posted, Publishers Weekly learned that some affected authors have had their accounts reinstated by B&N. Reported in publishersweekly.com, August 23.

GOVERNMENT SPEECH

The Trump administration has informed multiple divisions within the Department of Health and Human Services that they should avoid using certain words or phrases in official documents being drafted for next year’s budget.

Officials at the Centers for Disease Control and Prevention, which is part of HHS, were given a list of seven prohibited words or phrases during a meeting Thursday with senior CDC officials who oversee the budget. The words to avoid: “vulnerable,” “entitlement,” “diversity,” “transgender,” “fetus,” “evidence-based” and “science-based.”

A second HHS agency received similar guidance to avoid using “entitlement,” “diversity” and “vulnerable,” according to an official who took part in a briefing earlier in the week. Participants at that agency were also told to use “Obamacare” instead of ACA, or the Affordable Care Act, and to use “exchanges” instead of “marketplaces” to describe the venues where people can purchase health insurance.



At the State Department, meanwhile, certain documents now refer to sex education as “sexual risk avoidance.”

The colleague who provided the briefing at the second HHS agency relied on a document from the Office of Management and Budget detailing guidance for the fiscal 2019 budget, said the official in an interview. No explanations were given for the language changes. The HHS official spoke on the condition of anonymity because the language change information was supposed to be “close hold.” The person did not want to name the agency to protect the identity of officials involved in the talks.

It’s not clear whether other federal agencies have been instructed to avoid certain words, and if so, to what extent, in preparing their budget documents for next year. Officials interviewed at the two HHS agencies said the language restriction was unusual and a departure from previous years.

The OMB oversees the process that culminates in the president’s annual budget proposal to Congress. That budget document, usually several volumes, is generally shaped to reflect an administration’s priorities. An OMB spokesman did not respond to a request for comment.

News of the directives to stop using these words and phrases drew outcry from scientific groups, researchers and advocacy organizations who took to Twitter and other social media.

Rush Holt, chief executive of the American Association for the Advancement of Science, said: “Among the words forbidden to be used in CDC budget documents are ‘evidence-based’ and ‘science-based.’ I suppose one must not think those things either. Here’s a word that’s still allowed: ridiculous.”

Mara Keisling, executive director of the National Center for

Transgender Equality, noted that CDC’s own research suggests that transgender people face a higher risk of being infected with HIV.

A CDC study published in August, which analyzed 9 million agency-funded HIV tests, determined that transgender women “had the highest percentage of confirmed positive results (2.7 percent) of any gender category.”

“To pretend and insist that transgender people do not exist, and to allow this lie to infect public health research and prevention is irrational and very dangerous, and not just to transgender people,” Keisling said in an email.

While HHS staffers were directly notified about how they must change the language they use when preparing budget documents, a shift is happening in other departments as well.

At the State Department, for example, employees received a guidance document on Wednesday that outlined how they should develop country operating plans under the President’s Plan for Emergency AIDS Relief (PEPFAR) for 2018. This document repeatedly uses the phrase “sexual risk avoidance,” which has been defined in recent congressional funding bills as abstinence-only practices until marriage, as the primary form of sex education.

Jen Kates, vice president and director of global health and HIV policy at the Kaiser Family Foundation, said in an interview Saturday that while the document does not specifically change how much money should be spent on abstinence-only programs under PEPFAR, the heavy emphasis on it could shift priorities on how money is spent overseas.

“It’s a change, and the language in these documents does matter, because that’s what’s communicated to the teams in the field,” Kates said, adding

that it’s “too early to tell” how this might translate into funding changes. According to a database compiled by the Foundation for AIDS Research, or Amfar, the amount of money that has been allotted for “Abstinence/Be Faithful” programs under PEPFAR fell from a high of \$258.3 million in 2008 to \$20.1 million in 2017. As a share of overall PEPFAR funding, this represented a decline from 7 percent to 1 percent.

The same guidance document includes a line touting the efficacy of abstinence-only programs, referring to “abstinence as a highly effective form of prevention.”

Several public health experts questioned that assertion, noting that multiple studies have shown that there is little evidence this form of education either delays sexual activity or reduces the number of sexual partners a person has. A nine-year congressionally mandated study concluded in 2007 that teenagers enrolled in abstinence-only programs were no more likely to refrain from having sex than those who did not enroll. Among those who did have sex, the study found, there was no difference in when they began to engage in this activity or how many partners the teens in each group had.

Jesse Boyer, senior policy manager at the Guttmacher Institute, said in an interview Saturday that the “rebranding” of abstinence programs with the term “sexual risk avoidance” would not make them more effective.

“It’s the continual promotion of a coercive and ideological agenda over what the science and research tells us what young people need to lead healthy lives,” she said.

In a statement, the State Department said Violence Against Children surveys funded by the program in 11 countries “showed that an average of 1 in 3 young women had a first sexual



experience that was forced or coerced. In light of this alarming evidence, PEPFAR has placed an even greater emphasis on activities supporting sexual risk avoidance, with a particular focus on girls ages 9-14," in the guidance.

The HHS official who received the briefing on language changes said the reaction among participants was similar to that at the CDC when budget analysts were informed they couldn't use the seven words or phrases in drafting budget materials.

"People were surprised, people were not thrilled," the HHS official said. "We all kind of looked at each other and said, 'Oh, God.'"

At the CDC, budget analysts were told they could use an alternative phrase instead of "evidence-based" or "science-based" in budget documents. That phrase is "CDC bases its recommendations on science in consideration with community standards and wishes," said a budget analyst who took part in the 90-minute briefing. No alternatives were suggested for the other words.

At the CDC, the briefing was led by a senior career civil servant in the office that oversees formulation of the agency's budget. She opened the meeting by telling participants not to use the words "vulnerable," "entitlement" and "diversity" because documents containing those words were being "flagged" by others higher up the chain in the budget process, and documents were being sent back to CDC for corrections.

The civil servant then announced the additional words—"fetus," "transgender," "evidence-based" and "science-based"—that were not to be used. Another senior CDC budget person told the group that agency budget officials conducted a search across the agency's budget documents and found that "evidence-based" and "science-based" were used so frequently that they were essentially meaningless, the analyst recalled.

In a statement, HHS spokesman Matt Lloyd said: "The assertion that HHS has 'banned words' is a complete mischaracterization of discussions regarding the budget formulation process. HHS will continue to use

the best scientific evidence available to improve the health of all Americans. HHS also strongly encourages the use of outcome and evidence data in program evaluations and budget decisions."

Lloyd declined to identify any specific inaccuracies in the *Washington Post's* report about words that are prohibited in CDC budget documents.

CDC Director Brenda Fitzgerald emailed staff late Saturday reassuring them that the agency has a history of making public health and budget decisions based on the best available science and will continue to do so. "I want to assure you that CDC remains committed to our public health mission as a science- and evidence-based institution," she wrote.

The CDC analyst said it was clear to participants that they were to avoid those seven words but only in drafting budget documents.

"What would you call it when you're told not to use those words?" the person said. "If that's not a ban, maybe I need to improve my vocabulary." Reported in: *Washington Post*, December 16.



BOOKS

The White House's demand that Macmillan cease publication of a controversial new book about President Donald Trump and his administration is "flagrantly unconstitutional" and runs afoul of the First Amendment, declared the publisher. Trump had his lawyer send a letter to Henry Holt & Co., demanding that it "cease and desist" publication of *Fire and Fury: Inside the Trump White House* by Michael Wolff. This is a longstanding Trump tactic, but it would not stop the publisher, said its chief executive, John Sargent. Reported in *Wall Street Journal*, January 7, January 8.

LIBRARIES

West Chicago, Illinois

This Day in June by Gayle E. Pitman, a children's book featuring illustrations of a gay pride parade, was challenged but retained at the West Chicago Public Library. The mother of a 3-year-old girl, Michaela Jaros, said she was surprised at the content when her daughter found the book. The mother thought it wasn't age-appropriate, and filed a complaint with the library. Her husband, Kurt Jaros, asked the library board if the material could be removed or moved out of the children's section.

Once the incident was reported on the website of the conservative Illinois Family Institute, "The whole thing blew up," Jaros said.

At a library board meeting to discuss the issue, a crowd packed the meeting room and spilled into the hallway. A library official said more than 150 people signed up to speak about the matter, and the vast majority supported keeping the book. After much debate, the board voted 6-1 to keep the book in the library's collection.

"This was a very hot topic," said Maria Dalianis, a West Chicago resident and advocate for keeping the

book as a show of tolerance and diversity. "Our position is you can't address just one segment of the population. It's a book about the gay pride parade. It's pretty darn innocuous. Whatever is in the library, it's the parents' responsibility to monitor their children and decide what's right for them," she said.

Kurt Jaros said his wife would prefer to let her children discover books in the library on their own with her ultimate oversight. "My wife doesn't perceive that she should have to be a helicopter parent," he said. "She feels like the library is not providing a safe place for children to explore children's books."

Jaros is executive director of Defenders Media, an alliance of evangelical ministries that advocates for a Christian worldview. He is also host of a conservative Christian podcast.

"At the very least, this book should be moved to the parental section," Jaros said. "I don't think we see other children's books showing these sorts of images."

The book includes drawings of same-sex couples embracing and holding hands, and Jaros said he believes the book is "ultimately about sexuality."

Library Director Benjamin Weseloh said the book is primarily made up of colorful drawings of a gay pride parade. At the back of the book is a parent's guide that explains terminology and ways to discuss the topic with children.

"This is not sexual in any way," he said. "In my opinion, that's being read into it."

The library has just one copy of the book, which came out in 2014, Weseloh said, but there is suddenly renewed interest in it because of the controversy.

On the website of the publisher, Magination Press, the author is quoted as saying: "When I wrote this

story, I wanted *Pride* to be featured as realistically as possible. I wanted to see drag queens, guys in leather, rainbows, political signs, the Dykes on Bikes—everything you would see at *Pride*. . . . There's something very powerful about allowing something to be portrayed authentically because it teaches children in an indirect way to be as authentic as they can."

Both sides saw the controversy as part of a broader cultural debate over intolerance.

The Illinois Family Institute, a nonprofit Christian group based in Tinley Park, Illinois, wrote an article before the meeting, urging people to attend in opposition to the book, which it called "propaganda" aimed at children.

Self-identified librarians from around the country posted on the group's Facebook site, calling the group "hateful" and "homophobic."

Institute author Laurie Higgins responded by saying the group's critics were trying to bully its members, and that institute members think homosexuality is wrong but abhor violence and hate. Reported in: *Chicago Tribune*, August 30.

SCHOOLS

Conejo Valley, California

One member of Conejo Valley Unified School District's board voted against *The Absolutely True Diary of a Part-Time Indian* by Sherman Alexie for the ninth-grade curriculum, but he was alone. Trustee Mike Dunn had no support from his colleagues, so the young-adult novel was approved at a board meeting on August 15, after two months of controversy.

Dunn said he couldn't vote for the book because it was "too controversial. . . . Our children will be hurt by this decision." Prior to the vote, Dunn said there are thousands of books more suitable for ninth-graders.



He asked Trustee Betsy Connolly, who made the motion early on in the meeting to approve the book, “How about you and I get together and find a book that’s not controversial, that’s still stimulating?”

Connolly replied, “That’s not my job. It’s my job that the process is followed carefully and that the curriculum committee consists of diverse teachers. It’s not my job to tell teachers how to teach calculus. It’s not my job to tell teachers what specimens to dissect in class.” Connolly said the board has a role in making sure that correct steps are taken during teachers’ decision-making process. Alexie’s book, based on his life as a Native American boy who leaves his reservation school to attend an all-white campus, was recommended by a team of nearly 50 teachers and curriculum experts in the district. Published 10 years ago, the novel has received the National Book Award, among others, but it’s also on the American Library Association lists of the most challenged books in recent years. Instances of bullying, violence and masturbation are found in the book.

Just hours before the board meeting, a letter was emailed to Dunn urging support for the book from representatives of the American Library Association Office for Intellectual Freedom, National Council of Teachers of English and California Library Association.

“We strongly recommend that the Conejo Valley Unified School District take advantage of the opportunity to reaffirm the importance and value of the freedom to read by approving the recommended curriculum, including *The Absolutely True Diary of a Part-Time Indian*, in the classrooms,” according to the letter. “By doing so, you will send a powerful message to students that, in this country, they have

the responsibility and the right to think critically about what they read, rather than allowing others to think for them. If we refrain from discussing controversial issues, we’ve failed to prepare our students for the real world.”

The crux of Dunn’s objection with the book lies in the district’s opt-out process.

Jennifer Boone, director of curriculum for the district, said parents must sign the teacher’s syllabus, which lists the books to be read, at the start of the semester. If parents or students have an issue with a book, they are encouraged to discuss it with the teacher and work together in selecting an alternative book.

“Here in Conejo, there’s an opportunity to opt out,” Boone said. “We do offer options.”

According to an informal teacher poll taken over the summer, there have been 12 instances of opting out of a book since 1985. Boone pointed out that not all teachers responded to the poll.

“We have a process to opt out, and it’s worked,” said Interim Superintendent Mark McLaughlin.

But the school board has never received a complaint about the opt-out process, said Trustee Pat Phelps.

Not true, said Dunn. He said he’s received an email about a student who opted out of a book and received a lower grade.

Trustee Sandee Everett also shared secondhand anecdotes about students being embarrassed about opting out or experiencing some kind of repercussion for opting out.

Nearly 30 people addressed the board. Most criticized Dunn, and called on the board to trust the teachers who recommended the book. Supporters of the book included teachers, parents and students. Reported in *Ventura County Star*, August 16.

Rocklin, California

Controversy erupted after a kindergarten student at Rocklin Academy sparked a class discussion about gender issues. The kindergarten teacher at the elementary charter school in the Sacramento area defended her decision to read in class a book related to transgenderism. She says the book was given to her by a transgender child going through a transition.

The book in question is *I Am Jazz*, a story of a transgender child, based on the real-life experience of Jazz Jennings, who has become a spokesperson for transkids everywhere.

The incident happened during the last few days of the 2016-17 school year, and was discussed at a Rocklin Academy Board meeting in August. “I’m so proud of my students. It was never my intent to harm any students, but to help them through a difficult situation,” the teacher said.

Yet many parents objected. “These parents feel betrayed by the school district that they were not notified,” said Karen England with the Capitol Resource Institute. Parents say besides the books, the transgender student at some point during class also changed clothes and revealed her true gender identity.

At a follow-up meeting in September attended by more than 500 people, the board voted to affirm its literature policy. The board also said that going forward it will try to notify parents of any controversial or sensitive topics being discussed in class.

At the earlier board meeting in August, one parent said she wants her daughter “to hear from me as a parent what her gender identity means to her and our family, not from a book that may be controversial.” Another parent said, “My daughter came home crying and shaking, so afraid she could turn into a boy.”



Parent Chelsea McQuistan said, “It’s really about the parents being informed and involved and giving us the choice and rights of what’s being introduced to our kids, and at what age.” One parent said the impact on her son was extremely positive. “It was so precious to see that he had absolutely no prejudice in his body. My child just went in there and listened to the story, and didn’t relate it to anything malicious, or didn’t question his own body,” she said. Many teachers spoke out in support of what transpired inside the classroom. They spoke about the importance of teaching students about diversity and having healthy dialogues.

“When we head in the direction of banned books or book lists, or selective literature that should only be read inside or outside the classroom, I think that’s a very dangerous direction to go,” said 7th grade teacher Kelly Bryson.

In August, the district said the books were age-appropriate and fell within their literature selection policy. Unlike sex education, the topics of gender identity don’t require prior parental notice. Since then, the district has held a number of talks with parents, faith leaders, and other school districts, and administrators offered a series of recommendations that were being discussed. The main recommendations were to affirm the literature policy and to make a change in the parent handbook that would suggest that the school will “endeavor” to notify parents about controversial topics being discussed in class.

“‘Endeavor to notify’ is too loose in my opinion. Who is accountable for that? What will we be notified of? There’s nothing in the proposed policy that guarantees this won’t happen again,” a parent complained.

“It’s impossible to say that every controversial topic the teacher’s going

be able to give a heads up on, that’s just not how classrooms work,” said Elizabeth Ashford, a spokesperson with the Rocklin Academy Schools.

Many parents have wanted to not have their children be placed in the same classroom as transgender children and were asking the board for a chance to opt out. But the district says that is against the law and is discrimination towards a protected class.

Since the incident, at least 14 families have pulled their children from the school. Superintendent Rob-in Stout says she is expecting more people to withdraw. Yet she adds that there are more than 1,000 families on their academy waitlist. Reported in: www.cbsnews.com, August 22; sacramento.cbslocal.com, September 19.

Milton, Florida

Central School, a public school for grades pre-kindergarten through 12 grade that is part of the Santa Rosa County School District in northwest Florida, is resisting a parent’s efforts to ban *Fahrenheit 451*, Ray Bradbury’s science fiction novel about book burning. (The title refers to the temperature at which paper burns.) Set in the 24th century, the story is about a “fireman” in charge of burning illegally owned books as well as the homes of the lawbreakers.

Sonja McCall-Strehlow, mother of a student at Central School, filed the formal request October 10, challenging the book because of its use of profanity and using God’s name in vain. She also had concerns about sex, drugs, suicide, murder, and abortion in the book. “I’m very disappointed in the whole system,” McCall-Strehlow told *NWF Daily News*. “School is a place where children are supposed to be safe, but the material being read isn’t safe content.” McCall-Strehlow argued that if the students are made to sign a handbook that prohibits the use

of profanity on school grounds, then they should not be reading it in book assignments.

The book, according to the re-evaluation form, was being read by eighth-graders at Central School.

Santa Rosa County Superintendent of Schools Tim Wyrosdick on November 1 sent out a letter in response to McCall-Strehlow’s complaint. He said a District Materials Review Committee was formed to review the book and later submitted a recommendation.

Wyrosdick said the right to read, like all rights guaranteed or implied in the Constitution, can be used wisely or foolishly. He added that school district policy encourages students and parents to speak up if they are uncomfortable with material, and allows for alternative assignments.

“I am supporting the decision that *Fahrenheit 451* remain a choice of educational material as part of the core curriculum,” Wyrosdick said.

McCall-Strehlow said she first heard about the book assignment when her 13-year-old daughter asked her what a “bastard” was. “She said that word was in the book and proceeded to tell me what else was in it,” she said. McCall-Strehlow suggested replacing *Fahrenheit 451* with *The Giver*, *When the English Fall*, *Animal Farm*, and *Gathering Blue*. McCall-Strehlow’s second suggestion was to censor some of the language in *Fahrenheit 451*.

McCall-Strehlow said that despite the School District’s assurance her daughter can opt for another assignment, she’s not satisfied. She said her daughter and a handful of other students upset about the novel plan to start a petition to get *Fahrenheit 451* out of Santa Rosa County schools for good. Reported in: nwfdailynews.com, December 1.



Rigby, Idaho

George Orwell's novel *1984* was temporarily removed but returned to classrooms at Rigby High School, part of the Jefferson County Joint School District #252. The novel, with its vision of an all-powerful "Big Brother" government, was being taught in two senior government classes. At least one parent claimed to be shocked by this passage in the book: "He would flog her to death with a rubber truncheon. He would tie her naked to a stake and shoot her full of arrows like Saint Sebastian. He would ravish her and cut her throat at the moment of climax."

Students argued that the passage was taken out of context, and was important to Orwell's themes. Senior Natalie Gittens said that if school administrators "understood the novel, they would know why it is important. In this scene, Orwell is trying to show us that power is determined by one's ability to control and degrade someone else." Gittens also pointed out that the attack on the book came one week before Banned Books Week.

Another student's Facebook post about the attempt to ban *1984* drew more than 100 comments from classmates against the censorship. Within a week, an anonymously posted petition against the censorship gained more than 537 signatures, plus 215 comments from people across Idaho, and overseas, and the controversy attracted media attention.

If parents or students objected to the book, the school would offer an alternative assignment, according to Lisa Sherick, superintendent of the Jefferson County School Board. She said teachers would continue to use *1984*. According to Sherick, Rigby High School principal Brian Lords told teachers using the book to pause instruction while administrators reviewed board policy surrounding the issue.

Administrators eventually determined that board policy allows for alternative assignments to be used when objections over content are made. But administrators' clarification to offer an alternative assignment for *1984* didn't reach the classroom, Sherick said, "and books were collected from students." Administrators then told teachers to return the books and resume instruction.

Several Rigby High students told *Idaho News* their teachers made it clear that the book was being banned—and that the district backpedaled once word began to spread. Reported in: idahodnews.org, September 22, September 26.

Alton, Illinois

The Absolutely True Diary of a Part-Time Indian, written by Sherman Alexie and illustrated by Ellen Forney, has been restored to the 10th grade curriculum at Alton High School. The book had been temporarily suspended a few weeks earlier, pending the decision of a review committee, after one parent simply requested an alternate assignment for their own child. Alton officials have now clarified that teachers have the authority to offer an alternate reading assignment on a per-student basis without triggering a review of the primary assignment.

When the book was banned, the National Coalition Against Censorship and the Kids' Right to Read Project sent a letter of protest to Alton superintendent Mark Cappel. Organizations signing the letter included the American Library Association's Office of Intellectual Freedom, the Freedom to Read Foundation, the Comic Book Legal Defense Fund, the Intellectual Freedom Center of the National Council of Teachers of English, American Booksellers for Free Expression, the Association of American Publishers, the Authors Guild,

the Society of Children's Book Writer and Illustrators, and PEN America's Children's and Young Adult Books Committee.

In their letter, they urged that the district keep challenged books available to students until the review process is completed. The Alton School District's challenge policy is not well defined and directs complainants to follow a Uniform Grievance Procedure that is also used for myriad other issues like potential ADA violations, sexual harassment, and bullying. Due to the catch-all nature of this procedure, it does not include safeguards for intellectual freedom in the situation where a book or other material has been challenged. In addition to the confusion over how pending challenges are handled in Alton, a further question was raised when a local newspaper quoted the assistant superintendent of the school district, Kristie Baumgartner, as reporting that the parent who complained about *Absolutely True Diary* "is not asking for the book to be banned/removed." If that is the case, then it is unclear why a review of the book was needed, since the challenge policy already said that any parent can request an alternate assignment for their own child. Reported in: cblfd.org, October 17, October 25.

Annandale, Minnesota

The Annandale Board of Education chose to keep Sherman Alexie's *The Absolutely True Diary of a Part-Time Indian* in the 9th grade curriculum, despite calls from a small group of parents to ban it due to "explicit language." Comic Book Legal Defense Fund and other sponsors of the Kids' Right to Read Project last week sent a letter to the board in defense of the book.

Absolutely True Diary has been assigned to 9th graders at Annandale



High School for the past six years without any issues, since parents or students may choose an alternate reading assignment if they're uncomfortable with the primary one for any reason. The book is frequently challenged in schools around the country for language—including a racial slur used by a bully against the protagonist—as well as mentions of alcohol and drug use. The Annandale board made its decision in October, about a week after the Kids' Right to Read Project sent a letter protesting the censorship attempt. Among the organizations signing the letter were the National Coalition Against Censorship, the Comic Book Legal Defense Fund, the National Council of Teachers of English, the Association of American Publishers, American Booksellers for Free Expression, and the Authors Guild. Reported in cdbldf.org, October 11.

Las Vegas, Nevada

Parents objected to explicit language and mature themes in *The Absolutely True Diary of a Part-time Indian* by Sherman Alexie, when it was assigned to 7th graders at Democracy Prep at Agassi Campus charter school in Las Vegas.

Parent Shateraka Hampton says her 12-year old son asked her to define “masturbate” when he came across the word in Alexie’s book. Hampton took her concerns about the book to the administration, and says she was told the book is part of the curriculum to teach kids about racism.

She complained, “It’s like the *Fifty Shades of Grey* for kids. Naked woman and all this stuff about masturbation, you thought that was appropriate? Not once did you ask us permission to expose our children to his foul language. If you’re just going to discuss the racism and that aspect, then why not pick another

book?” Hampton said. She isn’t the only parent who voiced concerns about the reading material. Karissa Lott, who also has a student at the school, says, “To sit there and say, ‘they’re at that age when they’re going to start being exposed to this’—well, that should be our decision!”

According to Hampton, “If sex education requires some type of permission slip, then this should have required some type of permission slip.”

Democracy Prep Public Schools issued the following statement: “This young adult novel, which received the National Book Award for Young People’s Literature and was named one of the best books of 2007 by the *School Library Journal*, has been a successful and important part of our curriculum, as well as the curriculum of other successful school districts for several years. The novel’s thought-provoking themes include bullying, race, violence, and other issues relevant to young people today. If there are parent concerns, our principal is available to meet, to discuss, and if, appropriate, offer alternative texts.” Reported in newsource.ns.cnn.com, November 17.

PRISONS North Carolina

The North Carolina prison system agreed to remove *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* by Michelle Alexander from its banned book list. Prisoners will now be allowed to read the award-winning book about mass incarceration and discrimination against African-Americans in the justice system. The news came on January 23, amid pressure from the American Civil Liberties Union (ACLU), which described the ban as “shameful,” “wrong,” and “unconstitutional.” Chris Brook, legal director of the ACLU of North Carolina, sent a letter

to Jane Gilchrist, an attorney for the state Department of Public Safety, contending that such a ban violates the First Amendment rights of prisoners, as well as the department’s own policies.

New Jersey also reversed a prohibition on *The New Jim Crow* at two prisons. The New Jersey decision came on January 8, hours after the ACLU of New Jersey on Monday sent a letter to the state’s corrections commissioner, Gary M. Lanigan.

However, the book is still banned in Florida prisons. A spokeswoman for the Florida Department of Corrections confirmed that the book had been banned but would not elaborate. A form from the prison system’s literature review committee obtained by the *New York Times* indicates that the book was rejected because it presented a security threat and was filled with what the document called “racial overtures.”

Cornel West, a champion for racial justice, described Alexander’s work in a foreword to her book as the “secular bible for a new social movement in early twenty-first-century America.” West said the book takes its readers beyond such breakthroughs as the election of President Barack Obama, the first black president, “to the systemic breakdown of black and poor communities devastated by mass unemployment, social neglect, economic abandonment, and intense police surveillance. Her subtle analysis shifts our attention from the racial symbol of America’s achievement to the actual substance of America’s shame: the massive use of state power to incarcerate hundreds of thousands of precious poor, black, male (and, increasingly, female) young people in the name of a bogus ‘War on Drugs.’”

Since the book’s publication in 2010, more than a million copies have been sold. Its premise: Decades after



the eradication of Jim Crow laws, which enforced racial segregation in the South, many African Americans continue to face discrimination inside the nation's prisons.

Jerry Higgins, a spokesman for the North Carolina Department of Public Safety (DPS), issued a statement announcing the change, a day after Brook sent a letter outlining the ACLU's concerns.

"Upon receipt, the department responded to the ACLU that it would look into the matter," Higgins said. "As of today, the director of Prisons has decided to immediately remove the book titled *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* by Michelle Alexander from the DPS *Disapproved Publications Report*. The director will be reviewing the entire list to determine whether any other books will be removed from the report."

African Americans are incarcerated in state prisons across the country at more than five times the rate of white people, according to a 2016 report by The Sentencing Project, a group that advocates for prison reform.

Alexander recently told the *New York Times*: "Some prison officials are determined to keep the people they lock in cages as ignorant as possible about the racial, social and political forces that have made the United States the most punitive nation on earth. Perhaps they worry the truth might actually set the captives free."

In North Carolina, the ACLU's Brook said, black people make up 52 percent of the state's prison population while representing only 22 percent of the statewide population, according to 2016 U.S. census data.

"Barring *The New Jim Crow* from our state's prisons because it shines a light on a harsh reality confronted every day by Black prisoners in North Carolina is not only indefensible as a matter of constitutional rights,

DPS policy, and logic but also cruelly ironic," Brook stated in his letter to Gilchrist.

Under North Carolina prison regulations, officials can prohibit inmates from receiving publications that threaten the safety of prisoners or staff.

DPS policy lets a facility prohibit an inmate from receiving a publication for a range of reasons that largely fall under the umbrella of disrupting "institutional order, security and safety" and "inmate rehabilitation." Sexually explicit material (*Booty! Pirate Queens Volume 1* is prohibited in N.C. prisons) as well as publications depicting violence (*A Game of Thrones Volume 1*) or insurrection (*The Anti-Government Movement Guidebook*) can be banned. How-to information on manufacturing weapons, drugs, or poisons, disabling communication or security systems, or escaping from confinement may also be grounds for prohibition. Large, hardcover books may also be banned (such as *Encyclopedia of North Carolina*), with an exception made for legal and religious publications.

"No publication or material will be withheld solely on the basis of its appeal to a particular ethnic, racial or religious group. A publication may not be rejected solely because its content is religious, philosophical, political, social or sexual, or because its content is unpopular or repugnant," according to state policy. "Publications that provide unbiased reporting of actual news and events are not normally withheld."

Some of the publications on the list in 2014 and 2015 included *The New York Times Essential Guide to Knowledge*, *Jailhouse Lawyers: Prisoners Defending Prisoners v. the USA* by Mumia Abu-Jamal, *Fifty Shades of Grey* by E.L. James, Sun Tzu's *The Art of War*, Adolf Hitler's *Mein Kampf*, numerous tattoo books, encyclopedias on a

variety of topics, erotica, and many magazines.

The most recent DPS *Disapproved Publications Report* includes 480 titles prohibited in the past twelve months. Among the more unusual inclusions: Maya Angelou's *I Know Why the Caged Bird Sings*, because it features the rape of a minor; *Prison Ramen*, a book of ramen recipes devised by inmate-cooks that apparently includes instructions on how to stow a razor blade; *Hope—A Memoir of Survival in Cleveland*, written by the two women who in 2013 famously escaped ten years of captivity in a Cleveland man's home; and the May 2017 edition of *Elle Décor* and the October 2017 issue of *O: The Oprah Magazine*, for reasons unknown.

"We appreciate the prompt response and are glad that officials have agreed to review the entire list of banned books, as they should," Brook said. "We will continue to safeguard the First Amendment rights of people incarcerated in North Carolina. Everyone in our state would do well to read *The New Jim Crow* so that together we can work to undo the racial injustice that permeates our criminal justice system."

Yet it is possible the book will be banned again in North Carolina prisons, where it has been banned multiple times. "All you need is one prison to challenge it, and then the book goes back on the list," Katya Roytburd, a volunteer with Prison Books Collective, told the *New York Times*. Her organization is a nonprofit that sends free books to prisoners in North Carolina and Alabama. Under North Carolina prison policy, such bans can last for only a year, but then the book can be banned again. Reported in *newsobserver.com*, January 23; *www.indyweek.com*, January 31; *New York Times*, January 8, January 18.



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FALL 2017-WINTER 2018

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