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From a library  
art exhibit about  
mental health.

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SUMMER 2019  
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FORTUNATELY, I WORK IN A LIBRARY, AND LIBRARIANS ARE MASTER BRIDGE BUILDERS, CONNECTING PEOPLE TO RESOURCES, PEOPLE, INFORMATION, AND ULTIMATELY, TO A BETTER PLACE.”

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## SUMMER 2019 \_ ABOUT THE COVER

 \_ The image on the front cover of this month's issue is of "Gate," artwork created by Deacon Stone in 2006 and featured in the Drinko Library art exhibition at Marshall University. The exhibit was designed to explore perspectives on mental health in the library. For more information, please see the commentary featured on page 3.

The artist describes his work: "'Gate' is from a series of gates created from assemblages, comprised of objects found or forged. The works are an exploration of boundaries both self-imposed and perceived, and contemplations of how humans—as masters of categorization and organization—attempt to understand the world by designations; creating boundaries, limits, and arenas.

"As a son of the hills, raised in a Pentecostal tradition of Appalachian Mysticism, challenged by the expansion of boundaries that comes with a good liberal arts education, I had—and have still—so many perceived boundaries to erase; closed gates through which to pass, others to do away with altogether.

"The critical lesson in this journey has been that while we take comfort in our categorizations, or cocoon into the safety of in-group favoritism, we must be ever wary of out-group hostility which is an inevitable result. As physical objects, these gates are attempts at relegating our divisiveness and instinctive categorization to the history books . . . a recollection of how we used to think, feel, and behave."



A close-up of "Gate," artwork by Deacon Stone and featured in the library at Marshall University.

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## Ending the Silence

### Utilizing Personal Experiences to Enhance a Library Mental Health Initiative

**Authors** \_ **Sabrina Thomas** (tho4@marshall.edu), research and instruction librarian at Marshall University, and **Kacy Lovelace** (kacy.lovelace@marshall.edu), student success and research librarian at Marshall University

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*This article summarizes a panel presentation given at the American Library Association Annual Conference in Washington D.C. (June 22, 2019). The panel consisted of Sabrina Thomas, research and instruction librarian at Marshall University; Leah Tolliver, director of wellness programs and the Women's and Gender Center at Marshall University; C. Michelle Alford, senior library IT consultant at Marshall University; and Kacy Lovelace, research and student success librarian at Marshall University. Tenikka Phillips, EAP coordinator at Cabell Huntington Hospital, worked extensively on the project but was unable to take part in the panel presentation. The following is a conversation between Sabrina Thomas and Kacy Lovelace discussing how their own personal experiences with mental health challenges and trauma served to enhance the mental health initiative in their academic library.*

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**Sabrina:** Shame is a powerful motivator. Shame can motivate one into years or even decades of silence. For years, I struggled with my own shame from early childhood trauma of abuse, neglect, and years spent shuffling from one foster home to the next. The abuse and trauma were so severe as to leave lingering mental health damages that still affect me today. It was shame that kept me silent when I suffered from postpartum depression after the birth of my first child. Shame and silence magnify suffering, and it is this shame and silence that I wished to combat by breaking free.

There is one thing I have found to be more powerful than shame, and that is righteous indignation. Anger, too, can be a powerful motivator—and liberating when channeled properly. I am angry that I allowed the stigma of mental health challenges and illness to keep me silent about my struggles for so long. Breaking free from my own silence, I wanted to build a bridge to quality, credible information for those who were like me. Fortunately, I

work in a library, and librarians are master bridge builders, connecting people to resources, people, information, and ultimately, to a better place than they were before they started.

**Kacy:** Shame has always been a powerful motivator in my life as well. Childhood trauma: abuse, emotional neglect, and being a pawn for my divorced parents' power struggles, has led to a life-long struggle with mental illness, low self-esteem, and an inability to connect with others as deeply as I would like.

When we discuss trauma, we often talk about resiliency as well. It is important to discuss our ability to recover from the hardships that we face. I consider myself incredibly resilient, with a resiliency score of fourteen on a fifteen-point scale; however, I am guilty of using that resiliency to hide my trauma. Because I could compartmentalize, and because I wanted to appear as "normal" as possible, I acted as though the trauma never happened,



even as its effects impacted my daily life and every type of relationship that I've ever attempted to make.

It wasn't until I realized that speaking up about my own trauma helped others feel safe enough to discuss their own, that I began to share my story. Becoming a librarian, and working to build the mental health initiative in our library and on our campus, not only gave me a sense that I was helping others cope, but it was instrumental in helping me cope with my own traumatic experiences.

**Sabrina:** Becoming trauma-informed is a solid first step to building a mental health initiative in your library. Being trauma informed, libraries are uniquely situated to be safe spaces of intellectual freedom. A trauma informed library is a library in which the librarians and staff better understand how to help and serve those library users who have mental health challenges, illnesses, and stresses. We can do this by harnessing what we already do well.

First, our walls and our displays can play a vital role in ensuring that the library is a welcome and inclusive place for all people, including those with mental health challenges and illnesses. Creating a display of books on mental wellness is a solid first step. In spring of 2019, I created *Don't Call Me Crazy: Resiliency through Art*, a library exhibition for Marshall University. In it, students, faculty, and staff both present and past were encouraged to submit artwork that reflected their experiences with mental health or informed their creative process. Advocacy and support begin with our own environments. What is on our walls and in our displays and what is the message that they are sending? Is your library truly open to all? Our spaces must be welcoming and inclusive if our intentions are truly to connect people to resources and information.

As a reference librarian, I grew accustomed to waiting to be asked questions. Those with mental health challenges and illnesses often face discrimination as well as stigma. It is this fear that prevents many from approaching our service desks for help. To combat this, I organized a team of librarians and staff to create both print and online research guides that listed places to find help, both on and off campus. We began to speak of our study rooms as safe spaces to process stress. We collaborated with the Women's Center and the Counseling Center to organize multiple panel presentations with experts from across the mental health fields so that library users could meet face-to-face with knowledgeable professionals. Noting that anonymity was vital to helping connect people to information, we utilized social media to livestream the events, showing only the panelists. We encouraged both face-to-face and online attendees to ask questions anonymously.

While protecting anonymity, I fostered inclusivity by inviting panelists who experienced mental health challenges and illnesses to highlight both the good and the bad ways that these issues affected their lives. I did this specifically to foster an environment in which people could speak freely without fear of judgment. Demonstrating that mental health challenges and adverse childhood experiences could be not just overcome but harnessed as tools to help others was one of my ultimate goals.

**Kacy:** Creating the online research guide was an incredibly rewarding process. It not only provided a dedicated space for providing information about our discussion panels and pertinent trainings, it continues to act as an ever-growing, centralized location for providing invaluable resources for those in need. When we feel vulnerable, it can be difficult to reach out for support. Vulnerability is not only healthy—it is crucial to healing past wounds and creating connections in our present and future. Allowing those within our university family to see our trauma and our disabilities will only encourage them to do the same.

It is important to note that not everyone was enthusiastic about all aspects of our initiative. In particular, the art exhibition was the recipient of several challenges by students. Each challenge was considered with appropriate gravity by the Head of Access Services and the President of the university, but each challenge was dismissed because of the commitment to free speech that our library and university hold dear. We are committed to enabling and furthering the expression of free speech; that is one of the primary goals of the art exhibition. Ultimately, our goal, both through the initiative and as a library, is to provide safe places for students, faculty, and staff to explore and discuss information, ideas, and ways to access help.

**Sabrina:** By first outing myself as one who suffered with a learning disability, I was placed in a better position to help those with learning disabilities. Because I suffered from postpartum depression in the past, I came to understand mental illness as not necessarily a permanent disability but a temporary disability. Each time a challenge arose, I grew from that challenge. Ultimately, it is by ending the conspiracy of silence, outing ourselves, and facing down the fear of discrimination that we help those around us. I challenge librarians to look at their own life experiences, their own fears, and use them as springboards to help their library users. Begin with your own walls and grow from there.



## Anti-Social Media: How Facebook Disconnects Us and Undermines Democracy

Author \_ Siva Vaidhyathan

Publisher \_ Oxford University Press, 2018. 288 p. Hardcover \$24.95. ISBN: 978-0-19-084116-4.

Paperback \$17.95. ISBN: 978-0-19-005654-4

Reviewer \_ Sarah Noel Probst, member services coordinator at ConnectNY, an academic library consortium in New York

Social media, and Facebook in particular, have become such a ubiquitous and deeply imbedded part of culture that few would bother to mark their existence with more than a casual shrug. People use social media to fulfill all manner of tasks, needs, and desires, while businesses and organizations use it to reach increasingly specific segments of the population. Engaging with social media is a foregone conclusion—a swift glance around any coffee shop, university, classroom, restaurant, or nearly any other public setting is enough to validate this. In the realm of social media, Facebook is king. The platform can now boast of well over 2 billion international users that post, upload pictures and video, and interact with it hundreds of thousands of times a day. At a surface level, Facebook appears to ask nothing of people except their time, but a deeper dive into the world of likes, clicks, and shares unveils a riptide of surveillance, manipulation, disinformation, and digital imperialism. In *Anti-Social Media: How Facebook Disconnects Us and Undermines Democracy*, Siva Vaidhyathan takes a floodlight to the very roots of the platform and demonstrates with careful, piercing analysis how it has eroded one of the hallmarks of a democracy: the ability of the public to have reasoned, informed discourse.

Vaidhyathan approaches the exploration of Facebook's intrinsic issues as a historian. The book is divided into seven chapters, each providing a detailed look at a function of Facebook and the twentieth-century intellectual underpinnings that influenced the function's inclusion or promotion within the platform. The author acknowledges from the start his own wide-ranging use of both Facebook and social media at large. Rather than calling into question the validity and sincerity of presented arguments, this frank admission identifies Vaidhyathan as a

voice of reason operating within the same social framework as billions.

Chapter 1, "The Pleasure Machine," in conjunction with chapter 3, "The Attention Machine," lays out how Facebook perpetuates its value among users by providing for the cheap maintenance of long-distance relationships, engagement in causes, participation in groups, acquisition of new "Friends," playing games, and much more. These chapters illuminate an inherent part of Facebook's nature that is not unlike a Las Vegas slot machine—it provides a constant supply of low-level feedback, both good and bad, that entices the user to return time and time again in the hope of receiving a reward. Vaidhyathan advises that while the relative personal rewards of Facebook are high and, generally, the harms to the individual low, this overall manipulative cycle is damaging to larger society and to the ability to process new knowledge with any significant amount of interaction or thought.

Chapter 2, "The Surveillance Machine," is easily one of the most chilling chapters in the entire work. As previously mentioned, one of the main functions of Facebook is the ability of users to post information, photographs, and videos about themselves and others; this is both intrinsic to the service and has the demonstrated potential to be insidious. Vaidhyathan breaks down in great detail the ways in which the personal information hoarded by the platform is used by commercial entities, governments, and other users to form a network of near-constant surveillance that can tarnish reputations and destroy lives.

Chapter 4, "The Benevolence Machine," examines the rise of the ideology of corporate social responsibility/social entrepreneurship at large, how it has been utilized by Mark Zuckerberg and Facebook to engender goodwill



among its users and shareholders, and how this belief in corporate social goodness invites both disaster and the pomposity of self-righteousness. The author explores the apolitical language used by Zuckerberg in describing the negative aspects of Facebook while simultaneously dismissing them as design flaws to be fixed in the next update.

The last three chapters in the book clarify Facebook's role in politics, uprisings, and protests. The lack of transparency and accountability for political ads displayed to narrow sections of the population is addressed at length, as is the platform's use and complicity in disseminating extreme propaganda from dictators and their supporters around the globe. These chapters also discuss the election of Donald Trump in America and Brexit in the United Kingdom, offering deep insight into the pre-existing environments and social unrest that Facebook's algorithms expertly exploited to the satisfaction of both campaigns.

Anyone concerned about the ways Facebook uses the data it collects and the effects social media has had on society at large will be well served by reading this book. Those interested in examining the rise of Facebook and similar services from a historical perspective will likewise benefit from Vaidhyathan's critical analysis of the twentieth-century ideologies that paved the way for current platforms. Many already harbor concerns about the lack of civil discourse in the public sphere and search for ways to correct this; while Vaidhyathan does not provide a precise roadmap to bringing back reasoned

discussion, those in search of answers will find comfort and hope in the author's recommendations for the future.

Despite the dire nature of the topic, Vaidhyathan's prose is a pleasure to read; the eloquence of *Anti-Social Media* lies in the careful balance struck between straightforward language and demonstrated depth of thought and research. Unencumbered by superfluous jargon, the author's style is a successful combination of astute observer and teacher. *Anti-Social Media* is not a manifesto encouraging readers to disembark Facebook en masse; rather, it is a call to seriously consider the impact of social media on the human experience and what steps may be taken not by Facebook or any other for-profit enterprise, but by the general public, to reclaim what has been stripped from society. Vaidhyathan acknowledges that the path forward to meaningful discussion and careful deliberation will be long one, but that there are indeed means to correct the current course should the effort be put in to doing so. This book is predicated on the notion that a majority of people want to be informed and active participants in their own lives, but empowering people to fully participate in their existence and governance is a topic for another work. What the author does offer is a wealth of food for thought and the room for each reader to deliberate on how to possibly wrest their lives from the machinations of organizations that give lip-service to justice and equality while successfully chipping away at the most basic and essential freedoms.

## Speak Freely: Why Universities Must Defend Free Speech

**Author \_ Keith E. Whittington**

**Publisher \_ Princeton University Press, 2018. 216p. Cloth (also available as an e-book)**

**\$24.95. ISBN: 978-0-691-18160-8**

**Reviewer \_ Kristi H. Jerome, Graduate student, School of Library and Information Studies, University of Alabama**

There has been a rise in recent discussions about the purpose of higher education. Due to rising costs, political turmoil, and a perceived overabundance of censoring conservative voices, many are questioning whether universities are just bastions of left-leaning, socialist schools of thought. In his book *Speak Freely: Why Universities Must Defend Free Speech*, Keith E. Whittington, a constitutional law professor from Princeton University with a background in history, uses history, constitutional law, and philosophy to show how foundational free speech and intellectual freedom are to the American university system. These principles allow for the exchange of ideas in an environment meant to educate and promote intellectual

thought. Whittington writes that universities have a mission to "produce and disseminate knowledge." In order to accomplish those goals, students and faculty must be able to listen and freely discuss different forms of thought and expression in order to substantiate, strengthen, change, or produce knowledge.

Whittington sets the stage for his treatise with a narrative of a student protest at the University of California, Berkeley. The way it is written, the reader could easily assume the author is alluding to the recent 2017 protests that erupted into violence. However, Whittington is really referring to a historical event that occurred in 1903 when Carrie Nation was invited to speak. He believes that even



though there has been a long history of protesting and legal battles to support free speech, we are now at a turning point. If universities continue to handle issues of free speech the way they currently are, they may actually reverse many of the hard-won freedoms that we currently have.

The first chapter, “The Mission of a University,” feels like a second introduction. The author uses it to describe the nature of universities and how free speech is inherently built into it. The chapter is very short, but he is able to concisely address current views of the American university system, historical changes that made it the best in the world, and how the mission of universities is necessary for American society. He defends the idea that universities are an important part of democratic life and are places where ideas are formed, debated, and continually shaped. He disagrees with the idea that the university’s purpose is to “mobilize social movements.”

The second chapter addresses the progression of free speech in the United States. The author illustrates how the version of free speech we currently take for granted developed over the centuries, starting with the Alien and Sedition Acts of 1798. Whittington walks the reader through time, showing the legal battles fought and the philosophical evolutions made. He does this mostly by citing Milton, Locke, and Mill.

The third chapter is the longest and addresses the current events on campuses that are making the news. Whittington explains the original purposes and ideas behind controversial topics such as hate speech, safe spaces, and trigger warnings. He also argues that these terms have been distorted. Instead of learning from other perspectives, students now claim that anything they disagree with is “hate speech.” Instead of discussing topics that may be difficult to discuss, students claim that they need “trigger warnings” in the class descriptions.

People need to learn about opposing perspectives in order to strengthen, change, or develop new points of view. Now students feel that they need “safe spaces” so that they are not exposed to ideas that are different than

their own, when initially the idea of safe spaces was to allow students to know that they could freely express ideas without repercussions. It is the professor’s job to manage classroom discussions in a way that allows everyone to learn from the variety of viewpoints. If someone was wrong in their facts, they could be corrected without judgment. That is how students learn.

What is most interesting about this chapter is his position on the current protests and riots that have been occurring on campuses. Most of these have occurred because a few student organizations are opposed to conservative public figures being invited to the universities for speaking engagements, as in Whittington’s introduction. Protesting is covered under free speech laws, but when people begin obstructing others from attending one of these events it does not constitute free speech. More so, violence and rioting are not considered free speech either.

Chapter 4 discusses how academic administrations are poorly handling free speech issues. Once again this is not a new occurrence, but Whittington believes that this is where problems truly lie. If administrations are not willing to support their faculty and support intellectual freedom, then universities will cease to accomplish their mission.

As a reader, I thoroughly enjoyed reading this book and learning how our free speech laws progressed. Whittington does an excellent job of laying out the different ways that free speech has been attacked on campuses from “hate speech” to “safe spaces” and even large protests and riots causing damage to property and persons. For such a small book, Whittington was able to succinctly discuss the history of American universities, free speech, intellectual freedom, and where our universities are heading if changes are not made. This book should be read by anyone interested in intellectual freedom, policy, and academia. It is also a good secondary reference for history students. It should be purchased for academic libraries and public libraries that have local college or university campuses.





## How to Rig an Election

Authors \_ Nic Cheeseman and Brian Klaas

Publisher \_ Yale University Press, 2018. 320 p. Hardcover \$26.00. ISBN: 978-0-300-20443-8

Reviewer \_ Michael Whitlow, Westminster Law Library, University of Denver Sturm College of Law

Democracy is under attack. At first, it's easy to dismiss or assimilate a statement like that according to your partisan politics. The sad truth however is that an increasing number of observers are sounding the alarm that democracy truly is in retreat on a global scale.<sup>1</sup> Whatever your opinions on the state of American politics, the fact remains that speech rights, press freedoms, and election fairness are backsliding not just in the United States, but also in Europe, Asia, and Africa.

Into this context comes Cheeseman and Klaas's book *How to Rig an Election*. When I first saw the title, my initial reaction was to expect an assessment of American politics generally or a polemic post-mortem on the 2016 presidential election. Instead, their treatise is a perfect primer on all the ways in which democracy can be subverted by autocrats and authoritarians. The American system is by no means exempted from their analysis, but they specifically go beyond our borders to look at methods of election rigging in Africa, Europe, and Asia, especially sub-Saharan Africa, the former Soviet bloc, and repressive Middle Eastern regime responses to the Arab Spring.

After a lengthy introduction that serves as an important overview, the book is divided into six main chapters, each discussing in detail a specific form of election rigging. By detail, I mean that the authors not only describe all the various methods, overt and covert, that regimes can utilize to accomplish a particular form of rigging, but they also use at least one historical example of each detailed method drawn from interviews with citizens and government officials as well as observations from journalists and professional election monitors. The result is that the text does not deal in hypotheticals, but is solidly grounded in reality.

Chapter 1 focuses on "invisible" rigging methods such as gerrymandering and voter suppression methods. This is one of the areas in which our own country is truly taken to task as not only an exemplar, but the progenitor of such

methods. Chapter 2 discusses bribery, not just of officials and monitors, but even of the electorate. From the cronyism of Tammany Hall to infrastructure, government contracts, and outright cash payments, some regimes retain power by ensuring it's in the best interests of enough (or the right) people. Chapter 3 begins delving into the darker side of electoral manipulation with a focus on political violence and the politics of division. Cheeseman and Klaas describe that it is not just the regime's thugs and secret police that enforce these divisions, but cultural and ethnic divisions can be manipulated to turn the populace against itself.

Chapter 4 explores all the ways in which technology can be used against us. The "fake news" phenomenon is of course detailed, but so also are the ways in which voter rolls, ballot machines, and vote tallies can be hacked or digitally manipulated. Chapter 5 covers the various methods of ballot-box stuffing and the associated risks of discovery. Chapter 6 covers the more meta-level approach of public relations efforts to distract and divert attention from the previous efforts to gain international legitimacy. It is in this chapter that the authors truly take the West to task for their history of allowing political expediency and foreign policy agendas to willfully blind them to authoritarian abuses.

Lest you think all is doom and gloom, the authors once again provide concrete suggestions and examples of how to improve democratic systems. Their chapter-length conclusion is very prescriptive, and describes local, national, and international systemic changes that have proven effective. The authors are not shy about warning that these changes will not be quick, cheap, or easy, and they certainly acknowledge that the largest impediment may simply be political will. But they are also not shy about championing democracy as the best available form of government, nor are they shy about charging those who agree with them to fight to implement these changes.

The book is as well-sourced and supported by empirical data as one could desire in a scholarly publication, but where the book truly shines is in its ability to avoid academic jargon and present the material in such a way that any lay reader would understand and benefit from its reading. I managed to read an uncorrected advance proof, in which the graphical data was compiled as an appendix. I hope that the final edition assimilates these charts and graphs into the main body both as a stylistic break and

i. Larry Diamond, "Facing Up to the Democratic Recession," 2015, <https://www.journalofdemocracy.org/articles/facing-up-to-the-democratic-recession/>; Jay Ogilvy, "The Forces Driving Democratic Recession," 2017, <https://www.forbes.com/sites/stratfor/2017/05/25/the-forces-driving-democratic-recession/#9864a234db2e>; "Democracy Index 2017," Economist Intelligence Unit, 2017, [http://www.eiu.com/Handlers/WhitepaperHandler.ashx?fi=Democracy\\_Index\\_2017.pdf&mode=wp&campaignid=DemocracyIndex2017](http://www.eiu.com/Handlers/WhitepaperHandler.ashx?fi=Democracy_Index_2017.pdf&mode=wp&campaignid=DemocracyIndex2017).



a way to bolster the evidentiary paragraphs, but regardless of the final formatting the book provides an excellent resource for anyone with an interest in political systems.

It is most appropriate for an undergraduate student audience, as it does more to introduce and explain election

rigging methods to readers that are currently unfamiliar with them than it does to enlighten experts in the field. It would be most at home in academic libraries, particularly undergraduate institutions, though it would also be of use in law libraries for students with an interest in election law.

## The Internet Trap: How the Digital Economy Builds Monopolies and Undermines Democracy

Author \_ Matthew Hindman

Publisher \_ Princeton University Press, 2018. 256p. Cloth (also available as an e-book). \$29.95.

ISBN: 978-0-691-15926-3

Reviewer \_ Clem Guthro, independent librarian

Hindman, an assistant professor of media and public affairs at George Washington University, has written a fascinating book that attempts to upend the common understanding of the internet as a force that provides a level playing field and economic opportunity that is only a click away. In eight chapters, using data-driven research, he shows how very large companies have captured the attention economy, and the danger this poses to news organizations, a key component of our democratic life and values. His book joins several other recent volumes that attempt to show the ways that the attention economy is shaping our lives and work. These include C. C. Bueno, *The Attention Economy: Labour, Time and Power in Cognitive Capitalism*, 2016; J. G. Webster, *The Marketplace of Attention: How Audiences Take Shape in a Digital Age*, 2016; J. Williams, *Stand out of our Light: Freedom and Resistance in the Attention Economy Paperback*, 2018, and T. Wu, *The Attention Merchants: The Epic Scramble to Get Inside Our Heads*, 2016.

Google was one of the first companies to systematically conduct research on user behavior, discovering that small changes resulted in compound instead of incremental changes.

Compound attention on any site is referred to as “stickiness” and Google’s research discovered ways to increase stickiness, including increased load speed and offering ancillary services such as email, video, maps, mobile, and office software. Site stickiness created by Google, Facebook, Microsoft, and Yahoo allowed them to capture one-third of all web traffic, and Google and Facebook to capture almost 75 percent of digital advertising revenue in the United States.

Hindman argues that “the digital attention economy increasingly shapes public life, including what content is produced, where audiences go, and ultimately which news and democratic information citizens see” (p. 5). He

attempts to define a new model of audience attention: one that explains the reality of what is happening and dispels the myth that the internet disperses attention and allows small and local sites to flourish.

The playing field is not level in today’s network economy. Hindman correctly argues that mega companies’ investments in technical infrastructure translate into sites and services with increased efficiency, stickiness, revenue, and dominance in the marketplace. Google, with its blazingly fast architecture, uses load speed as a factor in ranking search results, which favors large organizations that can invest heavily in technology. The unevenness of the playing field further advantages large firms because of their ability to conduct experiments on site usage and layout and leverage what they learn to make their sites stickier. Big brand recognition (e.g., *New York Times*) as well as easy to use sites, usually designed and improved through large scale testing, also favors large sites. Brand loyalty and proficiency of use capture users’ attention and makes it hard to switch users to new sites. Hindman argues that this unevenness counters the popular mythology of an internet that is frictionless commerce and a level playing field.

Personalization and recommender systems dominate the internet. Using the Netflix prize, a competition to improve its recommender system, as an example, Hindman shows that, at scale, recommender algorithms often outperform humans. Recommender systems and learning algorithms built and employed by large sites (Google, Facebook, Amazon) are beginning to replace editorial judgment and journalistic and information norms. Hindman rightly worries about the profound effect this has on what content we see and even which sites are presented first in a search. Recommender systems are one of the powerful tools that help grow audiences and give large



firms a competitive advantage. Recommender systems, based on large scale data collected from users, also allows these same large firms to target advertising in sophisticated ways in which smaller firms or startups cannot. Large firms use these recommender systems to dramatically increase their audience and promote lock-in to keep their audience coming back.

Hindman explores online content production, showing that content bundling and aggregation dominate large companies and sites. Bundling is a key strategy of content producers to help concentrate audience attention and build increased revenue. Hindman's model provides insights that are contrary to popular views, namely that digital media concentrate influence as well as jobs geographically rather than dispersing them, and small niche sites, especially local news sites, have an uphill battle compared to Google news. Because search engines are so large and powerful, they can push traffic to small niche producers but also can circumvent the small producers by hosting the content themselves and concentrating more power and influence.

Hindman sets out a power model for the dynamics of web traffic that overturns the common understanding that the internet promotes a natural tendency to dispersion and decentralization. He makes one of the first large scale studies of audience churn, using Hitwise data for the top three hundred sites for every day between July 1, 2005, and June 30, 2008. Hindman bases the model on stochastic dynamical systems (SDS), a statistical model which Hindman explains in great detail, and while helpful for the expert, it is easy for others to get lost in the statistical detail. He also does not indicate his reasons for the choice of very old data that does not include data on mobile or app use of news sites. His study showed traffic for large sites is more stable than for small sites, noting that traffic for the top ten sites is very stable, and sites below the top twenty-five are subject to greater audience churn and are constantly changing their position in rank. Hindman notes that this strong stability of larger sites speaks against the conventional notion that real competition and massive growth is only a click away for any new site.

Hindman switches his focus to online news, especially web-based local news, without specific comment as to why he chose online news as an example. He conducts a study using ComScore data from February, March, and April 2010 and covered the one hundred largest US broadcast market areas. It is unclear why he used such dated data—especially when it did not include mobile data. It would be helpful to see results from current data,

including app-based access to news sites. Based on his work on web traffic, it is not surprising that this data shows how small the monthly audience is for local news. Hindman notes that the FCC rollback of net neutrality further complicates online news because the rollback supports cross-media ownership, which further limits the number of independent local news outlets. The overall argument that the internet has expanded the number and amount of local news coverage does not find support in the data.

Hindman believes most news leaders misunderstand the nature of web-based audiences. He thinks it is clear from the data that the large audience for local news that news leaders talk about is a fantasy. If digital news is going to survive and thrive, news leaders need a basic understanding of how digital audience is compounded and what strategies make sites sticky. Because news sites get only three percent of web traffic and most of that goes to national news sites, he believes that local news needs to abandon false strategies like paywalls or the shift to video journalism. Hindman insists they focus on strategies that will actually build their audience and that increase stickiness: load speed, effective site design and layout, personal content recommendation, and creating more compelling digital content that is constantly updated.

Other strategies include a stream of short news pieces, headline testing, optimizing for social media, and more multimedia content. Hindman correctly notes that news organizations need new and different types of employees and outsourced services, and this takes strategic spending and not seeing digital media as an afterthought.

Hindman concludes with a chapter that is a mix of caution and optimism. He rightly recognizes the mythology that imagines the internet is a leveling force which invites even the smallest business to succeed and grow with no apparent barriers. He shows that the real internet favors the large and disadvantages the small. This is particularly telling and problematic for news organizations because of the reality of the small size of the news audience. Because the internet functions as an “attention economy” and there is such strong gravitational pull towards giants such as Google and Facebook, it will be necessary for small publishers to build an audience with the help of big digital firms.

Hindman's book is a significant addition to our understanding of the contemporary internet and how digital audiences are built and grown. He successfully casts doubt on the naïve view of the internet of the past, a leveling



force that democratizes access for all, and shows the large players like Google, Facebook, Amazon, and Yahoo for what they are—attention engines that dominate the internet. He rightly raises the issue regarding the scope of data collected by large firms. He sees privacy and security issues and the potential for government abuse or for non-state actors to steal and use the data to influence public discourse and spread fake news.

Despite these challenges Hindman still holds out some hope for local news sites, provided they pay attention to building and keeping a digital audience and making their sites sticky.

This book is appropriate for the general public, technologists, news professionals, political scientists, librarians, and others concerned with the nature of the internet and the effect it has on audience generation, distribution, and the news.



# INTELLECTUAL FREEDOM ROUND TABLE

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## SCHOOLS Sacramento, California

Six books have been removed from California's 2019 edition of its *Health Education Curriculum Framework*, created under a 2016 state law that requires school districts to ensure that all students in grades seven through twelve receive comprehensive sexual health education and HIV prevention education. On May 8, 2019, the California Board of Education took action to remove these titles from the Framework's list of recommended resources:

- *My Princess Boy* (2009) by Cheryl Kilodavis, a story about a boy who sometimes wears dresses and sometimes wears jeans;
- *Who Are You?: The Kid's Guide to Gender Identity* (2017) by Brook Pessin-Whedbee, an illustrated introduction to gender for 5- to 8-year-olds;
- *Changing You!: A Guide to Body Changes and Sexuality* (2007) by Gail Saltz and Lynne Avril Cravath, an illustrated guide to puberty for elementary school children;
- *The What's Happening to My Body?: Book for Boys* (1983, 1988, 2000, 2007) by Lynda Madaras, Area Madaras, et al., a guide to puberty and health for boys age 10 and up;
- *The What's Happening to My Body?: Book for Girls* (1983, 1988, 2000, 2007) by Lynda Madaras, Area Madaras, et al., written for preteen and teen girls, and
- *S.E.X.: The All You Need to Know Sexuality Guide to Get You Through Your Teens and Twenties* (2016) by Heather Corinna, a sexual education guide for teens and young adults.

The state Board of Education removed the titles after two sixty-day periods when the public was invited

to comment on the draft framework. After the removals, some parents still considered the parts of the framework not age-appropriate. They said that topics such as masturbation and gender identity should be taught at home, not in school. Nothing in the framework is required. Rather, it suggests ways to add sex and health education to the curriculum.

A week after the board adopted the revised framework, protesters across the state kept their children out of school on May 17 and held rallies that day with slogans such as "NoSeXXX Ed," "No to Explicit Sex Ed," and "Too Much Too Soon." A group called the Informed Parents of California planned "sit-outs" at each county's department of education building.

Fighting to retain a more inclusive curriculum, the National Coalition Against Censorship argued, "This sort of attempt to censor educational materials stems from the misconception that sexual identity equals sex . . . [and] the continually reoccurring phenomenon of describing books, comics, and even lesson plans that mention the existence of LGBTQIA [lesbian, gay, bisexual, transgender, queer/questioning, intersex, and asexual] individuals as inherently inappropriate, conflating sexual-identity with sex." Reported in: [cbdlf.org](http://cbdlf.org), May 14, 2019; [KTLA 5 TV](http://KTLA5TV.com), May 17; [cde.ca.gov](http://cde.ca.gov), May 31.

## San Francisco, California

The "Life of Washington" mural at George Washington High School in San Francisco, painted in 1936 by Russian émigré artist Victor Arnautoff in a federal Depression-era art project, will be covered over to hide images of some African American slaves being sold and others picking cotton in the fields of President Washington's Mount Vernon home. The

San Francisco Board of Education voted unanimously in mid-June 2019 to remove the entire thirteen-panel mural from view, not just the portions that had been criticized as culturally and historically offensive.

Yet while some viewers today are offended when people of color are shown as victims or in subservient or demeaning positions, others say that in 1936 it was rare for their place in history to be acknowledged at all, and that the mural is an important piece of art that is actually critical of oppression and imperialism, and for those reasons it should be saved.

A community advisory committee created by the board to consider whether the mural should be removed began meeting in December [see *JIFP Spring 2019*, page 50]. The committee, with members of the local Native American community, students, school and district representatives, local artists, and historians, wanted to both preserve the legacy of the artist and address the feelings of students, such as one who said, "We don't need to see ourselves portrayed as dead Indians every single time we see ourselves portrayed in any type of art or in any books." The committee's recommendation: digitally archive the mural, but paint over it.

The decision is not final. Some groups, including the school's alumni association, have said they will file a lawsuit to keep the mural on display. And the school board has not decided how to cover the mural. Since it was painted as a fresco on wet plaster, it is an integral part of the wall. Covering it with custom panels could cost up to \$875,000, while painting over it could cost \$600,000 and might be delayed by the legal steps needed for permission to destroy public property.

The controversy has gained national attention, with several organizations, including the National



Coalition Against Censorship, urging the district to save the mural. “NCAC strongly urges the district to consider the serious ramifications of the irreversible act of destroying an artwork, as well as the precedent it would set for other works installed in San Francisco public schools that could spark strong emotions in the future,” according to a May 6 letter sent to Superintendent Vince Matthews. “We ask the district to leave the murals in place and provide additional context and programming around them.” Reported in: *San Francisco Chronicle*, June 17, 2019; *Los Angeles Times*, June 28.

### Collier County, Florida

*Blood Will Tell* (2015) by April Henry and *Only the Good Spy Young* (2010) by Ally Carter drew complaints from some parents after Laurel Oak Elementary School in Collier County, Florida, sold them at a school book fair. The mother of a fourth grader posted on Facebook that she was upset over such passages in the books as:

- “When he kissed me it was hungrier somehow as if this moment was all we had.”
- “The kiss was real, the kiss was safe. I kissed him again.”
- “Their beers hadn’t even been touched. They had probably been too busy kissing.”

The books are listed as being at the sixth grade level, but the book fair did not restrict students by age nor grade level. The mom, who didn’t want to be identified, said her daughter will be returning the books to the school. She said those books don’t belong in an elementary school. Some other parents agreed.

“There is not a single reason that they need to be worried about kissing and touching and drinking and any of that stuff at 10 and 7 and however

old the kids are,” Collier County mom Ashley Stalling said. “Elementary school is not that time.” She was among dozens of people to comment on the post.

“We continually seek ways to provide engaging, challenging books to students that are appropriate to the developmental age of the reader,” a Collier County Schools spokesperson has said in the past. “If an issue arises with a selection, educators work closely with the parent to resolve the situation.” Reported in: WBBH/WZVN ABC-7, May 22, 2019.

### Ocala, Florida

Nine books challenged in the Marion County Public Schools in Ocala, Florida, will remain on high school library shelves, but some of them are being removed from middle school libraries, pending a final decision by the school board. A group called It’s Your Tea Party, Florida and a group called Florida Citizens’ Alliance had charged that the books contain material that is “obscene and/or pornographic” under Florida law and that they do not have any educational value.

Upon receiving the complaint in February, County Schools Superintendent Heidi Maier immediately had the books removed if they were in a middle school library, but retained them in high school libraries. Then, in accordance with school board policy, she created a committee to hear parent objections. After receiving the committee’s recommendations, she made these decisions about the books:

- *Almost Perfect* (2009) by Brian Katcher: Allow in high school libraries.
- *Angela’s Ashes* (1996) by Frank McCourt: Allow in middle and high libraries.
- *The Awakening* (2015) by Kate

Chopin: Allow in high school libraries.

- *Beloved* (1987) by Toni Morrison: Allow in high school libraries.
- *The Bluest Eye* (1970) by Toni Morrison: Allow in high school libraries.
- *A Clockwork Orange* (1962) by Anthony Burgess: Allow in high school libraries.
- *Dreaming in Cuban* (1992) by Cristina Garcia: Allow high school libraries.
- *Killing Mr. Griffin* (1978) by Lois Duncan: Allow in high school libraries, except for Dunnellon High School.
- *The Women of Brewster’s Place* (1980) by Gloria Naylor: Allow in high school libraries.

A tenth book on the Tea Party’s original list, *The Truth about Alice* (2014) by Jennifer Mathieu, was not reviewed by the committee. Maier said the Tea Party did not fill out an official complaint form for that book to be reviewed. The group had originally raised questions about fourteen books, but four of them are not in any Marion County school library.

In most instances, the superintendent accepted the recommendations of the committee, but she was more restrictive in judging some titles inappropriate for middle school.

Superintendent Maier announced her decisions in June 2019 and forwarded them to the school board, which will make final decisions.

The review committee included three parents, one of whom was a School Advisory Council president. The committee also featured a secondary school librarian, a high school principal, a district curriculum administrator, and three high school staff members. It found educational value in all nine books, and



recommended that five of them be allowed in middle school libraries.

Ed Wilson, chairman of the local It's Your Tea Party, Florida and a committee member of the statewide Florida Citizens' Alliance, a grassroots conservative group, said early this year that he was pleased the books were removed from the middle school shelves. He had hoped the committee would find the books had no "place in any school." Reported in: *Ocala Star-Banner*, February 26, 2019, June 18.

### Wallace, Idaho

Books in *The Walking Dead* series of graphic novels (2003–2019) written by Robert Kirkman were challenged at Wallace Jr./Sr. High School in Idaho's Wallace School District. The books were retained, then banned, and subsequently may lead to a change in the rules for minors who use the Wallace Public Library outside of school.

Though later adapted into a TV show with a TV-14 rating, the books are rated for an older audience and contain graphic language, violence, and sexually explicit content. This concerned a teacher who saw a student reading one of the books toward the end of the 2018–2019 school year. Since some of the books in the series were available in the high school library, he brought his concern to WHS Principal Chris Lund.

Lund consulted the school district's policy on selection of library materials, which "reaffirms the principles of intellectual freedom inherent in the First Amendment of the Constitution of the United States and expressed in the School Library Bill of Rights."

Lund then formed a committee of eleven people, composed of students, staff, and parents, to discuss and review the books. Afterward, they voted on whether to keep them in the school or remove them. The final vote

resulted in a 7–4 decision in favor of keeping the books in the library.

Some parents objected to the vote, however, and WSD Superintendent Dr. Bob Ranells made an executive decision to remove the books from the shelves, as he judged them to contain material inappropriate for a scholastic environment.

The books were taken from the school library and given to the Wallace Public Library. This has brought up another potential issue for officials to monitor. The Wallace School District is a part of the Interlibrary Loan Network—which offers access to roughly 500,000 books, as opposed to 1,200 books in the WHS library.

"For a rural school to have access to this is such a benefit," Lund said. However, access to the network does allow kids to select from materials that may be outside of the school's guidelines—including *The Walking Dead*.

"How do we prevent these types of issues in the future?" Superintendent Ranells asked. "We have discussed the idea of implementing a two-library card system where one card may only allow students access to books in the WHS library and the other allows them to use the interlibrary loan service. I think that would be a pretty good compromise."

That concept will need to pass the Wallace School Board before it becomes actual policy.

Ranells ultimately believes that the decision should remain with the parents to determine what content their children consume.

And no matter where student might obtain the books, the school will be requesting that *The Walking Dead* not be brought onto school grounds. Reported in: *Shoshone News-Press*, June 22, 2019.

### Alexandria, Minnesota

*Simon vs. the Homo Sapiens Agenda* (2015) by Becky Albertalli and *Sold* (2006) by Patricia McCormick have been removed as choices for eighth graders to read in a language arts unit, Assistant Superintendent Rick Sansted announced at the Alexandria School Board meeting on May 20, 2019. In addition, four other books in the unit remain under review, and parents will be part of a committee to review book selections in the future.

A group of parents had raised objections to the six books, citing passages of a sexual or violent nature, foul language, and references to drinking and drugs. The books were among eighteen that students could choose from in a unit on "social issues." This is the first year where students were given a choice of "social issues" titles.

The district's actions should not be construed as banning books, said Angie Krebs, a school board member. "We're certainly not censoring these books. We're just not going to use them for our book study club," she said. "These are issues kids need to hear about. Could we use better texts? Yes, we could."

*Simon vs. the Homo Sapiens Agenda* is a coming-of-age story with a sixteen-year-old boy struggling with whether to come out of the closet about his sexuality. *Sold* deals with the issue of human trafficking, as the novel tells of a girl from Nepal sold into prostitution in India.

David Wegner, the main spokesman for the parents group that objected to the books, said, "It's one thing to check out these fictional books from a library for your own personal reading. It's another thing as part of an education curriculum for thirteen- and fourteen-year-olds."

He added, "We are not saying that hard issues that eighth graders face



shouldn't come up in the classrooms." However, the group believes content addressing social issues should be done through non-fiction, fact-based, evidence-based materials.

Another parent at the school board meeting disagreed. Christine Reilly said, "I feel it necessary to say that not everyone shares the same opinion. When I hear about books being removed, that scares me a lot. I feel strongly that another side needs to be heard." While she appreciates non-fiction books, Reilly also said that fiction has real value, starting with the fiction books parents read to their children. Reported in: *Alexandria Echo Press*, May 23, 2019.

### Annandale, New Jersey

*Fun Home: A Family Tragicomic* (2006) by Alison Bechdel was removed from general circulation in high school libraries in New Jersey's North Hunterdon-Voorhees district in late February 2019, then was restored in the first week of March—and on March 19 was put at risk again. In fact, access to all controversial books in those high school libraries was put at risk. The school district removed all language in support of intellectual freedom from its library policy.

Bechdel's graphic autobiographical, illustrated novel tells her story of growing up in the funeral home her family ran, while coming to terms with her realization that she is a lesbian. The book has won awards, but also has been challenged frequently. Reportedly, administrators at the two North Hunterdon-Voorhees high schools specifically objected to images on one page out of the 233 pages in *Fun Home*.

The school district first limited the book's circulation to only those with "explicit parental permission."

Protesting that decision, the Comic Book Legal Defense Fund (CBLDF) wrote:

they are taking the memoir away from those too uncomfortable to ask their parents for permission. They are taking *Fun Home* away from students afraid that mentioning the desire to borrow an LGBTQIA book might alert their parents to questions they aren't ready to share. Administrators are taking this important work from those teenagers whose parents have different values from themselves, or parents who are more concerned with optics than content. While any parent can direct their individual child's reading, putting undue restrictions on all students' reading access is an erosion of their rights.

CBDLF and others also pointed out that the way the restriction was implemented violated the district's own policy on how to handle challenges to library materials. Approximately one week later, all restrictions on *Fun Home* were lifted.

Yet less than three weeks later, the district officially changed its procedure for handling challenges, known as Policy 2530. Among other changes, the new version of the policy removed these sentences:

- "North Hunterdon-Voorhees Regional High School District Board of Education supports principles of intellectual freedom inherent [in] the First Amendment" and
- "In the event that materials are questioned, the principles of intellectual freedom, the right to access of materials and the integrity of the certified library/media personnel must be defended."

Also removed were criteria for retaining books that are "relevant to

today's world" and "provide a stimulus to creativity."

In a new protest, the Kids' Right to Read Project (which combines the forces of the American Library Association's Office for Intellectual Freedom, CBDLF, and other groups representing authors, illustrators, publishers, booksellers, and teachers) wrote that "with the language as it stands now, if a comic or novel were challenged today the chance of the school district being able to retain it seems minuscule."

Another letter protesting the policy change came from the National Coalition Against Censorship, which wrote:

The original policy 2530 played a significant role in safeguarding NHV students' right to a broad and censorship-free education by entrusting trained librarians with book selection. This delegation of responsibility assured book selections were credibly rooted in sound pedagogical reasoning, rather than subjective opinion.

As worded, the current policy vests absolute authority in the sole person of the Superintendent to select and remove books without a review of their educational merits. . . . We strongly recommend that you restore credibility to the book selection process by delegating responsibility to librarians and teachers.

Reported in: [cblfd.org](http://cblfd.org), February 20, 2019; April 26; *Bleeding Cool*, April 27.

### Irving, Texas

Six graphic novels were removed from an English I unit on social justice at Irving High School in Texas:

- *March* (2013) by Congressman John Lewis of Georgia, a first-hand account of his struggle for civil rights;





- *Speak* (2018) by Laurie Halse Anderson, a graphic novel version of her 1999 novel about a high school girl finding her voice after suffering trauma at a party;
- *Monster* (2015) by Walter Dean Myers, a graphic novel version of his 1999 story about a high school boy on trial for murder;
- *Love Is Love* (2016) by Marc Andreyko, an anthology of comics about LGBT-related relationships and discrimination, in honor those who were killed at the Pulse nightclub in Orlando;
- *In Real Life* (2014) by Cory Doctorow and Jen Wang, a look at adolescence, gaming, poverty, and culture-clash; and
- *Hidden: A Child's Story of the Holocaust* (2012) by Loic Dauvillier, Greg Salsedo, et al., where a grandmother tells how she was hidden from the Nazis when she was a little girl.

School administrators banned the books from the curriculum in the spring of 2018, but it took more than a year for some of the details to emerge about the reasons for the book banning. In July 2019, one of the teachers who had created the curriculum, Anna Waugh, reported on what she and a fellow teacher uncovered.

According to her article in the *Dallas Voice*, all six novels were removed two days before she and her colleagues planned to start teaching the unit “because of one LGBT-themed text. This was followed by silence from leadership, an eventual cover-up by the district, and a new policy gate-keeping teacher-selected materials.”

She added, “It is only recently, as my former coworker, Carol Revelle, and I compiled some research on the story for a book about LGBT curriculums, that we fully recognized how bigoted the process had been.”

The Irving Schools Foundation had provided a grant to purchase the graphic novels. The principal told the teachers to pack up the books because a complaint had reached the superintendent.

Then, Waugh recalled, “Our team lead, Revelle—who has a doctorate in curriculum and instruction and more than two decades of teaching experience—emailed a letter the next day, requesting an immediate return of the novels and that the district follow its policy for challenged materials. No response ever came.”

Waugh and Revelle learned that *Love Is Love*—the book with LGBT themes—was banned in a meeting in the superintendent’s conference room.

The district later created a new policy that requires six-weeks’ notice for non-approved texts. Waugh surmises that the ban “can only have been created to prevent future LGBT-inclusive texts.” Her *Dallas Voice* article adds,

Additionally, the district is concealing this ban by not listing any of the graphic novels as challenged or *Love Is Love* as banned in its records. In fact, the information obtained from the district is incomplete, as these events, as well as at least two emails, are known to be missing from records requests.

Reported in: *Dallas Voice*, July 5, 2019.

### Ashland, Virginia

A parent complained about *PRIDE: The Story of Harvey Milk and the Rainbow Flag* (2018) by Rob Sanders being read aloud in a second-grade classroom in Hanover County, Virginia. In response to the complaint, the school’s principal wrote to all parents to alert them of the incident and explain that the book had not been

pre-vetted as is required for material deemed potentially sensitive.

The National Coalition Against Censorship has written to the district in support of the teacher and the book, urging them to keep the book in classrooms and available to students who choose to read it.

The well-reviewed picture book was read aloud as part of a lesson on civil rights and fighting against bigotry, in support of the district’s anti-bullying curriculum.

The district’s sensitive material policy requires the school to alert parents to potentially controversial texts and allow them to request alternative assignments for their students. Since the challenge and the principal’s letter, many parents in the community have spoken out in support of the book and the teacher. The book’s supporters argue that the book, which does not contain references to sex or violence, is a civil rights story and does not merit being labeled sensitive or controversial. Reported in: [ncac.org](http://ncac.org), May 14, 2019.

### COLLEGES AND UNIVERSITIES Conway, Arkansas

A sign with a quotation from Lady Gaga, displayed in celebration of Gay Pride Month, was removed from outside the Torreyson Library at the University of Central Arkansas (UCA).

UCA President Houston Davis sent an email about the issue to students, faculty, and staff on June 18, 2019.

“Unlike our student groups or other organizations, the library is an official arm of UCA and when it ‘speaks’ on that sign which serves information regarding library hours, it speaks officially,” Davis wrote. “We do have to be very careful that we walk the fine line between individual freedom of speech and institutional voice.”



Davis said another problem was timing—an apparent reference to the summer band camps and other activities that attract many secondary students to the campus.

“We have to be very mindful of the hundreds of minors that are on campus during the summer which further complicates an environment that is normally programmed for adults and our very meaningful conversations about ourselves and our world,” he wrote. “One outgrowth of that perspective on minors has been a start of a good conversation about best practices how to present or represent issues when minors are on the campus.”

The sidewalk sign outside the school’s Torreyson Library was celebrating Gay Pride Month before it was removed during the second week of June. The black-and-white sign said, “Being gay is like glitter. It never goes away.—Lady Gaga.”

Senior Ashley Nicole Hunter of Conway said that the letter from the university president so upset her that she was withdrawing from classes.

“This is doubling down and further insulting us by suggesting we [members of the LTBTQ community] shouldn’t be exposed to minors,” she said. Reported in: *Arkansas Democrat-Gazette*, June 18, 2019.

## New Brunswick, New Jersey

Rutgers University’s student newspaper, the award-winning *Daily Targum*, lost its funding despite winning the overall support of student voters in an April referendum. An analysis by the Foundation for Individual Rights in Education (FIRE) found that the Rutgers policy that defunded the newspaper is unconstitutional in at least four ways. FIRE on June 3, 2019, called on Rutgers to fund the *Daily*

*Targum* and reform its unconstitutional funding policy.

Though 68 percent of voting students supported continuing to fund the *Daily Targum*, it fell short of receiving the required thumbs-up from at least a quarter of the overall student population—because only about a quarter of Rutgers students voted on the ballot measure, which is held every three years.

Since 2017, the Rutgers University Conservative Union has led a #DefundTheTargum campaign. The group, which argues that it aimed “not to destroy the paper, but to give more freedom and more choice” to students, had run-ins with the *Targum* in recent years. Group leaders have complained that the newspaper printed “Fake News” after the *Targum* published an article revealing that a member of the group crafted flyers nearly identical to those created by American Vanguard, a white supremacist group.

Melissa Hayes, an alumni member of the *Daily Targum*’s Board of Trustees, told NJ.com that the vote means a loss for the newspaper of around \$540,000 a year.

“The university must immediately reverse course and implement a funding process that doesn’t subject student newspapers, or any other student organization, to layer upon layer of impermissible viewpoint discrimination,” said FIRE’s Adam Goldstein.

According to FIRE, the referendum itself, and the system that determines a student group’s eligibility for a funding referendum, are unconstitutional in four ways:

1. Court precedents forbid public colleges from distributing student activity fees by referenda. The Supreme Court has said, under the First Amendment, the power to impose a

mandatory student activity fee is tied to the obligation to distribute that fee in a viewpoint-neutral way. A referendum cannot be viewpoint-neutral because, as the Supreme Court has held in another student fee funding case, “access to a public forum . . . does not depend upon majoritarian consent.”

2. The referendum procedure is apparently unavailable to belief-based groups, such as political and religious organizations.
3. Under the policy, a committee of the University Senate is charged with determining whether the “educational value of the organization justifies the proposed investment.” While an inquiry into “educational value”—which the Rutgers policy leaves undefined—may be a lawful component of a viewpoint-neutral standard, it does not, standing alone, provide adequate guidance to decision-makers and thus allows for biased funding determinations.
4. The university president has unfettered power to unilaterally approve or deny a student group’s request for a referendum, including for viewpoint-discriminatory reasons.

“Whether the conservative group’s campaign changed a single vote is irrelevant, as the mere establishment of the voting system is unconstitutional even if the *Targum* won every vote,” Goldstein said. “If a popular vote was a lawful method of defunding a student group, many voices—almost assuredly conservative ones included—would be silenced. Rutgers cannot permit any student group to lose funding because someone didn’t like what they published, and that’s all a referendum is: a heckler’s veto with



extra steps.” Reported in: [fire.org](http://fire.org), June 3, 2019.

## PRISONS Phoenix, Arizona

*Chokehold: Policing Black Men* (2017) by Paul Butler has been banned in Arizona prisons. The book, by a former federal prosecutor, examines law enforcement and mass incarceration through its treatment of black men.

Butler, who now is a criminal law professor at Georgetown University, said his publisher was notified by email in March 2019 that his book had “unauthorized content.” The notice did not specify what led to the decision, but stated that some aspect of the book was “detrimental to the safe, secure, and orderly operation of the facility.”

Butler said he is mystified as to what raised alarm bells. “Chokehold,” the word he used for his title, is a maneuver police have used to restrain a suspect by the neck. Butler uses it throughout the book as a metaphor for how society and law subjugate black men. Nowhere does Butler advocate violent or retaliatory behavior.

“I disavow violence because first, I think it’s immoral, and second, because it wouldn’t work,” Butler said. “I’ve received letters from several inmates who have read *Chokehold* while they are serving time. No one has indicated that reading *Chokehold* has caused any problems in prison.”

The American Civil Liberties Union (ACLU) on May 21 called on the Arizona Department of Corrections to rescind the ban. “In order for them to ban a book, they have to show the restriction is related to a legitimate prison interest,” said Emerson Sykes, an ACLU attorney. “There’s no interest to keep inmates from learning about the criminal justice system and policing.”

Arizona’s corrections department prohibits inmates from receiving publications that contain any depictions or descriptions that would incite or facilitate a riot, resistance, or stopping work. The publications also can’t contain pictures, illustrations, or text that encourage “unacceptable sexual or hostile behaviors.” Any publications with sexually explicit material or sexual representations of inmates and law enforcement also are not permitted.

The Arizona Department of Corrections is in a court battle over a similar case involving a different publication. *Prison Legal News*, a monthly journal, sued corrections officials in 2015 for refusing to deliver four issues in 2014. The case is set for trial later this year.

Supporters say access to books for the more than 2 million people incarcerated in the US can make all the difference for life outside the prison walls. About half the adult prison population doesn’t have a high school degree, said Christia Mercer, a philosophy professor at Columbia University who has taught classes in New York prisons. Reading books can be transformative and help them feel like they are using their time to make something of themselves.

“One in nineteen black men are in prison in Arizona right now,” Butler said. “Rather than acknowledge it’s a good thing that inmates want to read about and debate important public policy, Arizona pushes back against rehabilitation, against literacy, against the Constitution.”

Sykes said the ACLU is prepared to sue if corrections officials fail to respond to its written request to end the book’s exclusion. He believes the ban was made based on content, which would be unconstitutional. Reported in: *Associated Press*, May 21, 2019; National Public Radio/[npr.org](http://npr.org), June 21.

## Topeka, Kansas

Thousands of books have been banned from entering Kansas’ state prisons over the last two decades, with hundreds added to the list of censored literature over the last two years.

Books to Prisoners, an organization that facilitates book donations to prisons, shared the Kansas Department of Correction’s banned book list on Twitter. Books on the list include:

- *A Clockwork Orange* (1962) by Anthony Burgess
- *A Game of Thrones* (1996) by George R.R. Martin
- *Are Prisons Obsolete?* (2003) by Angela Y. Davis
- *Black Klansman* (2014), Ron Stallworth’s memoir which inspired Spike Lee’s 2018 *BlacKkKlansman* film
- *Twelve Years a Slave* (2015) by Solomon Northup
- *Fifty Shades of Grey* (2011) by E.L. James
- *American Gods* (2011) by Neil Gaiman

At least sixty “how-to” books also made the ban list, including *How to Make Small Talk: Conversation Starters, Exercises, and Scenarios* (2017) by Melissa Wadsworth, *How To Paint & Draw* (2002) by Hazel Harrison, *How to Analyze People: An Ideal Book for Understanding Different Personalities* (2015) by Aiden McCoy, *How to Disappear: Erase Your Digital Footprint, Leave False Trails, and Disappear without a Trace* (2010) by Frank M. Ahearn and Eileen C. Horan, and *How to Survive Anything, Anywhere* (2004) by Chris McNab.

The list also includes a number of banned coloring books, newsletters, and comic books, including a number of Marvel and DC comics, plus role-playing manuals for games such as *Dungeons and Dragons*



and Pathfinder, and also magazines, including *Cosmopolitan*, *Allure*, *Elle*, *Art in America*, *Hot Bike*, and *Hooters*.

While some of the books likely made the banned list due to references of violence, such as Vince Flynn's *Consent to Kill* (2005), social media users were quick to point out how innocuous many of the books, magazines, and graphic novels appear to be. These include Klaus Honnef's book on *Contemporary Art* (1994) and a "Step by Step" guide on how to use Microsoft Office Excel 2007.

Books to Prisoners (BTP) obtained the list with the Human Rights Defense Center (HRDC). BTP said "Kansas has fewer than 10,000 prisoners, yet more than 7,000 books are banned for them." Michelle Dillon, who is a BTP organizer and also is Public Records Manager at the HRDC, told *Newsweek* in a phone interview that in her seven years working with BTP, she had "never seen a list like this, except in Texas," where she said officials have banned as many as fifteen thousand books.

Dillon said prison book bans tend to vary from state to state, with more conservative states tending to see greater censorship.

In all states, she added, atlases are commonly rejected by prisons, including maps of imaginary places, like Westeros in *A Game of Thrones*. With George R.R. Martin's popular series, Dillon said, it may not even be the "violence or sexual content" that will get his novels banned from prisons, "but it's also because of the maps because, you know, somehow it could lead to a prisoner escaping to Westeros."

For organizations like BTP, the lack of clear guidelines makes determining what literature can and cannot be sent out to prisoners a difficult and time-consuming task.

Kansas Department of Corrections Secretary Roger Werholtz said in a statement sent to *Newsweek* that decisions on which books to censor are made based on pre-established criteria. "If one item within a publication meets the criteria, then the entire publication must be censored as we cannot redact that one item," Werholtz said.

The corrections secretary said that if facility staff do flag a publication for censoring, an appeal can be launched against the decision.

"The current censorship list is approximately fifteen years old. Within this time frame, 1,622 publications have been appealed with 141 appeals being overturned," Werholtz said.

"While this list reflects censorship activity during the past fifteen years, the standards by which items are placed on the list have evolved over time," he continued. "For instance, role playing publications were not allowed within the facility at one time. However, this is no longer a blanket practice. Also, at one time, depictions of guns in magazines were not allowed. However, this practice has changed and photographs of guns are now allowed. The censorship list does not reflect these changes because our practice is that each publication is reviewed as it enters a facility."

Werholtz added, "Censorship decisions have been made based on maintaining the safety and security of the facility and those decisions err on the side of caution." However, he said, the Kansas Department of Corrections was "planning to review the processes by which publications are placed on this list." Reported in: *Newsweek*, May 31, 2019.

### New Hampshire

Books that are critical of the justice and prison systems are among the most frequently banned publications

in New Hampshire prisons, according to the Human Rights Defense Center (HRDC), a nonprofit which advocates on behalf of those held in correctional facilities throughout the United States.

HRDC in May 2019 obtained a list of specific titles and their associated violations for those incarcerated in New Hampshire under the state's Right-to-Know law. More than 120 titles were rejected by New Hampshire corrections officials between 2014 and the present.

Among the banned titles that take issue with the country's justice system and mass incarceration are:

- *Prison Nation: The Warehousing of America's Poor* (2003) by Tara Harivel and Paul Wright
- *Locked Up but Not Locked Down: A Guide to Surviving the American Prison System* (2011) by Ahmariah Jackson
- *The Factory: A Journey Through the Prison Industrial Complex* (2016) by Christopher Lordan and Robert Dellelo
- *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy* (2017) by Heather Ann Thomas
- *Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey* (2015) by Jason Lydon, et al.

Alex Friedmann, the associate director of the HRDC, said decisions about questionable books should be made by independent panels rather than prison employees.

New Hampshire Corrections Commissioner Helen Hanks said thousands of titles—41,000 books at the three state prison libraries—are available to prisoners. Electronic books are also available on prison-issued tablets.





The Department of Corrections disputed the notion the books are banned and noted that some decisions can be revisited and overturned. They provided the *Union Leader* with a list of books initially rejected but deemed acceptable by the Literary Review Committee. They include *Death Before Dishonor* (2007), a novel by hip hop artist 50 Cent, *Papillon* (1969) by Henri Charriere, books about narco kingpin Pablo Escobar, and books about witchcraft.

HRDC has sued to get some books in prison. It has won most cases of its cases nationwide, but lost in federal courts in Texas. Reported in: BookRiot.com, May 28, 2019; *New Hampshire Union Leader*, June 1.

### Toledo, Ohio

All used books are banned; only new books are allowed in at least five prisons in Ohio. This limits the efforts of non-profit groups, family members, and friends to provide a wide range of reading material to incarcerated people, and the ability of prisoners with limited funds to buy books for themselves.

The latest such ban to come to light is at the Toledo Correctional Institution. On May 3, 2019, the non-profit Central Ohio Incarcerated Workers Organizing Committee publicly shared a copy of a memo from officials at the Toledo institution, dated November 21, 2018, stating that used or damaged books had been deemed “a threat to the security of the institution and will no longer be permitted to be sent in” under any circumstances. “Books and other printed material must be ordered and received in new condition in order to be processed,” the memo said.

Previous reporting from public radio station WOUB in Athens, Ohio, indicates that at least four other prisons in Ohio have had this policy—or

more restrictive ones—in place since at least early 2018. In December 2017, Redbird Books-To-Prisoners received a letter from a prisoner at Grafton Correctional Institution about a new policy banning prisoners from receiving used books. WOUB reporters knew of three other prisons in Ohio with this particular policy: Chillicothe Correctional Institution, Lebanon Correctional Institution, and Ridgeland Correctional Institution.

The policy at Grafton not only banned used books, it also required the books to be bought from a list of approved vendors. After an internal complaint was filed, Grafton amended its policy to include Redbird as an approved vendor. But, the books still must be new.

Purchasing new books is costly. New books usually cost around \$20. But on average, inmates only have a monthly income of about \$24, according to data compiled by the Prison Policy Initiative. Buying a new book would mean inmates would potentially have to spend their entire monthly wages on one item. For prisoners who don’t have family that can send them items in prison, it would be a financial hardship to pay for new books on their own.

“Basically they’re saying you can’t read books if you’re poor,” Madeline Smith, one of the volunteer organizers of Redbird, told WOUB. Smith, a Ph.D. student at Ohio State University, said, “That’s another level of . . . discrimination that I think is just unconscionable.”

PEN America issued a statement saying, “The state of Ohio’s prison policies banning used books from its prisons represent a misguided effort, as well as a troubling sign of the erosion of the right to read in American prisons.”

In recent years, with the stated aim of blocking contraband from entering

prisons, various states as well as the federal prison system have attempted to dramatically restrict book deliveries to incarcerated people, or shut down such deliveries entirely. In the past two years alone, PEN America has joined others in decrying such policies in New York, Maryland, and around the country. After public outcry, some of these policies have been rescinded or amended. Reported in: WOUB Public Media, April 27, 2018; Central Ohio IOC, November 21; Pen America, May 14, 2019.

### Seattle, Washington

Used books—an affordable way to get books into the hands of prisoners—were banned by Washington state’s Department of Corrections (WDOC) in March 2019, but a public outcry led to a partial lifting of the ban in mid-April.

WDOC officials said they see a lot of contraband coming in through books, and there’s not enough staff to check each package.

The non-profit Books to Prisoners (BTP) mails more than 10,000 books at no charge to prisoners in Washington each year. The group, based in Seattle and with branches in Portland, Olympia, and Spokane, started providing this service in 1973. BTP board member Michelle Dillon said the group has never had a problem, and banning services like this will cut off inmates’ access to information. A BTP statement called the policy “cruel and senseless.”

After partially rescinding the ban, the DOC is now allowing a select group of four nonprofits to send books: Books to Prisoners Seattle, Books Through Bars, Women’s Prison Book Project, and Prisoners Literature Project.

BTP called the adjusted policy “insufficient.” Representatives of BTP met with WDOC officials on April



12 to challenge and clarify the new book policy.

“We’re still working with the Washington DOC to clarify the terms of new acceptance policies, but are optimistic for resolution and improved lines of communication in the future,” Dillon told *Publishers Weekly*. She emphasized that “we still have many concerns” about the new policy.

Dillon said BTP’s goal is to “negotiate a policy which doesn’t just restore the limited access” prior to the universal ban, but a policy that offers “a much more just, comprehensive, consistent policy that ensures that all [nonprofit prison support] groups are treated equally.” The current “very short list of approved vendors,” she said “would exclude at least a dozen known organizations which have sent books to Washington prisoners in the past.”

Dillon said, “These book donations, which have been supplied by humanitarian organizations across the country since 1973, are lifelines for many of these prisoners, who face underfunded (or nonexistent) prison libraries.”

Following the initial ban, a report in the *Seattle Times* cast doubt on WDOC’s claims that illegal contraband sent to prisons was escalating “at a high rate.” The *Seattle Times* reported that most of the instances cited by the DOC either didn’t involve books at all or, in the remaining instances, it was unclear whether the contraband cited was actually smuggled using books. Reported in: Q13 Fox TV, April 1, 2019; *Publishers Weekly*, April 15; [bookstoprisoner.net](http://bookstoprisoner.net), n.d.

## BOOKSTORES Washington, D.C.

A book talk to help launch *The Management of Savagery: How America’s Security State Fueled the Rise of Al*

*Qaeda, ISIS, and Donald Trump* (2019) by independent journalist Max Blumenthal, scheduled for April 3, 2019, was cancelled at a bookstore in the nation’s capital. The owners of the local bookstore chain Politics and Prose expressed concern after being targeted by a social media campaign that amounted to a heckler’s veto.

Days before the scheduled book talk at the bookstore’s location at The Wharf, the owners began hearing concerns about it. “We were caught off guard by a number of people who were reaching out to us and the passion of their comments,” said Bradley Graham, co-owner of the chain, which hosts more than seven hundred events a year.

A few hours before Blumenthal was scheduled to talk, the bookstore announced on Twitter that it was postponing the event.

The author said the bookstore was setting a disturbing precedent by caving to complaints, but the store owners said they wanted to find a way to move forward with the event.

A week later, rather than host a book launch at one of their stores, Politics and Prose instead supported Blumenthal’s event on April 10 at the Justice Center.

Blumenthal’s investigative journalism focuses on American militarism (he’s also the son of former Bill and Hillary Clinton aide Sidney Blumenthal). He describes his new book as an attempt to put “Trump and the European far right in a new context, and place blame on the warmakers who caused the refugee crisis.”

While Blumenthal has been a polarizing figure for his writing about Israel and US foreign intervention, he’s held three book launch events at Politics and Prose before without incident.

But on April 2, the Syrian American Council, which advocates for US

and United Nations intervention in Syria, tweeted that it was “dismayed that @politicsprose invited Max Blumenthal . . . to speak tomorrow.”

A subsequent tweet told the account’s followers to voice their concern, and included the phone number of the bookstore, along with Graham and co-owner Lissa Muscatine’s email addresses. Syrian American Council Executive Director Suzanne Meriden told DCist that she also privately emailed Graham and Muscatine asking them to reconsider their decision to host Blumenthal.

Graham said it wasn’t just the Syrian American Council that opposed Blumenthal’s event. “We were hearing from people who were customers of the store, not necessarily affiliated with the Syrian American Council,” he said. “But they are aware of Max or aware of events in the Middle East or in other subjects that Max has written and talked about.” He added that those who were writing were “very upset that we were holding this event for him. . . . It’s just a challenge now to deal with the extent of emotion and allegations and counter allegations being thrown back and forth.”

Blumenthal called the pressure campaign the “internet version of having a book burning.” He said that, while his new book isn’t focused on Syria, “the people who are trying to censor me and shut down my book tour—and they’re trying to shut it down everywhere—many of them are people who have been directly involved in trying to sell the war [in Syria] to the American public.”

Meriden countered that her organization is composed of “American citizens exercising our right to speak up when we feel something wrong is taking place. Max is free to speak anywhere he wants to, but it’s also our right to protest what kinds of platforms he’s getting to speak.”



The week before Blumenthal's scheduled book launch at Politics and Prose, the store hosted former Department of Homeland Security Secretary Janet Napolitano. Graham said that a protest that disrupted the Napolitano event played a part in the store's decision to postpone Blumenthal's talk. "We just didn't want to go through that again," he says. "We didn't know that there was going to be any protest with Napolitano; we didn't have any warning. With Max's event, we had some warning. We're actually trying to be more responsible in preparing for this event."

Graham said that this level of contention is highly unusual for the store. "We're trying to avoid disruption because we want people to be able to listen to the arguments, absorb them, question them if they want. But demonstrating in a way that shuts down a speaker and avoids open questioning seems to me to be counterproductive to what we're trying to achieve." Reported in: DCist.com, April 5, April 9 2019.

### BROADCAST MEDIA Birmingham, Alabama

One episode of *Arthur*, a long-running children's series on PBS, was banned by Alabama Public Television (APT). APT refused to air the May 13, 2019 episode, "Mr. Ratburn and

the Special Someone," which features Arthur's third grade teacher Mr. Ratburn marrying another man. Instead, the broadcaster played a re-run of another *Arthur* episode.

In response, a church in Birmingham, Alabama, made plans to host a free screening of the banned episode. The First United Methodist Church is collaborating with the Sidewalk Film Festival and Shout LGBTQ Film Festival for the special event. WGBH, the production company behind the show, granted permission for the episode to be screened.

The church announced in a Facebook Event post that the screening would be held at 10 a.m. on June 15. The announcement said, "There will be wedding cake, sparkling apple juice and surprises. This all ages screening and celebration is free and open to all."

Rachel Morgan, the creative director for both festivals, explained to *Newsweek* why she wanted to screen the episode. "We wanted to help allow for anyone in the Birmingham area who wants to see the episode to have the opportunity to do so. We hope that the screening reflects the fact that there are many people in Alabama who disagree with censorship and believe that all lives are worthy of representation," she said.

Mike McKenzie, the director of programming at APT, has previously

stated the decision to cut the episode was so that children could watch *Arthur* without supervision. "Parents have trusted Alabama Public Television for more than fifty years to provide children's programs that entertain, educate and inspire," he said. "More importantly—although we strongly encourage parents to watch television with their children and talk about what they have learned afterwards—parents trust that their children can watch APT without their supervision.

"We also know that children who are younger than the 'target' audience for *Arthur* also watch the program," McKenzie added.

*Arthur* is a Canadian/American animated educational TV series about the life of an eight-year-old anthropomorphic aardvark, based on the *Arthur Adventure* book series written and illustrated by Marc Brown.

Speaking about the episode featuring same-sex marriage, Marc Brown told CBS, "You know, art reflects life, and life reflects art, and I think kids need to see what's happening in the world. I would hate to live in a world which is sanitized and censored, and that's really something I can't get behind." Reported in: *Newsweek*, June 6, 2019.



## SUPREME COURT

The US Supreme Court on June 27, 2019 issued a 5–4 ruling in *Department of Commerce v. New York*, temporarily blocking the US Commerce Department from adding a citizenship question to the 2020 Census. In response, American Library Association (ALA) President Wanda Brown made the following statement:

The American Library Association agrees that there is a “substantial mismatch” between the Commerce Secretary’s decision and the rationale he provided for adding a citizenship question to the 2020 Census. We welcome the Supreme Court’s decision to at least temporarily block the addition of the question. ALA has consistently opposed the addition of the question on the 2020 census form, as most recently argued in ALA’s *amicus curiae* brief in this case.

ALA will continue to work in coalition with civil and human rights organizations to carefully review the implications of the case and actively advocate for a fair, accurate, and inclusive census.

The Supreme Court action came after the Trump Administration appealed a decision in US District Court in Manhattan that Commerce Secretary Wilbur L. Ross Jr. broke federal rules when he ordered the citizenship question added to the Census. [See JIFP, *Spring 2019*, page 58.]

The Census Bureau itself had estimated that at least 630,000 households would refuse to fill out the 2020 questionnaire if such a question were included. This would result in an undercount of the population in states with a high percentage of immigrants, and thus reduce those states’ representation in Congress and the Electoral College, and reduce funding for federal programs in those states, for

the following ten years. Reported in: *American Libraries*, June 27, 2019.

The Supreme Court on June 24, 2019 struck down a provision of federal trademark law that had denied registration for “immoral or scandalous” trademarks, as an overbroad regulation that limited free speech based on the viewpoint expressed.

In *Iancu v. Brunetti*, the court ruled against the US Patent and Trademark Office’s rejection of Erik Brunetti’s application for a trademark for his clothing line named FUCT. The name obviously bears close resemblance to a profanity.

The Trademark Office said “FUCT” violated the law because it was “a total vulgar” and “extremely offensive” name. Brunetti sued on First Amendment grounds.

The court ruled in his favor for at least two reasons. First, the provision permitting the rejection of marks as “immoral” allowed the government to engage in what is known as viewpoint discrimination. This violates the principle that the government should not favor certain viewpoints and disfavor other viewpoints.

Justice Elena Kagan in her majority opinion wrote that the viewpoint bias was “facial” [obvious on its face] and thus “results in viewpoint-discriminatory applications.”

Justice Samuel Alito was even blunter in his concurring opinion: “Viewpoint discrimination is poison to a free society.”

The court also relied on the principle that when a law sweeps more broadly than is needed to accomplish its purpose, and prohibits speech that ought to be protected, the law is overbroad.

As Justice Kagan explained: “There are a great many immoral and scandalous ideas in the world (even more than there are swearwords) and the

Lanham Act (the federal trademark law) covers them all. It therefore violates the First Amendment.” Reported in: [supremecourt.gov](http://supremecourt.gov), June 24, 2019; *Freedom Forum*, July 3.

*Carpenter v. United States* expanded Fourth Amendment privacy protections in the digital age, by requiring the police to obtain a warrant before obtaining cellphone location history from a phone company. The Supreme Court issued its ruling on June 22, 2018, but the case was back in the news a year later.

Timothy Carpenter, the appellant in the Supreme Court case, had been convicted of a series of federal offenses, including robbery and gun-related charges. But prosecutors won the case and secured a 116-year prison sentence against him with the help of cell-site location information that the Supreme Court later said was unlawfully obtained.

Unlike other types of criminal cases decided by the Supreme Court, which may result in a reversed conviction or a new chance to prove one’s innocence, successful challenges to government searches and seizures routinely seek suppression of the tainted evidence. Under what’s called the exclusionary rule, any evidence obtained in violation of the Constitution cannot be used at trial.

The Supreme Court remanded the case back to the appellate court.

On June 11, 2019, the US Court of Appeals for the Sixth Circuit ruled that at the time FBI agents obtained the cell phone evidence, the Supreme Court had not yet ruled, so the agents believed the search warrant they issued to the phone company was legal. Under the “good faith” exception to Fourth Amendment, the evidence did not need to be suppressed. Thus, the trial court’s decision stands, and Carpenter remains sentenced to





116 years in prison, even though he won in the Supreme Court.

The American Civil Liberty Union's Nathan Wessler, who argued and won the *Carpenter* case before the Supreme Court, said the development of the law may suffer in the long term, as lower courts excuse violations while refusing to expand privacy rights.

"When courts dodge the Fourth Amendment question and rule just on 'good faith,' it leaves the public and police without clear guidance about what the Fourth Amendment means and how it should apply to novel but important digital-age intrusions," Wessler wrote in an email.

Orin Kerr, a Fourth Amendment expert who has unsuccessfully challenged the good-faith exception before the Supreme Court, reasoned that the Supreme Court justices may feel more comfortable ruling for expanded civil liberties, so long as they don't also have to let the bad guy go free. Still, the current system is far from just. "Supreme Court cases should mean something," Kerr said in an email. "The Supreme Court is supposed to decide a person's case, not just settle the rules for everyone else." Reported in: [supremecourt.gov/opinions](https://supremecourt.gov/opinions), June 22, 2018; [opn.ca6.uscourts.gov/opinions](https://opn.ca6.uscourts.gov/opinions), June 11, 2019; *New York Times*, June 13, 2019.

In a cable TV case that may have implications for social media, the Supreme Court on June 17, 2019 ruled in *Manhattan Community Access Corp. v. Halleck* that a nonprofit entity running public access channels isn't bound by the First Amendment as government-run channels would be.

The case centered around a Manhattan-based nonprofit tasked by New York City with operating public access channels in the area. The organization disciplined two producers

after a film led to complaints, which the producers argued was a violation of their First Amendment speech rights. The case turned on whether the nonprofit was a "state actor" running a platform governed by First Amendment constraints.

In a split 5–4 ruling decision written by Justice Brett Kavanaugh, the conservative wing of the court ruled that the First Amendment constraints didn't apply to the nonprofit, which they considered a private entity. Providing a forum for speech wasn't enough to become a government actor, the justices ruled.

The liberal justices on the court dissented. As Justice Sonia Sotomayor wrote, the nonprofit "stepped into the City's shoes and thus qualifies as a state actor, subject to the First Amendment like any other."

None of the justices' opinions in the case mention the internet nor social media, but potential implications were seen before the Supreme Court heard the case. The Electronic Frontier Foundation, which submitted an *amicus* brief, wrote: "A broadly written opinion, adopting a low threshold for governmental involvement, could threaten the First Amendment rights of platform operators to curate content, and could give the government power to dictate content moderation rules and control what platforms can and can't publish."

Likewise, the Internet Association, a trade group, said in 2018 that such a decision could mean the internet "will become less attractive, less safe and less welcoming to the average user."

The decision to limit the scope of the First Amendment in this cable TV case seems to limit the chances that private companies will be punished for attempts to monitor content on the social media platforms they operate. Reported in: [eff.org](https://eff.org), December

12, 2018; [supremecourt.gov/opinions](https://supremecourt.gov/opinions), June 17, 2019; *The Verge*, June 17.

The Supreme Court's ruling on May 28, 2019 in *Nieves v. Bartlett* gives law enforcement officers significant protection from people who want to sue and claim they were arrested in retaliation for something they said or wrote. The justices said that because the officers had probable cause to arrest Alaska resident Russell Bartlett, his lawsuit fails.

Bartlett was arrested in 2014 at Arctic Man, an annual, weeklong winter sports festival that Chief Justice John Roberts described as "an event known for both extreme sports and extreme alcohol consumption." Bartlett was arrested for disorderly conduct and resisting arrest after exchanging words with two troopers investigating underage drinking during the event. Officers said they arrested Bartlett because he initiated a physical confrontation by standing close to one of the troopers and speaking in a loud voice.

The charges against Bartlett were ultimately dismissed, but Bartlett sued, claiming his arrest was retaliation for comments he made to the officers.

The court rejected Bartlett's argument, and stated, "The presence of probable cause should generally defeat a First Amendment retaliatory arrest claim." Roberts wrote that if Bartlett's arguments were to prevail, "policing certain events like an unruly protest would pose overwhelming litigation risks. . . . Any inartful turn of phrase or perceived slight during a legitimate arrest could land an officer in years of litigation."

Yet Roberts' opinion added that having the legal right having to make an arrest (i.e., "probable cause") will not protect police from all lawsuits. In a situation where officers generally



would not arrest someone despite having probable cause, the arrested person should be able to sue. Otherwise, as stated in a prior Supreme Court case known as *Lozman* that Roberts quoted, there is “a risk that some police officers may exploit the arrest power as a means of suppressing speech.”

The justices gave the example of a person who has been complaining about police conduct who is arrested for jaywalking, which rarely results in an arrest. The justices said in a case like that, if the person can prove that he was arrested when other jaywalkers had not been, he could move forward with a retaliatory arrest lawsuit.

One of Bartlett’s attorneys, Kerri Barsh, said she was disappointed with the outcome for her client. Yet she said she was pleased the court acknowledged there was at least a narrow category of cases where the fact that probable cause exists doesn’t close the door to lawsuits. “The facts mean a lot in these cases,” she said.

Bartlett had been supported by numerous First Amendment and media organizations, including the Associated Press. Reported in: [supremecourt.gov/opinion](http://supremecourt.gov/opinion), May 28, 2019; Associated Press, May 28.

The US Supreme Court on April 22, 2019 granted review in two consolidated cases, *Bostock v. Clayton County, Ga.*, and *Altitude Express Inc. v. Zarda*, that raise the question of whether the prohibition against sex discrimination in Title VII of the Civil Rights Act of 1964 encompasses sexual orientation.

The court also granted review in *R.G & G.R. Harris Funeral Homes v. Equal Employment Opportunity Commission*, which the justices said raises this question: “Whether Title VII prohibits discrimination against transgender people based on (1) their

status as transgender or (2) sex stereotyping under *Price Waterhouse v. Hopkins*.” In *Price Waterhouse*, the Supreme Court was divided in 1989, but had suggested that an employer’s reliance on sex stereotypes could be evidence of impermissible sex discrimination under Title VII.

These cases are expected to be heard during the Supreme Court’s October 2019 term. Reported in: *Education Week*, April 22, 2019.

## LIBRARIES Orange City, Iowa

Paul Robert Dorr burned four children’s books with LGBTQ (lesbian, gay, bisexual, transgender, queer) themes that he checked out from the Orange City Public Library on October 19, 2018 [see JIFP, *Fall-Winter 2018*, page 18], but says the First Amendment is on his side in the criminal case against him, *Iowa v. Dorr*, in **Iowa District Court of Sioux County**.

He pled not guilty to one count of fifth-degree criminal mischief—a simple misdemeanor—for publicly burning the library books: *Two Boys Kissing* by David Levithan, *This Day in June* (about a Gay Pride parade) by Gayle E. Pitman, *Morris Micklewhite and the Tangerine Dress* by Christine Baldacchino, and *Families, Families, Families* (a picture book showing many kinds of nontraditional families) by Suzanne Lang. He said the books promote “the trans-gender agenda” and violate Christian teachings.

Representing himself in the criminal case, he filed a motion calling for the charges to be dropped on the basis of “selective prosecution” in violation of his First Amendment and equal protection rights. He claimed that other patrons who lost or destroyed library books have not been prosecuted, but prosecutors “threw the book at him” because he posted his

book-burning protest on social media. According to his motion, “the government’s action in thus singling him out was based on an impermissible motive such as race, religion or the exercise of his constitutional rights.”

Sioux County District Court Magistrate Lisa Mazurek on July 8 ruled against Dorr’s motion to dismiss. “His actions involved the intentional destruction of the library materials that he had checked out,” Mazurek said. “There is no evidence to indicate that any other library patrons who failed to return their library materials intended to destroy those materials or even whether they did destroy them.”

She said he failed to prove that the message he was sending in his protest was the reason he was charged with a crime. The message being sent to him, she added, is “that he cannot burn books that do not belong to him.”

A jury trial in the case has been scheduled for August 6, 2019. Reported in: KIWA Radio, June 10, 2019; *N’West Iowa Review/nwestiowa.com*, June 16, July 9; Associated Press, July 10.

## SCHOOLS Hartford, Connecticut

A family is suing a private college preparatory school, claiming it expelled a high school sophomore because of his “politically incorrect views.” In *Mancini V. Cheshire Academy*, filed in **State of Connecticut Superior Court** on April 15, 2019, the family of Michael Mancini alleges in the complaint that the Cheshire Academy suspended Michael for five days and then expelled him from the school after his father launched a website detailing the issue.

The complaint says several incidents led to Michael’s suspension, including a discussion in English class of William Shakespeare’s *Twelfth Night*, in which the character Viola



cross-dresses as a male. Michael disagreed with some classmates who claimed Shakespeare was portraying transgender individuals in a positive light, saying that during the time the play was written (1601-1602) society would never partake in that activity.

The complaint says Michael was then verbally attacked by two of his classmates and asked by the teacher to explain himself afterward.

Cheshire Academy, which was founded in 1794, is the state's oldest boarding school.

The Mancini family is seeking an injunction to have Michael reinstated at the school as well as unspecified monetary damages.

School officials told the Cheshire Academy community in a letter signed by school head Julie Anderson that a student had been expelled following "a fair process," the *New Haven Register* reported. "Contrary to what you may have read, our decision was not based on an opposition to political dialogue. We will take steps to defend the good name and reputation of CA, and will continue to work with legal counsel through this unfortunate episode."

The letter didn't reveal the student's name. Reported in: *Epoch Times*, April 22, 2019.

## Atlanta, Georgia

The First Amendment protects high school students who exercise their free speech rights to call for their principal to be fired, the **US District Court for the Northern District of Georgia, Atlanta Division**, ruled in *K.B. v. DeKalb County School District* on May 1, 2019.

K.B., a student at Chamblee Charter High School in DeKalb County, became concerned about the performance of controversial principal Rebecca Braaten, and he and his

family signed an online petition calling for Braaten to be reassigned.

On October 1, 2018, K.B. designed stickers with Braaten's professional headshot photograph and the words "Fire Braaten" overlaid on a waving United States flag "to express his political views on the controversy regarding the principal." Court records indicate that K.B. placed a sticker on his phone case and openly displayed it at school. K.B. printed "no more than thirty-six" stickers and handed some to other students who requested them. K.B. was not aware of any stickers placed on school property and did not see his stickers displayed on anything other than students' own personal property.

School authorities concluded "that K.B. had violated the code of conduct rules regarding 'disrespectfulness' and 'creating a disturbance.'" They suspended him for a week, later reduced to a one-day in-school suspension.

The school argued that, as a matter of law, "schools may discipline students for insubordination and open displays of disrespect or contempt for school employees."

But the court rejected this argument, concluding that (1) this legal reasoning applies only to vulgar speech, and not to all expression of "disrespect or contempt for school employees," and (2) the First Amendment applies in schools, unless there is a real showing of likely substantial disruption—such disruption can't categorically be assumed just because speech calls for a principal to be fired.

The court concluded that the school violated K.B.'s First Amendment rights, unless the school could show that the speech was indeed likely to substantially disrupt school activities. The case can go forward, to see if the factfinder decides whether the substantial disruption standard is met.

In practice, according to Eugene Volokh in "The Volokh Conspiracy" blog, such cases often settle after the motion to dismiss is denied. Reported in: *reason.com*, May 1, 2019.

## Somerville, New Jersey

Unhappy with a compromise that moved the graphic novel *Fun Home: A Family Tragicomic* by Alison Bechdel from required reading to an optional choice on a list of what students may read for class in the twelfth-grade curriculum at Watchung Hills Regional High School in Warren Township [see JIFP, *Fall-Winter 2018*, page 25], some residents of the township are suing to have the book completely removed. On May 3, 2019, they filed *Gallic, et al. v. Watchung Hill Regional High School Board of Education*, in **Somerset County Superior Court**, asking for immediate removal of the book, and "to enjoin the defendants from facilitating, distributing or in any way permitting *Fun Home* from appearing or being any part of the curriculum at Watchung Hills."

The judge, Margaret Goodzeit, denied immediate relief. She said, "If the Plaintiffs were so concerned about the contents of *Fun Home*, this application could have been brought months—if not a year—sooner."

The suit says the Plaintiffs "fear if the defendants are not enjoined minors will suffer irreparable harm and that New Jersey statutes will be violated."

*Fun Home* chronicles the author's childhood in a family that ran a funeral home, and addresses themes of sexual orientation, gender roles, suicide, emotional abuse, dysfunctional family life, and the role of literature in understanding self and family. The book has won awards, but it also has frequently been challenged in schools and libraries.



One of the defendants, Watchung Hills Regional High School Board of Education President Peter Fallon, said the plaintiffs call the book “obscene,” but ignore that material must arouse “prurient interest” to be covered by the obscenity law. “If the plaintiffs were seriously seeking relief in this lawsuit, rather than just publicity for their opposition to the book, they would have addressed both elements” of the law, Fallon said.

Fallon’s statement indicates that none of the plaintiffs are students nor parents of students at the high school, although one was a senior there last year. Reported in: *Tap into Warren*, May 9, 2019.

## COLLEGES AND UNIVERSITIES

### Los Angeles, California

The Foundation for Individual Rights in Education (FIRE) sued the University of California, Los Angeles (UCLA) for failing to release a video and documents surrounding a campus speaking appearance by US Secretary of the Treasury Steven Mnuchin on February 26, 2018. In *FIRE v. University of California* filed in the Superior Court of the State of California, Los Angeles County, on March 27, 2019, FIRE stated that in the 391 days since FIRE’s initial request for records, the public university “unilaterally granted itself five extensions, obstructing FIRE and the public’s reasonable access to information.”

During Mnuchin’s appearance, several protesters were escorted from the facility, and there were five arrests. Two days later, the *Wall Street Journal* reported that Mnuchin “retracted his permission” for UCLA to release a video of his speaking appearance.

FIRE issued a public records request to UCLA on March 2, 2018, seeking any communications about

the release of the video, as well as any agreements between Mnuchin’s office and UCLA about the secretary’s appearance.

“UCLA can’t be allowed to defeat public records law by unilaterally putting off its response deadline forever,” said Adam Steinbaugh, director of FIRE’s Individual Rights Defense Program, who submitted the request on FIRE’s behalf. “This is a serious abuse of the public trust. UCLA—and public colleges across the country—must recognize that following the law isn’t a choice.”

The California Public Records Act (CPRA) requires that public institutions such as universities make copies of public records “promptly available.” FIRE’s lawsuit alleges the university failed to properly respond to its request, obstructed the production of the records, and failed to provide an estimated date of availability, all of which violate the CPRA’s requirements.

FIRE Director of Litigation Marieke Tuthill Beck-Coon said, “A university whose motto is ‘let there be light’ shouldn’t keep the public in the dark.” Reported in: *thefire.org*, March 28, 2019.

### Atlanta, Georgia

Georgia Gwinnett College in Lawrenceville blocked a student, Chike Uzuegbunam, from speaking about his Christian faith during the 2016-17 school year, and the case is continuing even after the school scrapped its “free speech zone” policy. Attorneys from Alliance Defending Freedom (ADF) described the college’s two “free speech zones” as “tiny” in a lawsuit filed in December 2107, *Uzuegbunam v. Preczewski*. After the filing, the school changed its policy. With students now allowed to speak publicly in any outdoor area on campus, Judge Eleanor L. Ross of the US District

**Court for the Northern District of Georgia** on May 25, 2018, dismissed the case as moot.

On June 25, 2019, the ADF argued before the **11th US Circuit Court of Appeals** that the district court didn’t settle the constitutional rights aspect of the case. ADF Legal Counsel Travis Barham said in a statement, “The district court clarified what Georgia Gwinnett College refused to make clear: that its students have the right to speak in any outdoor area of campus. That’s good news,” but Barham said the court “ignored how GGC officials repeatedly censored Chike, and these officials should not get off scot-free for creating and enforcing policies that trampled students’ constitutionally protected freedoms.”

The initial case drew some national attention after US Attorney General Jeff Sessions filed a brief in support of Uzuegbunam and another student, Joseph Bradford, who also wanted to preach on campus and had joined the case as a plaintiff. Bradford is still a student at the college while Uzuegbunam has graduated.

After the district court dismissed the lawsuit, the ADF’s Barham said, “We believe the college has to make amends for the unconstitutional enforcement of its policies against our clients.” Reported in: *Atlanta Journal-Constitution*, May 14, 2019; *Gwinnett Daily Post*, June 25; Alliance Defending Freedom, July 1.

### Boston, Massachusetts

A group of Jewish students failed to block a panel discussion about Palestinian rights at the University of Massachusetts-Amherst, when Judge Robert Ullmann of the **Suffolk County Superior Court** in Boston on May 2, 2019, denied their request for an injunction, two days prior to the event. Entitled “Not Backing





Down: Israel, Free Speech, and the Battle for Palestinian Human Rights,” the discussion included some speakers known for encouraging a boycott of Israel for its policies toward Palestinians.

Filing as “*John Doe 1*,” “*John Doe 2*,” and “*John Doe 3*,” the Jewish students argued that the panel was anti-Semitic and posed a threat to Jews on campus. Karen Hurvitz, the attorney representing the students, called the event a “hate fest” that would incite hostility toward supporters of Israel. Hosting the anti-Israel panel on campus would violate “numerous policies concerning non-discrimination, intolerance and inclusion,” that existed at UMass-Amherst to protect students, she argued.

UMass argued that an injunction would amount to a prior restraint on free speech.

Jewish Voice for Peace Western Mass, one of the sponsors of the event, contended that the plaintiffs’ definition of anti-Semitism is not agreed upon, even within the Jewish community.

One purpose of the panel was to argue that pro-Israel groups have tried to silence Palestinian points of view.

Judge Ullman said he couldn’t take action against the forum just because someone may say something “that fits someone’s definition of anti-Semitism.”

Rachel Weber, a lawyer for Jewish Voice for Peace, said, “We’re glad that the judge was so clear that the plaintiffs (A) hadn’t shown any evidence of any perceived harm that might happen, and (B) that this would have been a violation of the First Amendment.” Reported in: Jewish News Syndicate, April 26, 2019; Associated Press, May 2; *Daily Hampshire Gazette*, May 2.

## FREEDOM OF THE PRESS Baltimore, Maryland

A group of former military and intelligence officials are challenging a system of prior review that the government uses to censor millions of ex-government employees who want to write articles and books after they leave public service. Their lawsuit, *Edgar et al. v. Coats et al.*, filed on April 2, 2019, in **US District Court, Maryland District**, appears to be the first to challenge the entire pre-publication review system, rather than the handling of any particular manuscript, according to legal specialists consulted by the *New York Times*.

Originally imposed on a handful of Central Intelligence Agency officials in the 1950s, the policy now requires nearly anyone granted a security clearance to submit their writing to prior review for the rest of their lives.

The system’s ambiguous policies and vague standards puts too much discretionary power in the hands of reviewing officials, the lawsuit said.

“This far-reaching censorship system simply can’t be squared with the Constitution,” said Jameel Jaffer, executive director of the Knight First Amendment Institute at Columbia University, which is jointly representing the plaintiffs with the American Civil Liberties Union. He added: “The government has a legitimate interest in protecting bona fide national-security secrets, but this system sweeps too broadly, fails to limit the discretion of government censors and suppresses political speech that is vital to informing public debate.”

The system relies mainly on a 1980 Supreme Court ruling, *Snepp v. United States*, which permitted the CIA to seize the proceeds from a former officer who published a book without submitting it to the agency for review. The court did not hear arguments or take briefs in that case before issuing

an unsigned ruling, which dismissed the First Amendment issues in a footnote.

The legality of the censorship system is “unsettled” in part because “the practice of prior restraint by the government has grown enormously” since that case was decided, said Jack Goldsmith, a Harvard Law School professor and former Bush administration Justice Department official who has co-written several articles critical of the process.

The plaintiffs asked a judge to rule that agencies cannot enforce any obligation for individuals to submit their future writings to review boards. They took no position on whether the solution is to fix the system or make it voluntary—which would leave former intelligence and military officials and contractors free to publish without prior review if they assume the risk of being prosecuted if they divulge any dangerous secrets.

The plaintiffs include Timothy H. Edgar and Richard H. Immerman, former employees of the Office of the Director of National Intelligence; Melvin A. Goodman, a former CIA employee; Anuradha Bhagwati, a former Marine; and Mark Fallon, a former counterterrorism agent at the Naval Criminal Investigative Service. Reported in: *New York Times*, April 2, 2019.

## New York, New York

The *New York Times* and the Federal Communications Commission (FCC) are arguing in **US District Court for the Southern District of New York** over whether the Freedom of Information Act requires the agency to disclose information about people who filed comments about net neutrality. In *New York Times Company et al. v. FCC*, the newspaper asked for data such as users’ IP addresses and time stamps of their comments,



to investigating potential Russian meddling in the 2017 net neutrality proceeding.

In early May 2019, the agency countered that such information would compromise commenters' privacy.

In April 2017, FCC Chairman Ajit Pai proposed revoking Obama-era net neutrality rules that kept broadband providers from blocking or throttling traffic and from charging higher fees for fast-lane service. Ajit's proposal drew a record-breaking 22 million comments, but many were submitted under fake names or by Russian bots. The precise number of fake comments is unclear, but around 450,000 came from Russian email addresses, according to the *Times*.

The *Times* argued in court papers that any risk to consumers' privacy is small, since most web users have different IP addresses now than in 2017. The newspaper also argued IP logs will reveal clues about the geographic locations of commenters—including whether they came from Russia.

But the FCC counters that not all commenters necessarily have different IP addresses now than in 2017. The agency adds IP addresses can be combined with other data in ways that pose a risk to people.

"Anyone who can link an individual commenter's name and postal address with his or her IP address and User-Agent header can commercially exploit the user's personal information for financial gain, commit identity theft, or otherwise harm the user," the agency writes. Reported in: dockets.justia.com, October 20, 2018; mediapost.com, May 6, 2019.

### Alexandria, Virginia

A federal grand jury's indictment on May 23, 2019, raises questions about whether WikiLeaks founder Julian P.

Assange is a spy or a journalist. In the case of *United States v. Assange* in the **US District Court for the Eastern District of Virginia, Alexandria Division**, an 18-count superseding indictment alleges that Assange was complicit with Chelsea Manning, a former intelligence analyst in the US Army, in unlawfully obtaining and disclosing classified documents related to the national defense.

The US Justice Department described this as "one of the largest compromises of classified information in the history of the United States." The Justice Department news release includes the disclaimer that Assange is presumed innocent until and unless proven guilty in court, but the federal charges could have implications for freedom of the press.

The Freedom Forum Institute said the charges against Assange "implicate the work of journalists, which often involves talking with sources and at times possessing and publishing secret documents."

Of special concern, according to the institute, is "the government defining who is and who is not a journalist. This was the very activity that the nation's founders—who had first-hand experience with the abuses inherent in a system where the crown licensed printers and publishers—ruled out in 1791 by creating unequivocal First Amendment protection for a free press."

The institute warned, "The Assange indictment, if it stands, could dramatically change the delicate balancing act that has existed until now, in which the government sought to protect its secrets by prosecuting leakers, but did not go after reporters and news outlets that produced news reports based on leaked materials." Reported in: justice.gov, May

23, 2019; Freedom Forum Institute, June 13.

### FREE SPEECH Los Angeles, California, and Charlottesville, Virginia

Judges in California and Virginia came to different conclusions about whether white supremacist rallies that lead to violence are protected by the First Amendment.

Judge Cormac J. Carney of the **US District Court for the Central District of California** on June 3, 2019 dismissed the federal charges against three alleged members of a violent white supremacist group. In *USA v. Rundo et al.*, some alleged members of the Rise Above Movement (RAM) had been accused of inciting violence at California political rallies, but Judge Carney found their actions amounted to constitutionally protected free speech.

Prosecutors said members conspired to riot by using the internet to coordinate hand-to-hand combat training, traveling to protests, and attacking demonstrators at gatherings in Huntington Beach, Berkeley, and San Bernardino. The group also posted videos to celebrate violence and recruit members.

Despite the group's "hateful and toxic ideology," the criminal statute against protests went too far in regulating free speech, the judge ruled. He said the Anti-Riot Act of 1968—most famously used to prosecute the "Chicago Eight," including Abbie Hoffman, Bobby Seale, and Tom Hayden, for conspiring to incite a riot at the 1968 Democratic National Convention—was unconstitutional in part because it criminalized advocating violence when no riot or crime was imminent. He said prosecutors cited social media posts the men made



months before and months after the rallies.

The judge threw out the charges and ordered the release of alleged RAM leader Robert Rundo and suspected member Robert Boman. Charges against Aaron Eason, who was free on bond, were also dropped.

Defense attorney John McNicholas, who represented Eason, said his client was never a member of RAM and committed no crime. He said the men thought they were doing good, going to conservative rallies to counter the anti-fascists known as Antifa who were “committing acts of violence to suppress speech they disagreed with.” He criticized prosecutors for not pursuing charges against Antifa members.

The Los Angeles decision alarmed groups that track white supremacist activity. They fear the court decision could empower RAM, which is known for espousing anti-Semitic and other racist views.

Brian Levin, director of the Center for the Study of Hate and Extremism at California State University, San Bernardino, said if members discussed a criminal plan and took steps to carry it out, their speech was not protected. “The Supreme Court has basically held that hateful speech is protected; however, violence and conspiracies are not,” Levin said. “That’s where I think the judge may have gotten this one wrong.”

Prosecutors were disappointed with the ruling, and are reviewing grounds for appeal, spokesman Ciaran McEvoy said.

In a similar case in Virginia that involved alleged RAM members from California who participated in violent white nationalist rallies in both states, Judge Norman Moon reached a conclusion opposite of Judge Carney’s. Four defendants from California admitted punching and kicking counter-protesters as white

nationalists led a torch-lit march at the University of Virginia and at the “Unite the Right” rally in Charlottesville in August 2017. They pleaded guilty to those charges on May 3, 2019 in *United States v. Daley et al.* in the **US District Court for the Western District of Virginia** in Charlottesville. However, for the charges based on the Anti-Riot Act, they plan to appeal on the grounds that the statute is unconstitutional because it is overbroad, vague, and infringes on protected First Amendment activities, said Lisa Lorish, assistant federal public defender in Charlottesville. She expects the appeals court will agree with Judge Carney’s reasoning.

There are plausible arguments in support of both decisions—with Judge Carney taking a broad interpretation of the law, and Judge Moon in Virginia taking a narrow one, said Eugene Volokh, a law professor at the University of California, Los Angeles. Reported in: courtlistener.com, May 3, 2019; Associated Press, June 5.

## Denver, Colorado

The **US Court of Appeals for Tenth Circuit** in Denver rejected the First Amendment claim of a public employee who was demoted after giving sworn testimony in a judicial proceeding involving a domestic child custody dispute between his sister-in-law and a fellow public employee. The decision in *Butler v. Board of County Commissioners for San Miguel County* on March 29, 2019 gives “inadequate protection to public employees who testify in court,” according to the Freedom Forum Institute. The decision also creates a split between different appellate circuits, and the split may require ultimate review by the US Supreme Court.

Jerud Butler works as a supervisor for the San Miguel County

(Colorado) Road and Bridge Department. He suffered a demotion after he testified in a court proceeding involving his sister-in-law and her ex-husband, who also works for the San Miguel County Road and Bridge Department. Two of Butler’s work superiors investigated his court testimony and gave him a written reprimand and demotion.

Butler then sued the two county directors who demoted him, alleging he was retaliated against for his First Amendment-protected speech. A federal district court dismissed his lawsuit, reasoning that his court testimony did not address a matter of public concern—defined generally as speech that relates to any matter of political, social, or other concern to the community.

Butler appealed the decision, arguing that the district court failed to faithfully apply the US Supreme Court’s 2014 *Lane v. Franks* decision. In that decision, the court held that Alabama college officials violated the First Amendment rights of a public employee who testified about financial malfeasance of a former college employee.

However, in a split decision by a three-judge panel, the 10th Circuit majority distinguished Butler’s case from *Lane*, reasoning that Butler merely served as a character witness for his sister-in-law, speech that deals with a “purely personal dispute.” Butler argued that his speech certainly touched on a matter of public concern because the state of Colorado has a strong interest in the welfare of children and the fair resolution of child custody matters. The 10th Circuit rejected that argument, writing that “there is no indication that this testimony was of interest or concern to the community at large.”

The majority concluded that “Butler’s specific testimony as a character



witness for his sister-in-law during a child custody hearing was not a matter of public concern.”

Judge Carlos F. Lucero dissented. “It is difficult for me to accept the proposition that society’s concern in the custody of a child can be as personal as the majority pronounces,” he wrote. “To be sure, participants in the proceeding may have personal concerns regarding the custody of a child, but the overarching public interest in the well-being of children cannot be so easily ignored.”

Judge Lucero pointed out that the Supreme Court in *Lane* emphasized the importance of “sworn testimony in a judicial proceeding. . . . Integrity of our judicial process depends on witness’ willingness to provide truthful testimony,” he wrote.

Writing for the Freedom Forum Institute, David L. Hudson Jr., a member of the Belmont University law school faculty, called the majority’s decision “misguided.” He wrote, “Judge Lucero has the better view. Sworn testimony in a judicial proceeding should be presumed to be speech on a matter of public concern. Furthermore, it is simply grossly unfair and an abuse of power to demote a public employee because he gives testimony in a court case.”

Hudson also said the decision is in conflict with other decisions in other circuits. “Hopefully,” he wrote, “this unjust decision will be reviewed either by the 10<sup>th</sup> Circuit en banc or the US Supreme Court.” Reported in: *Freedom Forum Institute*, April 23, 2019.

### Rapid City, South Dakota

To protect the rights of potential protesters who want to block the Keystone XL oil pipeline, the American Civil Liberties Union (ACLU) of South Dakota filed a federal First Amendment lawsuit on March 28, 2019, in **US District Court for the**

**District of South Dakota, Western Division** in Rapid City. In *Dakota Rural Action, et al. v. Noem et al.* the ACLU is challenging Senate Bill 189, which Governor Kristi Noem signed into law on March 27.

The law establishes a legal avenue and funding source for the state to pursue out-of-state sources that “riot boost,” or, according to Noem, fund violent protests that aim to shut down pipeline construction. Those found guilty of breaking the law can be sent to prison for up to twenty-five years.

“No one should have to fear the government coming after them for exercising their First Amendment rights,” Courtney Bowie, ACLU-SD legal director, said in a news release. “That is exactly what the constitution protects against, and why we’re taking these laws to court. Whatever one’s views on the pipeline, the laws threaten the First Amendment rights of South Dakotans on every side of the issue.”

Governor Noem’s office said that it is confident the legislation does not violate the First Amendment. The governor and her team stand behind her pipeline legislation, which does not place restrictions on peaceful protest or peaceful assembly, a Noem spokeswoman said in an email. “Governor Noem remains committed to upholding these laws as a means to protect our people, our counties, our environment, and our state.”

In its complaint, the ACLU cites quotes by Noem and her allies that say the bill isn’t just aimed at violent protesters and rioting but also people and activity that disrupts or delays construction of the pipeline. “Preventing anti-pipeline protests that seek to end or slow the construction of the pipeline is not a valid government interest,” the complaint says.

Because SB 189 creates a “riot boosting fund” paid by those who

break the law, the law also “incentivizes” South Dakota to sue protesters and those who back them in order to compensate for security costs, the complaint says.

The lawsuit also challenges South Dakota Codified Laws 22-10-6 and 22-10-6.1, which make it illegal to encourage or solicit violence during a riot whether one is participating in it or not.

These laws are not “narrowly tailored to achieve the government interest of preventing violence,” the complaint says. They’re also redundant since South Dakota already bans riots, solicitation, unlawful assembly, disorderly conduct, blocking traffic, and ignoring law enforcement orders during riots.

The ACLU says the three laws violate the First and Fourteenth amendments by discouraging free speech and being unclear about what exact actions are considered boosting or encouraging a riot.

The plaintiffs are the Sierra Club; the Indigenous Environmental Network (IEN) Dakota Rural Action, a South Dakota group that organizes on behalf of family ranchers and farmers; and NDN Collective, a nationwide indigenous group that challenges resource extraction. Dallas Goldtooth, who heads IEN’s Keep It In the Ground campaign against fossil fuels, and Nick Tilsen, a Rapid City resident who founded NDN Collective, are also named as plaintiffs.

The ACLU is suing Noem, Attorney General Jason Ravnsborg, and Pennington County Sheriff Kevin Thom. The lawsuit named Thom because the ACLU suspects protests will take place near Rapid City, Janna Farley, ACLU spokeswoman, said in an email. Reported in: *Rapid City Journal*, March 28, 2019; courthouse-news.com, March 28.





## Austin, Texas

Texas cannot ban contractors from boycotting Israel, according to a preliminary injunction issued on April 25, 2019 by the **US District Court for the Western District of Texas, Austin Division** in *Amawi v.*

*Pflugerville ISD*. The court ruled that the law plainly violates the free speech guarantee of the First Amendment.

“Following similar decisions by federal courts in Kansas and Arizona, the ruling becomes the third judicial finding—out of three who have evaluated the constitutionality of such laws—to conclude that they are unconstitutional attacks on the free speech rights of Americans,” according to *The Intercept*. Such cases arise out of the Boycott, Divestment and Sanctions [BDS] movement that seeks to pressure the government of Israel to modify its policies regarding Palestinians, and efforts by supporters of Israel to weaken the BDS movement and discredit it as anti-Semitic.

The plaintiff is Bahia Amawi. Her contract to work as an elementary school speech pathologist in Austin, Texas, was not renewed, due to her refusal to sign an oath certifying that she does not participate in any boycotts of Israel. The oath was required under a new law enacted with almost no dissent by the Texas State Legislature in May 2017. When Governor Greg Abbott signed the bill into law, he proclaimed: “Any anti-Israel policy is an anti-Texas policy.”

The governor’s attitude, along with the virtually unanimous pro-Israel sentiment in the Texas State Legislature, was cited by US District Court Judge Robert Pitman as evidence of why the pro-Israel oath violates the free speech guarantees of the US Constitution’s First Amendment. He quoted a 1943 US Supreme Court decision, *West Virginia State Board of Ed v. Barnette*: “If there is any fixed

star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”

Judge Pitman emphasized that the law was not merely “government speech” in defense of Israel, but rather a classic embodiment of what the First Amendment was designed to prevent: punishment imposed on those who disagree with the majority’s political opinions on contested political topics. The attack on free speech, his ruling said, was manifest from the text of the law itself.

Much of the court’s reasoning relied upon the 1982 US Supreme Court decision in *NAACP v. Claiborne Hardware Co.*, which rejected attempts by the state of Mississippi to hold state NAACP leaders liable for losses suffered by stores during NAACP boycotts. Judge Pitman summarized *Claiborne*: “The desire to not purchase certain products is distinctly protected in the context of a political boycott,” and nobody can be punished for the “consequences” of protected First Amendment activities, including theories that their speech “inspired” or “incited” others to take action. In sum, said the court, “plaintiffs’ BDS boycotts are speech protected by the First Amendment.”

According to *The Intercept*, “What makes this ruling particularly important, aside from the fact that it comes from one of the largest states in the country, is that it completely rejected the most common (and most toxic) justification for these laws: that it is not designed to suppress speech or activism against Israel but rather to combat discrimination (namely, anti-Semitism or discrimination against Israelis).”

*The Intercept* added, “Such laws are indisputably designed to outlaw and punish political activism that lies at the heart of the First Amendment’s free speech guarantee. . . . These three rulings from federal courts in Kansas, Arizona, and now Texas technically apply only to the specific districts in which these courts sit. But they give clear judicial momentum to an ultimate finding that these still-proliferating laws are direct infringements of the core rights guaranteed by the US Constitution.” Reported in: *The Intercept*, April 26, 2019.

## SOCIAL MEDIA New Orleans, Louisiana

The **Fifth Circuit Court of Appeals** in New Orleans ruled in mid-April 2019 that the official Facebook page of the Hunt County Sheriff’s Office (HCSO) was a public forum; that the office’s posting rules were based on the viewpoint of the poster, in violation of the First Amendment; and that the rules constituted official county policy. The ruling in *Robinson v. Hunt County, Texas* reverses a lower court’s denial of a preliminary injunction and remands the case for further proceedings. (Thus, the case is not yet settled, although the appeals court ruling answers many of the legal questions.)

The Facebook page declared, “We welcome your input and POSITIVE comments regarding the Hunt County Sheriff’s Office.” It also stated, “We encourage you to submit comments, but please note that this is NOT a public forum.”

On January 18, 2017, the HCSO Facebook account posted this message:

We find it suspicious that the day after a North Texas Police Office is murdered we have received several anti-police calls in the office as well



as people trying to degrade or insult police officers on this page. ANY post filled with foul language, hate speech of all types and comments that are considered inappropriate will be removed and the user banned. There are a lot of families on this page and it is for everyone and therefore we monitor it extremely closely. Thank you for your understanding.

Deanna J. Robinson and others posted on the page criticizing the policy as a violation of the First Amendment. Robinson's post was removed, and she was banned from the page. She sued individual officers and the county and moved for a preliminary injunction. The district court denied the injunction and later dismissed the case for failure to state a claim.

The Fifth Circuit reversed the decision, holding that she sufficiently pleaded a constitutional violation, because the defendants' actions constituted viewpoint discrimination in violation of the First Amendment. The court said that the Facebook page was a public forum, and it didn't matter which kind (designated or limited), because either way viewpoint-based discrimination is impermissible.

The circuit court held that the policy constituted official policy (for purposes of Robinson's Section 1983 claim against the county), because Robinson "has plausibly alleged that Hunt County had an explicit policy of viewpoint discrimination on the HCSO Facebook page," through the sheriff's official control of the page. Reported in: *Constitutional Law Prof Blog*, April 20, 2019.

### Upper Marlboro, Maryland

Racist memes on a cellphone and a racist Facebook page can be used as evidence in the trial of a white man charged with murder and a hate crime

in a black student's fatal stabbing on the University of Maryland's campus, a judge in the **Circuit Court for Prince George's County, Maryland** ruled on June 5.

In the criminal case against **Sean Urbanski**, defense attorneys argued jurors should not see evidence that the twenty-four-year-old liked a Facebook page called "Alt-Reich: Nation," and had at least six photographs of racist memes on his phone. Urbanski's lawyers argued the material is inflammatory, irrelevant, and inadmissible, with no connection between the content and the killing.

Prince George's County prosecutors said the racist content found on Urbanski's cellphone points to a motive for the killing, indicating he stabbed Bowie State University student Richard Collins III because he was black. "These photographs show that the defendant has a bias against black people," said deputy state's attorney Jason Abbott. "These photos show violence against black people."

Defense attorney William Brennan argued, "Possessing racially insensitive material is not against the law. It is protected by the First Amendment." Citing a *New York Times* story that suggested the Facebook page was created as a parody, he said it does not prove what was in Urbanski's mind.

But Circuit Court Judge Lawrence Hill Jr. denied the defense's request to exclude the evidence from a trial scheduled to start in late July.

"There are some (memes), or a few, that do suggest some level of violence," the judge said. "It will not be unfairly prejudicial for the state to use this evidence."

Urbanski is charged with first-degree murder and a hate crime in the May 2017 killing of Collins, twenty-three, who was visiting friends at the University of Maryland's

College Park campus when he was stabbed to death at a bus stop.

Judge Hill also refused to throw out the hate crime charge. The judge rejected defense lawyers' argument that the racist material extracted from Urbanski's cellphone and the deleted Facebook page are protected speech under the First Amendment.

"Every person has a right of freedom of speech," Hill said. "The defendant is not here for a violation of freedom of speech."

Wired.com said cases such as this are "forcing courts to grapple with new questions about the relative significance of a Facebook post, a 'Like,' a follow, a tweet. . . . Courts will have to carefully decide how much weight they can really put on a person's online allegiances and whether mere membership in such a hateful online group constitutes evidence of intent to commit a hate crime."

Neil Richards, a professor of First Amendment and privacy law at Washington University School of Law, told wired.com, "We don't want to permit a system in which merely reading something or associating with other people can be used as strong evidence that you hold the views of the people you hang out with or the things you read." Reported in: wired.com, May 23, 2017; Associated Press, June 5, 2019.

### New York, New York

President Trump has been violating the Constitution by blocking people from following his Twitter account because they criticized or mocked him, a three-judge panel on the **US Court of Appeals for the Second Circuit**, in New York, ruled unanimously on July 9, 2019.

Because Trump uses Twitter to conduct government business, the judges wrote, he cannot exclude some Americans whose views he dislikes



from reading his posts, nor block them from engaging in conversations in the replies to them.

The ruling may help define what the First Amendment means in a time when political expression increasingly takes place online. It is also a time, Judge Barrington D. Parker wrote, when government conduct is subject to a “wide-open, robust debate” that “generates a level of passion and intensity the likes of which have rarely been seen.”

The First Amendment prohibits an official who uses a social media account for government purposes from excluding people from an “otherwise open online dialogue” because they say things that the official finds objectionable, Judge Parker wrote.

“This debate, as uncomfortable and as unpleasant as it frequently may be, is nonetheless a good thing,” the judge wrote. “In resolving this appeal, we remind the litigants and the public that if the First Amendment means anything, it means that the best response to disfavored speech on matters of public concern is more speech, not less.”

The Justice Department said officials had not yet decided whether to appeal to the full appeals court or the Supreme Court. “We are disappointed with the court’s decision and are exploring possible next steps,” said Kelly Laco, a department spokeswoman. “As we argued, President Trump’s decision to block users from his personal Twitter account does not violate the First Amendment.”

But Jameel Jaffer, the director of the Knight First Amendment Institute at Columbia University, which represented a group of Twitter users who were blocked by Trump and filed the lawsuit, praised the ruling. He said that public officials’ social-media accounts are among the most

significant forums for the public to discuss government policy.

Trump’s Twitter account, @realDonaldTrump, has nearly 62 million followers, and he often uses it to make policy pronouncements and communicate with the public, driving the news of the day. His posts routinely generate tens of thousands of replies, as people respond to the original tweet and to each other’s replies.

The lawsuit argued that Trump’s account amounted to a public forum—a “digital town hall”—so his decision to selectively block people from participating in that forum because he did not like what they said amounted to unconstitutional discrimination based on their viewpoints.

Trump’s legal team argued, among other things, that he operated the account merely in a personal capacity, and so had the right to block whomever he wanted for any reason—including because users annoyed him by criticizing or mocking him.

But the appeals court upheld a May 2018 decision by a Federal District Court judge that also found Trump’s practice of blocking his critics from his Twitter account to be unconstitutional. Reported in: *New York Times*, July 9, 2019.

## PUBLIC TRANSIT ADS New York, New York

Asking why New York City’s subway accepts advertisements depicting erectile dysfunction, bare buttocks, inflatable plastic breasts, and condoms, but is refusing ads for women’s sex toys, a female-owned startup company filed suit against New York City’s transit authority (MTA) on June 18, 2019, in **US District Court, Southern District of New York**. The case, *Dame Products v. Metropolitan Transit Authority et al.*, “adds another chapter to the female founder-led ongoing

battle to access advertising platforms that consistently reject and censor female sexual wellness oriented businesses,” according to *Forbes* magazine.

Dame Products cofounders Alexandra Fine and Janet Lieberman said they spent months working with Outfront, the agency that revises advertising proposals for the MTA.

Dame’s legal team seeks damages for the MTA’s violations of Dame’s rights to free speech, due process, and equal protection under the First and Fourteenth Amendments of the United States Constitution, declarations that the Authority’s conduct was unlawful and improper, and an injunction requiring the MTA to approve and display Dame’s advertisements.

The MTA rejected the ad campaign on the basis of “updated guidelines” banning “sexually oriented” advertising. Dame promises to “close the pleasure gap” for women by selling “toys, for sex.”

The complaint faulted the MTA for deciding to “privilege male interests” through irrational, arbitrary advertising choices that violate the US Constitution’s First Amendment guaranteeing free speech. It said MTA chose to allow ads from bedding company Brooklinen featuring sexual double entendres, and a travel booker urging travelers to “Get Wet (on the beach, not from the guy next to you).”

Dame said the MTA even allowed an ad sponsored by the city’s health department for “Kyng”-sized condoms.

MTA spokesman Maxwell Young said in a statement that the agency is “constitutionally entitled to draw reasonable content-based distinctions” among ads, including by banning ads for sex toys, and that its ad policy “in no way” discriminates based on gender or viewpoint. He said the MTA intends to defend against the lawsuit.



In the formal complaint, the plaintiff details the MTA's continued approval of male-centric companies who "reap the tremendous financial benefit and prestige of advertisement space on the MTA's well-trafficked property."

The complaint also points to the discriminatory nature of the MTA's advertising choices, "and its fundamental misunderstanding of Dame's products, which have transformed the sexual health and wellness of more than 100,000 consumers." Dame cites research by medical professionals who found vibrators and other sex toys and tools to be beneficial to a variety of conditions, such as arousal difficulties and sexual discomfort caused by pelvic pain.

There is "nothing titillating" about Dame's ads, Richard Emery, a lawyer for Dame, told Reuters in an interview.

The MTA told CNN, "The MTA's FAQs about its advertising policy clearly states that advertisements for sex toys or devices for any gender are not permitted, and advertising for FDA approved medication—for either gender—is permitted."

New York City's subway in 2017 carried about 5.58 million riders on an average weekday and 1.73 billion riders overall. Reported in: *Forbes*, June 18, 2019; Reuters, June 18.

## PRIVACY Washington, D.C.

Facebook is facing scrutiny and at least one lawsuit over whether it failed to safeguard the personal data of its users. The attorney general for the District of Columbia filed a suit entitled *District of Columbia v. Facebook* on December 19, 2018, in **Superior Court of the District of Columbia, Civil Division**.

On June 28, 2019, the court rejected Facebook's second attempt

to stop the lawsuit, and the case will now proceed to the discovery phase, according to DC Attorney General Karl Racine.

The company's "lax oversight and misleading privacy settings" allowed UK political consultancy Cambridge Analytica to gain access to the personal information of Facebook users without their permission, according to the attorney general's office. In March 2018, revelations surfaced that Cambridge Analytica, which had ties to Donald Trump's presidential campaign, had improperly gained access to the data of up to 87 million Facebook users.

The lawsuit accuses Facebook of violating DC's consumer protection law.

A Facebook spokesperson told CNET that protecting its users' data and privacy is "a top priority. . . . We know we have more work to do. However, we do not believe this suit has any merit and will continue to defend ourselves vigorously."

The US Federal Trade Commission also kicked off an investigation of Facebook [see page 37].

In addition, the New York attorney general's office is investigating Facebook over the harvesting of email contacts of about 1.5 million users without their consent. Facebook confirmed in April 2019 that it collected the email contacts of its users, but said it wasn't deliberate. Reported in: [oag.dc.gov](http://oag.dc.gov), December 19, 2018; [cnet.com](http://cnet.com), December 19, 2018, June 28, 2019.

## Boston, Massachusetts

Nearly two years after suing the federal government for its warrantless and suspicionless searches of phones and laptops at airports and other US ports of entry, the American Civil Liberties Union (ACLU) and the Electronic Frontier Foundation on

April 30, 2019, filed a motion for summary judgment "to prevent such searches and confiscations in the future, and to expunge the information the government has retained from past searches."

Since the filing of the suit, *Alasaad, et al. v. McAleenan, et al.*, in **US District Court for the District of Massachusetts**, in September 2017, US Customs and Border Protection (CBP) and US Immigration and Customs Enforcement (ICE) have had to turn over documents and evidence about the searches and explain their policies under oath. The ACLU says this has produced enough evidence for the court to declare the searches to be violations the First and Fourth Amendments of the US Constitution without proceeding to a trial.

An ACLU statement said:

The information we uncovered through our lawsuit shows that CBP and ICE are asserting near-unfettered authority to search and seize travelers' devices at the border, for purposes far afield from the enforcement of immigration and customs laws. The agencies' policies allow officers to search devices for general law enforcement purposes, such as investigating and enforcing bankruptcy, environmental, and consumer protection laws. The agencies also say that they can search and seize devices for the purpose of compiling "risk assessments" or to advance pre-existing investigations. The policies even allow officers to consider requests from other government agencies to search specific travelers' devices.

CBP and ICE also say they can search a traveler's electronic devices to find information about someone else. That means they can search a US citizen's devices to probe whether that person's family or friends may





be undocumented; the devices of a journalist or scholar with foreign sources who may be of interest to the US government; or the devices of a traveler who is the business partner or colleague of someone under investigation.

Both agencies allow officers to retain information from travelers' electronic devices and share it with other government entities, including state, local, and foreign law enforcement agencies. "Let's get one thing clear: The government cannot use the pretext of the 'border' to make an end run around the Constitution," the ACLU stated.

The suit contends that the Fourth Amendment protects against unreasonable searches and seizures, including at the border. Border agents have authority to search for contraband or illegal items, but mobile electronic devices are different. The ACLU argues that "they contain far more personal and revealing information than could be gleaned from a thorough search of a person's home," and a home may not legally be searched without a warrant.

The ACLU says the searches also violate the First Amendment. "People will self-censor and avoid expressing dissent if they know that returning to the United States means that border officers can read and retain what they say privately, or see what topics they searched online. Similarly, journalists will avoid reporting on issues that the US government may have an interest in, or that may place them in contact with sensitive sources."

The plaintiffs are ten US citizens and one lawful permanent resident whose phones and laptops were searched while returning to the United States.

Their experiences demonstrate the intrusiveness of device searches. For instance, Zainab Merchant and

Nadia Alasaad both wear headscarves in public for religious reasons, and their smartphones contained photos of themselves without headscarves that are not meant to be seen by strangers. Officers searched the phones nonetheless.

On another occasion, a border officer searched Merchant's phone even though she repeatedly told the officer that it contained attorney-client privileged communications.

Isma'il Kushkush, a journalist, worried that repeated searches of his electronic devices meant he was being targeted because of his reporting. He questioned whether to continue covering issues overseas.

"Crossing the US border shouldn't mean facing the prospect of turning over years of emails, photos, location data, medical and financial information, browsing history, or other personal information on our mobile devices," according to the ACLU statement. "That's why we're asking a federal court to rule that border agencies must do what any other law enforcement agency would have to do in order to search electronic devices: get a warrant." Reported in: [aclu.org](http://aclu.org), April 30, 2019.

**Harrisburg, Pennsylvania**  
School bus surveillance videos in two Pennsylvania cases can be released to the public under the state's Right to Know Law (RTKL) and are not "education records" subject to the confidentiality restrictions of the Family Educational Rights and Privacy Act (FERPA), according to the **Commonwealth Court of Pennsylvania**.

In *Easton Area Sch. Dist. v. Miller*, the court ruled on July 20, 2018, that a video that depicted a school teacher roughly disciplining a student directly related to the teacher, not the students, so the students, their

families, and the school could not keep them private. In *Central Dauphin School District v. Hawkins*, the court decided on December 10, 2018, that a recorded confrontation between a student and a parent of another student was not an "education record" of the student under FERPA because it was not directly related to the student nor maintained by the District.

In both cases, a school district had denied a RTKL request for video from a school bus security camera, on the grounds that under FERPA the videos were education records of the students depicted.

FERPA cuts off federal funds to any school district that permits the release of education records (or personally identifiable information from those records) without the consent of the students' parents. Under FERPA, education records are defined as materials that: (1) contain information directly related to a student; and (2) are maintained by a school district. A record must meet both parts of the definition to qualify as an education record.

In the *Miller* case, the court focused on FERPA's definition that protected records are "directly related" to a student. The court held that the video depicting the teacher abusing the student was only tangentially related to the student.

In the *Hawkins* case, the court focused on whether the video was "maintained" by the school district. The Commonwealth judges cited a 2002 US Supreme Court decision in *Owalso ISD v. Falvo* that said maintaining a record means keeping it in a filing cabinet in a records room at the school, or on a permanent secure database that is subject to a maintenance protocol. In *Hawkins*, the court found that the video was not "maintained" by the district because the district did not have a maintenance



protocol for school bus videos and that such videos were not permanently maintained.

Though the Commonwealth Court narrowed the FERPA exception in the *Miller* and *Hawkins* decisions, the court did not hold that every school bus video is a public record. Some school bus videos are subject to the protections of FERPA.

Moreover, the Commonwealth Court asserted that both decisions are consistent with guidance issued by Department of Education on its website. This guidance provides that a surveillance video showing two students fighting that is used as part of a disciplinary action is “directly related” to the students who are disciplined. With respect to the “maintenance” requirement, a photo or video that shows two students fighting which is maintained in the students’ disciplinary records is “maintained” by the District under FERPA.

Thus, according to a summary of the cases in *JD Supra*, a school district should always consult its lawyers before releasing a video involving a student pursuant to a RTKL request, because determining whether a video is an education record of a student can be a difficult, fact-sensitive

determination. Reported in: *JD Supra*, April 29, 2019.

## AGENCY ACTIONS

[EDITOR’S NOTE: Some government rulings do not come from a bench in the judicial branch of the government, but from agencies of the executive branch.]

### Washington, D.C., and Menlo Park, California

The Federal Trade Commission (FTC) is negotiating a settlement with Facebook to strengthen the social media company’s privacy practices, two sources told the *New York Times*. In addition, Facebook is preparing for the possibility that the FTC may impose a fine of up to \$5 million—the highest ever levied by the United States against a technology company. And *Politico* reports that another option under consideration at the FTC, in addition to financial penalties, is to hold Facebook’s owner, Mark Zuckerberg, personally liable.

The *Times* reported that as negotiations with the FTC continue, Facebook has offered to create an independent privacy committee (that would include members of Facebook’s board of directors) to protect users’ data, and it agreed to an external assessor

who would be appointed by the company and the FTC. The negotiations have been underway for months over claims that Facebook violated a 2011 privacy consent decree.

The negotiations are being conducted behind closed doors. Representatives from Facebook and the FTC declined to comment for the media.

A \$5 billion penalty would be far higher than the FTC’s current record against a tech company. The agency fined Google \$22.5 million in 2012 for misleading users about how some of its tools were tracking users.

Yet even \$5 billion would be a small percentage of the company’s annual revenue, which was \$56 billion—and growing. Facebook said that its revenue in the first quarter of 2019 increased 26 percent from a year earlier.

Some privacy advocates have said they would like the FTC to limit Facebook’s ability to share data with business partners, or require it to take more measures to inform consumers when and how it collects data. Such requirements are not expected to be in the settlement, sources told the *Times*. Reported in: *New York Times*, May 1, 2019; *Politico*, July 3.



## LIBRARIES

### Santa Cruz, California

How serious was the breach of patron privacy at the Santa Cruz Public Library (SCPL)?

The Santa Cruz County Grand Jury (which is part of the civil court system, and has no power to issue criminal indictments, only reports and recommendations) said that SCPL from 2016 through 2018 used a data analysis tool from Gale Analytics on Demand that may have violated patron privacy policies. A grand jury report issued on June 24, 2019, entitled *Patron Privacy at Santa Cruz Public Libraries*, said the software blended patron data with other data from Experian Mosaic.

With more than three hundred pieces of additional consumer data per patron, “the library holds significantly more household-level data in its computer system than patrons originally provided,” the Grand Jury reported. The information was used to help the library’s long-term strategic planning, but the program was inconsistent with SCPL’s privacy policy, and library administrators did not inform library patrons that it was being used, and did not seek their consent, according to the grand jury report.

The report also found that library administrators did not review the contract provided by Gale Analytics on Demand, and found the contract “unclear” and lacking in language that protects patrons.

SCPL Director Susan Nemitz said the software was intended to help the library system focus its programs and services.

“Because we collect so little data about our patrons it can help us better understand them,” she said. “A lot of libraries have embraced this in a big way.” Nemitz said that the library used the program to study whether it was reaching people of color and

low-income people and to learn who was using the libraries geographically.

Under state law, organizations typically have ninety days to respond to grand jury reports. They are not, however, required to implement any of the suggested changes.

Prior to release of the grand jury report, SCPL had stopped using Gale Analytics on Demand, and reworked its privacy policy. Reported in: [co.santa-cruz.ca.us](http://co.santa-cruz.ca.us), June 24, 2019; *Register-Panjaronian*, June 28.

### Boise, Idaho

How much content will be blocked for Wi-Fi users in Idaho’s public libraries when a new internet filtering law takes effect next year?

In early April 2019, Republican Governor Brad Little signed into law legislation that adds publicly accessible wireless internet to a law that requires libraries to filter access on their internet services so that obscene and pornographic material can’t be accessed.

The amendment is intended to prevent minors from using personal laptops, tablets, smartphones, or other devices to access pornographic sites. Previously, the law only dealt with publicly accessible computers. The new law goes into effect on July 1, 2020.

Officials say public libraries will have to update their policies, and that up to 35 rural libraries might need to install equipment. The estimated cost is up to \$2,500 per library, but possibly much less depending on the type of system. Reported in: *Associated Press*, April 8, 2019.

### Worcester County, Maryland

Should a lecture on the US Constitution at a public library be cancelled when critics calling themselves patriots threaten violence?

Worcester County Commissioners praised Worcester County Library Director Jennifer Ranck for putting safety first when deciding not to proceed with a lecture on impeaching the president in an area where he has widespread support.

The lecture was part of a series on the Constitution hosted by Howard Sribnick, the president of the Worcester County Library Foundation and a former Worcester County Democratic Central Committee chairman. It was scheduled for Wednesday, March 6, 2019, at the Worcester County Library’s Berlin branch.

The Main Street Patriots Eastern Shore, Maryland, started a campaign on Facebook on Friday, March 1, posting a caption above an article entitled, “America’s Second Civil War Has Already Begun.” They wrote, “How many of you local folks will be at the Berlin library on Wednesday . . . for the primer (hosted by Democrats of course) on how to either impeach Trump or remove him from office via the 25th Amendment? They will collude and conspire to take away your vote (Trump won here in Worcester County by almost a 2 to 1 margin), will you be there to stand up for the truth?”

“Someone should take them out,” another person commented.

The session was canceled. “When people threatened to disrupt the presentation, we thought that would raise a safety issue for those who may be trying to attend the program, or just those who were using the library at that particular time on that particular day,” Ranck said in an interview.

Nearly three weeks later, some of the commissioners brought up the incident when she appeared at Worcester County Commission’s meeting on March 26 on an unrelated library funding issue. They thanked Ranck and the library board for acting



“professionally” during “the situation down at the library.” Reported in: *Ocean City Times*, March 29, 2019.

## Columbus, Newark, and Delaware County, Ohio

Was it wrong for two Ohio public libraries to give in to pressure and withdraw their support for events focusing on drag queen and LGBTQ (lesbian, gay, bisexual, transgender, and queer) culture, or wrong for them to schedule such events in the first place?

The Delaware County Library had scheduled “Drag Queen 101” for Wednesday, June 5, 2019. The library said several teens had requested a class focused on the theatrical craft of drag performances. Selena T. West, a well-known drag queen from Columbus, was to be the instructor for the workshop.

But library director George Needham announced on May 29 that the event was canceled after the library received threatening messages, some from outside the area. The sponsors moved the event to a privately-owned bookstore nearby called Secret Identity Comics.

Elsewhere in the same state at nearly the same time, the Emerson R. Miller library in Newark, in Ohio’s Licking County, scheduled “Galaxy of Diversity: A LGBTQ Teen Event” for Friday, June 7. A powerful Republican politician, Ohio House Speaker Larry Householder, issued an open letter on May 31 stating, “Taxpayers aren’t interested in seeing their hard-earned dollars being used to teach teenage boys how to become drag queens. I expect this to end immediately.” His letter did not name any libraries, but a spokesperson confirmed that Householder had the Delaware County and Licking County libraries in mind. Householder represents neither; his district is in Perry County.

Licking County Library Director Babette Wofter said she canceled the “Galaxy of Diversity” event because it became too difficult for the organization to control the misinformation circulating about it.

The Newark County Pride Coalition, which was co-sponsoring the “Galaxy of Diversity” event, stated in an open letter of its own that the event was meant to be an arts and crafts project and safe-sex educational program, with only an “optional make-up tutorial.” The coalition asked Householder to respect the civil liberties of Newark residents, noting that the US Supreme Court has affirmed the freedoms of speech and expression for the LGBTQ community.

Householder dismissed the concerns about free speech. “Let me be crystal clear: This isn’t about banning books or banning thought or any other red herring argument,” he wrote. “This is about right and wrong. This is about being good stewards of the public’s money.”

The Newark coalition noted that no public money would have been used for the program, which would have taken place after library hours and would have been funded by a non-governmental grant.

A group of House Democrats from Central Ohio, in a news release, called Householder’s comments “unfortunate.” The Democrats’ statement said, “the promise of America is . . . we all agree to let everyone have their voice. That is certainly true for the nearly 500,000 LGBTQ Ohioans.”

West, who led the Delaware County’s “Drag Queen 101,” said the June 5 class went even better than expected. She said only about five people had signed up through the library, but 30 were in attendance for the event at the Secret Identity store. Reported in: *ThisWeekNews.com*,

May 21, 2019, June 1; *CityBeat Cincinnati*, June 1; *cleveland.com*, June 2.

## Austin, Texas

When should police be called on teenagers in a public library, and can library staff find another way to intervene rather than having a 13-year-old arrested in front of younger children?

Njera Keith, a teacher at an alternative school that holds some of its classes in the Carver Branch of the Austin Public Library, said she was entering the library with a six-year-old student when they saw a police officer patting down thirteen-year-old LaTashia Milligam. The teenager was handcuffed and had no shoes on.

Keith said her young student immediately began shaking. “She’s shocked that this little girl that we were just interacting with is now in handcuffs,” she said.

According to library staff, LaTashia was arrested for an existing warrant, after the parent of another student called police and accused her of threatening to attack her daughter.

Keith, who is also the executive director of an advocacy group called Black Sovereign Nation, said authorities should never have been called. Instead, a staff member or other responsible adult should have intervened. After the incident, Black Sovereign Nation members tried to speak with library staff to address concerns about library policies regarding minors. When they finally did, there was no consensus about how to move forward.

Austin Public Library policy states that children under ten cannot be left unsupervised in the library unless accompanied by someone who’s at least seventeen. If staff members feel a child is unsafe or has nowhere else to go, they should refer the child to the Austin Police Department.



Keith said there was “no concrete policy” to guide staff members in LaTashia’s case.

Black Sovereign Nation and Counter Balance: ATX launched a campaign called No Sanctuary for Black Futures aimed at changing Austin library policies. They are asking for more diversity training for staff and more comprehensive policies regarding minors. Organizers are also asking for a citywide policy requiring staff to contact the guardian of a child if they come in contact with police or have some other conflict.

Kristina Brown, Black Sovereign Nation’s deputy director, said libraries “are spaces for oftentimes marginalized people to have internet access and obviously to read books and have access to information. And we are not against that, obviously, we just want those spaces to be safe,” with patrons not at risk of harsh treatment due to stereotyping. Reported in: *Austin Monitor*, May 9, 2019.

## SCHOOLS Houston, Texas

When a school institutes a parental dress code for when they visit the school, is this discrimination on the basis of race or class?

Under a new dress code at James Madison High School in Houston, parents can’t be on campus if they’re wearing hair rollers, a shower cap, or pajamas. Other banned clothing includes revealing leggings, low-cut tops, sagging pants, torn jeans, and Daisy Duke shorts. In a memo, the school’s principal said that if parents break the rules, they will not be permitted inside Madison High until they return “appropriately dressed for the school setting.”

The principal said this maintains the school’s “high standards.”

Others said this discriminates against women of color who use caps and rollers to protect their hair.

“The first thing I thought was this is anti-blackness,” said Roni Burren, who teaches at the University of Houston’s College of Education. She’s also an activist who successfully campaigned against a major textbook company after her son showed her his book calling slaves “immigrants.”

Burren said this kind of dress code is part of a long history of policing black women’s hair and appearance in the United States, and it reflects that internalized racism is real.

What’s more, she said that a dress code for parents doesn’t have any connection to instruction and discourages parents from coming to school.

The Texas Education Agency leaves it up to local school districts to set dress codes. The Houston district declined to comment.

The dress code at Madison High was issued after KPRC-TV reported the school turned away a mom who tried to enroll her daughter at Madison because she was wearing a T-shirt dress and headscarf. Reported in: *Houston Public Media*, April 24, 2019.

## Madison, Wisconsin

Is a public school teacher’s proclamation of their personal transsexual identity in class an exercise of the teacher’s First Amendment right of free speech—or is telling students what pronoun to use for the teacher a violation of the students’ First Amendment rights?

A science teacher at Allis Elementary School in the Madison (Wisconsin) Metropolitan School District had been known as Mark “Vince” Busenbark, and was addressed as “Mr. B.” by students. The teacher and the teacher’s wife (whose last name is Steel) produced a home video explaining the teacher’s “non-binary”

identity. The video introduced the teacher’s new name, Vica Steel. It requested that students call the teacher “Mix Steel” or “Mx. Steel” instead of “Mr. B,” and refer to the teacher as “they” instead of “he.”

In the video, the teacher reads a book titled *They Call Me Mix*. A passage in the book says: “‘BOY or GIRL?’ Are you a boy or a girl? How can you be both? ‘Some days I am both. Some days I am neither. Most days I am everything in between.’”

On Facebook, the teacher said the purpose of the video was “all so [the children] can know who I am and who I am becoming.”

Liberty Counsel (LC), an activist Christian ministry with offices in central Florida, Virginia, and Washington, DC, called it “inappropriate activism in the classroom” when the teacher showed the video to every student in grades K-5 at the school. In a letter sent in June 2019 to Superintendent Jennifer Cheatham, LC said this “appears to violate several district policies, as well as the constitutional prohibition against schools enforcing any kind of ‘orthodoxy.’”

That restriction, stated by the US Supreme Court, is, “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”

Under provisions of Wisconsin law, Liberty Counsel asked for any emails, flyers, notes, text messages, and other district communications asking parental permission to show the “coming out” video to students. It also requested all communications from Allis Elementary Principal Sara Cutler, Vice Principal Andrea Alrichi, or Busenbark “notifying the district of the plan to show the video, or





requesting district permission to show the video to the children.”

LC also wants to see all emails referencing the video as the cause of confusion to children, communications approving Busenbark’s use of “Mix” or “Mx.,” and any other communications referencing the controversy.

LC claims the teacher’s actions may conflict with the school district’s wellness policy, which states instruction should be “age-appropriate, medically accurate, and non-stigmatizing,” and its policies regarding controversial issues, the use of district resources, and “political activities.” Reported in: WND TV, June 4, 2019.

## COLLEGES AND UNIVERSITIES

### Montgomery, Alabama

Should free speech be guaranteed on college and university campuses, even if the speakers are controversial or unpopular, and they might induce violent reactions?

Alabama Governor Kay Ivey signed a bill into law on June 6, 2019, that will prevent Alabama’s taxpayer-funded public universities from limiting free expression and student speech to “free speech zones” on campus. In particular, the speech policies must make clear that the outdoor areas of a public college’s campus shall be deemed a public forum for members of the campus community.

Known as House Bill 498, the law also ensures that if hecklers choose to protest and intimidate guest speakers on campus, the universities cannot capitulate to the hecklers by forcing the speaker to pay for security costs that have arisen from the protest. The law will go into effect next year, on July 1, 2020.

Free speech zones, which have been touted by some as ways to allow students to express a variety of

opinions, even if the speech might trigger strong, possibly violent reactions, often require school faculty or administrators to be notified in advance and approve demonstrations in the zones. Critics say such a process places an undue restriction on First Amendment rights.

The bill’s sponsor, Republican state Representative Matt Fridy, called such efforts by universities “unfair” attempts to crack down on viewpoints with which they disagree. “Alabama’s university campuses should be places where ideas are freely debated and students are exposed to a variety of viewpoints. Unfortunately, across the nation—occasionally even here in Alabama—college administrators have used unfair, arbitrary speech codes to silence speech that is deemed ‘offensive.’ Oftentimes, politically and religiously conservative groups are targeted,” Fridy said in an interview after the bill was signed.

During the House floor debate, Democratic state Representative Napoleon Bracy opposed the bill, saying that university administrators should focus on the safety of students on campus and citing concerns that certain speech could incite violence in some students. Bracy said college administrators should be able to determine which speakers are invited to speak at their institutions.

Most Alabama colleges had opposed the bill, according to *Alabama Political Reporter*.

The bill would not apply to private colleges and universities, because as private entities they have the right to set their own standards. Public institutions, on the other hand, are covered by the First Amendment, Fridy said.

H.B. 498 was approved by a bipartisan 24 to 1 vote in the Alabama State Senate and a 73 to 26 vote in the House of Representatives. Reported

in: *Alabama Political Reporter*, June 7, 2019; *The Hill*, June 8.

### Des Moines, Iowa

Will a new “free speech” law in Iowa change how public universities and community colleges uphold the “full-est degree of intellectual freedom and free expression”?

The law, which Governor Kim Reynolds signed on March 27, 2019, requires state universities and community colleges to adopt policies respecting free speech on campus. But Democrats argued one section in the new law will pave the way for discrimination.

Conservative students and groups across the country have claimed their free speech rights have been restricted on liberal campuses in recent years, causing a rash of new proposals from state lawmakers. Reynolds, a Republican, said she was proud to sign the Iowa law. “Our public universities and community colleges should always be places where ideas can be debated, built upon, and creative thoughts flourish without limits,” she said in a news release.

Katherine Tachau president of the University of Iowa (UI) chapter of the American Association of University Professors (AAUP), said freedom of expression is at the heart of universities. It’s not clear how the law will change the UI campus, but the AAUP worries about “undesirable unintended consequences.” Tachau said, “As a public university we are bound by constitutional law on freedom of expression, so we were not at all convinced that we needed a new law to achieve what we achieve most of the time,” Tachau said.

During floor debate in the Iowa House this month, Democrats stressed that they support free speech but said one sentence in the bill kept them from voting for it. That sentence



would allow student groups that receive public university funding to bar certain students from leadership positions based on their identity, Democrats argued. The AAUP also takes issue with the section.

Versions of the Iowa law have been debated for years, but lawmakers doubled their efforts after a federal court ruled in favor of a Christian group that argued UI discriminated against it. The group, Business Leaders in Christ, was accused of barring a student from a leadership position because he is openly gay. The university later revoked the group's status as a registered student organization, but the court found the university was not uniformly applying its human rights policy. Republicans have touted the incident as evidence that free speech on Iowa campuses is being stifled.

The law directs the governing boards of the state's three public universities and numerous community colleges to adopt policies that state, in part, that "the institution must strive to ensure the fullest degree of intellectual freedom and free expression."

The law also designates outdoor areas on campus as public forums. The law specifies "that it is not the proper role of an institution of higher education to shield individuals from speech protected by the First Amendment to the Constitution of the United States, which may include ideas and opinions the individual finds unwelcome, disagreeable or even offensive."

The Senate approved the measure 35–11 earlier this month, with some Democrats in support. But in the House, where it passed 52–44, Democrats all voted against it or said they opposed it. Reported in: *Des Moines Register*, March 27, 2019.

### Frankfort, Kentucky

Will Kentucky institutions of higher education stop limiting controversial

expression to "free speech zones" without waiting for court rulings, or will students need to sue, as they now can under a new law?

Kentucky Governor Matt Bevin on March 26, 2019, signed HB 254 into law, protecting free speech at the commonwealth's public colleges and universities by granting students the "broadest possible latitude to speak, write, listen, challenge, learn, and discuss any issue." The bill requires institutions to maintain "a marketplace of ideas where the free exchange of ideas is not suppressed," and explicitly prohibits the use of restrictive free speech zones.

"College leaders should promote the fact that their campuses host diverse viewpoints, not corral dissenting speakers into pre-approved areas where they determine it's 'safe' to have an opinion," said Robert Shibley, executive director of the Foundation for Individual Rights in Education (FIRE). "We commend Kentucky legislators for making free speech a priority, and encourage other states to follow their lead."

Ten percent of colleges and universities surveyed by FIRE maintain a free speech zone, according to FIRE's *Spotlight on Speech Codes 2019* report. Free speech zones have repeatedly been struck down by courts or voluntarily revised by colleges as part of lawsuit settlements brought by students.

The University of Kentucky, Morehead State University, and Murray State University are among the institutions that will need to change or clarify their policies to comply with the law.

Under the law, Kentucky's public colleges and universities are prohibited from charging students security fees based on the expressive content of their campus events or the ideas of their invited guest speakers. The law

also prevents institutions from "dis-inviting" speakers invited by a student, student organization, or faculty member.

The new legislation also provides a cause of action, which allows students to sue institutions in state court for violations of the act. Reported in: *thefire.org*, March 26, 2019.

### Cambridge, Massachusetts

Is it hypocritical for a university that was once associated with slavery and segregation to deny admission to an incoming freshman because he at one time wrote and shared a document that used the word "nigger"?

That is the question Kyle Kashuv, a pro-gun rights survivor of the 2018 mass shooting in Parkland, Florida, raised after Harvard University rescinded its offer of admission, apparently because after he was admitted, racist comments he had made two years earlier surfaced online.

Kashuv became an activist for gun rights shortly after the Parkland shootings. He was accused in May 2019 of having used racial slurs in a shared Google Doc in 2017. He wrote the N-word multiple times in the document and followed the slurs with "practice uhhhhh makes perfect." Shortly after the comments became public, he posted a statement on Twitter calling the racist language he had used "callous and inflammatory," but did not formally apologize for it.

In June 2019, Kashuv posted documents to Twitter that appeared to show Harvard had second thoughts about granting him admission. According to the documents, the university's admissions committee had decided that Kashuv's language in 2017 violated the conditions of his acceptance, and therefore threatened to rescind his admission following an investigation.



“We have become aware of media reports discussing offensive statements allegedly authored by you,” said a letter, dated May 24. “As you know, Harvard reserves the right to withdraw an offer of admission under various conditions, including ‘if you engage or have engaged in behavior that brings into question your honesty, maturity, or moral character.’”

On Twitter, Kashuv said that his response to the committee took “full responsibility for the idiotic and hurtful things I wrote two years ago.”

But on June 3, he said, the university wrote that he would no longer be accepted into Harvard’s Class of 2023, this fall’s freshman class. (Rachael Dane, director of media relations at Harvard, said it does not comment publicly on the admissions status of individual applicants.)

Kashuv criticized Harvard’s decision on Twitter, relating the situation to the institution’s own past associations with slavery and segregation. “If Harvard is suggesting that growth isn’t possible and that our past defines our future, then Harvard is an inherently racist institution,” Kashuv tweeted. “But I don’t believe that.”

Kashuv’s status as a right-wing activist grew considerably after the 2018 shootings, which claimed 17 lives at Marjory Stoneman Douglas High School. He gained attention mostly for his advocacy for campus safety through gun rights. Kashuv has made frequent appearances on Fox News and has met with President Trump. Reported in: *Chronicle of Higher Education*, June 17, 2019.

## Crete, Nebraska

Was it offensive for a library at Doane University to display historical photos of students in blackface? Was it a violation of academic freedom when the university closed the exhibit and put the librarian on leave?

In April 2019, a student complained about two photos in a display called “Parties of the Past” in Doane University’s Perkins Library on the Crete campus. This was part of an exhibit of historical photographs that Library Director Melissa Gomis had curated in March, of memorabilia from student scrapbooks housed in university archives. The two photos showed students attending a 1926 Halloween party, apparently in blackface. A blurb from a local newspaper at the time indicated it was a campus masquerade party. But there was no accompanying note from the curators explaining why the photos were included.

After speaking with the concerned student, Gomis decided to remove the blackface photos due to concern for the student.

Then, under orders from the provost, the entire exhibit was removed. That same day, Gomis was told to collect her things from her office, and was suspended indefinitely.

Doane University administrators said that displaying the photos ran counter to the university’s values and, as presented, served no educational purpose.

Some members of the faculty who support the librarian disagree. They said that Doane interfered in a learning moment, albeit a painful one, that their colleague was already working to right.

“Were some of our students genuinely offended or hurt by the library display? Yes,” said Brian Pauwels, associate professor of psychology at Doane and vice president of the campus’s American Association of University Professors (AAUP) advocacy chapter. “Was suspending the librarian in response to that hurt heavy-handed and in violation of the academic freedom that is necessary to do her difficult job every day?”

Pauwels continued, “Can’t the answer to both questions be yes? Because lots of people want us to pick one or the other. These are values that are hard to define, and now they’re colliding with one another.”

Doane’s AAUP chapter approved a statement condemning Gomis’s suspension.

Other professors think Doane University made the right call.

Many historians have argued that there is value in showing racism that existed in the past at universities and in other parts of society, even if seeing it makes people uncomfortable today. Yet many also argue that this kind of content should be put into context.

The AAUP said Gomis’s suspension was a “consequence of a grievance complaint” without due process nor an investigation.

Citing censorship guidelines from the American Library Association, Doane’s AAUP chapter described the university’s forced removal of the exhibit as “an unambiguous example of censorship,” coming from “outside the library, performed by a person with no training in library and archival science.” That is in contrast to Gomis’s initial self-censorship, which was “driven by her genuine concern to respond to the student and to avoid external censorship.”

When an educator “is pressured to remove content from a lecture, lesson or display that was created according to the current methods of the profession, then a violation of academic freedom has occurred,” the AAUP said.

Doane President Jacque Carter sent an all-campus memo saying that blackface “has a history of dehumanization and stereotyping, which perpetuates systemic racism in society.” He apologized for the photos and the hurt they had caused. “Such an insensitive action is unacceptable and will



not be tolerated now or in the future,” Carter wrote.

Doane’s AAUP chapter took issue with that statement, saying that an environment in which a president can judge exhibits as “sufficiently controversial or offensive that they must be removed partially or in their entirety at the president’s discretion” constitutes “an infringement of the academic freedom that is essential to the work of Director Gomis, all other faculty and, by extension, the students of the university.”

Mark Orsag, a professor in Doane’s history department, said the photos, without context, were “clearly disrespectful to the African American faculty, staff and students on this campus.” Given national controversies over similar pictures, he added, “putting those photos up in that manner was tone-deaf in the extreme and demonstrated a fundamental lack of common sense.” Academic freedom “carries with it the responsibility to act respectfully, with fairness and with common sense,” he added, arguing that “such offensive displays” are explicitly against Doane’s anti-harassment policy.

Amanda McKinney, executive director of Doane’s Institute for Human and Planetary Health and director of its Open Learning Academy, said the key issue is not content but context. “There was nothing there with the pictures to indicate whether this was right or wrong, racist or not, condoned by the librarian or not,” McKinney said. Given the display title, one “might even think we were celebrating it. That’s the crux of the issue,” she added.

Quoting AAUP’s policy on academic freedom, McKinney said that teachers “are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching

controversial matter that has no relation to their subject.” Additionally, she continued, quoting the AAUP, professors’ “special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances.”

McKinney said that Doane was within its rights to suspend Gomis under its anti-harassment policy, pending the investigation. She said she thinks it is unlikely that Gomis would be fired.

Do librarians have academic freedom? Doane’s AAUP chapter declared, “We assert that the library is a fundamental classroom, where knowledge and learning begin.” Doane’s AAUP chapter further argues that librarians “are particularly vulnerable to sanctions resulting from public disapproval of their collections and exhibits,” since they deal with an “enormous range of materials that inevitably will include items that some, and perhaps even many, will find objectionable.” And unlike professors in a dynamic classroom setting, the chapter wrote, librarians can’t “respond instantly to questions or reactions from their audience, or explain in the moment their decision-making process in presenting such materials.”

Pauwels argued that the broader issue is that one instance of even well-meaning censorship sets the stage for worrisome instances of censorship going forward. Defending academic freedom “here and in the long term” ultimately ends up benefiting students, he said. Reported in: *Inside Higher Ed*, May 6, 2019.

### **Plymouth, New Hampshire**

Should the free speech of faculty members be limited when they speak in defense of someone accused of sexual assault?

University System of New Hampshire (USNH) and Plymouth State University (PSU) signed an agreement on February 15, 2019, to pay a former adjunct lecturer \$350,000 to avoid a potential lawsuit after she lost her job for speaking in support of a former Exeter High School guidance counselor who sexually assaulted a student.

Nancy Strapko, a local mental health counselor, reached the settlement with the university system after controversy arose when Strapko and several educators and other professionals pleaded for leniency at Kristie Torbick’s sentencing in Rockingham County Superior Court in July 2018. The thirty-nine-year-old Torbick had pleaded guilty to four counts of sexual assault on a fourteen-year-old student.

Strapko, an associate professor emeritus and former graduate school health education coordinator at PSU, was one of twenty-three people who wrote letters supporting Torbick. Strapko also testified at Torbick’s sentencing on July 9, 2018, asking for leniency. Judge Andrew Schulman sentenced Torbick to two-and-a-half to five years in prison. The sentence was lighter than the five to ten years prosecutors sought.

PSU dismissed Strapko on August 1, 2018, saying in a public statement that she would not be rehired as an adjunct teaching lecturer nor employed in any other capacity at the university.

In her letter to the court, Strapko wrote, in part, “Kristie takes full responsibility for her actions with her ‘victim.’ I put this in (quotes) because I am aware that her ‘victim’ was truly the pursuer in this case.”

Strapko’s description of the victim as the “pursuer” outraged many, including advocates for sexual assault survivors.

In its statement announcing her dismissal, the university wrote, “In



PSU's opinion, portraying a fourteen-year-old sexual assault victim as a 'pursuer' is legally wrong and morally reprehensible."

USNH general counsel Ronald Rodgers, along with Strapko's attorneys, released a joint public statement on the settlement: "The University System of New Hampshire and Dr. Nancy Strapko have reached a mediated resolution of their concerns arising out [of] an assessment Dr. Strapko provided in a criminal sentencing hearing. The parties abhor all forms of interpersonal exploitation, in particular the sexual abuse of children. They also agree on the importance of witnesses participating in the criminal justice process, including criminal sentencing."

The amount of the settlement was released in response to a request for information under the Right-to-Know law, filed by the *New Hampshire Union Leader*.

PSU professors Michael L. Fischler and Gary Goodnough also came under fire for their letters of support.

Fischler, a professor emeritus of counselor education and school psychology, and Goodnough, a professor of counselor education who served as Torbick's adviser and internship supervisor, both agreed to complete additional training on sexual assault and to work closely with PSU faculty, students, and staff to address the issues and the concerns created by their letters, the university said in a statement.

But Manchester-based attorney Jon Meyer, who is representing Fischler, has criticized PSU for disciplining his client, insisting that he was punished for exercising his constitutional and statutory free expression rights.

Meyer also argued that the action will have a "chilling effect" on people who are asked to testify during future sentencing proceedings.

Fallout from the Torbick sentencing also led to the resignation of Bedford school superintendent Chip McGee. He faced pressure after Bedford High School educators also supported Torbick, who was a Bedford counselor before she was hired in Exeter.

Newfound Regional High School guidance counselor Shelly Philbrick also resigned after she spoke at Torbick's sentencing.

The Foundation for Individual Rights in Education (FIRE) wrote to PSU in September 2018 to explain that the First Amendment prohibits a public university from punishing its professors for testifying in judicial proceedings.

"Professor Strapko was fired for nothing more than her witness testimony—and that is a blatant violation of her First Amendment rights and a clear violation of Plymouth State's free speech promises," said Zach Greenberg, program officer in FIRE's Individual Rights Defense Program. "Plymouth State disregarded the profound societal importance of ensuring that people with relevant information come forward when called to testify in criminal trials—a civic responsibility that forms the backbone of any functional system of justice."

After the settlement was announced, FIRE's Greenberg said, "This settlement represents the high costs of failing to uphold the First Amendment rights of faculty at a public university. Universities should learn from Plymouth State's mistake by committing to protect free speech on campus—and honoring those commitments in practice." Reported in: *New Hampshire Union Leader*, April 29, 2019; [thefire.org](http://thefire.org), April 30.

### New York, New York

Is a policy asking university students to show identification after 11 p.m.

discriminatory? It might be, if the policy is selectively enforced.

Barnard College placed several public safety officers and a supervisor on administrative leave following accusations of racial profiling.

The issue arose when a video recorded by a Columbia University student showed what happened at the Barnard library on April 11, 2019, at 11:30 p.m. The student was held and asked for identification while trying to enter the library.

Current college policy states that students must show ID after 11 p.m., but students say that policy is not routinely enforced.

Barnard's president apologized to the Columbia University student and said the college will review its policies. Reported in: CBS New York, April 15, 2019.

### Philadelphia, Pennsylvania

Do principles of academic freedom and free speech mean that a university should grant a platform to a professor whose "dangerous" ideas may cause harm and incite violence?

At the University of the Arts (UArts) in Philadelphia, where the critic Camille Paglia has taught for thirty years, a faction of art-school students wants her fired and banned from holding speaking events or selling books on campus. Their petition says her ideas "are not merely 'controversial,' they are dangerous."

Others believe this would set a dangerous precedent that would undermine freedom of expression and free academic inquiry.

Conor Friedersdorf, a staff writer for the *Atlantic* magazine, covered the controversy in a lengthy article. It is rare for student activists to argue that a tenured faculty member *at their own institution* should be denied a platform, Friedersdorf's magazine pointed out.





Paglia has been outspoken and controversial ever since her first book, *Sexual Personae: Art and Decadence From Nefertiti to Emily Dickinson*, was published in 1990. The book criticized feminist thinking about rape and argued that sex differences are rooted in biology. It was savaged by feminist critics, but became an unexpected, 700-page bestseller. And it sparked a national debate about art, history, gender, ideas that offend, free inquiry, and political correctness.

The latest student protests against Paglia began in the spring of 2019, when it was announced that she would give a lecture titled “Ambiguous Images: Sexual Duality and Sexual Multiplicity in Western Art.”

According to a letter that two student activists released, “Joseph McAndrew (they/them), a gender non-binary creative writing major, brought this lecture to the student body’s attention through social media and raised their concerns to Title IX and other University administration about the school giving Camille a platform. This led to the University reaching out to Deja Lynn Alvarez, a local transgender activist, to facilitate a talk-back after Camille’s lecture. Students were informed the day before the lecture that Camille had no plans to stay for the talk-back.”

UArts administrators declined to cancel the public lecture that Paglia was scheduled to deliver. The student activists responded by protesting the event. Before the event was over, someone pulled the fire alarm in the building, causing it to be evacuated.

To help justify the effort to suppress Paglia’s speech, student activists pointed to an interview posted to YouTube in which she dismissed some allegations of campus sexual assault. For example, one student wrote in an email: “As a survivor of sexual assault, I would never feel comfortable taking

a class with someone who stated that ‘It’s ridiculous . . . that any university ever tolerated a complaint of a girl coming in six months or a year after an event,’ or that ‘If a real rape was committed, go friggin’ report it to police.’ Perhaps this is an ‘opinion,’ but it’s a dangerous one, one that propagates rape culture and victim-blaming. For this and other reasons, I find her place as an educator at this university extremely concerning and problematic.”

After Paglia’s interrupted speech, UArts President David Yager released a long statement defending free expression. Its core message:

Across our nation it is all too common that opinions expressed that differ from one another’s—especially those that are controversial—can spark passion and even outrage, often resulting in calls to suppress that speech. That simply cannot be allowed to happen. I firmly believe that limiting the range of voices in society erodes our democracy. Universities, moreover, are at the heart of the revolutionary notion of free expression: promoting the free exchange of ideas is part of the core reason for their existence. That open interchange of opinions and beliefs includes all members of the UArts community: faculty, students and staff, in and out of the classroom. We are dedicated to fostering a climate conducive to respectful intellectual debate that empowers and equips our students to meet the challenges they will face in their futures. I believe this resolve holds even greater importance at an art school. Artists over the centuries have suffered censorship, and even persecution, for the expression of their beliefs through their work. My answer is simple: not now, not at UArts.

Later, when student activists launched their online petition, they included the demand, “Yager must apologize for his wildly ignorant and hypocritical letter.”

To better understand the student-activist perspective, Friedersdorf emailed Sheridan Merrick, who posted the Change.org petition against Paglia, asking how have the professor’s “dangerous” ideas harmed students.

In reply, Merrick cited statistics about the percentage of transgender adults who report having attempted suicide or suffered hate crimes. From there she reasoned:

Paglia’s comments have echoed the hateful language that pushes so many transgender people to contemplate suicide, and encourage transphobic people to react to transgender people violently. . . . I personally know at least one person who, due to Paglia’s comments, has experienced suicidal thoughts and has considered leaving the University. The comments that many of us have been receiving online have caused public safety at our school to be told to up their security game, in case our (very queer) student body is targeted by angry supporters of hers. This is what we mean when we say that her views are not merely controversial, but dangerous.”

Friedersdorf disagrees. The *Atlantic* article concludes that the argument that

a speaker is responsible for harms that are theoretical, indirect, and so diffuse as to encompass actions of strangers who put themselves on the same side of a controversy—is untenable. Suppressing speech because it *might* indirectly cause danger depending on how people other than the speaker *may* react is an authoritarian



move. And this approach to speech, applied consistently, would of course impede the actions of the anti-Paglia protesters as well.

. . . What's more, when student activists strategically engage in protests, callouts, and other behavior expressly calculated to "make life more difficult" for others, they could indirectly inspire outside parties to engage in threats or even attacks. . . . adopting different standards for different identity groups—which would of course never fly in a legal context—would ultimately hurt historically marginalized groups.

. . . The identitarian conceit is that trans people and survivors of sexual assault can't learn from Paglia, because she renders them "unsafe." Meanwhile, cis [non-trans] white males are acculturated to believe that they can always learn from anyone, even professors overtly hostile to their race, sexual orientation, or gender identity. In this way, left-identitarianism encourages historically marginalized groups to believe that they are less resilient and less capable than their white, male classmates. They suggest, falsely, that "harm" is the only possible result of listening to controversial (or even offensive) ideas.

There are, finally, political costs of illiberal activism. By targeting Paglia's job, student activists may alienate people who are open to substantive critiques of her ideas, yet insistent on the absolute necessity of safeguarding a culture of free speech, regardless of whether the speech in question is "correct" or "incorrect." They fail to heed Henry Louis Gates's prescient warning not to divide the liberal civil-rights and civil-liberties communities.

The activists also fail to heed a much older lesson that art students ought to know best: Nothing makes

an act of free expression more intriguing than an attempt to censor it.

Reported in: *The Atlantic*, May 1, 2019.

### Pierre, South Dakota

Are colleges really protecting free speech when they limit it to "free speech zones" on campus?

On March 20, 2019, South Dakota Governor Kristi Noem signed into law HB 1087, which will codify free speech protections for students at South Dakota's public colleges and universities. The law prohibits South Dakota public colleges and universities from quarantining student expression into small, misleadingly labeled "free speech zones."

According to a count maintained by the Foundation for Individual Rights in Education (FIRE), this made South Dakota the 13th state to pass legislation banning public colleges and universities from relegating student expression to free speech zones. The others are Virginia, Missouri, Arizona, Kentucky, Colorado, Utah, North Carolina, Tennessee, Florida, Georgia, Louisiana, and Arkansas. [After South Dakota, Alabama and Iowa passed similar laws (see page 41). This raised the total to fifteen states with laws against restricting free speech on the campuses of public institutions of higher education.]

South Dakota's HB 1087 also prevents institutions of higher education from discriminating "against any student or student organization based on the content or viewpoint of their expressive activity." The law guarantees that funds distributed to student organizations are allocated in a nondiscriminatory manner. It further states that belief-based student organizations are free to maintain policies that require leaders or members of the organization to "affirm and adhere

to the organization's sincerely held beliefs."

FIRE Executive Director Robert Shibley said "Free speech zones' send the false and illiberal message that a student's First Amendment rights are dangerous, and should be constrained within tiny, pre-approved areas of campus. We commend legislators in South Dakota for recognizing the critical importance of free speech to higher education, and encourage other states to follow their lead."

"HB 1087 is an important step toward ensuring no viewpoints are silenced at public institutions in South Dakota," said FIRE Legislative and Policy Director Joe Cohn. "By enacting this legislation, South Dakota is standing up for all students who wish to speak their minds freely on campus."

According to FIRE's *Spotlight on Speech Codes 2019* report, approximately 10 percent of top colleges nationwide maintain a free speech zone, despite the fact that the practice violates the First Amendment. Free speech zones have been repeatedly struck down by courts or voluntarily revised by colleges as part of settlements to lawsuits brought by students. Reported in: [thefire.org](http://thefire.org), March 21, 2019.

### San Marcos, Texas

What is the difference between a vote by the student government and official action by their university?

The Texas State University student government provoked outrage on April 8, 2019, by voting to ban a conservative student group, Turning Point USA, from campus.

The outrage of Charlie Kirk, founder of Turning Point USA, was quickly retweeted by his followers and picked up by conservative media sites. Greg Abbott, Texas' Republican governor, jumped into the fray, tweeting



that he looked forward to signing a bill to uphold free speech on college campuses, passed by the state Senate.

Lost in the initial outrage was a response from Margarita Arellano, the university's dean of students, who issued a statement saying that, while the student government has a right to pass a resolution calling for a ban of any student group, it does not have the authority to actually kick Turning Point USA off campus. Student organizations can be banned only if they are facing disciplinary sanctions, she wrote, and the campus chapter of Turning Point is not.

The resolution approved by the student government, but not acted on by the administration, called on the university to ban the campus chapter of Turning Point USA, citing its "consistent history of creating hostile work and learning environments through a myriad of intimidation tactics aimed against students and faculty." The resolution criticized the group's "Professor Watchlist," which "exposes" faculty members accused of discriminating against conservative students and promoting a liberal agenda.

Stormi Rodriguez, president of Turning Point's campus chapter, spoke during an open forum before the vote. Her remarks were interrupted by chants of "No more harassment, no more hate, remove Turning Point from Texas State!" The taunts continued as she left the meeting. She recorded them on Twitter. "If the left wants an example of what it looks like to be threatening and intimidating students, they should look in a mirror at #txst," she tweeted.

The Foundation for Individual Rights in Education (FIRE) said the university made the right call in rejecting the attempt to ban Turning Point USA. "The student government is free to call on the university to ban TPUSA, but it's a request that

the university's administration cannot grant," Adam B. Steinbaugh, director of FIRE's Individual Rights Defense Program, wrote in an email. "Nor can the student government take steps to deprive the TPUSA chapter of benefits provided to other organizations due to objections to TPUSA's views." Reported in: *Chronicle of Higher Education*, April 10, 2019.

## PRISONS New York, New York

How much of a right to read do incarcerated people have? Are library book carts, rather than actual libraries, enough for prisoners to exercise that right?

On February 26, the New York City Council's Criminal Justice Committee heard testimony on Councilmember Daniel Dromm's bill, Int. 1184, that requires the Department of Corrections (DOC) to provide access to the library for all incarcerated people within 48 hours of entering the jail system. The Department would be required to report on the number of books they receive, the source of those books and, if books are censored, the reason for the censorship.

Only two of the city's eleven jail buildings at Rikers Island have permanent libraries—and these were created only recently, in July 2016 and April 2018. A third library only exists for a few hours one day a week, when librarians from the New York Public Library bring books into a gymnasium. Men in that particular jail are escorted to the makeshift library to peruse and check out books. Then, the remaining books are packed away into a closet until the following Friday.

For people in New York's other eight jail buildings, that leaves the book cart. Librarians of the city's public library systems bring a book cart around to the housing units where

people can check books out. There's no uniformity as to how often a book cart is allowed onto a housing unit—for some units, it's once a week; for others, books might only come every other week or as often as twice a week.

For people in punitive segregation (129 inmates, as of November 30, 2018) who can spend anywhere from 17 to 23 hours in their cell, access seems to be even more spotty. DOC officials testified that people in punitive segregation do not have access to either a physical library or the library's book carts, a declaration that shocked and appalled Dromm and his colleagues. But librarians from the New York, Queens and Brooklyn public libraries later testified that they do indeed provide access to books and magazines for people in segregation as well as in the city's Enhanced Supervision Housing. In some units, they are able to meet the readers face to face; at others, the would-be reader receives a list of available genres. They choose one, submit the slip and in return receive a book.

Michael Tausek, the DOC's deputy commissioner for programming and community relationships, told the Committee that the DOC does not support the bill. "We do not believe that this bill would have the desired outcome of actually increasing the level of access to reading materials," he testified.

The librarians who actually work in the city's jails disagree. Nick Higgins, the chief librarian for the Brooklyn Public Library, told the committee that if each jail had a dedicated library, "we can do so much more." Reported in: *Gothamist*, February 27, 2019.

## GOVERNMENT SPEECH Washington, D.C.

When government agencies remove references to certain types of



discrimination from government websites, does this mean the government will no longer try to prevent such discrimination?

In the Spring of 2017, the Office for Civil Rights (OCR) at the Department of Health and Human Services quietly changed information on its website related to Section 1557 and discrimination against transgender and gender nonconforming people in healthcare settings. The changes were documented by the Web Integrity Project in 2018 (*see* JIFP, *Fall 2017–Winter 2018*, page 70).

New regulations announced on May 24, 2019, would roll back protections for transgender and gender nonconforming patients in healthcare settings. The proposed new rules reinterpret Section 1557 of the Affordable Care Act to exclude “gender identity” as a prohibited basis for discrimination.

With both the proposed changes to the rule, and the changes to text on the OCR website, “The current administration has rewritten large swaths of the implementing regulations of Section 1557 to limit the definition of discrimination, meaning women, LGBTQ people and limited English proficient individuals may again be shut out of vital health services and care because of biases against them,” said National Health Law Program Executive Director Elizabeth G. Taylor in a press release.

At issue was whether Section 1557 of the Affordable Care Act, which prohibits discrimination based on sex, could be interpreted to also prohibit discrimination on the basis of gender identity and termination of pregnancy. The Obama administration had determined that the law did empower HHS to enforce prohibitions on such discrimination. But a federal court in Texas ruled against that view of the law, and issued a

nationwide injunction prohibiting OCR from enforcing discrimination on the basis of gender identity.

The Sunlight Foundation wrote at the time that more content about prohibitions on sex discrimination was removed than appeared necessary to reflect the injunction.

The new rules indicate that advocates were right when they suspected that the Trump administration might seek to officially reinterpret Section 1557 to exclude transgender and gender non-conforming individuals from sex discrimination protections.

The administration framed the new rules as reflecting lawmakers’ intent when Section 1557 was first enacted. Reported in: SunlightFoundation.com, May 29, 2019.

## INTERNET United States

Are students’ rights to an education curtailed when they have no computer or internet at home?

An Associated Press analysis of census data indicates that nearly three million students around the United States struggle to keep up with their studies because they have no home internet. Unlike classrooms, where access to laptops and the internet is nearly universal, at home, the cost of internet service and gaps in its availability affect both urban and rural areas, the AP found.

In this “homework gap,” an estimated 17 percent of US students do not have access to computers at home, and 18 percent do not have home access to broadband internet.

Students without home internet consistently score lower in reading, math, and science.

Students without internet at home are more likely to be students of color, from low-income families, or in households with lower parental education levels.

A third of households with school-age children that do not have home internet cite the expense as the main reason, according to federal Education Department statistics gathered in 2017 and released in May. The survey found the number of households without internet has been declining overall but was still at 14 percent for metropolitan areas and 18 percent in nonmetropolitan areas. Reported in: *Associated Press*, June 10, 2019.

## Augusta, Maine

Can state laws effectively replace national “net neutrality” regulations issued by Federal Communications Commission under the Obama administration, then rescinded under the Trump administration?

Maine joined a growing number of states passing net neutrality laws. On June 25, 2019, Governor Janet Mills signed into law a bill that prohibits the state from using funds to pay internet service providers (ISPs) unless they adhere to “net neutral” services. Specifically, the bill defines “net neutral” services as a promise not to block lawful content, not to throttle internet speeds, and to not engage in paid prioritization.

“The internet is a powerful economic and educational tool that can open doors of opportunity for Maine people and small businesses,” Mills said in a statement announcing her signing of the bill. “That potential should not be limited by internet service providers interested in increasing their profits. I hope net neutrality will be fully restored in federal law, but in the meantime I welcome this new law as a positive step forward for Maine and as a sign that we will protect a free and open internet for Maine people.”

Maine’s new law is similar to ones working their way through state legislatures in New York and New Jersey.



In 2018, two states—California and Vermont—passed net neutrality bills, but both states agreed to halt their implementation in the midst of being sued. Those bills will not go into effect while a federal court battle over the Federal Communications Commission’s (FCC) repeal plays out. A decision from the United States Court of Appeals District of Columbia Circuit is expected this year. Reported in: *Daily Dot*, June 26, 2019.

### FREE SPEECH San Antonio, Texas

Are business owners’ First Amendment rights violated when a government stops them from opening a store because of their religious beliefs and political donations?

The San Antonio City Council voted to exclude Chick-fil-A from the city’s airport because the restaurant chain’s Christian owners have donated to organizations that champion the belief that marriage is between a man and a woman. In mid-April 2019, the council narrowly rejected a proposal to reconsider its decision.

“Such censorship is blatantly unconstitutional,” declared an editorial in the *San Antonio Express-News*. The newspaper wrote, “This incident is symptomatic of deeper problems. Many people believe they have the absolute truth with regard to issues of morality, sexuality, religion or politics, and that those who disagree are evil and must be censored or excluded. Similarly, many see people as fragile and argue that offensive speech is violence.”

The editorial concludes, “This outlook corrodes our free speech foundations and should be rejected by all those who value the First Amendment.” Reported in: *San Antonio Express-News*, April 21, 2019.

### PRIVACY Washington, D.C.

How much information should the government collect from foreigners who want to enter the country?

The US State Department is now requiring nearly all applicants for US visas to submit their social media usernames, previous email addresses, and phone numbers. In a vast expansion of the Trump administration’s enhanced screening of potential immigrants and visitors, the department announced updated immigrant and nonimmigrant visa forms that now request additional information, including “social media identifiers,” from almost all applicants.

The change, first proposed in March 2018, is expected to affect about 15 million foreigners who apply for visas to enter the United States each year.

Social media, email, and phone number histories had only been sought in the past from applicants who were identified for extra scrutiny, such as people who had traveled to areas controlled by terrorist organizations. An estimated 65,000 applicants per year had fallen into that category.

The department says collecting the additional information from more applicants “will strengthen our process for vetting these applicants and confirming their identity.”

The new rules apply to virtually all applicants for immigrant and nonimmigrant visas. When it filed its initial notice to make the change, the department estimated it would affect 710,000 immigrant visa applicants and 14 million nonimmigrant visa applicants, including those who want to come to the United States for business or education.

The new visa application forms list a number of social media platforms and require the applicant to provide any account names they may have had

on them over the previous five years. They also give applicants the option to volunteer information about social media accounts on platforms not listed on the form.

In addition to their social media histories, visa applicants are now asked for five years of previously used telephone numbers, email addresses, international travel and deportation status, as well as whether any family members have been involved in terrorist activities.

Only applicants for certain diplomatic and official visa types are exempted from the requirements. Reported in: Associated Press, June 1, 2019.

### Washington, D.C., and many localities

Should federal agents have access to state and local license plate and drivers’ records—including automated license plate readers that can track a vehicle’s location—to help them deport undocumented immigrants?

More than 80 law enforcement agencies in the United States have agreed to share with US Immigration and Customs Enforcement (ICE) license plate information that supports its arrests and deportation efforts, according to the American Civil Liberties Union (ACLU), which obtained a trove of internal agency records.

The documents acquired by the ACLU show that ICE obtained access to a database with license plate information collected in dozens of counties across the United States—data that helped the agency to track people’s locations in real time. Emails revealed that police have also informally given driver information to immigration officers requesting those details in communications that the ACLU said appeared to violate local laws and ICE’s own privacy rules.





The files, which the ACLU obtained through a Freedom of Information Act request, have raised fresh concerns about ICE's monitoring of immigrants and the way local police aid the Trump administration's deportation agenda.

ICE has taken advantage of expanded automated license plate recognition technology, which allows cameras to take images of plates and link them to specific locations.

The documents show that ICE allowed agents—more than 9,000 of them, according to one email—working on civil immigration cases to search a license plate reader database maintained by Vigilant Solutions, a private data analytics company, for files going back five years.

“It’s a huge invasion of privacy,” Vasudha Talla, an ACLU staff attorney, told *The Guardian*. “Location surveillance and location data can really paint such an intimate portrait of someone’s life, down to what they do minute by minute.” The five-year broad timeframe, Talla argued, risked dragging in associates of the individual being investigated, or anyone who had a tie to a license plate over that period.

An ICE spokesperson, Matthew Bourke, defended the use of license plate information for investigations, saying the agency was not building its own database and that it would not use the data to track individuals with no connection to ICE enforcement. ICE doesn’t take action against someone solely based on license plate data, he wrote in an email, adding that the agency limited database access to ICE employees who “need [license plate] data for their mission-related purposes.”

The ACLU has called on cities to reject contracts for license plate surveillance, to stop sharing this kind of data with ICE, and to pass proactive

privacy ordinances that require oversight when police buy surveillance technology. Reported in: *The Guardian*, March 13, 2019.

### Washington, D.C.

How much data does the US Department of Homeland Security (DHS) collect from social media? Is the information accurate, free from bias, and effective in enhancing national security?

DHS has dramatically expanded its monitoring of social media monitoring in recent years, collecting a vast amount of user information in the process—including political and religious views, data about physical and mental health, and the identity of family and friends. DHS increasingly uses this information for vetting and analysis, including for individuals seeking to enter the United States and for both US and international travelers. In a new report, *Social Media Monitoring*, the Brennan Center provides an overview of DHS social media monitoring programs and the new set of challenges that they are surfacing.

The Brennan Center says, “There is little indication that social media monitoring programs—or the algorithms that sometimes power them—are effective in achieving their stated goals. Additionally, there is evidence that DHS is using personal information extracted from social media posts to target protestors and religious and ethnic minorities for increased vetting and surveillance.”

According to the Brennan Center, the social media monitoring is used across various arms of DHS, including Customs and Border Protection (CBP), the Transportation Security Administration (TSA), US Immigration and Customs Enforcement (ICE), and US Citizenship and Immigration Services (USCIS).

Despite their expansion, the DHS programs have not proven successful, even based on the department’s own measures. For example, after USCIS piloted five social media monitoring programs in 2016, the agency’s own evaluations found the programs largely ineffective in identifying threats to public safety or national security.

The Brennan Center lists several of the central challenges associated with social media monitoring. One is the difficulty of interpreting what’s in the social media messages and connecting them to actual threats. These interpretation problems become even more complex when a non-English language or unfamiliar cultural context is involved. The programs themselves also carry civil liberties risks. “They give the government a pool of information about people’s personal lives and political and religious beliefs that can easily be abused. And research shows that people censor themselves when they know the government is watching,” said Rachel Levinson-Waldman, senior counsel in the Brennan Center’s Liberty and National Security Program.

Another concern in social media monitoring programs is the increasing use of algorithmic tools to review social media posts. These tools, which include natural language processing and algorithmic tone and sentiment analysis, have high error rates. This makes it questionable that they are actually capable of achieving DHS objectives, particularly because of the open-ended nature of the evaluations they are used for, such as identifying national security threats. Further, the algorithms are susceptible to bias.

“Our experience with algorithmic tools shows that they tend to operate in a discriminatory fashion,” said Faiza Patel, co-director of the Brennan Center’s Liberty and National



Security Program. “They make judgments based on proxies, and when these proxies reflect biases, the results produced by an algorithm simply reproduce those biases. For example, the biases evident in the early versions of the Trump administration’s Muslim ban could be coded into an algorithm, resulting in the flagging of many Muslims as a national security threat.” Since even before the ban, federal agencies such as the FBI and the Department of Defense have used religious beliefs as markers of dangerousness.

One barrier to addressing DHS’s expansion of its social media monitoring programs is the lack of visibility into the full scope of the department’s surveillance capabilities, a gap the Brennan Center report seeks to address.

“Congress should look closely at these DHS programs and ask the basic questions,” said Patel. “In what contexts is the Department monitoring social media? How is it verifying the accuracy of accounts being attributed to individuals? What kinds of decisions is it using this data for? How is the information being shared? And how is the effectiveness of these programs being measured?” Reported in: [brennancenter.org](http://brennancenter.org), May 22, 2019.

### Mountain View, California

For users concerned that Google collects too much of their personal data, will Google’s new security and privacy features satisfy them?

At its annual I/O developer conference in Mountain View, California, on May 7, 2019, Google touted new settings that allow anyone with a Google account to start limiting how long their data gets stored. The company also announced changes to its Nest home security system.

The new data settings allow users to set a time limit for Google to retain

certain types of data, either three months or eighteen months. After that, the information is automatically deleted. For now, the auto-delete feature is only available for “Web & App Activity,” which tracks searches and other browsing data. The company will offer options across more services in the future.

By default, however, Google will continue to indefinitely retain the web and app activity data according to users’ current settings. When auto-delete is not turned on, the web and app activity page says, “Your activity is being kept until you delete it manually.”

At the same I/O conference, Google announced a “privacy pledge” for its smart home devices, apparently in response to revelations that some Nest devices contained a previously undocumented microphone.

The company also announced a new measure meant to expand the security offerings for Nest accounts—perhaps because of an epidemic of Nest account takeovers. Beginning this summer, users will be able to migrate their Nest accounts into a new or existing Google account so they can have access to Google security features like suspicious activity monitoring and expanded options for two-factor authentication. (Nest already offers two-factor authentication, so users can activate that to ward off takeovers without linking even more data to their Google account.) Reported in: [wired.com](http://wired.com), May 7, 2019.

### San Francisco, California; Detroit, Michigan, and nationwide

“What are we going to do about all the cameras?”

That question keeps *New York Times* columnist Farhad Manjoo up at night, he related in an opinion column in the *Time’s* “Privacy Project”

series. In an overview of how new camera technology threatens privacy he, wrote:

Advances in computer vision are giving machines the ability to distinguish and track faces, to make guesses about people’s behaviors and intentions, and to comprehend and navigate threats in the physical environment. In China, smart cameras sit at the foundation of an all-encompassing surveillance totalitarianism unprecedented in human history. In the West, intelligent cameras are now being sold as cheap solutions to nearly every private and public woe, from catching cheating spouses and package thieves to preventing school shootings and immigration violations.

Among recent developments cited in Manjoo’s column:

- In May, San Francisco’s board of supervisors voted to ban the use of facial-recognition technology by the city’s police and other agencies.
- Detroit signed a \$1 million deal with DataWorks Plus, a facial recognition vendor, for software that allows for continuous screening of hundreds of private and public cameras set up around the city.
- Some police departments want to use “facial recognition on forensic sketches . . . a process riddled with the sort of human subjectivity that facial recognition was supposed to obviate.”

Manjoo concluded:

What sort of rules should we impose on law enforcement’s use of facial recognition? What about on the use of smart cameras by our friends and neighbors, in their cars and doorbells? In short, who has the right to surveil



others—and under what circumstances can you object?

It will take time and careful study to answer these questions. But we have time. There's no need to rush into the unknown. Let's stop using facial recognition immediately, at least until we figure out what is going on.

Reported in: *New York Times*, May 16, 2019.

### San Francisco, California

When people store, share, or save personal photos on a commercial website, should they be informed if the corporation will use their photos in its facial recognition technology?

The Ever AI website promotes that the company possesses an “ever-expanding private global dataset of 13 billion photos and videos” from what the company said are tens of millions of users in 95 countries. Ever AI uses the photos in developing its face recognition technology, which the company says can estimate emotion, ethnicity, gender, and age. A company representative confirmed in an interview with NBC News that those photos come from users of the firm's Ever app, which offers people a way to store photos and save memory space in their electronic devices.

After NBC News asked the company in April if users had consented to their photos being used to train facial recognition software that could be sold to the police and the military, the company posted an updated privacy policy on the app's website.

Previously, the privacy policy explained that facial recognition technology was used to help “organize your files and enable you to share them with the right people.” The app has an opt-in face-tagging feature much like Facebook that allows users to search for specific friends or family

members who use the app. This means that many people in the photos have no knowledge of or control over their images being uploaded, even if the Ever app user consented to the firm's privacy policy.

And the privacy policy was vague. In the previous privacy policy, the only indication that the photos would be used for another purpose was a single line: “Your files may be used to help improve and train our products and these technologies.”

On April 15, one week after NBC News first contacted Ever, the company added a sentence to explain what it meant: “Some of these technologies may be used in our separate products and services for enterprise customers, including our enterprise face recognition offerings, but your files and personal information will not be,” the policy now states. Reported in: NBC News, May 9, 2019.

### Chicago, Illinois, and Detroit, Michigan

How invasive and pervasive are facial recognition technologies used by police and other authorities in US cities?

A report by the Center on Privacy and Technology at the Georgetown University law school, published on May 16, 2019, and entitled *America Under Watch: Face Surveillance in the United States*, uncovered unregulated systems in Chicago and Detroit that give police the ability to identify faces from surveillance footage in real time. Both cities purchased software from a South Carolina company, DataWorks Plus, according to contracts obtained by the Georgetown researchers. A description on the company's website says the technology, called FaceWatch Plus, “provides continuous screening and monitoring of live video streams.”

Chicago claims it has not used its system; Detroit says it is not using its

system currently. But no federal or state law would prevent use of the technology.

Facial recognition has long been used on static images, but using the technology with real-time video is less common. It has become practical only through recent advances in AI and computer vision, although it remains significantly less accurate than facial recognition under controlled circumstances.

Privacy advocates say ongoing use of the technology in this way would redefine the traditional anonymity of public spaces. “Historically we haven't had to regulate privacy in public because it's been too expensive for any entity to track our whereabouts,” says Evan Selinger, a professor at the Rochester Institute of Technology. “This is a game changer.”

According to the report, Detroit first purchased a facial recognition system capable of real-time analysis in July 2017 as part of a three-year contract related to an unusual community policing program called Project Greenlight. To deter late-night crime, gas stations and other businesses hooked up cameras that fed live surveillance footage to police department analysts. The program expanded over the years to stream footage to police from more than 500 locations, including churches and reproductive health clinics.

Chicago's adoption of FaceWatch Plus goes back to at least 2016, the report says. According to a description of the program—found in DataWorks Plus' pitch to Detroit—the “project objective” involved tapping into Chicago's 20,000 street and transit cameras. Chicago police told the researchers the system was never turned on. Illinois is one of only three states with biometric-identification laws that require consent from people before companies collect biometric markers,



like fingerprints and face data, but public agencies are exempted.

Georgetown's findings show how the lack of federal rules on facial recognition may create a patchwork of surveillance regimes inside the United States. In Chicago and Detroit, citizens in public are watched by cameras that could be connected to software checking every face passing by. Police in Orlando and New York City are testing similar technology in pilot projects.

For millions of others in New York City, Orlando, and Washington, D.C., face surveillance is also on the horizon. And for the rest of the country, there are no practical restrictions against the deployment of face surveillance by federal, state, or local law enforcement.

The Georgetown report said there has been little public oversight of such systems in Chicago, Detroit, or elsewhere.

Such surveillance "risks fundamentally changing the nature of our public spaces," according to the Georgetown report. It lists specific concerns:

- **Free Speech.** When used on public gatherings, face surveillance may have a chilling effect on our First Amendment rights to unabridged free speech and peaceful assembly.
- **Privacy.** If mounted on churches, health clinics, community centers, and schools, face surveillance cameras risk revealing a person's "familial, political, professional, religious, and sexual associations," the very "privacies of life" that the Supreme Court in *Carpenter v. United States* (2018) suggested receive protection under the US Constitution.
- **Bias.** The risks of face surveillance are likely to be borne disproportionately by communities of color. African Americans

are simultaneously more likely to be enrolled in face recognition databases and to be the targets of police surveillance use. Compounding this, studies continue to show that face recognition performs differently depending on the age, gender, and race of the person being searched. This creates the risk that African Americans will disproportionately bear the harms of face recognition misidentification.

The Center on Privacy & Technology said the in the two years since it issued an earlier report on police use of face recognition technology in the United States, "a dramatic range of abuse and bias has surfaced."

Therefore, the Georgetown report ends with a recommendation: "We now believe that state, local, and federal government should place a moratorium on police use of face recognition. . . . Once bans or moratoria are in place, communities can stop to think about whether face surveillance should be allowed in their streets and neighborhoods." Reported in: *America Under Watch*, May 16, 2019; wired.com, May 17.

### Augusta, Maine

Will a new law protecting consumers' privacy online in Maine affect how internet service providers (ISPs) do business in other states as well, or will court challenges prevent the law from going into effect?

On June 6, Maine Governor Janet Mills signed into law a bill that the *Portland Press Herald* said requires ISPs to provide "the strictest consumer privacy protections in the nation."

Before the bill's passage, several technology and communication trade groups told the Maine legislature that it may be in conflict with federal law

and would likely be the subject of legal action.

The new law, which goes into effect on July 1, 2020, would require providers to ask for permission before they sell or share any of their customers' data to a third party. The law would also apply to telecommunications companies that provide access to the internet via their cellular networks.

The law is modeled on a US Federal Communications Commission rule, adopted under the administration of President Obama but overturned by the administration of President Trump in 2017. The rule blocked an ISP from selling a customer's personal data, which is not prohibited under federal law.

According to the *Press Herald*, "The law is unlike any in the nation, as it requires an ISP to obtain consent from a consumer before sharing any data. Only California has a similar law on the books, but it requires consumers to "opt out" by asking their ISP to protect their data."

The Maine bill passed with strong bipartisan support. Reported in: *Portland Press Herald*, June 6, 2019.

### Lockport, New York

Which school district will become the first in the United States to implement a facial recognition system to track all the visitors, students, faculty, and staff members in its schools?

The Lockport City School District in Western New York state was set to activate a pilot version of its Aegis system on June 3, 2019, and planned make the whole system operational throughout its eight schools in September. However, on May 30, the New York State Department of Education asked Lockport to delay its use of facial recognition technology on students.



In March 2018, Lockport announced plans to install facial recognition security, funded through the New York Smart Schools Bond Act—an act meant to help New York schools acquire instructional technology. Instead of buying electronic devices for students and teachers, Lockport proposed a high-tech security system, and allocated much of the \$4.2 million it was given toward adding dozens of surveillance cameras in the school and installing the facial recognition system Aegis, from a Canadian firm, SN Technologies. By the end of May 2019, Lockport had spent \$1.4 million to get the system up and running.

The American Civil Liberties Union, which wrote to the state Department of Education opposing Lockport’s plan, told *BuzzFeed News* that Lockport was about to be the first public school district to begin using a facial recognition system, although other schools have considered such technology.

As described by Lockport officials in an FAQ distributed to the school’s parents and obtained by *BuzzFeed News*, “Aegis is an early warning system that informs staff of threats including guns or individuals who have been identified as not allowed in our buildings. Aegis has the ability [to screen] every door and throughout buildings to identify people or guns. Early detection of a threat to our schools allows for a quicker and more effective response.”

According to the FAQ, Aegis will track individuals who are “level 2 or 3 sex offenders, students who have been suspended from school, staff who have been suspended and/or are on administrative leave, any persons that have been notified that they may not be present on District property, anyone prohibited from entry to District property by court order . . . or

anyone believed to pose a threat based on credible information presented to the District.” The *Lockport Journal* reported that Aegis also includes an object recognition system, which is said to be able to detect 10 types of guns.

The FAQ adds that the system “will not generate information on or record the movements of any other district students, staff or visitors,” but previous reporting from *BuzzFeed News* has shown that in order to effectively flag the faces of “persons of interest,” facial recognition systems must also disregard the faces of persons who are not of interest. In other words, it analyzes them, too.

Explaining its decision to postpone facial recognition in Lockport’s schools, the New York State Department of Education emailed a statement:

The Department is currently reviewing the Lockport CSD’s privacy assessment to ensure that student data will be protected with the addition of the new technology. The Department has not come to the conclusion that the District has demonstrated the necessary framework is in place to protect the privacy of data subjects and properly secure the data. As such, it is the Department’s continued recommendation that the District delay its use of facial recognition technology.

Regulations are in the process of being finalized that will adopt a standard for data privacy and security for all state educational agencies. We recommended in past communication that the District consider reviewing the standard and related materials in developing and refining its data security and privacy program. We will remain in contact with school district officials.

Reported in: *Buzzfeed*, May 29, May 30, 2019.

## Salt Lake City, Utah

Do police need a warrant to obtain citizens’ private information from providers of electronic data services? In Utah, the answer is yes.

Utah Governor Gary Herbert on March 17, 2019, signed a new privacy law that made his state the first to protect private electronic data, stored with third-party providers, from government access without a warrant. Under the legislation passed unanimously by the Utah legislature, to go into effect on May 14, law enforcement agencies need a warrant to obtain information about an individual from wireless communications providers, email platforms, search engine providers, or social media companies.

Previously, on both the federal and state levels, law enforcement agencies generally had access to information through third-party providers on the grounds that individuals have no reasonable expectation of privacy when they share their personal information with third parties.

The US Supreme Court limited that access in 2018 in its 5–4 opinion in *Carpenter v. United States*, in which the majority held that the government’s search of personal cell phone location information held by a wireless communications provider constitutes a Fourth Amendment search, and therefore requires a warrant. However, the opinion did not extend beyond location information, and the dissenting justices urged that legislation was needed to govern this body of law in a new age of technology.

Utah’s new law specifically states that “a law enforcement agency may not obtain, without a search warrant issued by a court upon probable cause,” the location information from





an electronic device or “electronic information or data transmitted by the owner of the electronic information or data to a remote computing service provider.” The law defines “electronic information or data” broadly to include “a sign, signal, writing, image, sound, or intelligence of any nature transmitted or stored in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system.”

There are specific exceptions, such as when the third-party provider believes an emergency exists with risk of death, serious physical injury, or sexual abuse.

Among other things the bill:

- Requires a search warrant to obtain certain electronic information or data;
- Specifies when notification must be provided that electronic information or data were obtained;
- Regulates transmission of electronic information or data to a remote computing service, including restrictions on government entities;
- Provides that the individual who transmits electronic information or data is the presumed owner of the electronic information or data; and
- Excludes from evidence electronic information or data obtained without a warrant.

Reported in: [le.utah.gov](http://le.utah.gov), n.d.; Cyber Adviser, March 28, 2019; *Data Privacy + Security Insider*, April 1.

### Richmond, Virginia

Does publication of fake images violate a victim’s privacy the same way publication of actual images would?

Virginia has expanded its ban on revenge porn to include “deepfake” images and videos. (Deepfake

technology uses artificial intelligence to manipulate images and videos nearly seamlessly, for example to put one person’s face on another person’s body.) An updated law, which took effect on July 1, 2019, amends an existing law that says anyone who shares or sells nude or sexual images and videos to “coerce, harass, or intimidate” is guilty of a Class 1 misdemeanor. The update adds language about “a falsely created videographic or still image.”

The Virginia General Assembly passed the updated bill in March, and it was signed by Governor Ralph Northam in the same month.

Deepfakes are leading to growing concern about privacy. In June 2019, an app called DeepNude, which can morph pictures of clothed women into nudes, shut down. Samsung also developed an artificial intelligence system that can create a fake clip from a single picture. In 2018, Reddit banned deepfake porn. Reported in: [cnet.com](http://cnet.com), July 1, 2019.

### Seattle, Washington, and nationwide

Amazon’s “Ring” doorbell system “has essentially created private surveillance networks powered by Amazon and promoted by police departments,” according to [cnet.com](http://cnet.com).

Police departments across the United States have offered free or discounted Ring doorbells to citizens, sometimes using taxpayer funds to pay for Amazon’s products. While Ring owners are supposed to have a choice in providing footage to police, in some giveaways, police require recipients to turn over footage when requested.

Ring said on June 4, 2019, that it would start cracking down on those strings attached. “Ring customers are in control of their videos, when they decide to share them and whether or

not they want to purchase a recording plan. . . . Ring does not support programs that require recipients to subscribe to a recording plan or that footage from Ring devices be shared as a condition for receiving a donated device.”

More than fifty local police departments across the United States have partnered with Ring over the last two years, giving them access to security footage in suburban neighborhoods that otherwise might not be covered by security cameras.

Amazon bought Ring in 2018 for a reported \$1 billion, helping Amazon expand its “smart homes” business.

Multiple cities have laws requiring a public process to debate how police use and buy surveillance technology. But when police and Amazon convince private residents to buy these cameras, this can circumvent that process while saving the city money. Ring cameras can cost between \$99 and \$500.

Police can get additional information by adding their own technology to that of Ring and Amazon. Depending on how the Ring camera is set up, it can capture motion on the streets, such as cars passing by. Police can enter details on a car from Ring footage into an automated license plate reader system, and figure out the car’s owner and address. Reported in: [cnet.com](http://cnet.com), June 5, 2019.

### Seattle, Washington

Does Amazon’s Echo Dot Kids, a smart speaker designed for children, illegally keep data on children, even after their parents try to delete it?

A coalition of nineteen consumer and public health advocates led by the Campaign for a Commercial-Free Childhood (CCFC) and the Center for Digital Democracy (CDD), filed a complaint asking the Federal Trade



Commission (FTC) to investigate Amazon and its \$35 device.

Amazon markets the device as “a kid-friendly study buddy, DJ, comedian, storyteller, and more,” and promises “peace of mind” for parents who want to screen explicit music and other potentially harmful content from their kids. But the complaint alleges that parents may be risking their children’s privacy, alleging that the kids’ version of Amazon’s Alexa won’t forget what children tell it, even after parents try to delete the conversations.

“These are children talking in their own homes about anything and everything,” said Josh Golin, who directs the Campaign for a Commercial Free Childhood. “Why is Amazon keeping these voice recordings?”

The coalition of groups led by Golin’s organization, along with Georgetown University’s Institute for Public Representation, allege that Amazon is violating the federal Children’s Online Privacy Protection Act (COPPA).

Amazon said in a statement that its Echo Dot Kids Edition is compliant with COPPA.

It is unclear whether the FTC will take up the complaint, since its investigations are rarely public. But the agency has been enforcing children’s privacy rules more seriously in the past year, said Allison Fitzpatrick, a lawyer who helps companies comply with COPPA requirements and was not involved in the complaint.

For the FTC to take notice, however, Fitzpatrick said there usually needs to be evidence of “real, actual harm,” not just the theoretical harm she said advocacy groups often outline. Reported in: CBS News, May 9, 2019.

## INTERNATIONAL Dublin, Ireland

Is Google complying with Europe’s new General Data Protection Regulation (GDPR)?

Ireland’s Data Protection Commissioner (DPC), a major regulator of internet companies in the European Union, opened its first investigation into Google on May 22, 2019, over how it handles personal data for the purpose of advertising.

The commissioner said the probe was the result of a number of submissions against Google, including from privacy-focused web browser Brave. Brave argued that when a person visits a website, Google collects intimate personal data that describes them and what they are doing online and broadcasts the data to tens or hundreds of companies without the person’s knowledge.

The Irish DPC said it would investigate whether processing of personal data carried out at each stage of an advertising transaction was in compliance with the GDPR. The European Union passed the privacy law in 2018.

Many large international technology firms have their European headquarters in Ireland, putting them under the watch of the Irish DPC.

The regulator said earlier this month that it had fifty-one large-scale investigations under way, seventeen of which related to large technology firms, including Twitter, LinkedIn, Apple, and Facebook and its WhatsApp and Instagram subsidiaries.

Under the EU’s GDPR, regulators have the power to impose fines for violations of up to 4 percent of a company’s global revenue, or 20 million euros, whichever is higher.

When Brave raised its privacy concerns about Google in September 2018, Google said it had already implemented strong privacy protections in consultation with European

regulators and is committed to complying with the GDPR. Reported in: Reuters, May 22, 2019.

## Luxembourg City, Luxembourg

Should internet service providers and other electronic platforms be held responsible when users post material that infringes on the content creator’s copyright? And will the European Union’s new Copyright Directive lead to excessive censorship as platforms try to protect themselves from liability?

In March 2019, the European Union passed the burden for copyright infringement from users to platforms under its new Copyright Directive. In May 2019, Poland, a member of the EU, filed a legal challenge to the directive, saying that it will lead to “preventive censorship.”

The Copyright Directive was first proposed in 2016, and went through numerous failed votes and subsequent tweaks before it was passed. Proponents of the law said that it was about making sure fair compensation went to content creators—news sites, musicians, or artists, for example.

Yet critics—including the Polish government—say the law’s vague definitions and a lack of clarity about how to enforce such measures means that platforms are likely to over-filter content rather than leave themselves open to legal risks.

In its filing with the European Union’s Court of Justice in Luxembourg, the Polish government says that the Copyright Directive “may result in adopting regulations that are analogous to preventive censorship, which is forbidden not only in the Polish constitution but also in the EU treaties.”

Alongside the announcement, Polish Prime Minister Mateusz Morawiecki, tweeted that the new law is “a



disproportionate measure that fuels censorship and threatens freedom of expression.”

Under prior copyright law, platforms were not responsible for their

users breaching rules as long as the company took reasonable steps to remove anything infringing. Under the new system, a platform would be liable the moment a user uploads

something they don't own the rights to. Reported in: [techspot.com](http://techspot.com), May 27, 2019.



## LIBRARIES

### Park Ridge, Illinois

“Indians Cede the Land” by George Melville Smith, one of the historic Works Progress Administration (WPA) murals painted during the Great Depression, will stay inside the Park Ridge city library—but with some additional historical context, Heidi Smith, executive director of the library, announced in May 2019.

Other WPA murals have been removed from schools in nearby Oak Park, following complaints that they do not reflect the community’s diversity.

Smith’s oil on canvas mural depicts Native Americans and white government agents and was created in 1940 as part of a government program that commissioned art to be created for federal buildings. It hung for many years in the former Park Ridge Post Office and was restored in 2013 through a volunteer-led fundraising campaign.

Printed pamphlets describing the history and restoration of the “Indians Cede the Land” mural will be updated to include expanded historical context of the scene, based on information provided to the library last year by Julie Pelletier, an associate professor of indigenous studies at the University of Winnipeg. The additional information explains that when US government treaties were signed with Native American tribes, they often were not honored by the government, Smith said.

Pelletier’s information states:

The act of ceding land by Native Americans was involuntary and typically done under duress. In return for vast tracts of land, tribes might be promised goods, money, reserved lands (reservations) and protection from encroaching settlers . . . The Treaty of Chicago gained over a

million acres of land for the United States. In return, signatory tribes received \$100,000 in trade goods, \$280,000 in twenty annual payments of \$14,000 each, and \$150,000 for the erection of mills, houses, etc. The treaty does not list any land to be held for the tribes so one wonders where the houses and mills would be built. The United States government often did not honor its treaties with Native Americans and most tribes do not receive what they were promised as payment for land cessions.

Officials said they did not yet know when the library’s informational brochure on the mural would be updated to include the new language.

Smith said she reached out to Pelletier in summer 2018, around the time that a patron inquired if the mural was insulting to Native Americans and questioned whether it should continue to have a “place of honor” in the library.

Pelletier acknowledged that the portrayal of Native Americans in such a prominent piece of art was “unusual” for the time it was created, but it was not necessarily an accurate portrayal. It may also be viewed as offensive to native people, which is why it is important to “put the mural into perspective” by considering the heightened nationalism of the period when it was painted and the actual history of government treaties, Pelletier said. Reported in: *Chicago Tribune*, May 16, 2019.

### Kalispell, Montana

*Prince & Knight* (2018) by Daniel Haack, a LGBTQ-friendly children’s book, will remain on the shelf at the Kalispell ImagineIF Library, despite suggestions to remove it.

After a storytime session for pre-schoolers on March 18 featured the illustrated fairytale, in which a

prince falls in love with a knight, a local teacher, Sherry Stockholm, objected in a letter to the editor to the *Daily Inter Lake*. Stockholm’s letter said she considers the topic of gay marriage to be “totally inappropriate for an audience of pre-schoolers,” and was disappointed the librarian did not provide notification that it would “introduce such a controversial subject to innocent children.” The newspaper printed the letter on April 4 along with the library’s policies for book selection when building its inventory.

Since the letter, library staff said they received about seventy public comments regarding the book and subsequent reading. Some commentary challenged the book as being part of the library’s collection in general, requesting it be removed from the shelf. Most of the comments offered words of support to ImagineIF for offering gay-friendly material and for choosing to read them aloud.

The Board of Trustees at a public meeting on May 1, 2019 voted to keep the book on the shelf. Board Chair Michael Morton said the library also will work on creating policies for various programs, including storytime sessions. When created, the policies will be made public on ImagineIF’s website, alongside the already-existing policies for considering which books should be added to their collection.

ImagineIF Library Director Connie Behe reiterated ways in which *Prince & Knight* meets ImagineIF’s guidelines for its collection development, which are available online. According to the library’s website, criteria includes customer demand and interest, the author’s reputation and significance as a writer, and critical reviews. Reported in: *Daily Inter Lake*, May 2, 2019.



## Belleville, New Jersey

A rainbow flag in honor of LGBTQ Pride Month was temporarily taken down but restored to a flagpole outside the Belleville Public Library.

A “Drag Queen Story Time” event scheduled to take place at the library on Saturday, June 22, 2019, along with the raising of the rainbow flag inspired a flurry of comments from the Belleville community. Some comments have been in opposition, but many more in support, library staff reported.

Mia Torres, head of circulation, said that the rainbow flag was temporarily taken down while staff figured out a way for it to be properly displayed in conjunction with a US flag, which is also on display outside the library.

It was soon put back up with another addition, a banner bearing a message of peace that will hang at the front of the building “well beyond Pride Month,” Torres said.

“While we did in fact receive a handful of calls wanting the Pride flag removed and storytime cancelled, we also received many calls wondering why we had taken it down, with testimonies as to why we need it flown here in Belleville,” Torres explained. “We followed up with a Facebook post letting all know that it was back up.”

According to Torres, the Belleville Public Library exists to serve the community . . . and that includes everyone in it. Reported in: *Belleville-Nutley Patch*, June 12, 2019.

## Highland Park, New Jersey

*P Is for Palestine* (2017), a self-published book by Golbarg Bashi, Ph.D., was returned to the schedule of author talks at the Highland Park Public Library, after vocal protests.

Jewish Voice for Peace sponsored the event featuring Bashi, a Middle East studies instructor at nearby Rutgers University in New Brunswick, New Jersey. Bashi was scheduled to read to children on May 19, 2019. A large swath of Highland Park’s Jewish community objected, primarily because of language in the book that whitewashed the word “Intifada,” casting the term as a peaceful term meaning “to stand up for what’s right.” Even more concerning, said members of the community who read the book, it was written with no mention of the existence of Israel or the Jewish people, though many of the locations included in the book appear in both the Israel of the Bible and, subsequently, modern-day Israel.

After the reading was postponed, the Council of American-Islamic Relations, the Jewish Voice for Peace, Palestine Legal, the Center for Constitutional Rights and the ACLU of New Jersey all insisted that the event be rescheduled. The American Library Association’s Office for Intellectual Freedom informed Library Director Jane Stanley that it was ALA’s advice to move forward with the event, citing free speech concerns and potential threats of legal action if the event were to be permanently canceled.

A public meeting of the library’s board of trustees in Highland Park to discuss the issue on June 5 drew so much interest that the meeting was cancelled to due to crowd control and security concerns.

On the advice of counsel, trustee president Bruce Walker decided that the library would simply reschedule the *P Is for Palestine* author talk, and “the library will schedule a program around the book *I Is for Israel* by Gili Bar-Hillel and Prodepta Das as soon as possible.”

The Vaad Harabonim of Raritan Valley, an Orthodox rabbinical council, made a statement in support of the decision. “We prefer this compromise for the sake of public safety and to avoid potentially toxic confrontations between opposing sides,” the council said.

Not every Jewish community member or even every rabbi in the Highland Park area was in favor of the compromise.

“Imagine that people wrote a book called T Is for Tiananmen Square, and didn’t talk about the massacre that occurred there,” said Rabbi Eliot Melomet, rabbi of the Highland Park Conservative Temple/Congregation Anshe Emeth, in an interview. “It provides legitimacy to this book and makes the children’s reading room a battleground for ideology and propaganda. We need to unmask the lies that are being presented here. That book is being presented as an exercise in tolerance and understanding, but that is a lie, by renowned provocateurs.”

He added, “I realize it [the compromise] is for the sake of *shalom bayit* (‘peace’), but it kicks the issue down the road.” Reported in: *Jewish News Syndicate*, June 5, 2019.

## Montclair, New Jersey

An anti-Trump painting entitled *Hello Shitty, Available in a White House Near You! (Grab Him by His Pussy)* by Gwenn Seemel was reinstalled at an exhibition called “Fear and Love” at the Montclair Public Library in Montclair, New Jersey.

The satirical painting featured President Trump with his signature “Make America Great Again” cap changed to “Make America White Again,” and a mock-up of the Hello Kitty brand, with the “Kitty” changed to “Shitty.” It was part of





an exhibit featuring the works of six artists.

Studio Montclair, which organized the exhibition, had said it took down the painting because of the library's policy prohibiting profanity. In addition to the obscenity in its title, there are obscene words in the painting itself, although they are not easily noticed at first glance.

Yet, according to library director Peter Coyle, the library has no such policy about profanity.

After news reports, including a national story on Newsweek.com, covered the removal of the painting in early April 2019, Coyle and Seemel, along with Studio Montclair President RitaMarie Cimini and Studio Montclair Executive Director Susanna Baker, met to discuss the matter. "After clearing up the misunderstanding about the prohibition against vulgarity, we installed the piece," said Cimini, adding: "It is never Studio Montclair's intention to censor freedom of expression."

Explaining Studio Montclair's actions, Baker told Patch.com that in previous collaborations with the library, they had been asked not to display artwork with nudes or curse words. "The title of the piece on all our documentation was 'Hello Kitty . . .'" and the curse words were not obvious to us in the images we had seen of the work prior to the installation."

The painting was back on display in the library within a week of its removal, until the scheduled closing of the exhibit on April 29.

Seemel, in a Facebook video discussing the exhibit, said the painting grew from her feeling "that this man was not fit to be president."

She added, "I can't make him go away . . . but I can paint his portrait. I'm a professional portrait artist. I can paint his portrait and surround him

with his crimes. And in my small way I can make sure that he doesn't get away with everything."

The artist added: "For the record, I'd like to say that I don't think anyone in this situation did anything wrong." Reported in: *Patch Montclair*, April 11, 2019; *Newsweek*, April 12; NJarts.net, April 12.

## SCHOOLS Los Angeles, California

A mural by artist Beau Stanton, honoring actress Ava Gardner, will be retained on the exterior wall of Robert F. Kennedy Community Schools' high school gym in Los Angeles, under a compromise in which the artist will oversee changes to the work.

Originally, the mural's background had rays behind the actress's head. Members of the surrounding community, which is ethnically Korean, complained that rays resembled the Rising Sun flag of Imperialist Japan. This complaint led the superintendent of the Los Angeles Unified School District to remove the mural in December 2018. The National Coalition Against Censorship and others pushed back against the superintendent's decision.

The mural was created as part of an arts initiative at the school, which involved workshops and seminars with students, with a grant from the Kennedy Foundation.

Stanton reflected on the outcome of the controversy: "Over the past several months I have had the opportunity to meet with a diverse cross section of stakeholders regarding my mural, including students, faculty, fellow artists, and members of the Koreatown Community. These interactions have allowed me to synthesize a solution that aims to rise above the original binary conversation of 'keep or remove the mural' in order to build upon the original work and

create something that speaks to the past, present, and future of the RFK campus."

The school district will re-allocate the funds earmarked for removal to fund the work of altering the mural.

Reported in: ncaac.org, December 7, 2018, December 17, May 30, 2019.

## Stockton, California

The *Bruin Voice*, the student newspaper at Bear Creek High School Stockton, California, withstood threats from the Lodi Unified School District administration, and on April 26, 2019 published a profile of an eighteen-year-old student who works in the porn industry.

Administrators wanted to review the story ahead of time, and had threatened to dismiss the paper's adviser if she did not comply. The district backed down following an attorney's review of the article.

"Because we are charged with the education and care of our community's children, we will always be diligent in our efforts to provide a safe learning environment for all students, while complying with our obligations under the law," the district said in a press release.

*Bruin Voice* news editor Bailey Kirkeby wrote the article, titled "Risky business: starting a career in the adult entertainment industry."

Although student journalists are protected under the First Amendment, content that is obscene, libelous, slanderous, incites unlawful or dangerous acts, or may disrupt the school day can be censored. Student journalists have some protections against administrative censorship under California's "New Voices" legislation, passed in 1977.

Adviser Kathi Duffel originally refused to agree to any prior review, citing the students' rights to free speech. She told the Associated



Press that the article, “will help students think more critically about the choices they do make at this age in their lives.”

According to statements by the school district, the district and Duffel later agreed on an independent review of the article by a third-party lawyer before publication.

The student who is profiled in the story said that she supports publication of the article to dispel rumors. “I’m 18, what I’m doing is legal, and I don’t see why everyone is making such a big deal out of it,” Caitlin Fink told the AP.

This is not the district’s first attempt to censor the newspaper. According to the publication’s “About” page, the *Bruin Voice*’s motto, “The *Voice* shall not be silenced” was coined after early attempts of censorship following the paper’s establishment in 1991. Reported in: *Education Week* blog, April 30, 2019.

### Hyattsville, Maryland

*The 25th Annual Putnam County Spelling Bee* (2005), a play by William Finn, was performed at Hyattsville Middle School on May 17 and 18, 2019, after an outcry from some parents and LGBTQ advocates when the show was abruptly cancelled by Prince George’s County Public Schools (PGCPS) officials the previous month.

The school principal said the decision to cancel was not based on the presence of gay characters in the musical comedy. Instead, he said, it was because “concerns arose over the production’s use of profane language, racial jokes, and sexual innuendo/content and its appropriateness for our young performers and even younger children in the audience.”

But in response to community concerns, the school district ultimately

decided to reverse its decision and let the show go on.

In a letter sent to students and parents, the principal apologized “for not being more diligent in selecting the play at the beginning” and said he understood the anger, confusion, and frustration that the sudden cancellation had caused.

Jamie McGonnigal, an LGBTQ advocate who has a child who will one day attend Hyattsville Middle School, said “I think the problem that needs to be addressed is the homophobia that was part of the decision-making process to cancel it in the first place,” McGonnigal has a background in theater and spent years producing Broadway concerts in New York.

As part of the school district’s decision to bring back the play, it was designated PG-13, and feeder elementary schools were not invited to the play. A sign posted at the school said “Disclaimer: Parental guidance suggested. Some material may not be suitable for children.”

In addition, all cast and crew members had to get signed permission forms from their parents/guardians.

WJLA Channel 7, the ABC television news affiliate in the Washington, D.C. area, reported that two parents are now playing the roles of the two gay dads who are featured in the play. It is unclear whether students were originally cast in those roles, prior to the controversy over the play’s content. A spokesperson for Prince George’s County Public Schools said the parents volunteered for those roles—but she could not yet say why or when that change was made.

Several community members told ABC7 they were disappointed to hear that update. McGonnigal agreed. “If there are only adults playing the gay characters, it sends a message that there’s something wrong with those roles, that they’re not suitable for kids

to play,” he said. “And I think that’s so incredibly the wrong message to be sending to kids.”

Some parents said they’re just relieved the kids got the chance to perform, after being crushed by the sudden cancellation in April. They had been rehearsing for months.

PGCPS has already said that its Department of Creative and Performing Arts will be reviewing its guidelines for age- and grade-level appropriate theater productions, in hopes of avoiding a similar situation in the future.

Music Theatre International, the New York-based licensing agency for play, and said that the play is very popular in high schools, but has also been performed by middle schools in the past. Reported in: WJLA ABC7, May 15, 2019.

### Johnston, Pennsylvania

*The Curious Incident of the Dog in the Night-Time* (2003) by Mark Haddon, a mystery novel about a teenager with an autism-like disorder, will remain on the list of books students may opt to read as part of the summer reading program at the Westmont Hilltop School District in Johnstown, Pennsylvania.

The district’s board of directors on May 16, 2019, voted 6–2 (with one member absent) to retain the book, in a meeting that drew one of the biggest crowds in its history.

Jeffrey Masterson, the president of the school board, said that the “many” complaints he received about the book fell into one or more of three categories—complaints about the foul language it contains, complaints that its profane use of God’s name offends Christian sensibilities, and complaints that it includes a negative portrayal of a character with autism or a similar disorder.



Lisa Drennen, one of the board members who voted against leaving the book on the reading list, gave the report of the board's curriculum committee, and said that the committee did not recommend approval. She and urged her fellow board members to remove the book from the reading list, condemning what she described as the "vulgarity" and "blasphemies" within its pages.

"If we, as a board, vote to pass this book, then we are condoning the book as a good choice for our students," she said. "We, as a board, should not be labeling vulgarity and religious blasphemies as good. . . . If, in the [student] handbook, a student's responsibility is to avoid indecent, obscene or inappropriate language . . . then why are we considering going directly against what we, as a school board, tell our students not to do?"

The other board member who voted against keeping the book on the list said before the vote that that the district would not be "banning" the book by removing it from its summer reading list, and added that parents who feel that their children should read the book can have them read it outside of school.

Another board member said before the vote that schools "need to teach our students to grow and think critically, not to shelter them from what is different. . . . I think that the value gained from understanding differences for this individual in particular far outweighs the language used." Reported in: *Johnston Tribune-Democrat*, May 17, 2019.

## PRISONS Savannah, Georgia

Books and magazines can once again be given to inmates at the Chatham County Detention Center in Savannah. The American Civil Liberties Union (ACLU) says a Georgia

sheriff's office in early June 2019 revised a policy that had prohibited inmates from receiving publications by mail or from visitors.

In April, the ACLU accused the Chatham County Sheriff's Office of violating the rights of inmates at the county jail in Savannah, saying authorities had enacted one of the "most egregious book bans" in US prisons or jails. Under the previous policy, which went into effect on March 4, 2019, inmates could only select reading materials from book carts managed by jail staff.

The ACLU protested that blocking reading material from friends, family, and nonprofit organizations infringes on prisoners' First Amendment rights.

When the policy was first announced, Sheriff John T. Wilcher claimed it was necessary to reduce the amount of flammable material in prison cells, as well as reduce the chance that contraband could be smuggled in through books and magazines. The contraband excuse was recently used by Washington State Department of Corrections in a similar, short-lived, policy, but the Washington policy was lax compared to this, the ACLU wrote. In a letter to Wilcher and Chatham County Attorney, R. Jonathan Hart, the ACLU declared, "We have never before encountered a policy that so completely restricts detained persons' access to books and publications."

In a statement on June 6, the ACLU said the new policy allows incarcerated people to order books and publications directly from publishers and vendors. Reported in: [acluga.org](http://acluga.org), April 10, 2019; [cblfd.org](http://cblfd.org), April 16; Associated Press, June 8.

## Danville, Illinois

More than 220 books were removed from the library at the Danville Correctional Center, most of them related

to African American history, race, and social change, between November 2018 and January 2019—but they were returned in July 2019.

The library was established by the Education Justice Project (EJP), a college in prison program at the University of Illinois. Members of the EJP took action to see that the titles were returned, including testifying at a hearing in the Illinois House of Representatives.

Among the materials that had been removed:

- *Uncle Tom's Cabin* (1852) by Harriet Beecher Stowe;
- *Up from Slavery* (1901), Booker T. Washington's autobiography;
- *Race Matters* (1994) by Harvard scholar Cornell West;
- *Locking Up Our Own: Crime and Punishment in Black America* (2017) by James Forman Jr., winner of the 2018 Pulitzer Prize for general nonfiction;
- *Mapping Your Future: A Guide to Successful Reentry 2017-2018* by the EJP, and
- Other materials that were carefully curated to help students make a successful transition from the medium-security prison back to their community after their release.

Prior to the return of materials, the prison issued a statement to the *News-Gazette* of Champaign, Illinois:

Education is a critical component of rehabilitation for those who are incarcerated and [the department] values our partnership with the University of Illinois and the Education Justice Project. Per [department] policy, all publications must be reviewed for admittance into Department facilities. When it was discovered that books had entered Danville Correctional Center without being



appropriately reviewed, they were removed from the facility.

We aim to review the books and return them to the facility, and while we have not yet received them back from the Education Justice Project, we remain hopeful this will occur.

Under state law, the corrections department can restrict books determined to be obscene or “detrimental to security, good order, rehabilitation or discipline or if it might facilitate criminal activity or be detrimental to mental health needs of an offender as determined by a mental health

professional,” said Brian Dolinar, of the Freedom to Learn Campaign.

While the state has an official list of books banned from prisons, Dolinar pointed out that none that were removed or denied in Danville were on the list. Reported in: *News-Gazette* (Champaign, Illinois), June 9, 2019; [smilepolitely.com](http://smilepolitely.com), July 9.



*EDITOR'S NOTE: An increasing number of challenges to free expression focus on "drag queen storytimes," where the target is usually not the titles, contents, nor authors of any specific books, but rather who is reading them. In this version of storytimes where picture books are read aloud to children, performers dressed in drag (usually men dressed in theatrically feminine costumes) try to encourage both a love of reading and acceptance of diversity. Some of the performers and events are affiliated with Drag Queen Story Hour, a network of local organizations that began in San Francisco; others are independent. Throughout this section, we use the acronym LGBTQ (lesbian, gay, bisexual, transgender, and queer) unless a quoted source uses a different one.*

## LIBRARIES Vallejo, California

Drag Queen Story Hour at Vallejo's John F. Kennedy Library in Vallejo, California on June 17, 2019, drew parents and children to hear a book read by Sacramento resident "Apple Adams," while a lone protester with a homemade sign, and a much larger number of Solano Pride Center counter-protesters, stood outside.

The protester, Don Grundmann of Santa Clara, said he has formed a group called The California Straight Pride Coalition, to combat what he said he believes is a movement designed to groom young children to accept aberrant behavior.

"I go all over the place for this," he said. "This is a special kind of evil that must be stopped. The reading is a cover story; it's about mentally making the children accept degeneracy as normal."

His Vallejo protest was Grundmann's "first foray into the public arena," he said. "But," he claimed, branches of his coalition "are springing up all across the country."

By the end of the event, three more protesters showed up, including frequent *Vallejo Times-Herald* letter-to-the-editor writer Ryan Messano, who often rails against homosexuals and other issues he believes are leading the country down a negative path.

One of the counter-protesters was Michael Wilson of Vallejo, aide to Solano County Supervisor Erin Hannigan and the city's second openly gay Councilman in the early 2000s.

"I'm an advocate of Pride Month and the activities going on with that," he said. "Supervisor Hannigan supports the Solano Pride Coalition and the good work they do. She and I advocate for equal rights for all people."

Tom Bilbo of the Solano Pride Center said he and several others were there to ensure the children who wanted to listen to story time were able to do so without interference.

Bilbo said his group recruited Friday's performer and that anyone brought to read to children is thoroughly vetted. The drag queen story hour is about getting dressed up and bringing joy to people, he said.

The Solano County Library's deputy director, Jessica Jupitus, said story hour is a regular event at the library and this one had no added agenda.

"It's a fun thing to do," she said. "We want to encourage people to come in to the library, and for young children age two to five, dress-up is normal imaginative play, so, to see a grown up dressed up, is fun."

The library system welcomes all kinds of people for its story hours, she said. "We've had a race car driver, someone dressed as Supergirl, [and] police officers, read stories," she said. "We want the community to know it's for everyone." Reported in: *Vallejo Times-Herald*, June 17, 2019.

## Jacksonville, Florida

"Storybook Pride Prom" at Willowbranch Library in Riverside, scheduled for Friday, June 28, 2019, was cancelled on Monday, June 24, after the library had received hundreds of phone calls supporting and protesting the event.

In a switch from a typical drag queen storytime, in which an adult dressed in drag reads to young children, the Storybook Prom planned to give the hundred teenagers who signed up a chance to dress as their favorite book characters, or in drag, for a night of music, dancing, and costumes.

Chris Boivin, the library's assistant director of community relations and marketing, said the library canceled the event over worries about whether the library could provide enough "safety and security for everybody involved." The library, which hosts other LGBTQ events, did not anticipate the responses to its plans for the Pride Prom, Boivin said.

Prior to the cancellation, Raymond Johnson, founder of Biblical Concepts Ministries in Jacksonville, encouraged people in an email titled "emergency alert" to contact city officials and local pastors and demand the event be canceled.

Also, Elizabeth Johnston, a popular blogger and author who goes by "The Activist Mommy," asked her hundreds of thousands of Facebook followers, a week before the scheduled "Prom," to call Willowbranch and "express your disgust that this perversion is taking place in a taxpayer funded library."

Beatrice Palmer, a local drag performer who had planned to make an appearance at the Storybook Prom, said that she does not believe security was a real issue for the event.

JASMYN, a nonprofit organization for LGBTQ youth, has hosted similar





prom events for the last decade without issues, Palmer said.

“You know how to keep one hundred people in your library safe,” Palmer said. “It is possible to keep on hundred kids safe in a library. But when it’s gay children, it becomes a problem.”

When the *Florida Times-Union* asked the library to comment, Boivin said “The primary component, the real intention . . . was to make it a prom, and to make it something where kids could discover the library in a way they may not have before. But in the end,” Boivin added, “the environment may have been too tumultuous for us to provide the kind of event that we wanted to provide.”

Boivin said there has not been a plan to reschedule the event within the library. Reported in: *Florida Times-Union*, June 25, 2019.

### Alpharetta and Atlanta, Georgia

The Atlanta-Fulton Public Library System removed a “Drag Queen Story Time” from its online calendar of events, cancelling without explanation the event that had been scheduled for April 6, 2019. It allowed the metro Atlanta drag queen Steven Igarashi-Ball, who performs in drag mostly for charity as Miss Terra Cotta Sugarbaker, to reschedule it for April 27 at the library system’s Alpharetta branch—but without any promotion by the library, nor by the county that funds the library. Other storytime events remain on the library system’s public calendar.

When the event was rescheduled, Igarashi-Ball said, the 180 spaces filled in less than an hour.

After the county library system declined to endorse the event, Atlanta Mayor Keisha Lance Bottoms invited the drag queen to read to children at city hall.

“Miss Terra Cotta Sugarbaker and all of our LGBTQ friends are always welcome at Atlanta City Hall. How about we host your next story hour? @CityofAtlanta—let’s make it happen! #OneAtlanta,” Bottoms tweeted on March 29.

Igarashi-Ball, who had been involved in such events at the library system’s Ponce de Leon Avenue branch since September 2017, said he received an email in early March from Claudia Strange, who handles marketing and public relations for the Atlanta-Fulton Public Library System.

“I was told that the event was being cancelled by the county and not by the library, and they said that it was above the library’s decision,” Igarashi-Ball said. “I was told that all of the libraries support the event and wanted it to continue, but that the county had say over them and that the county was cancelling it.”

The event in Alpharetta was to be the library system’s first drag queen storytime at a suburban branch, outside of the Atlanta city perimeter.

When asked by the *Atlanta Journal-Constitution*, neither library nor county officials explained why the event was dropped from the calendar.

Jessica Corbitt-Dominguez, a spokesperson for the library system (which includes the Alpharetta and Ponce de Leon libraries), sent the *Journal-Constitution* a statement similar to the one she gave Atlanta LGBTQ magazine *Project Q Atlanta*, which first reported the story: “We appreciate the community support for the Drag Queen Story Time event, which has been successful and well received at the Ponce de Leon Library. We recommended to the organizer that it continue at the location where it has a strong track record. . . . Not every program is offered at every location.”

Igarashi-Ball, who doesn’t perform in clubs, isn’t sure why his clean and

humorous act wasn’t welcomed for the children of Alpharetta as it has been in Atlanta, especially when the branch invited him.

He said he has a right to know who is taking issue with him so he can properly defend himself. “By not being provided an answer, it feels like discrimination and it feels like people are afraid of the event, which feels like homophobia.”

He told *Project Q Atlanta*, “If they’re going to censor my event, what event would be next? I feel like libraries have to be safe spaces and bastions of freedom of speech, and I feel like this goes against all of that.” Reported in: *Project Q Atlanta*, March 27, 2019; *Atlanta Journal-Constitution*, April 1; *The Hill*, April 4.

### Rockford, Illinois

Rockford Public Library’s first Drag Queen Story Hour, featuring entertainer Cass Downing—a transgender woman dressed in drag, whose stage name is Cass Marie Domino—attracted dozens of parents and their small children to the library’s East Branch on June 22, 2019, for stories and songs celebrating diversity and inclusion.

Outside the library, well over one hundred protesters lined East State Street, reciting prayers and carrying signs condemning the event. A smaller but vocal contingent of counter-protesters were also on hand, to support the Drag Queen Story Hour.

Several police officers, including Chief Dan O’Shea, maintained order in the parking lot as the two groups occasionally shouted insults at each other.

Downing, dressed as an “ice queen” in a powder blue floor-length, beaded dress with a matching crown, read books including *What’s the Difference? Being Different is Amazing* by



Doyin Richards, and *It's Okay to Be Different* by Todd Parr.

Rockford Public Library Executive Director Lynn Stainbrook was undaunted by the large group of protesters.

“We are living in a more diverse society than ever before,” Stainbrook said. “Our children, my grandchildren are going to work side-by-side with people that fall into the LGBTQ community. They need to learn tolerance and acceptance at a very early age. They will be living and working and playing aside people of this community and we need to accept that and celebrate it.”

Paul Logli, president of the library board of trustees, said he and other board members at first were “uncertain about the program.” Trustees learned in May about the story hour that was scheduled by staff.

“The title gets your attention,” Logli said. “But when staff explained to some of us, many—including myself—became more comfortable.”

Logli said some residents and patrons contacted board and staff members not only about the story hour, but also about Queer Prom two weeks earlier at the Nordlof Center, which the library owns and operates. It was for teens ages thirteen to eighteen years old. The event was funded by the Community Foundation of Northern Illinois.

The events at the library are tied into LGBTQ Pride Month. Mayor Tom McNamara made the city’s observance of the national pride month official with a proclamation.

Sandi Ware, a Rockford parent of two preschoolers, raised objections before the storytime. “A big, hairy man scantily dressed as a woman promoting homosexuality and gender confusion . . . is inappropriate for this age group,” Ware said. The drag

queen storytime was meant for children ages three to five.

Ware said she objects to the library “using our tax dollars . . . to promote gender confusion as normal and desirable.”

Logli said, however, that laws and policy would not deny use of the library “based solely or primarily on the sexual orientation or identification of the participants.” The library designated a room separate from the children’s area with its own door, so no child or adult will “stumble” into an event they don’t want to attend, Logli said.

“Attendees of Drag Queen Story Hour are citizens and taxpayers who have freely and intentionally chosen to participate and are equally entitled to access publicly funded facilities and programs of their choosing,” Logli said. Reported in: *Rockford Register Star*, June 4, June 22, 2019.

### Evansville, Indiana

Nearly a month after the original event was over, Drag Queen Story Hour remained a hot topic at the board meeting of Evansville Public Library on March 14, 2019.

“The stench of Drag Queen Story Hour intentionally sowing gender confusion in our littlest children still befouls our community,” one speaker said at the meeting.

“Jesus has given us a choice, why would we think we can’t give people a choice? As library board members, remember you represent all the citizens and not just a few,” said another.

A third speaker questioned how much security for the event cost the city. Afterwards, the Evansville Police Department told Eyewitness News that police overtime cost just under \$5,500 for the event.

The meeting ended almost identically to the last board meeting, which took place days before Drag Queen

Story Hour—with a motion: “That EVPL withdraw personnel, direct support, marketing and promotion of the Drag Queen Story Hour future events.”

The board member who made that motion, Richard Clements, is the same one who proposed it in February. No other board member seconded that motion.

At the March meeting, the board did not discuss whether another Drag Queen Story Hour is in Evansville’s future. Reported in: *TristateHomepage.com*. March 14, 2019.

### Lawrence, Kansas

The Lawrence Public Library went ahead with its “Reading Rainbow Storytime with Deja Brooks” event on June 22, 2019, despite a threatening message about the event posted on 4chan the day before.

The threatening message did not include the names of anyone specific, but called for protest and referred to the Reading Rainbow Storytime.

The library had announced the event with this summary:

Join our host Deja Brooks as she reads and performs stories embracing our local LGBT community and celebrating families of all kinds! Deja’s Reading Rainbow is a storytime about love and friendship, being different and belonging, being unique and being accepted, colors, rainbows, and, of course, fun!

The library asked that a Lawrence Police Department officer be present during the event in order to support library security staff. In a public statement before the event, library administrators said they “will continue to work together with the FBI and the Lawrence Police Department to keep informed of any further



developments, and will communicate them publicly if more information becomes available.”

The library posted the following tweet after the event: “Thank you, @LawrenceKS\_PD for being with us today, and @MrDejaBrooks for bringing hundreds of people out for your Reading Rainbow Storytime.” Reported in: KCTV-5 News, June 22, 2019.

### Wichita, Kansas

Protests continued for months after the Wichita Public Library hosted “Say YAAAS to Reading,” an event that featured drag queens reading picture books in a private conference room at the downtown library on September 25, 2018.

Taking action on the controversy nearly half a year later, on March 19, 2019, the Wichita library board of directors approved a new programming policy that states the library’s commitment to “free and open access to information and ideas for all users.” The proposed policy appears to leave the door open for future drag queen events, though none are scheduled.

The storytime in September drew about 220 people to the downtown library, including families with young children, even though it had been advertised as an adult event. It also drew protests—on the evening of the event as well as during the weeks and months to follow.

The new policy, inspired by the American Library Association’s “Library Bill of Rights,” stresses the library’s role as a forum for intellectual freedom, where a wide spectrum of thoughts and ideas are welcome. It further notes that library programs, like library materials, should not be censored just because some customers might disagree with them.

“Decisions to provide programs will not be made on the basis of any

anticipated approval or disapproval.” Wichita’s policy states, “but solely on the merits of the program in serving the interests of Library customers.”

The guidelines go on to say, “Performers and presenters will not be excluded from consideration because of their origin, background or views, or because of possible controversy.” Reported in: *Wichita Eagle*, March 14, 2019, March 21.

### Louisville, Kentucky

A Drag Queen Storytime at the Louisville Main Library in March 2019 was cancelled, but another one was held about two months later, on May 18.

The library never gave a reason for cancelling the March event, which was planned to feature the Derby Sisters.

The May event featured local entertainer Vanessa Demornay reading about to 200 families. The books she chose, *My Princess Boy* and *Not Every Princess Wears Pink*, center around being yourself and ignoring what society says you should be, according to Demornay.

Demonstrators, previously reported as being with the American Family Association, didn’t want the rescheduled Drag Queen Storytime to happen. To show their objection to the event, several stood just down the stairs, coming face-to-face with counter-protesters. Homemade signs suggested kids shouldn’t be exposed to the lifestyle.

“We were expecting that there would be a large and enthusiastic crowd for it. Turns out, we were correct,” said Lee Burchfield, director of the Louisville Free Public Library. “The Louisville community is very diverse. The public library’s mission is to provide the broadest possible range of information and ideas to the community, so we really strive to offer

something for everybody. I think this was an important step for us.”

The library hopes to be an example of compassion, encouraging protesters and counter-protesters alike to discuss their views respectfully. “What the library hopes is that one day the library can be the marketplace of ideas, where instead of shouting at each other, they actually sit down and talk to one another,” Burchfield said. Reported in: WAVE 3 News, May 18, 2019.

### Annapolis, Maryland

Two sessions of a Drag Queen Story Time at the Severna Park Community Library in Annapolis drew toddlers and parents, plus protesters, on June 29, 2019. About one week earlier, the board that oversees libraries in Annapolis, the Anne Arundel County Public Libraries (AACPL) Board of Trustees, had changed a programming policy to give library staff more autonomy in planning such events.

The June drag queen events were on the same day as Annapolis celebrated the city’s first LGBTQ pride parade.

At the day’s first storytime, at 1 p.m., about thirty protesters prayed and talked peacefully on the road outside of the library, according to AACPL spokesperson Christine Feldmann. Feldmann said the group had signs that said drag queens are dangerous for children and gender fluidity is not real.

At the 3 p.m. session, two protesters went inside, where about 165 toddlers and parents were attending the storytime. Feldmann said the two began shouting at the performer, Matthew Maisano, who performs as Balena Canto. Maisano said he was halfway through reading *Be Who You Are* when one of the men started shouting, “This is corrupting your children,” and “This isn’t right.”



Feldmann said the men were removed by police after one of them shoved library board member Rob Sapp, who asked them to be quiet. “The customers cheered when they were removed and the storytime continued,” Feldmann said. “Lots of happy families.”

Sapp said he plans to press charges, and he saw police arrest the man who pushed him. “I wanted to get between him and the kids,” Sapp said.

Both Feldmann and Maisano said the incident lasted less than a minute.

Previously, after a Drag Queen Story Time at another library in Anne Arundel County, the AACPL voted in December 2019 to give itself the power to vote on whether “controversial” programs should be approved. [See JIFP *Spring 2019*, page 68.] Many of the programs deemed “controversial” included LGBTQ content.

On June 20, the board unanimously voted to adopt a revised version of the policy that no longer gives the board voting power or calls for programs to be flagged as “potentially controversial,” and instead asks Libraries CEO Skip Auld to notify the board of any programs that “merit their special attention.” Reported in: *Capitol Gazette*, June 20, 2019, June 29.

### Lexington Park, Maryland

On June 23, 2019, Drag Queen Story Hour drew more than one hundred attendees to the public library in Lexington Park, Maryland. Supporters and protesters picketed and prayed outside the Lexington Park library as children listened to stories read by the performers, crafted paper crowns, and had their faces painted. One protester was arrested for allegedly disrupting the event.

The Southern Maryland Area Secular Humanists and PFLAG [Parents and Friends of Lesbians and Gays] Leonardtown, the nonprofit groups

that organized the story hour, rented a library room to host two male performance artists dressed in theatrical women’s clothing.

Ashley Kyle Morgan, a forty-two-year-old Leonardtown resident, was apprehended by St. Mary’s sheriff’s deputies after he was observed running into the meeting room just as the event was beginning. He told the children present, “Do not believe these lies” told by “men in dresses.” This prompted discord as parents tried to calm children, some of whom were crying.

Morgan has been charged on five misdemeanor counts of disorderly conduct, disturbing the peace, failure to obey a reasonable/lawful order, resisting arrest, and trespassing at a public agency, according to court records.

“It’s a private event, you have to be registered to do it. Obviously, you can’t cause a disturbance to prevent what’s going on in the room, which is what happened,” sheriff’s Captain Steven Hall, commander of the agency’s special operations division, said at the library.

After the arrest, the story hour commenced, with performers Nicholas Hebb, who goes by Angelica Lize, and Stormy Vain, who declined to provide his real name, reading books such as *Free To Be Incredible Me* by local author Joelle-Elizabeth Retener, *This Day in June* by Gayle Pitman, and *Neither* by Arlie Anderson.

As the event carried on, picketers stood on either side of the library, separated by police tape. Protesters displayed signs, some of which declared “God has something better for you,” while a few others espoused homophobic rhetoric.

Protesters outside peacefully held a prayer vigil, with no further incidents between the protesters and counter-protesters. Jeremy Linehan, who

joined the vigil, said he was there “so that the light of Jesus may shine on those who are lost,” to nods of agreement from those around him.

On the other side, supporters of the event blew bubbles, played the Beatles and Elton John, and held up colorful signage stating “Men in dresses telling stories is the foundation of Christianity,” and other messages of support for the LGBTQ community. Reported in: *The Enterprise/SoMDNews.com*, June 26, 2019.

### Fall River, Massachusetts

Hundreds of supporters and families with children turned out to the first-ever Drag Queen Storytime at the Fall River Public Library on June 1, 2019, an event to kick off June as Pride Month in the town’s LGBTQ community.

Library-goers filled the meeting room and hallway and spilled out the door. In order to accommodate everyone, drag queen Naomi Chomsky offered three separate readings to allow everyone to participate.

Opposition came from the Massachusetts Family Institute, a non-profit Christian organization based in Worcester, represented by local members of the Baptist Temple Church and its pastor Michael Johnson.

Before storytime, Chomsky told the press, “Today is about the children and celebrating diversity.” She said having inclusive events in bigger cities is important, but it may be even more critical in smaller municipalities like Fall River.

“Gay people live everywhere,” Chomsky said. “You shouldn’t have to move to the big city (to feel included). No matter who you are, you’re somebody who deserves love and respect.”

The Family Institute group outside peacefully protested and prayed. It did not participate in a sit-in to keep



children out of the event room, as had been planned.

Pastor Johnson said the group was not there to hate, but rather open lines of communication with the LGBTQ community to teach them God's way.

"We're trying to bring about a consciousness," Johnson said. "Leave our kids alone if you're going to indoctrinate them that this is an acceptable lifestyle."

A police presence, both uniformed and in plain clothes, was on the scene inside and outside the library. Police Sargent Mike Digagni said it was better to have "too many and not need them, than not enough."

Library Director Liane Verville said she had a lot of support from her Board of Trustees and Mayor Jasiel Correia II in holding the event, despite protesters. Reported in: *Herald News*, June 1, 2019.

### Conway, New Hampshire

An overflow crowd came to the Drag Queen Story Hour for children on Friday's June 28, 2019 at the Conway Public Library.

According to Christopher Bellis, co-chair of White Mountains Pride, which sponsored the event, "We had 90 people (children and parents) at the story hour, with the readers doing two sets of readings, and 40 to 50 people outside who were there to support and maybe 20 who were against."

An overflow reading area for children unable to get into the Drag Queen Story Hour was held by representatives of the Jackson Public Library.

David Smolen, library director at the Conway Public Library, said he was pleased with the Drag Queen Story Hour's reception, despite the protests out front. Ten to twenty protesters against the event were outnumbered by counter-protesters by a

margin of about two to one, according to reporters' estimates.

The White Mountains Pride Committee had hired a police detail, but the officers reported there were no altercations between the two bands of protesters.

Smolen said the story hour "did exactly what organizers said it would" The controversy "was much ado about nothing," said Smolen. "The two readers, Mimi and Kristi, did a great job, reading about inclusiveness and acceptance and diversity and being a good friend."

Smolen said he was proud that the board of trustees upheld the library's principles of free speech with a vision statement promoting open dialogue. "I think the program was consistent with our values as a profession," said Smolen.

Protesters said they did not feel it was proper to expose young children to the potential influence of drag queens.

Prior to the event, Christopher Jay, a lawyer affiliated with the conservative religious non-profit Cornerstone Action, filed a right-to-know request pertaining to Drag Queen Story Hours at the Conway Public Library. He obtained emails in which organizers of the storytimes said they were not teaching about any sort of sex.

Jay disputed that benign interpretation of drag queen storytimes. Cornerstone issued an official comment, saying: "Drag queens are 'adults-only entertainment' and adult-only entertainment should not be mixed with children. Parents have a right to know and to challenge this at their local library." Reported in: *Conway Daily Sun*, June 13; July 1.

### Brooklyn, New York

Two public libraries in Brooklyn held drag queen storytimes in June 2019.

When the Gerritsen Beach Library held its first ever Drag Queen Story Hour on June 6, a cluster of small children sat on the floor transfixed by a lavender-haired drag queen named Angel Elektra, who wore a rainbow-hued sequin sheath and read storybooks aloud to them.

Outside, it was a much different scene.

On one side of blue New York Police Department barricades stood protesters who had papered the neighborhood with fliers condemning the event. They held aloft signs with slogans like "Grinding America Down," and accused the organizers of child abuse.

A few yards away, behind another set of barricades, were counter-demonstrators who showed up to support Drag Queen Story Hour.

Objectors (who mainly took issue with the event's suggested age bracket, zero to five) say the "taxpayer funded attack on our babies" aims to "groom children into the transgender lifestyle."

Planners of the counter-protest had used Facebook to urge people to show that Angel Elektra was welcome in Brooklyn.

Later that month, locals flocked to support a drag queen who read children's books to kids at Brooklyn Public Library's Crown Heights branch on June 27, overwhelming a small group of protesters. Just five people gathered on June 27 to express outrage over Harmonica Sunbeam's presence at "Drag Queen Story Hour," while more than fifty colorfully dressed proponents sang songs and chanted in support of the event.

Police kept the two groups separated.

One protester shouted biblical references into a megaphone to warn of the potential dire consequences of the drag queen's presence.





“God wiped out cities because of this,” said the man who asked only to be identified as Tag. “We’re almost there. It’s getting worse now than it was back then.”

Supporters brushed off the ominous alarms, calling the protesters intolerant and a poor representation of the Crown Heights community.

“We’re here to stand against bigotry in whatever form it takes,” said Alice Tracey. “And look at how much we outnumber them by. I think that tells you all you need to know.”

The protest organizer chalked up the weak attendance to the intolerance of pro-drag queen demonstrators.

“Obviously, we didn’t have the turnout we’d hoped for,” said Rick Knight. “I think that if you express any conservative views, people just jump on you. People are afraid to speak against this.”

Knight suspected that the story hour program was the beginning of an elaborate indoctrination effort on the part of drag queens everywhere.

“They can’t reproduce, so they’re recruiting,” he said. “I’m not a conspiracy theorist, but I think a lot of this ideology is from the cultural Marxists.”

The demonstrators, whom Knight described as fighting a global culture war, were attempting to draw the line before society slid down a “slippery slope,” he said.

“Pedophilia is next,” Knight said. “You have to realize that drag queens were a fringe group just ten years ago, but now they’re mainstream. Next they’ll be defending pedophilia.”

The demonstrations did not interrupt the storytime, where approximately sixty-five kids listened to the guest of honor read a number of children’s books. Reported in: *Reported in: Brooklyn Eagle*, June 6, 2019; *The Daily Beast*, June 7; *Brooklyn Paper*, June 27.

## Astoria, Oregon

When a man showed up at the Astoria Library in February to protest a Drag Queen Story Hour, he had his phone out.

His plan was to provide a running commentary, broadcasting a livestream to his social media followers. His camera, though focused primarily on his own face, turned sometimes to capture the people attending the reading, including parents and their young children.

Jimmy Pearson, the library director, couldn’t do much about filming outside the library, but he drew the line when it came to filming and photographing people inside.

“I take library privacy very seriously,” Pearson said ahead of a Monday night City Council meeting, where he presented an updated set of the library’s standards of conduct.

“Parents have the right to not have their kids videotaped.”

The City Council approved the updated policy, which is not very different from what the library had in place before. It just codifies the rules, Pearson said.

The approval will give the rules a little more heft. Depending on the violation, anyone being disruptive or breaking library rules could be asked to leave for the day or even lose all privileges for up to three years. Reported in: *Daily Astorian*, April 16, 2019.

## Haverford Township, Pennsylvania

Haverford Township Free Library hosted its second annual Drag Queen Storytime in its third year of presenting programming featuring Pride and the LGBTQ community. Almost 500 people came to see the storytime on June 16, 2019, so the library had to add a second performance.

The event also drew hundreds of demonstrators, both in favor of and in opposition to the event. That was quite different from last year’s performance, which went off with no crowds outside. This year, township police closed the street to traffic in advance, and placed jersey barriers to keep the two factions separated from each other, as well as to provide a means of access for the families attending the event.

The reader was Matthew Maisano, a drag performer playing Ms. Balena Canto, dressed in a white pantsuit, glittery fuchsia stilettos, with eye shadow to match, plus a bejeweled necklace, bracelets, and earrings and flowers in her blond swept-up hair. For both performances, she read three books, sang songs such as the “Hello Song” and “If You Believe” from *The Wiz*, and did a rendition of the hokey pokey.

Sex was not discussed, and the storytime followed the structure of other storytimes hosted by non-drag queens.

“Today is about democracy,” said Phil Goldsmith, president of the library’s board of trustees. “It’s about people choosing for themselves what they want their children to see and be exposed to. It’s trying to understand the other side on both sides and hopefully at the end of the day, it’s a joyful day, that the kids have fun.”

Both sides were passionate in their cause and had visual and audible elements to have their message noticed.

On the one side was the opposition with an enormous banner reading, “Dear God: Let NOT the little children be perverted by Drag Queen story hours!” along with a statue of Mary, another banner of Our Lady of Guadalupe, bagpipes playing, and rounds of the Rosary being prayed.

On the other side, there were no shortage of supporters on hand. They



came with bubbles, rainbow flags, whistles, and even a didgeridoo. They also had a large banner, saying, “Welcome Balena Canto,” and drew rainbows on the street with sidewalk chalk.

Jennifer Phillips, interim director of the Swarthmore Public Library, started the event in Haverford three years ago as a way to support LGBTQ youth.

Phillips serves as co-host of the Equality, Diversity and Inclusion Commission for the Delaware County Library System with Mari Ayala, who said Saturday’s event represented the library’s mission. “The library,” Ayala said, “belongs to everyone.”

A few days before the event, more than 100 residents crowded a Haverford Township Board of Commissioners meeting on June 11 to air their views on whether the drag queen storytime should be held.

Among the opponents was Bill Williams, a physician and resident of Haverford Township, who warned that drag queen storytime “will force children into gender dysmorphia. We must consider the long-term consequences.”

He cited research from the American College of Pediatricians, which is listed by the Southern Poverty Law Center as “a fringe anti-LGBT hate group that masquerades as the premier US association of pediatricians to push anti-LGBT junk science, primarily via far-right conservative media and filing *amicus* briefs in cases related to gay adoption and marriage equality.”

But not all in the crowd were opposed to the event. Attendees wearing “I Support DQSH” stickers could be seen throughout the room.

“I think a lot of the opposition comes from a place of ignorance,” said Maisano, creator of the Balena Canto persona. He told *Philadelphia* magazine, “People who don’t take the time

to understand what Drag Queen Storytime really is about have the idea in their head that it’s a traditional club drag show that can have adult themes. It’s not. The main purpose of this is for kids to be exposed to a positive LGBTQ role model.”

In the end, only one member out of the nine commissioners spoke out in disapproval.

“This isn’t about inclusion and acceptance, this is about our children,” said commissioner James McGarrity. “The library should not have this on Saturday.”

Board commissioner Daniel Siegel fired back: “A cross-dresser reading to our three-year-olds isn’t a threat to our society, but intolerance is.”

“The event will go on as scheduled,” a representative from the library told *Philadelphia* magazine following the meeting. “Some residents assumed that the Board of Commissioners would side with them and put pressure on the library’s board to reconsider, but they failed. I’m happy to see that love trumps hate during Pride month.” Reported in: *Philadelphia Magazine*, June 14, 2019; *Delaware County Daily Times*, June 16.

### Pittsburgh, Pennsylvania

Carnegie Library of Pittsburgh (CLP) canceled a Drag Queen Story Hour at its Main branch, in the Oakland neighborhood, after threats were made against similar program nationwide. [The same threats also led to cancellation of a program at a Pittsburgh children’s museum—see page 76.]

The final installment of a series in which men in drag read stories to children had been scheduled for June 29, 2019, after previous installments of the series had gone off without a hitch. However, Carnegie Library spokesperson Suzanne Thinnes said, the library decided to “err on the side of safety.” She did not mention any

specific threats or where they purportedly came from.

Thinnes said, “We are very proud to offer this program and we fully intend on bringing it back next season.”

The library issued the following statement: “Due to unforeseen circumstances beyond our control, Drag Queen Story Hour will not be presented this Saturday, June 29, at CLP-Main. CLP is proud to join other libraries around the country to offer programming to families that explores diversity and encourages empathy, kindness and understanding.”

Sue Kerr, an LGBTQ activist, blogger and *Pittsburgh Current* columnist, said that while she understands that safety should be a primary concern, extra measures could have been taken by consulting with police to make the program safer, and let it go on as planned.

“Let’s make the event safer,” Kerr says. “I worry about what kind of message we are sending to the LGBTQ community, especially our children, when we give in to these kinds of threats.”

She added, “What makes the decision even harder to take is that this all happened on the last weekend of Pride Month and the weekend set to mark the 50th anniversary of the Stonewall riots. I think more should have been done before there was a cancellation.” Reported in: *Pittsburgh Current*, June 29, 2019; *Inquisitr*, June 30.

### Bristol, Rhode Island

The Rogers Free Library in Bristol, Rhode Island, cancelled a drag queen storytime originally scheduled for May 2019, after the library director cited “threats of protests.” The event was rescheduled for June 15.

A full house came out for the reading, with people spilling out of the room, as drag queen Naomi Chomski



read two picture books to children. The children had been invited to come in their favorite dress-up clothes and create their own crowns.

Swarms of people for and against drag queen story hour protested outside the library.

The library claims its mission includes the free exchange of diverse ideas, but that “sometimes it is challenging to get this balance just right,” the library said in a statement.

The event was co-sponsored by F.R. Pride as part of Pride Month. Reported in: WJAR/Turn to 10 TV News, May 31, 2019; June 4; WLNE ABC6 TV, June 15.

### Greenville County, South Carolina

A Drag Queen Story Hour on February 17, 2019, at the Five Forks branch of the Greenville County Library System in South Carolina may have been connected to the subsequent departure of the branch manager and the managers of two other branches in the library system.

The Drag Queen Story Hour was held by Mom’s Liberal Happy Hour SC, which said on Facebook that the event was designed to expose children “to all the different kinds of beautiful people in the world,” in an effort to allow them to “become more kind, confident, and tolerant individuals.”

There was a protest, but the event went off as planned, with the aid of the Greenville County Sheriff’s Office, which provided security at the Five Forks library, according to WHNS.

Prior to the event, the library issued a statement saying the Drag Queen Story Hour is “in accordance with the library’s policy on use of meeting spaces but is not being sponsored or promoted by the library system,” *The State* reported.

Jonathan Newton, the manager of the South Carolina library that held the event, is no longer employed at the branch, according to officials.

There is no word if Newton’s departure was the result of the Drag Queen Story Hour.

A longtime employee of the Greenville County Library System, Newton posted on Facebook on March 19 that he left his job as branch manager of the Five Forks library.

Newton did not indicate if he resigned or was fired, but his departure was confirmed by Beverly James, the library system’s executive director, the *Greenville News* reported. James gave no further information, telling the newspaper, “We don’t discuss personnel matters.”

Newton said “he has been advised not to make a statement about what led to the change in his employment status at this time,” according to WHNS.

He is not the only branch manager to leave the Greenville County system in the wake of the drag queen event.

The manager of the Pelham Road branch, Julie Phillips, said as of March 18 she is a “former employee” of the Greenville County system, the *Greenville News* reported. James confirmed that Phillips no longer worked there.

Another branch manager, in Simpsonville, Lina Bertinelli, posted about her resignation on Facebook. She planned to step down in April. She posted that “it has become increasingly obvious that GCLS is not the right fit for me . . . I am devastated by what has happened to my colleagues this week (they are a large part of why I have been here as long as I have) and I am honored to be in their company, but my resignation was put into motion before their news broke.” Reported in: *Greenville News*, March 21, 2019; *Charlotte Observer*, March 24.

### Austin, Texas

A drag queen storytime at the Old Quarry branch of the Austin Public Library on June 5, 2019, was disrupted by a representative of InfoWars, who crashed the event and filmed it.

He approached the performer, local drag queen Miss Kitty Litter ATX, who has been donating her time to the library’s story hour in connection with Austin International Drag Foundation for almost a year. The man claimed to be a “documentary filmmaker” who was “trying to protect the kids.” He asked library staff if a background check had been performed. As a staffer tried to explain APL policy, the man returned his focus to Kitty, demanding: “What’s your official name? Like what is your actual name? If people wanted to do a background check.”

David Richardson, who plays Miss Kitty, told the *Austin Chronicle* that he gave the man his name because he was “trying to be polite and nonconfrontational; I was nice to him. But I thought about it later. . . . It could have been a very dangerous situation.”

Within two days, hundreds of comments—many of which threaten violence and employ anti-LGBTQ hate speech—have been added to the InfoWars video post, which includes Richardson’s full name. Richardson called these comments that “really, really frightening.”

Austin Public Library staff quickly came to Richardson’s aid and asked the man to leave when he became disruptive.

Spokesperson Rachel Nguyen says the library doesn’t plan on doing much differently going forward, though Richardson has decided to sit out the next event. “We try to appease our audiences, and we are inclusive and excited to have all types of performers,” explained Nguyen.



As for “protecting the kids,” Nguyen said all Austin Public Library storytimes are run by librarian staff, who must be present for all youth events; guardians are also required to accompany all children under ten. As a guest performer, a background check on Richardson was not performed, nor felt to be needed.

Because the library is public property, personal filming and photography are allowed, but commercial filming or photography must be approved in advance by the administration. According to Nguyen, the library considers this an instance of commercial filming, “as it was used by an entertainment company for commercial purposes.” She also confirmed that InfoWars did not contact the library for approval, none was given, and the man filming failed to identify himself as a representative of the propaganda site.

Richardson said the goal of the storytime events is to teach kids about diversity and inclusivity. “You could replace ‘drag queen’ with ‘mayor’ or ‘waitress’ or ‘construction worker,’” he said. “What this does is give kids a different perspective on different people. We’re not teaching kids to be drag queens or LGBTQ, but saying if you were that it’s OK, or if one of your friends is gay—that’s OK, too.” Reported in: *Austin Chronicle*, June 14, 2019.

### Houston, Texas

Houston Public Library officials announced on March 22, 2019, that they intend to bring back the city’s Drag Queen Storytime program this summer. Earlier in March, the program was suspended over news reports that one volunteer participant was a registered sex offender who had not gone through a background check. [See JIFP, *Spring 2019*, page 69.]

“HPL is taking this time to reorganize the program, improve upon policies and procedures and to explore other collaborative partnership opportunities,” the library said in a statement.

The library has apologized for the incident. Reported in: *Houston Chronicle*, March 22, 2019.

### Leander, Texas

A controversial “Pride festival” that was hosted by an LGBTQ-friendly church on June 15, 2019, will be the last drag queen storytime at the Leander Public Library, under a new meeting room policy approved by the Leander City Council on August 15.

National attention came to Leander, a city of 56,000 about thirty miles north of Austin, over its plans for a Drag Queen Story Time in the library. In late May, the city of Leander canceled the prior plans for the event, following much social media attention, plus protests, and calls to the library and members of the city council. (Leander Public Library programming is managed by Library Systems and Services, a contracted partner with the City of Leander. This gives the city government final say over programming at the library.)

Open Cathedral Church then stepped in to host a new version the storytime and renamed it “Leander Family Pride Festival and Story Time.”

Ryan Hart, the minister and founder of Open Cathedral, said in a telephone interview that the church was surprised by the reaction to the event. Some two thousand people flooded the website to express interest in the event, which was by RSVP only, he said. The library conference room booked by the church holds about 150 people.

Aside from the part of the library that was rented to the church, the rest

of the facility was closed to the public that day, and the city had a large police presence during the event, out of public safety concerns.

A crowd of more than two hundred supporters and protesters, some yelling over loudspeakers and others banging drums, gathered outside on that Saturday afternoon, June 15. The two sides were separated by small gates.

Inside, Leander City Council member Christine Sederquist and two mothers read books about non-traditional families and accepting differences: *Love Makes a Family* by Sophie Beer; *And Tango Makes Three* by Justin Richardson, Peter Parnell, and Henry Cole; and *Red: A Crayon’s Story* by Michael Hall. The drag queen who had been scheduled to read to children was unable to attend because of “an unavoidable work commitment,” Pastor Hart wrote on the event’s Facebook page.

Afterwards, the library stopped renting meeting space for two months while it reviewed its policy.

The Leander City Council’s August decision, in a 5–2 vote, was to limit the use of library meeting rooms to city-use only. The rooms are no longer available for private rental.

Sederquist, who voted against the new policy, said the rooms should remain available to rent since there is a lack of meeting space in the community. The policy affects more than LGBTQ-friendly events. In the last year, local groups using the library rooms included local homeowners associations, Eagle Scouts, the San Gabriel chapter of the Daughters of the American Revolution, Pathway Bible Church and more, according to city documents.

Mayor Troy Hill said he does not think it makes economic sense for the city to keep the rooms open for rental. “I look at it as simple math: We brought in \$1,800 in rental fees



and we spent \$20,000 in security,” Hill said. “That’s not good math to me.” Reported in: *Washington Post*, June 11, 2019; *Austin American-Statesman*, June 16; *Hill Country News*, July 5; leandertx.gov, August 12; *Community Impact Newspaper*, August 16.

### Montpelier, Vermont

One month after a conservative Facebook personality Elizabeth Johnston, better known as “the Activist Mommy,” urged her 700,000 followers to try to get a Drag Queen Story Hour cancelled in Montpelier, the story hour went on as planned at the Kellogg-Hubbard Children’s Library on June 13, 2019.

Librarians say they received hundreds of calls from concerned people around the country, but there were no protesters during the event. Library officials, parents, and the drag queens all say the turnout is a reflection of Vermont’s dedication to inclusivity.

More than 130 Vermonters packed the library to see local drag queen duo of Nikki Champagne and Emoji Nightmare. “We’re reading books that are very inclusive and they’re representative of the audience that we’re reading them to,” said Nightmare.

The event drew the highest turnout for the duo since they began doing Drag Queen Story Hour in Vermont.

Carolyn Brennan, co-director of Kellogg-Hubbard Library, said she listened to the bulk of the out-of-state calls, and she stands by her decision to let the show go on.

“Most of it was from a base of just not understanding what Drag Queen Story Hour is,” Brennan said. “We have a variety of different kinds of story hours, and not every program is a good fit for everybody, but hopefully every program is a good fit for someone.”

Prior to the event, City Councilor Jack McCullough received an email from a local resident complaining that the program was inappropriate and asking for it to be cancelled.

McCullough’s email response said the Kellogg-Hubbard Library is a nonprofit, and the city had no control over its operations or programs.

“It would be inimical to all the values of our free society and our constitutional system of government for any government entity to attempt to censor the activities or programs of a public library,” McCullough wrote. “What you propose is a restriction of speech based on the content of that speech. Any such attempt would violate the First Amendment of the United States Constitution and Article 13 of the Vermont Constitution.”

McCullough also said state statute prohibited discrimination in any place of public accommodation based on sex, sexual orientation, or gender identity. He noted that the library has a background check process for volunteers. Reported in: *Barre-Montpelier Time-Argus*, June 24, 2019; WCAX, July 13, July 14.

### Des Moines, Washington

On June 17, 2019, more than two hundred parents and children attended the first Drag Queen Story Hour ever held at the public library in Des Moines, Washington.

There were also protesters in the library’s entryway, but they were in the minority.

“I would say that more overwhelming is the response from the LBGTQ community, and as you see today, the hundreds of parents that were here with their children. If anything, they have rallied more than the opposition has,” said Julie Acteson, director of community relations for the King County Library System.

The event’s performer, whose stage name is Cookie Couture, read *Neither* by Airlie Anderson, a picture book about an egg that hatches into an animal that doesn’t match the others.

“The core of it is all about celebrating what makes us different,” Couture said.

The program was organized by local librarians.

One of the protesters, Chris Blough of Tacoma, said, “I don’t want my tax dollars going to this.” He continued, “Why impose this lifestyle on a child? Children will grow up and learn their own opinions all by themselves. There is no reason for this.”

King County Councilmember Dave Upthegrove disagreed. “Libraries have always been a bastion of free expression and I am proud that the King County Library System remains a safe and welcoming space for everyone,” Upthegrove said. Reported in: King5 TV news, June 17, 2019.

### Renton, Washington

A Drag Queen Story Hour drew dozens of protesters, hundreds of supporters, and more than a hundred attendees to Fairwood Library, a small library outside of Renton, on June 27, 2019. The event was the final of four drag queen storytimes hosted during this year’s Pride Month by King County libraries.

The protesters included members of the paramilitary militia the Three Percenters (many of whom were openly carrying pistols), plus members of the far-right street fighting group known as the Proud Boys, and the right-wing local media outlet Operation Cold Front.

Supporters formed human barriers allowing attendees to enter the library without confronting the protesters. Groups in support of the event included the King County Democrats, local chapters of Indivisible, and





the Puget Sound John Brown Gun Club. They cheered as families with children ranging in age from toddlers to middle schoolers walked into the building to hear drag queen Thadayus read a story about a mermaid.

A member of the Three Percenters, who only shared his first name, Greg, said that residents opposed to the event were worried about antifascist organizers showing up. He said local residents asked his organization to provide security.

Julie Acteson, community relations director of the King County Library System, said that allowing free expression of every opinion is important to the library system. But, she added, the views expressed at Fairwood did not hold equal amounts of support.

“We certainly respect the right of anyone to come out and exercise their right to [freely express themselves]. At the Fairwood event last evening, overwhelmingly, the community turned out in favor of the storytime,” Acteson said. “I think there was about five hundred people there, and easily four hundred were supporters of us holding the event.”

Though the opposing views were contentious regarding the Drag Queen Story Hour, the library system will continue supporting diversity, Acteson said.

“Libraries are about diversity and inclusion. Those are huge values for us, so we want to make sure that we’re offering programs and services meeting the needs of our communities, and not just a chosen few,” she said. “We certainly don’t want to ever be trying to censor what we’re doing—whether it’s in our programs or our selections.”

Acteson could not say if the library system would hold the same series of events next year because the library system has not yet discussed program planning for 2020. Reported

in: *Snoqualmie Valley Record*, June 28, 2019.

### Spokane, Washington

The Spokane Public Library held two Drag Queen Story Hours during Gay Pride Month in June 2019.

At the South Hill branch library, hundreds of people gathered on Saturday, June 15, for an event which included drag queen Nova Kaine.

A week later, at the Downtown branch, about 150 protesters and some 300 counter-protesters gathered outside on Saturday, June 22, while drag queen Tirrany Hex was inside, reading *Not All Princesses Wear Pink* and other books to about 275 people, including parents and children.

At the South Hill branch, the protesters’ side of the street was filled with prayers and singing and signs that read “Adam and Eve, not Adam and Steve.” At the Downtown branch, some used megaphones and signs to demonstrate their concern about the drag queens and the library supporting the reading hour.

Anna Vohach, who created a group called 500 Moms Strong and believes drag has no place at the Spokane Public Library, protested at both events. Vohach said drag mocks women in a repulsive way and is offensive to the gay community.

The supporters of the Drag Queen Story Hour at South Hill tried to present a more positive image. “On this side, everyone is having fun, the children are laughing. We have balloons and face painting. It’s about love and support and access to public,” drag queen Nova Kaine said.

Kaine argued that drag queens are performance artists and they were here to be educational and entertaining, not warp the minds of children. “If you don’t like it, choose not to go, but don’t stand and protest against something that you don’t

understand, obviously don’t understand, with hate speech and bigotry,” Kaine concluded.

Jason Johnson, public engagement manager for the downtown Spokane Public Library, said the library has no current plans to host another drag queen reading event, but the library would likely accommodate if it got another proposal. “It’s a valuable program, and we’ll continue to do it,” he said. Reported in: KXLY4 TV News, June 11, 2019; KHQ6 TV News, June 14, June 15; *Spokesman-Review*, June 24, June 29.

### COMMUNITY CENTERS AND MUSEUMS Pittsburgh, Pennsylvania

The Children’s Museum of Pittsburgh cancelled a drag queen storytime that had been scheduled for June 28, 2019, on short notice, at the same time as another Pittsburgh institution, the Carnegie Library, cancelled its own drag queen storytime, scheduled for June 29. [See page 72.] Both cited “circumstances beyond our control” on Facebook pages for each event.

The Carnegie Library was more forthcoming about the reason for the cancellation, citing a threat posted to social media that alluded to drag queen storytime programs, but which did not specify any particular program.

Suzanne Thinnies, a spokesperson for Carnegie Library, said staff at the Children’s Museum alerted library officials to the online threat, and the two organizations discussed the cancellations.

Representatives for the Children’s Museum and Pittsburgh police could not immediately be reached by reporters seeking more information about the cancellation. Reported in: *Pittsburgh Post-Gazette*, June 29, 2019; triblive.com, July 1.



## Milwaukee, Wisconsin

At Bay View Community Center (BVCC) in Milwaukee on May 4, 2019, Drag Queen Story Hour MKE presented a Drag Queen Story Hour with a *Star Wars* theme, “May the Fierce Be with You.”

It featured *Star Wars*-related titles, including a comic book and two picture books aimed at children ages two to eight: *Goodnight Darth Vader* by Jeffrey Brown, *Star Wars Search Your Feelings* by Calliope Glass and Caitlin Kennedy, and the Little Golden Book *I Am a Hero (Star Wars)*.

Members of the American Society for the Defense of Tradition, Family and Property protested outside. They oppose homosexuality and believe drag queen storytimes groom children to accept non-traditional gender roles. They were countered by a group of young people and adults who gathered to demonstrate their support for the LGBTQ community.

Cassie Capriotti, BVCC’s program director, said 17 children attended the storytime.

Mike Mortell, the recently appointed BVCC president and CEO, said that the Drag Queen Story Hour was the first time such event was held at the center. “I was surprised there were protesters in this day and age,” he said. “It underscores a need for inclusion.” Reported in: *Bay View Compass*, May 4, 2019.

## BOOKSTORES AND OTHER STORES Denver, Colorado

The BookBar bookstore in Denver suffered vandalism before and during a reading it hosted by drag queen Miss Shirley Delta Blow on June 27, 2019.

The day before the event, the store was tagged with stickers from a hate group. The *Denver Post* said it is not naming the group, in order to avoid giving it unnecessary attention.

Channel 9 News, the local NBC affiliate, identified the group as the Patriot Front, and said it “is classified as a white nationalist hate group by the Southern Poverty Law Center.”

Despite the hateful stickers, BookBar owner Nicole Sullivan never considered nixing the drag queen reading, an event designed to celebrate LGBT Pride Month.

“I didn’t think about canceling the event, because then where do you draw the line as a business?” she said. “You have one person trying to intimidate, but you have an event you feel strongly about doing and a community that is coming out to support you.”

During the event, a man in a black T-shirt and black mask sprinted up to the window and spray-painted the storefront. Two people inside, along with police officers stationed nearby, chased the man, eventually catching him in an alley. Samuel Cordova, twenty years old, was arrested for investigation of a bias-motivated crime with property damage, said Christine Downs, a Denver police spokesperson.

Blow’s reading list, selected in light of pride month, included *It’s Okay to Be Different* by Todd Parr and *Tomorrow I’ll Be Brave* by Jessica Hische. Both books are centered on themes of openness and acceptance. Blow also read *Just Add Glitter* by Angela DiTerlizzi, about a child’s creativity. Reported in: *Denver Post*, June 28, 2019; [www.9news.com](http://www.9news.com), June 28, July 1.

## Waterville, Maine

About fifty people packed the inside of the Children’s Book Cellar on June 1, 2019, as Ophelia, a drag queen from Topsham, Maine, read from two books about inclusion.

Earlier that week, Ellen Richmond, owner of the children’s bookstore, said outrage over the event blew

up on social media, including a post and comments by Waterville Mayor Nick Isgro against the event, and a thread of comments on the Facebook page of Maine Conservative Grassroots.

On the day of the reading, a group called An End to Child Indoctrination at the Cellar Bookstore, protested outside. They said they wanted to spread a message about sparing young children from the confusion of adult gender identity.

A much larger group of more than one hundred people waved LGBTQ flags and carried signs in a counter-protest.

The event had been in the works since before the Waterville City Council passed a resolution during the prior month declaring June 2 “Central Maine Pride Day.” Reported in: *Morning Sentinel*/[centralmaine.com](http://centralmaine.com), June 3, 2019.

## Raleigh, North Carolina

More than one hundred people attended Drag Queen Story Hour—possibly the first such event in Raleigh—in Medicine Mama’s Pharmacy, a store that sells CBD products and products made from hemp (a cannabis plant and variant of marijuana that doesn’t get users high). The event was so successful, organizers said they are considering holding the story hour once a month.

Amazing Grace, whose real name is Travis Lewis, and Satine Allure, whose real name is Jonathan Sanderson, read children’s books that included *The Skin You Live In* by Michael Tyler; *Pink Is For Boys*, by Robb Pearlman, which talks about how colors don’t have genders; *The Wonky Donkey*, by Craig Smith, about a donkey with only three legs; and *One Fish, Two Fish, Red Fish, Blue Fish* by Dr. Seuss.



Satine Allure wore a knee-length dress with blue flowers and a tall sparkling crown. Amazing Grace wore a long, golden dress with a shorter crown. Children were invited to make their own crowns.

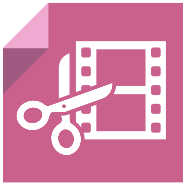
Organizers were expecting protests after backlash followed their announcement of the Saturday morning show. Some of the commenters on

social media said the event “promotes unnatural vice and moral disorder,” and that it will “destroy children’s innocence in a perverse way,” and it is an “offense against God.”

Jimmie Berry-Terry, one of the store’s owners, said, “They said that this event is done with scantily clad men dressed as women, you know known sex offenders, a lot of untrue

things. They gave our leasing company’s information. . . . They asked for us to be shut down. They obviously wanted the event canceled. They wanted our landlord to evict us.”

In the end, about 25 people gathered outside the store praying, according to a security guard. Reported in: WTVD ABC-11, June 28, 2019; *News & Observer*, June 29.



*EDITOR'S NOTE: Not all challenges to free expression or privacy are covered by the US Constitution. This 'For the Record' section includes news about editorial, business, or social decisions in the private sector.*

## LIBRARIES Washington, D.C.

The Council of the American Library Association on June 23, 2018 voted to remove the name of Melvil Dewey—creator of the Dewey Decimal Classification System—from the association's top professional honor, the Melvil Dewey Medal.

Citing Dewey for racism, anti-Semitism, and sexual harassment, the ALA Council approved the measure, after a resolution was successfully advanced at the ALA membership meeting during the 2019 ALA Annual Conference in Washington DC. The resolution states:

Melvil Dewey did not permit Jewish people, African Americans, or other minorities admittance to the resort owned by Dewey and his wife;

- . . . he was censured by the New York State Board of Regents for his refusal to admit Jews to his resort, whereupon he resigned as New York State Librarian;
- . . . Dewey made numerous inappropriate physical advances toward women he worked with and wielded professional power over . . .

. . . the behavior demonstrated for decades by Dewey does not represent the stated fundamental values of ALA in equity, diversity, and inclusion.

Dewey was one of the founders of the American Library Association in 1876, and has long been revered as the “father of the modern library,” despite being ostracized from the ALA in 1906 because of his offensive personal behavior.

In an article in the June 2018 issue of *American Libraries*, Anne Ford questioned why the ALA and the library profession still associates its highest honor with a man whose legacy does not align with the profession's core values. Some 88 years after his death, Dewey's #TimesUp moment appears to have finally come. Reported in: *Publishers Weekly*, June 24, 2019.

## COLLEGES AND UNIVERSITIES Minneapolis, Minnesota

The “ABC of It” exhibit at the Kerlan Collection, the venerable children's literature archive in the Elmer L. Andersen Library at the University of Minnesota's Minneapolis campus, has been modified in response to concerns that some of the featured books include content now seen as racist and because of racist ideas expressed by some of the authors outside of their books.

The display, which opened on February 27, 2019, is based on a 2013 exhibit of the same title at the New York Public Library, curated by children's literature historian Leonard S. Marcus. The Kerlan Collection used Marcus's 2013–2014 catalog, but replaced the objects from the NYPL exhibit with materials from the Kerlan's own collection.

When Kerlan opened its version of the exhibit, its display of books and related artifacts presented them without comment. At the same time, the University of Minnesota published the exhibit's catalog, *The ABC of It: Why Children's Books Matter* (2019) by Marcus, with a forward by Lisa Von Drasek, who curated the new exhibit.

Critics of the exhibit said some of the children's books may be classics, but are now considered by some to be racist, such as *The Cat in the Hat* by Dr. Seuss and *Caddie Woodlawn* by Carol Ryrie Brink. Another classic,

*The Wizard of Oz*, is not considered offensive to modern sensibilities, but its author, L. Frank Baum, has been widely condemned for his newspaper editorials calling for the extermination of Native Americans.

Children's author Trisha Speed Shaskan, who volunteers at the Kerlan and received docent training for the exhibit, said that when she previewed the exhibit before it opened, she “immediately saw problematic books on display. I felt that the exhibit fell short in terms of not including the racist history of some books.”

Shaskan says that she suggested to Von Drasek that footnotes be added to the signage to provide context about the books that are considered problematic, and a bibliography with suggested readings be provided to visitors. In response to her concerns, Kerlan personnel initially placed bibliographies of suggested readings and supplementary materials about racism in children's literature and banned books on the second floor of the exhibit area. The exhibit is spread out over three levels of the library.

The Kerlan opened its version of “The ABC of It” exhibit with a reception and program featuring a conversation between Marcus and Von Drasek. Several authors and others complained to *Publishers Weekly* that the program did not allow for audience participation, preventing them from addressing both Marcus and Von Drasek directly with their concerns.

In response, Von Drasek told *Publishers Weekly* (PW) via email that because the discussion went past its scheduled ending and the library's closing time, she made the decision not to allow audience questions. The following week, at her direction, signage labeled “Things to Think About” was added to the Dr. Seuss book display.



On March 6 Von Drasek sent an email informing a group of about ten Minnesota children's book authors and others about tweaks being made to the exhibit (to supplement the bibliographies on the second floor). The email announced a plan to hold a public forum on racism in children's literature. In the email, she wrote, "We appreciate our critical friends pointing out where we can do better and must do better as teachers and learners, as curators and librarians to be inclusive and reflective in our practice."

For his part, Marcus told *PW* via email that he is happy "that the current version of the exhibition has generated thoughtful discussions and appreciates the efforts that the university is making to respond to community concerns."

Reported in: *Publishers Weekly*, March 12, 2019.

## BOOK PUBLISHING Ann Arbor, Michigan

*The Siege of Tel Aviv* (2019) by Israeli-American author Hesh Kestin was only in print for two days. Dzanc Books published it on April 16, 2019, but reverted its rights back to Kestin a couple of days later. The publishing house determined that it no longer supported the author's narrative or generalizations of Muslims, according to Dzanc Books Publisher and Editor-in-Chief Michelle Dotter.

Dzanc co-founder Steve Gillis said *The Siege of Tel Aviv* addresses the "tragic situation" in the Middle East by wedding absurdism with satire and social commentary. It was not meant to be read literally as an Islamophobic text, Gillis said.

"That the material presents itself as problematic in this regard troubles me deeply," Gillis said in a statement after the book began to receive negative pushback. "I hoped readers would understand the intent of the novel,

the over-the-top absurdist narrative, drawing attention to—not championing—the ridiculous ways in which we, as a universal community, see one another and fail in our interactions. That the novel has been viewed as otherwise is our failing."

Kestin was a foreign correspondent in the Middle East for two decades, according to his bio, reporting on war, international security, arms dealing, and global business. The bio also indicates that the author, based in Long Island, New York, is an eighteen-year veteran of the Israel Defense Forces.

Kestin said Gillis' characterization of the novel as satire was made up. He described *The Siege of Tel Aviv* as "soaked in blood, as much a satire as 1984 or *The Manchurian Candidate*."

"In tossing out 'satire,' Gillis was trying to deflect the seriousness of the book—which is based simply on what Iran and militant Islam threaten every day, which is to wipe out Israel—instead saying it's really just a comic romp," Kestin said. "It posits a world in which Iran leads five Arab armies in a conquest of Israel that promises a second Holocaust. Nothing satiric here, just scary."

Kestin issued a press release after the book was pulled by Dzanc. He claimed the publisher pulled the book one day after a small corner of social media admonished the book's views on Muslims and the Middle East. Kestin also criticized Dzanc for quickly pulling half of the book's text that was posted online.

Kestin claims the two points of contention voiced online revolve around his use of the word "Moslem," rather than Muslim, and referring to Iran as an Arab country, which is not culturally accurate.

"My Iranian Moslem/Muslim family members in Houston use both spellings, though I'm unsure of

the usage by the family's Jews and Christians," Kestin notes in the press release.

Dotter said around two thousand copies of *The Siege of Tel Aviv* were printed—one thousand of which have already been sold. The other thousand copies remained in a warehouse after sales were halted.

Kestin has the option of purchasing the remaining copies rather than having them pulped, or destroyed, Dotter said. The editor-in-chief added that the publishing firm, based in Ann Arbor, Michigan, would let the author sell the remaining copies if all mentions of Dzanc are removed from the book. Reported in: *Mlive.com*, April 30, 2019.

## New York, New York

*Blood Heir*, Amélie Wen Zhao's debut novel, will be published after all, the author announced in April 2019. In January, the author had cancelled the book's scheduled June release, in response to social media criticism by "influencers" who had been given advanced readers copies. [See *JIFP, Spring 2019, page 71.*]

Some early readers argued that Zhao's depiction of slavery was racially insensitive. Zhao said her young adult fantasy was inspired by human trafficking in Asia, but issued an apology to readers who judged the book in relation to the legacy of slavery in the United States.

In March, Zhao called her editor at Delacorte Press and told her that she wanted to move forward with the novel after all. She made some revisions, and *Blood Heir* is now scheduled to be released in November.

"Ultimately, it's true to my vision," she said.

After Zhao decided she wanted to release the book, she and her publisher sought feedback from scholars and sensitivity readers in an effort





to resolve any ambiguity around the type of indentured labor depicted. They had academics from different multicultural backgrounds, as well as one who studies human trafficking in Asia, evaluate the text, and Zhao added new material and made changes based on their comments. They had additional sensitivity readers vet the book for racial and other stereotypes.

It is unclear whether such efforts will mollify Zhao's critics. Reported in: *New York Times*, April 29.

### COMICS PUBLISHING Burbank, California, and Syracuse, New York

*Second Coming*, a satirical comic series about Jesus Christ coming back to earth and learning what has happened to his teachings, written by Mark Russell and drawn by Richard Pace, was cancelled by DC Comics, but resurrected by a new publisher, AHOY Comics, based in Syracuse, New York.

*Second Coming's* story line revolves around God commanding Earth's mightiest superhero, Sunstar, to accept Jesus Christ as his roommate. Jesus, shocked at the way humans have twisted his message over two millennia, vows to straighten things out.

DC Comics, based in Burbank, California, announced in the summer of 2018 that it would launch the comic in March 2019.

In January 2019, a petition was launched on CitizenGo.com to get DC to pull the release from its schedule. Stories calling the series "more blasphemous than biblical" started appearing in Christian news sources and Fox News. In February 2019, CitizenGo.com declared victory as DC announced it was canceling publication of the series.

The *Second Coming* creators asked DC Comics to revert the publishing rights back to them, and DC did.

AHOY Comics, which started publishing in September 2018, said it would release the first issue of *Second Coming* on July 10, 2019. In total, AHOY Comics will be publishing a six-part *Second Coming* series. Reported in: *Syracuse.com*, March 14, 2019.

### BOOKSTORES Washington, D.C.

A public discussion of *Dying of Whiteness: How the Politics of Racial Resentment is Killing America's Heartland* (2019) by Jonathan M. Metzl was interrupted by about ten self-proclaimed white nationalists at the Politics and Prose bookstore in Washington, DC, on April 27, 2019.

Metzl, a psychiatrist and director of the Center for Medicine, Health, and Society at Vanderbilt University, was discussing his new book when the protestors with their own videographer walked in. Videos posted on Twitter show them gathering in front of Metz. An unidentified man with an electric megaphone then declared, "You would have the white working class trade their homeland for hand-outs." Amid booing, the man added, "But we, as nationalists and identitarians, can offer the workers of this country a homeland, their birthright, in addition to health care, good jobs and so forth." The booing got louder. The man with the megaphone then started a chant of "This land is our land," and the men walked back out.

Metzl's book explores how some lower- and middle-class white Americans are drawn to politicians who promise to improve their lives, but who promote policies that place white Americans at greater risk of illness and death. Metz's research found that people in states that rejected Medicaid expansion and blocked the full Affordable Care Act lived shorter lives, and states that made it easier to

buy guns saw hundreds more firearm deaths.

No one was hurt in the protest, and no damage was done to the store, said co-owner Bradley Graham. "The audience was not particularly receptive," Graham said. "We just let them have their say, expecting they would leave, and they did. It doesn't often happen here. It's a sign of the times."

Metzl said, "It was very symbolic for me. In case anybody's wondering what's happening right now, they're illustrating my point." Reported in: *Washington Post*, April 27, 2019.

### TELEVISION Burbank, California

*The Simpsons* episode "Stark Raving Dad" is one of the iconic episodes from the show's early run—but it will now be harder for fans to view.

Michael Jackson provided a voice for the episode, which aired as the premiere of the show's third season on September 19, 1991. His involvement was uncredited, and only years later were rumors confirmed it was actually Jackson's voice on the show. But now, following extensive allegations of sexual assault by Jackson, as chronicled in the HBO documentary "Leaving Neverland," *The Simpsons* producers decided to pull the episode from rotation.

"It feels clearly the only choice to make," executive producer James L. Brooks told the *Wall Street Journal*, which broke the news on March 7, 2019. He told the paper that fellow executive producers Matt Groening and Al Jean agreed with the decision.

In the episode, Jackson voiced the character Leon Kompowsky, who meets Homer Simpson in a mental institution. Simpson brings home the character, a large white man who claims to be Michael Jackson. Ultimately, Leon helps Bart Simpson celebrate his sister's birthday by singing



one of the show's most memorable tunes, "Happy Birthday Lisa." Jackson didn't actually sing on the episode; Kipp Lennon mimicked Jackson's voice on all of the episode's songs.

"This was a treasured episode. There are a lot of great memories we have wrapped up in that one, and this certainly doesn't allow them to remain," Brooks told the newspaper. He said it would take time, however, for the show to be removed from syndication, as well as FXX's "Simpsons World" on-demand service, and future reissues of its DVD sets.

"I'm against book burning of any kind. But this is our book, and we're allowed to take out a chapter," he told the *Journal*. Reported in: *Variety*, March 7, 2019.

### New York, New York

In the middle of an episode of *The Good Fight* on May 2, 2019, a scene depicting a confrontation between lawyers and their clients abruptly stopped. Shortly after, for about eight seconds, a black screen flashed the words, "CBS HAS CENSORED THIS CONTENT."

Some viewers of the legal drama saw the message as satire, just part of the show's irreverent approach to current events, Michelle King, one of the showrunners, said in an interview. Others, King said, took it as the producers had intended: literally.

The show, which runs on the CBS All Access streaming channel, and is a spinoff of *The Good Wife*, often breaks from its plot for an animated musical short that digs into controversial political issues of the day with an explanatory style similar to *Schoolhouse Rock!* A theme of the May 2 episode was American companies that want to do business in China and the pressures they face to appease Chinese government censors. An animated short was created on that same theme.

But the short was pulled from the show at the request of CBS about two weeks before it was scheduled to stream, said King, who created the show with her husband, Robert King.

Jonathan Coulton, the songwriter who makes the shorts, said in an interview that this particular video started with the fact that *The Good Wife* had been banned in China, most likely because of an episode that showed a Chinese dissident character being tortured. (The spinoff *The Good Fight* has not been banned.)

Coulton said the animated short included a host of references to topics that have been censored on the internet in China. Those include Falun Gong, a spiritual movement that is repressed by the Chinese government; Tiananmen Square, a reference to the violent crackdown on pro-democracy demonstrators in 1989; Winnie-the-Pooh, to whom China's president, Xi Jinping, is often compared; and the letter N, used by critics of the recent change to the Chinese Constitution that lets Xi stay in power indefinitely.

"It was a little bit like poking the bear," Coulton said. "They had gotten approval all along, and at the last minute, a couple of weeks before, they got word that they couldn't put it in the show."

In a statement, CBS All Access said: "We had concerns with some subject matter in the episode's animated short. This is the creative solution that we agreed upon with the producers." A spokeswoman declined to comment further.

*The New Yorker* first reported the details of CBS's decision to censor the animated short.

King said that she and her husband initially told CBS that they would quit the show if the song was pulled, but that they eventually agreed on inserting a message saying that the company had censored it.

Coulton said that he was told that CBS had concerns for the safety of its employees in China if the segment were included. CBS also has a Chinese audience, and when releasing content that is critical of China, American entertainment companies often have to weigh the risk of having their shows or movies blocked in the country. Reported in: *New York Times*, May 7, 2019.

### INTERNET United States

Nearly 3 million students around the country struggle to keep up with their studies because they must make do without home internet. In classrooms, access to laptops and the internet is nearly universal. Yet at home, the cost of internet service and gaps in its availability create obstacles in urban areas and rural communities alike.

In what has become known as the homework gap, an estimated 17 percent of US students do not have access to computers at home, and 18 percent do not have home access to broadband internet, according to an Associated Press analysis of census data.

Students without internet at home are more likely to be students of color, from low-income families or in households with lower parental education levels.

A third of households with school-age children that do not have home internet cite the expense as the main reason, according to federal Education Department statistics gathered in 2017 and released in May 2019. The survey found the number of households without internet has been declining overall but was still at 14 percent for metropolitan areas and 18 percent in nonmetropolitan areas. Reported in: *Associated Press*, June 10, 2019.



## SOCIAL MEDIA San Bruno, California

YouTube on June 5 expanded its hate-speech policy.

“Today, we’re taking another step in our hate-speech policy by specifically prohibiting videos alleging that a group is superior in order to justify discrimination, segregation, or exclusion based on qualities like age, gender, race, caste, religion, sexual orientation, or veteran status,” YouTube’s announcement said. “This would include, for example, videos that promote or glorify Nazi ideology, which is inherently discriminatory. Finally, we will remove content denying that well-documented violent events, like the Holocaust or the shooting at Sandy Hook Elementary, took place.”

YouTube, which is owned by Alphabet subsidiary Google and has been under pressure to ban more offensive content, said on June 5 that it would begin enforcing the updated policy immediately. “However, it will take time for our systems to fully ramp up, and we’ll be gradually expanding coverage over the next several months,” YouTube said.

Some of the videos targeted by YouTube’s new policy do have “value to researchers and NGOs looking to understand hate in order to combat it,” the company said. Because of that, YouTube said it is “exploring options” to make banned videos available to researchers and NGOs in the future.

“Context matters, so some videos could remain up because they discuss topics like pending legislation, aim to condemn or expose hate, or provide analysis of current events,” YouTube said in its June 5 announcement.

The *New York Times* noted, “YouTube did not name any specific channels or videos that would be banned. But . . . numerous far-right creators began complaining that their videos had been deleted or had been stripped

of ads, presumably a result of the new policy.” Thousands of videos are expected to be removed.

YouTube last year started displaying Wikipedia links and other information alongside videos that spread conspiracy theories. The effort to recommend more accurate information will expand, too, YouTube said today.

“If a user is watching a video that comes close to violating our policies, our systems may include more videos from authoritative sources (like top news channels) in the ‘watch next’ panel,” YouTube said.

A day after YouTube announced its new policy, messages with threatening and biased terms directed at YouTube started appearing on social media about 150 times an hour, according to Storyful’s analysis. Reported in: *Ars Technica*, June 5, June 6; *Wall Street Journal*, June 6.

## San Francisco, California

Facebook claimed on May 23, 2019, that it had become more aggressive about scrubbing its platform of hate speech. In a report the company releases biannually, Facebook also said that its automated detection software for scrubbing illicit content was improving and now automatically detects and removes more than half of the hate speech on the platform.

Regulators have expressed renewed interest in cracking down on Facebook after a gunman in Christchurch, New Zealand, live-streamed his mass killings on his Facebook account. The video was viewed just four thousand times before Facebook removed it, but it spread rapidly across the internet and was reposted millions of times.

The video prompted government leaders from around the world to sign on to the “Christchurch Call,” an agreement to limit violent and extremist content online. Facebook

said it would introduce stricter policies for live-streamed videos.

Mark Zuckerberg, Facebook’s chief executive, said in a call with reporters that governments around the world should take a more proactive role in the regulation of online speech. “If the rules for the internet were being written from scratch today, I don’t think people would want private companies to be making so many decisions about speech themselves,” Zuckerberg said.

Facebook said it had removed four million hate-speech posts during the first three months of the year, and detected 65 percent of them with artificial intelligence, up from 24 percent the year before. Its automated systems for detecting violence also improved, Facebook said. It caught 98 percent of the violent content posted on its platform before users reported it.

“We estimated for every 10,000 times people viewed content on Facebook, 25 views contained content that violated our violence and graphic content policy,” Guy Rosen, Facebook’s vice president of integrity, wrote in a blog post.

But Facebook sometimes mistakenly removes content that does not violate its policies. Zuckerberg said Facebook would establish an independent review board that would double-check its removal decisions.

The social media company also reported a spike in the number of fake accounts, which it said had been caused by large groups of malicious users trying to register for accounts. The company disabled 2.19 billion fake accounts in the first quarter of 2019, up from 1.2 billion in the final quarter of 2018. Reported in: *New York Times*, May 23, 2019.



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