

JOURNAL OF

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



Memorials honoring the shooting victims of the Tree of Life synagogue in Pittsburgh in 2018

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## FALL 2019 \_ ABOUT THE COVER

 In 2018, a gunman killed 11 people at the Tree of Life synagogue in Pittsburgh, Pennsylvania. One of the commentaries in this issue (see page 3) is written by Tom Twiss, a Pittsburgher and member of the Social Responsibilities Round Table (SRRT) of the American Libraries Association (ALA). In his commentary, he describes the way the city of Pittsburgh rallied around the Jewish community with the slogan “stronger than hate” to drown out the voices of hate.

Twiss writes about the problem of including “hate speech,” and groups that promote it, in libraries. The ALA Executive Council first voted to explicitly include “hate groups” in its meeting room policy, but then rescinded that phrasing after much controversy. He depicts the inherent tension between intellectual freedom (which would argue for allowing all points of view, including abhorrent ones), and making libraries welcoming spaces for traditionally marginalized communities (which would foreclose such speech in libraries). Twiss concludes with several recommendations from the SRRT that would strengthen libraries’ commitments to marginalized groups.



Mourners gather outside the Tree of Life synagogue in Pittsburgh.

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## Hate Speech in Libraries

How and How Not to Fight It

**Author** \_ Tom Twiss (ttwiss@pitt.edu) PhD, Faculty Emeritus, University of Pittsburgh

*This is a revised version of a talk delivered at the ALA 2019 Annual Conference on June 22, 2019, in the discussion group “Hate Speech and Libraries,” sponsored by the Social Responsibilities Round Table (SRRT) of ALA. Tom Twiss is co-chair of the International Responsibilities Task Force of SRRT and a member of the SRRT Action Council. Views expressed in this commentary reflect the general position articulated by SRRT Action Council in its August 2018 “Statement on Hate Speech and Libraries.” However, neither this commentary nor the talk on which it was based was endorsed by SRRT or its Action Council.*

**H**ate is on the rise in the United States. According to the Southern Poverty Law Center, between 2014 and 2018 the number of hate groups in the US surged by 30 percent, reaching an all-time high of 1,020. Meanwhile, the frequency of hate crimes has also mounted. From 2016 to 2017, the number of hate crime incidents reported to the FBI rose by about 17 percent, and the number of deaths attributed to the radical right in the US and Canada climbed from seventeen in 2017 to at least forty in 2018 (Beirich 2019, FBI 2018). Eleven of those murders were carried out in my home city, Pittsburgh, at the Tree of Life Synagogue.

In the midst of this rising tide of hate, in 2017, ALA’s Office for Intellectual Freedom (OIF) posted a webpage devoted to explaining at length the constitutional protections enjoyed by hate speech (American Library Association 2017). Then, in June, ALA’s Intellectual Freedom Committee inserted the words “hate groups” into a draft

of its new “Meeting Rooms: An Interpretation of the Library Bill of Rights” statement just before submitting it to Council. The resulting change, approved by Council, was unnecessary and read like an invitation to hate groups to use library meeting rooms.



These developments provoked a justifiable storm of protest from librarians who demanded a reversal. One expression of this was the [“Petition to Revise ALA’s Statement”](#) by We Here, a supportive community for library and archive workers and students of color (We Here 2018). Another was the “Statement” issued by the Action Council of the Social Responsibilities Round Table (SRRT) that endorsed the petition’s demand to remove and revise both the meeting rooms policy interpretation and OIF’s “Hate Speech and Hate Crime” webpage (SRRT Action Council 2018). In response to these protests, Council commendably rescinded its revision of the meeting rooms policy interpretation and then amended it (American Library Association 2019b). OIF has yet to change its hate speech page, but we should note that OIF has collaborated with the [Office for Diversity, Literacy and Outreach Services](#) to create a useful guide for library workers on “Hateful Conduct in Libraries” (American Library Association 2019a).

Hate speech in our libraries and in society at large is frightening, threatening, and intimidating—most of all, to people of color and other especially oppressed and marginalized communities. The stress provoked by hate speech can damage the quality of life of targeted populations and adversely affect mental and physical health (Pies 2018, Lloyd 2017, Barrett 2017). Hate speech can undermine the ability of marginalized communities to engage in public and political life and can promote horrible hate crimes. Beyond that, there is a real danger that the groups promoting hate speech could develop into a powerful movement in the context of demographic shifts, environmental changes, economic crises, or the encouragement of rightwing politicians. So, in our statement, SRRT Action Council agreed completely with those who emphasize the vital importance of combatting hate speech. However, we explicitly disagreed with the appeals by some for hate speech laws and bans on hate speech in libraries. We are convinced that attempts to fight hate speech by such means will be hopelessly ineffective and dangerously counterproductive.

In part, the problem is that governments and their agencies, including public libraries, cannot be trusted to enforce free speech restrictions in the interests of working people, the most oppressed, or the movements that articulate their interests. In fact, throughout the world there has been a disturbing pattern of applying hate speech laws precisely to those groups. In 1992, Sandra Coliver, the Legal Officer for the human rights organization Article 19, summed up an exhaustive study of hate speech laws internationally with the conclusion: “In most countries, hate speech laws either have been used to a substantial

degree to suppress the rights of government critics and other minorities or else have been used arbitrarily or not at all” (Coliver 1992, 363). Nadine Strossen, former president of the ACLU, observed in 2018 that throughout the world such laws “have predictably been enforced against those that lack political power, including government critics and members of the very minority groups these laws are intended to protect” (Strossen 2018, 81). And along the same lines, journalist Glenn Greenwald recently commented that hate speech laws in Europe and Canada “have frequently been used to constrain and sanction a wide range of political views that many left-wing censorship advocates would never dream could be deemed ‘hateful,’ and even against opinions which many of them likely share” (Greenwald 2017).

Could something similar happen in the US? We know from experience that it could. Significant restrictions on civil liberties instituted in the US, at least since the beginning of the twentieth century, have been used primarily against movements and organizations of the working class, the most oppressed, and the left. This has been true even when the alleged purposes of these laws and programs may have seemed reasonable or even progressive to many. For example, the Espionage and Sedition Acts were adopted in 1917 and 1918 ostensibly to combat German spying and sedition during World War I. But throughout the war both acts were employed almost entirely against socialists such as Eugene V. Debs, members of the radical union the I.W.W., and pacifists. Since then, the Espionage Act has been utilized against whistleblowers such as Daniel Ellsberg, John Kiriakou, Chelsea Manning, Edward Snowden, and Reality Winner. Currently, it is being used against Julian Assange, who helped expose US war crimes in Iraq and Afghanistan. In 1940, Congress passed the Smith Act to root out enemy subversion in anticipation of World War II. Few Nazis or fascists ever served prison time under the act. But during the war it was employed to incarcerate eighteen leaders of the Socialist Workers Party; after the war it was used in a series of prosecutions that decimated the Communist Party. The FBI’s Counterintelligence Program (or COINTELPRO) was created in 1956 allegedly to protect “national security.” However, from then until the 1970s the program’s surveillance and disruptive activities were directed overwhelmingly against socialists; against organizations such as the Black Panthers, the NAACP, and the American Indian Movement; and against the anti-Vietnam War movement. And in October 2001 the USA PATRIOT Act was signed into law “to intercept and obstruct terrorism.” But it was immediately utilized to expand surveillance of anti-war activists,



environmental organizations, groups the FBI considers “black identity extremists,” and the American public.

Against whom would hate speech restrictions in the United States be used today? There is little need to speculate. It has become commonplace for conservative pundits and our President to denounce the alleged “hate speech” of Black Lives Matter and Antifa, and there have even been attempts to get those groups designated as “hate groups” by state legislatures. Meanwhile, numerous states have passed bills against the nonviolent Boycott, Divestment, and Sanctions (or BDS) movement for Palestinian rights. If First Amendment protections were weakened, movements and organizations such as these would be the first to be targeted by Trump’s Justice Department and Trump-appointed judges, and the first to be excluded by public libraries under pressure from conservative politicians and interest groups.

Proponents of hate speech legislation accurately insist that rightwing hate groups are just trying to use the First Amendment to cover their anti-democratic organizing. But how would that be affected by new hate speech laws or regulations? Again, Glenn Greenwald has suggested an answer: “When I represented the free speech rights of such groups as a lawyer, they *loved* nothing more than when censorship attempts were directed at them, because they knew that nothing would more effectively strengthen their cause” (Greenwald 2017). The obvious reason is that when the far right is censored, public attention shifts from its hateful views and actions to the attempted “repression” by the left. As a result, the extreme right receives a wider hearing for its message.

Advocates of legal restrictions on hate speech sometimes equate opposition to such laws with passivity in the face of a growing danger. However, a passive approach is entrusting the struggle against hate speech to the benevolence and wisdom of government officials and courts—or library administrators. A truly active approach, and I believe the only effective way to combat the far right, is through a mass movement that involves especially the most oppressed and marginalized.

One of the best examples of such an approach was the response to the “Unite the Right” rally in Washington DC on the first anniversary of the violent white

supremacist demonstration in Charlottesville. With a major effort, the rightists managed to mobilize about thirty people for their anniversary rally. Their pitiful demonstration was dwarfed by a counterdemonstration of thousands that revealed just how isolated the far right really is. Meanwhile, the Amalgamated Transit Union Local 689, composed overwhelmingly of people of color, simply refused to go along with Metro plans to provide the fascists with subway cars and a police escort.

Equally inspiring was the response of my city, Pittsburgh, to the Tree of Life shootings. Many thousands turned out for vigils, services, and programs to honor the victims and support Tree of Life. Every religious denomination, including the Islamic Center, participated. And throughout the city Pittsburghers wore T-shirts and buttons and displayed yard signs proclaiming the message “Stronger than hate.” It has been an impressive statement of solidarity with our Jewish community and a powerful repudiation of hatred.

The SRRT Action Council “Statement” suggests several steps that ALA could take to promote such a mass movement and that librarians and other information workers could take to participate in it. For ALA, these include initiating a broader discussion of the issue; recommending that libraries post statements on behalf of equity, diversity, and inclusion; urging libraries to require that all meetings of organizations be nonexclusionary, public, and publicly announced; encouraging libraries to reach out to community groups—especially of the most marginalized—alerting them to relevant resources and making them aware of available meeting spaces; and suggesting that libraries collect resources and develop guides devoted to the struggle against fascism. Even more importantly, we believe that librarians and staff can participate effectively in the struggle by getting involved with organizations committed to a mass action approach for combatting hate speech, providing reference assistance to such organizations, collecting materials and preparing guides on the struggle against the far right, participating in demonstrations against gatherings of hate groups, monitoring their meetings, and directly confronting their bigotry. We in SRRT look forward to joining with others in the library community in such a struggle against hate speech.

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## Intellectual Freedom and Inclusivity

Opposites or Partners?

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### The Challenge

In November 2018, Vancouver Public Library's (VPL) Library Square Conference Centre received a request for a room rental for January 10, 2019, from Feminist Current, a group presenting a ticketed event with controversial speaker Meghan Murphy. The booking had been approved but came to the attention of the chief librarian and board when another organization asked to book the space on the same night.

As news of the event became public through news and social media, VPL received complaints and requests to cancel the booking from members and supporters of transgender and gender diverse communities. Support for continuing the event was also received.

VPL initiated conversations seeking legal advice on the situation. VPL subsequently received notice that legal action would be filed if they cancelled the booking, and legal counsel advised of risks associated with cancellation (De Castell 2019).

### The Decision

The Board upheld the booking and moved the event time to after the library closed to minimize disruption of access to services and impact on staff. The VPL Board discussed the situation extensively at regular and special meetings in late November and December before making the decision, and also committed to a review of the VPL Meeting Rooms and Facilities Policy.

In the lead up to the event, the chief librarian met or talked with concerned stakeholders and attended a discussion at a local LGBTQ2+ (lesbian, gay, bisexual, trans, queer/questioning, and others) organization, Qcommunity. VPL worked with transgender authors to modify a planned program on December 6, 2018, to convert it into a facilitated discussion of the booking (De Castell 2019).

### Who Is Meghan Murphy?

Meghan Murphy is the founder and editor of Feminist Current ("Founder and Editor: Meghan Murphy" 2019). Murphy actively campaigned against Bill C-16—a federal bill to amend the Canadian Human Rights Act to include "gender identity or expression" as a listed ground of discrimination (Canadian Human Rights Commission 2017). The bill was passed into law in 2017.

### The Aftermath

Reaction following the event was swift and vocal from members and supporters of transgender and gender diverse communities as well from those defending free speech.

If there can be a positive side to a situation that pits women, the LGBTQ community, and library workers against each other, it has been the conversations that have ensued—in essays, blog posts, and emails. Within the library community, we discussed and debated how to reconcile the intersection between intellectual freedom and inclusion—two values fundamental to our work. Outside





of the library community, the debate continued between Murphy supporters and trans advocates about whether the event should have been allowed.

One letter to the editor of the *Vancouver Sun* said, “To blame any respected learning centres for providing forums for democratic expression verges on censorship—a word we queer folk are all too familiar with” (Herman 2019), while a post from the BC Teacher’s Federation on VPL’s Twitter feed said, “Public institutions should not be hosting events or renting space where speakers promote hate against any group of people protected under the BC Human Rights Code. Public libraries, like public schools, must be safe inclusive spaces for all—including trans youth and adults” (BCTF 2019).

At VPL, coming up to a year since the event first came to her attention, the chief librarian continues to work at rebuilding bridges with the transgender and gender diverse community, library staff who felt betrayed and in some cases unsafe in their workplace as a result of the decision to hold the event, and to complete a review of the library’s meeting room policy. VPL continues to be both censured and applauded for their decision. They were asked not to participate in the annual Vancouver Pride Parade—an event of which they have traditionally been a part (Crawford 2019).

## The Discussion

To further my understanding of the concerns of my colleagues and friends, I had conversations with the president of the BC Library Association, the chief librarian of VPL, colleagues tasked with intellectual freedom training, fellow managers, front-line staff, and friends and family not part of the library community. I’ve found most people very interested in exploring the frictions between inclusion and intellectual freedom, recognizing the difficulty of making decisions that honor both. Many of my library colleagues see valid points on both sides and are struggling to form a new definition of intellectual freedom for themselves and their institutions. Dialogue remains key to finding that new definition.

Two colleagues chose to publish pieces that express their strong feelings on either side of the debate about platforming controversial ideas in public libraries. Dr. Alvin Schrader is a professor emeritus at the University of Alberta’s School of Library and Information Studies and an adjunct professor at the Institute for Sexual Minority Studies and Services. He is also a long-time advocate for both intellectual freedom and LGBTQ rights. Schrader notes that “deeply polarizing subjects have long challenged and tested the core values, institutional roles,

legal accountabilities, and time-honored credibility of public libraries across Canada . . . in the present context . . . critics are ignoring or assailing the interdependence of free expression and social justice.” His conclusion can be summed up as follows: “Public libraries must protect the right of people to be mistaken. . . . To continue honouring their commitment to intellectual freedom in the face of outrage over unpopular speakers, public libraries must err on the side of a plurality of ideas and perspectives, on the side of more voices and greater access” (Schrader 2019).

A blog post was written in response to Schrader’s article by Sam Popowich, discovery and web services librarian for the University of Alberta and a member of the Canadian Federation of Library Association (CFLA) Intellectual Freedom Committee. Popowich says “[Schrader] lists some recent challenges to the dominance of intellectual-freedom maximalism. However, he presents them all in the same light, as expressions of the same power dynamics (those who wish to speak and those who wish to prevent them), eliding the very important differences in social relations, power, history, and even severity.” He goes on to say that “it is not surprising that libraries find the navigation of values (e.g. intellectual freedom vs. community empowerment) difficult . . . libraries can only manage their balancing act by violating one or the other” (Popowich 2019).

I do not criticize the handling of the situation by VPL’s chief librarian or its board. They did not make the decision lightly, meeting several times in the fall of 2018 to wrestle with the contradictions of their joint commitments to freedom of expression, and diversity and inclusion. It was a booking of their meeting room, not a library hosted event, and it fit within their current policy of providing a venue for controversial views to be heard. They sought legal advice and could see no legal means to refuse the booking. They publicly distanced themselves from Murphy’s views (for which she attacked them). However, the backlash to the event has resulted in a fractured relationship with the transgendered and gender nonconforming community that has sorely tested VPL’s stated commitments to inclusion and to being community-led. The chief librarian acknowledges that “when content of rental events conflicts with VPL’s values and strategic initiatives, perceptions of VPL as a welcoming space for certain groups can be impacted”—as they surely were in this case (De Castell 2019).

Equally I cannot condemn those who feel disappointment and anger toward VPL for their decision. While I’d like to think of myself as an ally for the transgendered



and gender nonconforming community, I am not a part of that community. As a lesbian and a woman, I have felt that frisson of fear that occurs when an environment turns threatening, but it is an increasingly rare feeling. I am white and privileged in other respects. I can only guess that this feeling is far more common for trans and non-binary people, especially those of color, and Murphy’s vocal denial of their identity would be seen as a further threat to both dignity and safety. As a nonbinary colleague put it, “Trans people and allies have made clear that we expect public libraries to take stronger stances against transphobia. Knowing that library patrons care about libraries being trans inclusive and will advocate for this has been deeply reassuring to me in the wake of the betrayal I felt from VPL’s actions as an institution” (Jones 2019). Schrader counters the calls for silencing deniers of trans identity by saying, “My perspective is informed by the long and painful struggle in Canada over LGBTQ+ equality rights and a public voice. . . . Social justice triumphed through the supremacy of expressive rights, not in spite of them” (Schrader 2019).

While I recognize the need to consider the harm of airing views that have the potential for inciting intolerance, I have also heard and put forth the argument that the library is not, nor should it be, a safe place. Rather it should be a place where disparate views are available for its patrons to explore and decide for themselves where their beliefs reside. We have always made decisions around intellectual freedom, whether about collections or speakers, knowing that we allow one voice to be heard while another (the author, speaker, or the complainant) may be silenced. This is not a new dilemma or a new discussion. What is new is the ability for these decisions to be made more widely public and therefore to enlist the sentiments of the broader community. While this can make life difficult for those who have to make decisions that attempt to find balance with a community’s divergent views, this is not a bad thing as it makes us continue to question and examine our decisions and beliefs.

So where do we go from here? Do we hold firmly to the principles of intellectual freedom and freedom of speech and give a platform to a wide variety of speakers, including those with controversial views? Or do we temper these principles with language that allows us to refuse or cancel speakers whose ideas, while not strictly speaking hate speech, may promote discrimination?

Most meeting rooms rules and conditions draw now from policies that state clearly that the “contracting party” will not violate either the Criminal Code (which includes hate speech in Canada) or human rights codes unique to

each province. These can be quite extensive as in this language from Toronto Public Library:

The Contracting Party will not promote, or have the effect of promoting, discrimination, contempt or hatred for any group or person on the basis of race, ethnic origin, place of origin, citizenship, colour, ancestry, language, creed (religion), age, sex, gender identity, gender expression, marital status, family status, sexual orientation, disability, political affiliation, membership in a union or staff association, receipt of public assistance, level of literacy or any other similar factor. (Toronto Public Library n.d.)

Language in VPL’s draft revision of their meeting room policy includes similar language referencing the British Columbia Human Rights Code, but also includes the following:

**Protecting Safety, Dignity and Security**

The Library may deny or cancel a meeting room or facility booking, or may terminate any event, which is likely to cause a material risk of harm to the safety, dignity or security of Library staff, or to the public. (Vancouver Public Library 2019)

Would this language have given VPL legal grounds to refuse the Feminist Current booking? How would the final decision be made as to whether someone’s dignity or safety is at “material risk” and when that trumps the need for a plurality of ideas? What is the involvement of the community served by the library in making the decision and in potentially challenging it? What controversial ideas will we silence to support a world where everyone feels safe and included? Who will “guard the guardians” (Schrader 2019) of a shifting concept of public safety?

I am concerned about a trend toward listening more often to those with whom we agree and not challenging ourselves to hear out those who we consider our ideological enemies—a trend reinforced by our ability to filter our news and information—or have it filtered for us by an algorithm. If we can now filter who gets to speak in our public spaces, what rigorous critique of our ideas and policies do we lose? If there is any community resource better placed to give a wider view and to help build connections between disparate views, it is the public library. While I understand the need for those whose identities and livelihoods may be threatened by certain controversial speakers, I will be deeply saddened if public libraries relinquish that role. At the same time, it will be critical that we continue to work to ensure that the “plurality of ideas” includes a



wide range of voices, not just those who are most privileged or loudest.

### Postscript

This article was written in September and I have had many more conversations since then. Among the most illuminating have been the ones with the people most affected by Murphy's denial of transgender identity and active advocacy against rights for transgender women in particular. While public libraries in many cases are just beginning to offer washroom alternatives for trans individuals and allow them to use their preferred names when applying for library cards, they have for decades been a place for someone questioning their gender identity or sexual orientation to find materials to help them explore their options and decide what is right for them. This is particularly critical for trans and nonbinary youth who often struggle alone and who may become desperate enough to be suicidal during that struggle, who may be homeless and need resources such as public computers

to maintain vital supports. A noted trans author with whom I spoke said they would defend the right of Murphy to have a book on library shelves. But platforming is different. Unlike a material resource that one can choose to borrow or not, to read or not, the message surrounding and during an event is hard to ignore. In their words, "Platforming hate speech against my community renders the space itself unsafe for me, personally, before during and after, and you (in my mind) can't stick rainbow stickers up in the same space as hate speech against trans people is being platformed. It's one or the other." The library community—and its broader community of supporters—remains seriously divided. Many of us, however, are still struggling to figure out where we stand—to figure out how our wish to allow diverse views and our genuine desire to be respectful and inclusive can work together. We need to continue to talk to each other, to seek understanding with those with whom we disagree, to find a way to move forward that truly honors both intellectual freedom and inclusion.

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## On Press—The Liberal Values that Shaped the News

Author \_ Matthew Pressman

Publisher \_ Harvard University Press, 2018. 336 pp. Hardcover. \$29.95. ISBN: 978-0-6749-7665-8.

Reviewer \_ Clay Waters, Masters of Library and Information Studies, University of Alabama

In *On Press—The Liberal Values that Shaped the News*, Matthew Pressman chronicles the transformation of the American press between 1960 and 1980, as exemplified by two of the era's major newspapers, the *New York Times* and the *Los Angeles Times* (*NYT* and *LAT* from here on).

“On press” is an arcane phrase for “being printed,” and the book's cover image of a stack of newspapers may suggest a dry historical monograph. But *On Press* is an absorbing narrative that touches on society, culture, and the meaning of press objectivity, without being overly adulatory toward the profession, as the subtitle might imply. It is a secret history of journalism previously buried in archives, stretching beyond the four corners of the daily paper to detail the political and cultural milieu of the era.

Pressman documents the shift from stenographic-style reporting to explanatory, ultimately adversarial journalism, and what editors and reporters thought about it, both those fighting the trend and those encouraging it. Pressman, an assistant professor of journalism at Seton Hall University, traces the decades-long debate over whether objectivity in news coverage is desirable, achievable, or even definable. The battle is reminiscent of current arguments over library neutrality.

Pressman neatly encapsulates how radically the news culture changed by comparing the front pages of two editions of the *NYT*, one from 1960 and one from 1980. In the 1960 example, “all fourteen stories concerned the actions of government agencies or officials,” (2) demonstrating a “narrow definition of newsworthiness. . . . Reporters did not challenge the people they covered or question their motivations, beliefs, and competence” (3). By 1980, the front-page news hole had been reduced to seven stories, and the product had evolved into an adversarial beast, comfortable explaining to its readership not only what had happened that day but what it meant, with more scrutiny of public officials.

While not conceding the conservative charge of “liberal bias” in his introduction, Pressman does acknowledge the press shifted leftward over the period, adhering

to a “set of values” that “help create a news product more satisfying to the center-left than to those who are right of center” (1-2).

In chapter 1, “Opening the Door to Interpretation,” Pressman notes the objectivity-focused press was shaken in the 1950s by “red-baiting” Wisconsin Senator Joseph McCarthy, as newspapers operating under the precept of objectivity felt obliged to print McCarthy's outlandish charges—a example of the senator's “astute exploitation of journalistic norms” (27). Also, Americans were beginning to obtain more of their information from television, radio, and magazines, so newspapers had to offer something different: perspective.

Chapters 2 and 3 examine objectivity from both left and right, as conservative criticism expanded from individual liberal columnists to the press as a whole, a disdain encapsulated in the attacks of Richard Nixon's vice president, Spiro Agnew.

Among the quotes (some politically incorrect) gleaned from interviews, speeches, and trade publications, Pressman's greatest treasure trove may be the pithy memos and correspondence of A. M. (Abe) Rosenthal, who worked at the *NYT* for fifty-six years and served as the paper's executive editor for eleven. Energetic, opinionated, and temperamental, Rosenthal is the closest thing to a lead character in this long-running drama. Rosenthal is shown trying hard “to keep the paper straight” (60), worrying especially during the heady late 1960s-early 1970s that the paper was focused too much on left-wing demonstrations and protests.

The precepts of objectivity and neutrality were increasingly being rejected by journalists, who found “objectivity” an obstacle to higher ideals. Some called the quest for perfect objectivity itself a fool's errand. *LAT* editor Nick Williams said his paper strove for “fairness” and “honesty,” while claiming true objectivity to be impossible.

Chapter 4 switches the perspective around to the readers. With the end of World War II, the mission of newspapers had changed “from informing citizens to serving consumers” (132). Papers turned to “service journalism,” like club



and theatre listings. Revised layouts made the paper easier to read. “Women’s pages” were replaced with stand-alone rotating sections devoted to fashion, food, and sports.

Chapter 5 deals with discrimination against women and minorities, both in the newsroom and in the news coverage itself. Among his intriguing findings, Pressman found not much active racism in newsrooms, but discovered that casual sexism endured quite a long time in the upper echelons of the profession, as shown in memos unearthed in a successful discrimination lawsuit launched by female employees against the *NYT*.

Chapter 6 shifts from the left-right view to analyze the battle as a class-based conflict. By the 1970s, the press was seen as targeting Republican-friendly cultures like law enforcement, the military, big business, and of course, President Richard Nixon.

The final chapter takes in the myriad forms of new media replacing print newspapers and brings us to the present “parlous state” of journalism (22).

The 1980s-1990s marked a calm before the storm, with financial stability in a thriving economy. Then came the digital revolution and resulting loss of advertising revenue, followed by the Great Recession of 2007-2009. News organizations slashed budgets. Between 2001 and 2015 the number of people working as journalists declined by more than 40 percent. News outlets fought back with paywalls and “clickbait.”

On the political front, sectors of the press felt presidential candidate Donald Trump’s mendacity went beyond the normal boundaries of politics and felt obliged to react accordingly. Pressman cited *NYT* media reporter Jim Rutenberg’s front-page column of August 2016 that implied news reporting should reflect the “potentially dangerous” nature of a possible Trump presidency (248). Many journalists seemed to agree, an attitude that has alienated conservatives all the more.

Pressman concludes that the key to journalism’s survival is to continue dogged reporting while remaining apolitical. Frankly, the speculation comes off tentative, but after the electoral results of 2016 shocked the press and everyone else, it is understandable that anyone trying to predict the future would tread lightly.

There are some quibbles. The narrow scope of *On Press* (mainly two newspapers) results in an occasional sense of repetitiveness. One would have appreciated more photos of these old front pages. There’s little said about journalism schools.

But those are minor omissions. *On Press* is well-rounded, compact, and feels impressively complete for its length. It should interest students of political history, cultural history, and anyone curious to how the press became what it is today. Like a well-rounded Sunday newspaper, it offers something for everyone.

## Don’t Unplug: How Technology Saved My Life and Can Save Yours Too

**Author** \_ Chris Dancy

**Publisher** \_ St. Martin’s Press, 2018. 288 pp. Hardcover. \$27.99. ISBN: 978-1-250-15417-0.  
E-book available (978-1-250-15418-7)

**Reviewer** \_ Tania Harden, Assistant University Librarian, Digital Services and Technology, Idaho State University

Chris Dancy is a die-hard techie and a self-proclaimed consumption-aholic. Known as “the most connected person on earth” (21), Dancy used up to 700 sensors, devices, applications, and services to monitor, evaluate, and change his life—from his eating habits to his spirituality. *Don’t Unplug* consists of five main sections covering Dancy’s life from birth to age fifty. He shares a lot of his personal life in the book, which brings out feelings of sympathy, empathy, and pity in the reader. In each of the five sections, Dancy first shares his personal stories, and then offers his take-aways and advice from the experience. Dancy considers himself to have an obsessive and addictive

personality. “By 2011, I understood that if a substance or situation could be abused, I would find a way to do so” (53). As you read the lengths Dancy goes to tracking his behaviors, it leaves you in no doubt that he did tend to take things to the extreme in every instance.

“Part One: Bits and Bytes (1968-1998)” covers from birth to age thirty. Dancy discusses his childhood and briefly describes his dysfunctional family life and how his upbringing influenced his adult habits. He inherited his love of organizing and calendaring from his mother who would calendar all special events, holidays, anniversaries, and birthdays on a Hallmark calendar every year.



His interest in technology can be attributed to his father who “kept the family in perpetual debt with his desire to purchase the latest consumer electronic or new accessories for his motorcycle” (6). In 1983, at age fourteen, Dancy began working with computers. His father worked in a used car dealership that had a computer with Lotus 1, 2, 3, a simple DOS spreadsheet program. Being an organizer, he soon used his father’s work computer after school to create lists for his mother and to organize his life, including his extensive Michael Jackson memorabilia collection. Forced to drop out of college after his first semester because his mother misused his college scholarship money, he was soon helping family friends set up computers for their businesses. It was during this time that his unhealthy lifestyle of smoking, Diet Coke, junk food, alcohol, drugs, and sitting in front of the computer eighteen hours a day began catching up with him. He had his first full-blown panic attack. He self-medicated with more illicit drugs until he became dependent on Xanax and ended up using antidepressants and benzodiazepines for the next twenty years. By age thirty, his body was failing and he was a workaholic.

“Part Two: Data (2008–2010)” discusses social media, entertainment, and opinion. Dancy’s journey to connectedness began one day in 2008 when he could not find a post he made on his Myspace page. He started tracking his online interactions by setting up an RSS feed and having every online interaction (social media posts, emails, online music downloads, etc.) create an entry on his Google calendar. Between 2008 and 2012, he had ten Twitter accounts, two Facebook accounts, two LinkedIn accounts, and multiple blogs. He always saw social media not as a way to connect to friends but as audience platforms. He began to track the likes he got for posts. He noticed that he got more likes when he posted drunken, out-of-control pictures than when he posted healthy pictures like when he decided to quit smoking. Once he realized how social media influenced his actions, he decided to see how he could influence other people on social media. “I’m embarrassed to admit that I stretched as far as I could to game all my relationships” (39). Realizations that Dancy gained from monitoring his social media usage include selectively choosing what social media you connect to, cultivating your friendships offline instead of online, and creating guidelines for your relationships on social media by using specific social media outlets for specific types of relationships. While monitoring his entertainment consumption, Dancy noticed that when he prepared to binge watch something, it would feed other bad habits such as smoking, eating junk food, and consuming large amounts

of Diet Coke. By changing his entertainment habits, he could also change some of his other bad habits.

Dancy also talks about his rage issues. One way he expressed rage was by placing anonymous, angry reviews on Yelp. This behavior would also bleed over into other aspects of his life. “The feedback loop of crushing people online with data was toxic. Immediately after my searing posts went live, I would overeat. Then I would waste countless hours online, checking on how my reviews were doing. From there, I would stop listening to music I enjoyed, start to sleep poorly and, within 48 hours I would start to be toxic to the people in my real life” (76). Dancy found that by not allowing technology to replace face-to-face interaction, we keep our compassion and ability to be kind and understanding to other people.

“Part Three: Information (2010–2012)” covers content, work, and money. This section discusses how to use social media to increase your marketability. Dancy used social media and other online platforms to build a portfolio of things that displayed his interests and passions. He also used web alert tools to notify him when new articles and other career-related information became available. This allowed him to stay current with trends in the industry. Dancy also collected work statistics so he could see when he was productive, how much he accomplished, and how and when he procrastinated. He was able to determine when the best time was for him to focus on creative tasks as opposed to answering emails. While Dancy’s work could be considered brilliant, he was often sent to human resources because he did not play well with others. Because he had a huge following online, he tended to treat his co-workers discourteously at best. After being let go from several jobs in a short amount of time, Dancy soon learned, “Don’t let your online shadow cover up your real-world worth” (150). Like most other things in his life, Dancy could not control his spending habits. Through his technology usage, Dancy was able to connect his emotions as well as his eating habits with his spending. He was able to monitor his convenient spending, recognize his triggers to irrational spending, and change his spending patterns.

“Part Four: Knowledge (2012–2014)” covers health and environment. In this section, Dancy advocates learning to manage your health in one of four areas: activity, nutrition, sleep, and meditation. He also discusses not depending solely on technology to take over your behavior when it comes to your health. “No app or wearable can help you understand consequences better than the one you have between your ears, yet we still are slowly allowing ourselves to become dependent on the nudges from



technology” (147). Smart devices take away our choice. “In the next five years, many of you will start interacting with technology using your voice. Your ‘defaults’ will be chosen for you by your habits. Your ability to navigate the world and understand your choices will be defined by the tech companies you use. More urgently, your access to services, people and tools will be defined by the relationships those tech companies have with other tech companies” (176). Be smart with your tech choices. If you want to have access to the data collected, only buy devices that allow you access.

“Part Five: Wisdom (2014–2016)” covers spirituality and self-love. Dancy recommends changing five things on your phone to gain back control. First, remove any labels that show how much battery you have left to reduce anxiety. Second, change your time format to military time if that is not the standard to force yourself to slow down and confront your crazy schedule. Third, clear your home screen of any widgets. Fourth, organize the apps on your phone by their icon color to help your mood. Fifth, use different but complimentary lock screen and wallpaper to help broaden the depth of feelings. He also suggests rearranging your phone apps by putting the most used out of reach and the apps you would like to use within easy reach in order to force you to think about what you are doing. Use alarms and tasks on your calendar to live more in the now and to prompt you to be mindful of desired actions and responses in the future. After compiling data on almost all aspects of his life, Dancy decides that the last thing he needs to confront is his lifelong struggle with

depression, anxiety, and rage. He begins to remember episodes from his past and logging them electronically. He would then bring up the notes when he began having an attack so he could review his symptoms and compare his past experience to how he was feeling at that moment. He would then realize that he had done this before and was able to work through it. Another way he started handling his suicidal thoughts was googling it and reading about other people’s struggles with anxiety and depression. This helped him feel like he was not alone and helped him through the dark times.

While it was interesting to read about the different technology and the way Dancy used it to learn more about himself, hearing his story was a bit like a train wreck where one just cannot look away. Dancy comes across as an arrogant jerk through much of the book, but it did make one curious to know if all of this self-awareness has really changed his personality at all. It almost makes one want to watch his interviews, listen to his TED talks, and read his interviews to see if he really has used technology to become a better version of himself. It is amazing to see everything he did to compile this data but one can assume that most people would not be that dedicated or have the technical knowledge to accomplish what he did. Some of the information in this book is helpful to the average person, but a large part of it seems completely insane and very much out of the realm of reality. Readers who are interested in self-help topics and technology will be interested in buying this book.

## Why Social Media Is Ruining Your Life

**Author \_ Katherine Omerod**

**Publisher \_ Cassell, 2018. 256 pp. Hardcover. £12.99. ISBN: 978-1-7884-0062-6.**

**Reviewer \_ Sarah Grace Glover, Assistant Professor, Reference and Instruction Librarian, Collection Selector for Modern and Classical Languages and Spanish Departments, University of North Georgia**

Katherine Omerod’s *Why Social Media Is Ruining Your Life* takes a cursory look into social networks and their effects on mental health and day-to-day life. As a fashion blogger who uses Instagram as the main source of her business, Omerod uses both personal accounts and academic research to address current issues and bad behaviors developed through frequent social network use. Omerod’s main argument is that social media exaggerates self-esteem and mental health issues. She discusses how social networking sites such as Facebook and Instagram interact with the brain like an addiction. Each time we get a “like” from a picture or status we have posted, our brains receive a dopamine hit. She goes further to point out that

social networking companies have created algorithms to keep our addiction alive; this is often done by limiting how many people see, and thus “like” our posts, as well as timing when the post is shown so we are continually refreshing our app for updates. As we become addicted to these networks, we also become addicted to curating our online image. With the advent of editing apps such as Facetune, it’s easy to get caught up in erasing our faults, causing us to be overly critical with ourselves, which can lead to body dysmorphia. And as often as we edit our own images, we tend to forget that others have done the same, which can lessen our self-esteem and heighten our sense of inferiority. Omerod’s advice to counteract these



negative feelings often falls flat as she merely suggests “don’t let your digital persona overwhelm you” or to “cut yourself some slack” (56–57).

Omerod discusses how social networking sites have become a source of constant critique of how others live their lives—one of the most targeted groups is mothers. Social media has turned a watchful eye on how women choose to parent their children, whether it be using formula instead of breastfeeding or being a working or stay-at-home mom—social media users feel inclined to share their opinion. There is also constant comment and expectation on quickly losing baby weight and becoming fit. This pressure is unhealthy, both mentally and physically. New moms are under the extreme stress of taking care of an infant and often dealing with symptoms of postpartum depression. While social media does provide a community for new moms to share and connect, it doesn’t outweigh the images of stick-thin moms months after giving birth or silence the constant stream of “advice” from “friends.” Again, Omerod’s advice for dealing with this intrusiveness falls flat. She suggests you simply give yourself some space and ignore the haters.

Social media is now firmly centered not only in our social lives but our financial lives as well. Our posts are centered around filtered versions of ourselves, including how we spend our money. Images of high-end meals and cocktails or run-throughs of our new shopping spree or exotic vacations make users seem relevant and as if everyone around us is living a life of luxury. It can put added financial stress on users to seem up-to-date when they are only scraping by financially. These stressors contribute to the false narrative we present through our posts; often these vacations or work trips are stressful and not the pleasurable time we post about (179). The other side is influencers, who are being paid to post ads. Many celebrities or celebrity bloggers can make all of their income from endorsing products on Instagram. This turns into its own debacle of pay based on your follower counts.

While others are seemingly jet-setting around the world for their glamorous jobs, those of us left behind in the cubicle are left to follow online (190). The temptation to check your phone repeatedly throughout the work day greatly affects workplace performance. Taking frequent breaks from work to check social media accounts rewires our brains’ functioning and thus creates a big issue with attention deficit. If we are constantly rewarding ourselves with little media breaks we are interrupting our workflow and harming our attention span. Soon we start reaching for the phone and taking these quick breaks without even noticing it.

We have all noticed the infiltration of political opinions on media feeds. Social media has offered the opportunity to share opinions with a safe distance between us and our followers. This has led to people being much more open and vocal about political beliefs, but at the same time much more closed-minded and hostile to opposing beliefs. As we learned with this past election, users seem very willing to post articles that align with their own beliefs without checking the validity of the source. The spread of fake news is as alarming as the people who believe it even when confronted with its faults. Facebook is a free app; it makes its money from selling user data. So it’s no surprise that they cashed in on the windfall of the 2016 election, selling data and posting user targeted ads regardless of the intent behind the ad. After the election, many American Facebook users admitted that the Facebook ads and articles they were shown influenced their voting decisions.

It is important to note that Omerod herself is an Instagram fashion blogger who builds her career on her social media presence, and while she offers insightful thoughts she ultimately gives no concrete solutions for today’s problems with social media. *Why Social Media Is Ruining Your Life* is easily digestible for all readers and suitable for anyone with a surface interest in social media.

## We the People: A Progressive Reading of the Constitution for the Twenty-First Century

**Author** \_ Erwin Chemerinsky

**Publisher** \_ Picador, 2018. 320 pp. Paperback. \$16.00. ISBN: 978-1-2501-6600-5.

**Reviewer** \_ Ross Allan Sempek, Oregon Library Association Intellectual Freedom Committee

With government machinations, scandals, and conflict bombarding our American consciousness, it’s easy to overlook the core of our country’s identity: the US

Constitution. The first three words of this dearly regarded text remind us that we are the constituents who fulfill the ideals of this document. We the People are the progressive





catalyst this country needs to realize the lofty ideals of our Constitution.

In the eponymous book, *We the People*, Erwin Chemerinsky uses the US Constitution's preamble to inform an interpretation of the historical document with the hopes that it will guide progressives in future eras. For this reviewer, *We the People* is an understated yet powerful introduction to a legal treatise. It is at once inclusive and unifying; diverse and galvanizing. And its humanistic overtones inspire one of the few preambles that omits a supreme deity. Indeed, it deserves recognition beyond that of a perfunctory recitation for high school civics students. *We the People* is not just a title, it's a legal philosophy that underlies his core argument: the Constitution should work for everyone, and ensuring such an equitable outcome requires us to reform how we use the Constitution. While wielding the broad scope of the preamble he tackles many issues including abortion, police accountability, gerrymandering, privacy, and gun control, among others.

So, if you intuited that "progressive" reads "liberal," then you'd be right. Chemerinsky minces no words in this regard, and calls out Republicans for "using [the] constitution to advance their own agenda." And in the very first paragraph, he speculates that President Trump's Supreme Court picks will erode progressive values. He equitably decries Democrats in some of his arguments, but these are few in comparison to his examples of the far right's political priorities. But *We the People* isn't merely a platform to air grievances; it promulgates a liberal framework for the Constitution. This progressive reading is about "empowering varying levels of government" in order to uphold the magnanimous values of the Constitution and serve all US residents.

But government services are often controversial. The author notes that conservatives' beef with entitlement programs is that the Constitution was written as a document of negative liberties; it spells out what the government cannot do. Chemerinsky disagrees here, and in a cogent argument, shows that you can simply take these negative liberties and restate them in progressive-speak as government obligations. When you focus on what the government could and should be doing for its citizens, then everyone has the potential to benefit from the Constitution.

Indeed, JFK's famous plea, "Ask not what your country can do for you . . ." does not apply here. The people already work for the government by virtue of being taxed. So it's only fair that we ask what our country can do for us.

From a formal standpoint, *We The People* is an enjoyable read due to its impeccable design. Its structure allows

for a smooth progression of ideas all while captivating the reader with modern anecdotes and historical precedents. Chemerinsky is always on topic, and he writes about dense concepts in a way that can be grasped by the layperson. An intimidating topic becomes approachable, and his legal philosophy becomes digestible. But, unfortunately, this seamless feat frays where quotations' differing tones grate against his breezy, modern prose. He does his best to contextualize some of the more difficult passages, but it can still be challenging for the average reader. With some such sections I would press on after a handful of rereads, content that I at least got the gist of his arguments.

The content was equally engaging, and considering this publication for which I'm writing this review, I was eager to read the section on privacy and perhaps extrapolate how librarians might use this text for good. But, sadly, Chemerinsky lost me in the first few pages. His introduction to twenty-first-century privacy laws centers on a regrettable anecdote. *Maryland v. King* was a Supreme Court case in which a man who, after being arrested for assault, had his cheek swabbed by the police to collect his DNA. This was done to potentially tie him to any previous crimes via a database cross-check, and as a result he was convicted of rape and sentenced to life in prison. The author considers such swabbing an intrusive overreach of government power. But splitting hairs over a rapist's privacy is irrelevant to me when compared to the lifetime of trauma he inflicted on his victim. His main argument against the majority opinion (in favor of Maryland) in this case is that the swabbing was upheld due to the potential benefits to law enforcement's ability to efficiently process criminals. He sees a precipitation of government interference as a result of pardoning such police activity. But he missed the inference about upholding public safety as a compelling government interest. Considering the massive backlog of unprocessed rape kits in the US, and the impact of the #MeToo movement, this passage is hardly progressive and totally tone-deaf.

He then moves on to digital privacy; a welcome subject in a time when legislators are sluggish to regulate industry giants. But due to the scope of his arguments, his progressive reading of this topic was lacking. With another real-life example, he argues against warrantless government searches of cell phone data via telecom providers. In *Carpenter v. United States*, the FBI garnered 127 days' worth of information on Timothy Carpenter's location and movements from his cellphone provider. Said company granted this information to law enforcement without blinking an eye or looking for a warrant. However, the only thing keeping this anecdote in the book is government



involvement. The fact that a company keeps that info for so long apparently isn't worth mentioning. I agree that police should need a warrant in order to cull information from a phone, tablet, or computer; but his focus on governmental overreach obviates a critical discussion of the data-collecting practices in the private industry like those of Google, Amazon, and Facebook. The only reason the person in the case was convicted was because this information existed in the first place—warrant or none. Ground-level privacy violations occur at the behest of these companies, but that's moot to Chemerinsky. He just doesn't want the feds to violate your privacy a second time. With this reading, privacy is not the issue at hand, it's the presence of a warrant. This is even more baffling to me when he mentions "control over information" as one of the "three distinct rights" he seeks to protect with his progressive reading of privacy.

Privacy is certainly a worthy liberty due to its unique position as a cornerstone for other freedoms: intellectual freedom, the right to read and receive information,

and the right to general welfare. But our liberties do not exist within a vacuum. In a maxim apt for librarianship, Chemerinsky observes that there exists a perennial tension between liberty and equality. When more liberties are afforded by the government, equality takes a back seat. And when a government affords its people high levels of equality, individual liberties suffer. The efficacy of legislation, and even library policies, are proven through balancing these competing factions in a way that is both pragmatic and equitable. It's hard work, but that's what makes it worth doing.

So, despite our differences in opinion, this book is a good read—it is enlightening, informative, and would be an asset for all kinds of readers. Politicians, activists, legislators, and the US Constitution buff would benefit from the philosophies and acumen contained within its pages. While it is admirable for the author to champion the People's rights in the face of government oppression and gamesmanship, I challenge him to extend these values to regulate those analogous tools of private industry.

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## LIBRARIES Inverness, Florida

After a public meeting where many of the residents in attendance reflected President Donald Trump's dislike and distrust of the *New York Times*, the Citrus County (Florida) Board of County Commissioners on November 19, 2019, voted 3-2 to stop the Citrus County Library from making a digital subscription to the newspaper available to its 70,000 cardholders. Even voluntary donations to pay the \$2,700 annual cost of the digital subscription were rejected.

However, the county libraries will continue to receive printed editions of the *New York Times*.

Earlier, the Library Advisory Board voted 7-0 in favor of adding the digital *New York Times* subscription and sent their recommendation to the county commissioners. The library board members are volunteers, appointed by the County Commission.

After the commissioners first expressed opposition to the digital subscription but prior to their final vote on it, several online GoFundMe fundraising campaigns raised a total of more than \$7,000 to allow the library to pay for electronic access to the *New York Times*.

Citrus Library Director Eric Head, speaking through a county spokeswoman Cynthia Oswald, said funding was not the only issue the library faced. The digital subscription would have required a contract agreement, which in Citrus County needs to be approved by the commission and signed by the commission chair.

"The money has to go back to the people that donated it," said Sandy Price, the chair of both the local Friends of the Library and the Library Advisory Board. GoFundMe guarantees that donations will go to the designated purpose. A GoFundMe

spokesperson said the money is being returned to the donors.

Donors who simply sent checks to the library will be asked if they want their money back or want to let it become a donation to the library. Reported in: *Citrus County Chronicle*, November 14, 2019; *Tampa Bay Times*, November 19, November 22.

## Coeur d'Alene, Idaho

At the Coeur d'Alene Public Library, books are still being hidden from library patrons, as they have been for more than a year. [See *JIFP Fall-Winter 2018*, p.18.] The targets are books promoting LGBTQ rights, women's right to vote, and new releases critical of President Donald Trump, among other topics.

Someone—or possibly multiple someones, library staff believe—takes books dealing with issues generally associated with liberal political platforms and hides them in nooks and crannies throughout the building. Books are often recovered days later, most often in the fiction section, usually crammed into the Ws.

"Physically, it's the farthest spot away [from our vantage point]," library circulation manager Tyler McLane said. "Once a month or so, we'll have staff go through and poke their heads around to see what we can find."

They often find new releases from White House insiders or reporters detailing accounts and views critical of President Trump.

"The most notable one is *Fire and Fury* (2018) by Michael Wolff," Library Director Bette Ammon said. "That one has been moved I don't know how many times." Wolff, a journalist for *USA Today* who conducted more than 200 interviews with Trump and his West Wing campaign and transition staffs, wrote in the 2018 bestseller that "100 percent of the people around [Trump]" at the time

believed the President was unfit for office.

Other partisan books hidden from sight or intentionally removed from their correct place on the shelves include but (as Ammon emphasized) are not limited to:

- *Guns Down: How to Defeat the NRA and Build a Safer Future with Fewer Guns* (2019) by Igor Volkysy;
- *Enemies of the State: The Radical Right in America from FDR to Trump* (2018) by D.J. Mulloy;
- *It's Time to Fight Dirty: How Democrats Can Build a Lasting Majority in American Politics* (2019) by David Faris.

The list doesn't just include left-leaning titles, however. Also concealed were:

- *Impeachment: An American History* (2018) by Jon Meacham;
- *White Kids: Growing Up with Privilege in a Racially-Divided America* (2018) by Margaret A. Hagerman;
- *Punishment Without Crime: How Our Massive Misdemeanor System Traps the Innocent and Makes America More Unequal* (2018) by Alexandra Natapoff; and
- *Whose Boat Is This Boat?: Comments that Don't Help in the Aftermath of a Hurricane* (2018) by the Staff of the Late Show with Stephen Colbert.

Topics of other books gone missing revolve around LGBTQ rights, perspectives from California's political scene, and the history of the women's suffrage movement.

McLane said patrons are on waiting lists for many of the books, and the cost to replace one a patron wants that can't be found can exceed \$20 each. It also costs the library staff hours to search the shelves for wanted titles.



The culprit strikes from five times a week to ten times a month.

When asked if the misshelved books could be the result of accident or miscommunication, Ammon produced an anonymous patron's comment from August 2018.

"I noticed a large volume of books attacking our President," the comment card reads. "I am going to continue hiding these books in the most obscure places I can find to keep this propaganda out of the hands of young minds. Your liberal angst gives me great pleasure."

Ammon said, "It's censorship, plain and simple. The public library supports the city they serve. We have a lot of interests and diverse opinions. We try to have books that represent all of those interests and opinions."

McLane agreed and added, "I just wish they'd voice their feelings. If they feel a particular viewpoint isn't being represented, they can talk to us about it. I don't think stealing books is the answer. It's taking away the opportunity for someone else to read those materials." Reported in: *Bonner County Daily Bee*, October 16, 2019.

### Buckhannon, West Virginia

*Prince and Knight* (2018) by David Haack, a picture book with a twist on traditional fairy tales where a prince marries a princess, was challenged for supporting LGBTQ views and was pulled from the shelves at Upshur County Public Library in West Virginia. Subsequently, the library board ducked public discussion of its decision.

In mid-November 2019, Upshur County Public Library Director Paul Norko told *Mountaineer Journal* that the issue would be discussed during the November 2019 library board meeting. Dozens of Upshur County residents and multiple news outlets

came and filled the boardroom, but the item was not found on the agenda.

The board meeting started with a discussion of the library's regular operations, and then Board President Dennis Xander attempted to enter into executive session to clear the room. He indicated that following the executive session, the meeting would be adjourned, with no chance for either opponents or supporters of LGBTQ-themed books to speak.

Both sides became enraged.

"You're more than welcome to submit written comments," Xander responded. "We haven't had a single conversation about this. We're not going to sit here for hours . . . and hours . . . and hours and listen to people saying the same thing. We know pretty much what this is doing. This will be addressed at a future [meeting]."

Xander said, "I'm sorry, I'm going to ask everyone to leave now because we have to do the evaluation in executive session. Y'all need to leave."

Most of the people in attendance refused to leave.

Xander stormed out of the board meeting, making his way through the crowd.

Norko stated that *Prince and Knight* will remain off the shelves until the library board of directors has a chance to properly review it. Reported in: *Mountaineer Journal*, November 20, 2019.

### SCHOOLS Gardendale, Alabama

Gardendale (Alabama) High School removed *The God of Small Things* (1998) by Arundhati Roy from a summer reading list for incoming freshmen after a parent complained. The school district then reviewed the book and agreed with the parent's judgment that it is inappropriate.

The novel, winner of the Mann Booker Prize, tells of a forbidden love that changes a family in India.

Darek Obitz of Gardendale, whose daughter was about to become a freshman at the school, complained to the principal that the book includes graphic and sexually explicit text that is inappropriate for students his daughter's age.

The high school is part of the Jefferson County School District. After the principal removed *The God of Small Things* from the school's website, a district review team decided the book should not be used in any Jefferson County schools. Gardendale High School will now require all reading lists to be shown to the principal before they are given to students. Reported in: [wvtm13.com](http://wvtm13.com), August 16, 2019.

### Phoenix, Arizona

*It's Perfectly Normal: Changing Bodies, Growing Up, Sex, and Sexual Health*, written by Robie Harris and illustrated by Michael Emberley and first published in 1994, has been challenged by Republican lawmakers, who want it removed from public libraries and public school classrooms.

The book is designed to be a definitive book on puberty, relationships, and sexual health for kids ages ten to fourteen. Harris spent seven years writing and editing the text, an exhaustive rundown on sex and related topics narrated by an inquisitive bird and prudish bee. Emberley spent five years working on its illustrations, from drawings of adults having sex to more interpretative pictures, like a magnet representing sexual attraction and a comic strip-style explainer on menstruation featuring an assembly line "ovary" and anthropomorphic "eggs." Doctors, psychologists, and educators vetted the



age-appropriateness and accuracy of the book.

The book has been published in more than thirty languages in thirty-five countries and has sold more than 1 million copies.

But some Arizona lawmakers call the book obscene and pornographic. They say it shows the dangers of how sex education is taught in Arizona public schools, despite little to no evidence that teachers are using *It's Perfectly Normal* in classrooms.

On December 12, 2019, Republican State Representative Kelly Townsend wrote a Facebook post calling for public school and county libraries to pull copies from their shelves. She claimed that the book contains “depictions of teenagers engaged in sexual intercourse.”

The *Phoenix New Times* called Townsend’s claim “questionable.” *It's Perfectly Normal* contains an illustration of adults having intercourse, but not teenagers. *New Times* wrote that Townsend was likely referring to drawings of teenagers masturbating. The book’s text says, “Many people masturbate. Many don’t. Whether you masturbate or not is your choice. Masturbating is perfectly normal.”

Townsend’s call for censorship follows comments from two of her colleagues criticizing *It's Perfectly Normal*. Earlier in December, Republican State Representative Anthony Kern compared the book to videos on Pornhub, and falsely implied that the Democratic state superintendent of schools planned to distribute copies to kindergartners. In September 2019, Republican House Speaker Rusty Bowers promoted a conspiracy theory (without evidence) that the book and other sex ed encourages youth promiscuity with the goal of increasing abortions and STDs to the financial benefit of health care providers such as Planned Parenthood.

In Representative Townsend’s home county, the Maricopa County Library District will retain the book, spokesperson Andrew Tucker told *Phoenix New Times*. Tucker said *It's Perfectly Normal* meets the library system’s collection development policy, which states, “Responsibility for materials chosen and borrowed by children and adolescents rests with their parents or legal guardians. Selection decisions are not influenced by the possibility that materials may be accessible to minors.”

The introduction of *It's Perfectly Normal* to Arizona politics likely traces back to Family Watch International, a conservative nonprofit organization that has been labeled an anti-LGBTQ hate group by the Southern Poverty Law Center. Family Watch International has recently focused on restricting sex ed in the United States.

After attending a Family Watch International talk, Republican State Senator Sylvia Allen confirmed to *New Times* that she plans to introduce bills during the forthcoming legislative session to restrict sex education.

Emberley and Harris are working on a twenty-fifth-anniversary edition of *It's Perfectly Normal*. Reported in: *Phoenix New Times*, December 17, 2019

### Steamboat Springs, Colorado

A month after a review committee ruled to keep “Howl” (1956), a controversial poem by Allen Ginsberg, in the Steamboat Springs High School curriculum, a student’s family has recruited the help of a religious rights lawyer in an attempt to force changes in school policy.

The issue began in October 2019, when students in high school English teacher Ryan Ayala’s music literature class read and discussed parts of the

3,000-word poem. “Howl” is considered a literary canon of the Beat Generation, but has always been controversial. When it was published, the poem drew both praise and criticism. Its lewd language and graphic sexual references led to an obscenity trial in 1957. Judge Clayton W. Horn ruled that the book *Howl and Other Poems* was not obscene but contained “redeeming social importance.”

In Steamboat Springs, one student’s father, resident Brett Cason, lodged an official complaint over the poem, which prompted the school district’s review committee to evaluate the material.

In an 8–1 decision, the committee determined that “Howl” is “an influential part of our history” and, when taught in the context of the time period in which it was written, is an “important” piece of literature with widespread influence on poetry, art, jazz, and hip-hop.

Jay Hamric, director of teaching and learning for the Steamboat Springs School District, oversaw the review process. He said that Cason had an opportunity to appeal the committee’s decision, but he did not do so.

Instead, Cason hired Jeremy Dys, an attorney at First Liberty Institute, which on its website claims to be the largest legal organization in the country specializing in religious rights cases.

In a statement to Brad Meeks, superintendent of the school district, Dys claimed that Cason’s daughter, Skylar, was exposed to “offensive, lewd, and lascivious material” in Ayala’s class, referring to parts of the poem that made her feel “guilty” and “violated.”

Dys cites one line of the poem in particular, in which Ginsberg speaks of the best minds of his generation, “who let themselves be f\*\*\* in



the a\*\* by saintly motorcyclists and scream with joy.”

According to Dys, this language is inappropriate, particularly in the wake of the #MeToo movement involving sexual assault. He said such language describes “sexual violence against women, and vivid literary depictions of heterosexually and homosexually erotic acts.”

Ginsberg identified as a homosexual and pacifist, spearheading anti-war demonstrations in the 1950s and '60s. “Howl” is seen by many literary experts as an expression of freedom and a rejection of conformism.

Dys—like the judge in 1957 who supported the protection and distribution of “Howl” under the First Amendment—also cites the First Amendment. His statement argues that Skylar Cason’s First Amendment religious rights were violated, referencing the 1992 Supreme Court case, *Lee v. Weisman*.

“The knowing presentation of material that violates the religious beliefs of Skylar and her parents to view, without adequate forewarning and the option to opt-out and provide an alternative assignment rises to the level of the unacceptable coercive pressure contemplated in *Lee* and deprives students of their First Amendment rights of conscience and religious liberty,” Dys said in the statement.

In the same statement, he demands a written apology from teacher Ayala be sent to all parents in the class. Dys also requests that all district staff be required to receive two hours of training on the use of controversial materials, two hours of sensitivity training on parental rights in public education, and two hours of sensitivity training on the protection of student religious liberty and the rights of conscience.

Dys wants these conditions to be met by the end of the year and threatens legal action otherwise.

It is unclear whether the district will adopt these measures.

In a statement posted on the district’s website, Meeks apologized for not alerting parents prior to the start of the school year to give students a choice to opt out of this part of the curriculum. Meeks called the issue “simply an oversight.”

In a letter to Brett Cason, the teacher, Ayala, apologized for introducing a text in class that made students, namely Skylar, uncomfortable. Ayala said Ginsberg’s poem is the “most controversial” piece of literature the class covers, but he includes it to encourage students to take a critical look at what determines artistic merit and what justifies censorship.

Ayala said he does not personally endorse Ginsberg’s claims in the poem. He acknowledged he should have alerted parents about the controversial material before the semester started and said he has taken action to avoid further problems, such as making it an option for students to watch the movie version of the poem, which is included in the curriculum.

Hamric stands by his review committee’s decision to keep the poem in the school curriculum.

“I think it is an important piece of American culture, of American society,” he said. “It is something I would want our students, in a safe and supportive environment, to discuss and learn about.” Reported in: *craigdaily press.com*, November 30, 2019.

### Columbia County, Georgia

Out of seventeen books recommended as supplemental reading for high school students by a district-wide faculty committee at the Columbia County (Georgia) School District,

three were rejected by Superintendent Sandra Carraway.

The three books will be excluded not only from suggested reading lists, but also from Columbia County curriculum and school libraries. The banned books are:

- *The Curious Incident of the Dog in the Night-Time* (2003) by Mark Haddon, which depicts an autistic fifteen-year-old investigating the death of a neighbor’s dog;
- *Dear Martin* (2017) by Nic Stone, a novel about an African American private school student who starts a journal of letters to Martin Luther King Jr. about his struggles in life, including a violent encounter between him, a friend, and a police officer; and
- *Regeneration* (1991) by Pat Barker, which is about a British World War I soldier who refuses to continue serving and is sent to a mental hospital.

The District Reading Resources Professional Learning Community (sometimes referred to as the Novel Committee), with representatives from all five high schools in the county, submitted this year’s recommendations in the spring of 2019. Each book is reviewed by two teachers, who are asked to provide the book’s reading level, and page numbers of any potential areas of concern, including profanity or sexual content. The list is reviewed by Carraway, and approved books are voted on by the school board.

Novel Committee members were specifically asked in an email August 6, 2019, the day before school began, to provide a list of page numbers of any sex or rape scenes, graphic depictions, or profanity other than “hell” or “damn.”



Carraway said that after reviewing the list of books, there were three she was not willing to bring to the board for approval. She does not recall having to do this in the past.

She said her reason was the three books' explicit content, but some parents who objected to her decision (plus the author of *Dear Martin*) suspect that another reason was racial content.

*The Root* (which describes itself as a journal of "Black News, Opinions, Politics and Culture") compared the rejected books to the books that won approval. "It was not clear why some books were banned and others were not," according to *The Root*. Like the rejected books, some of the approved ones also used profanity, including *Alas, Babylon*, a novel about the aftermath of nuclear fallout. The questionable language—deemed acceptable by the Novel Committee, as part of *Alas, Babylon's* realistic characterizations—includes the word "nigger" used by the white characters as a racial slur. By contrast, *Dear Martin* uses the n-word racially only once, and twice as slang ("niggah").

Carraway's book-banning didn't just anger black parents. Tara Wood, a parent whose children attend schools in the district, called the decision "embarrassing for those of us who are not white supremacist gatekeepers." She told *The Root*, "If this isn't some racially influenced bullshit, I don't know what is. She [Carraway] claims it's because of the use of the 'F-word,'" but at least three of the approved books use the word on multiple occasions.

Nic Stone, the author of *Dear Martin*, said "When it comes to things like this, banning tends to be a reactionary power move rather than something that's well thought out. . . . I think there's an overall discomfort with facing up to the fact that racism is still

a thing that we need to be talking about. But I don't think it's possible to talk about it without people being uncomfortable."

Carraway confirmed that a violent scene involving a black teenager and police officers was a factor that prompted her to take *Dear Martin* off the supplemental reading list. The scene involving police conflict was "a very sensitive situation across the nation," she said. The schools in her district recently hired campus safety officers, she said.

"You can imagine if it's that sensitive in the adult realm, in a class of fourteen- or fifteen-year-olds it can be more sensitive also," Carraway said. "I do not believe we need to bring that kind of unrest and potential for divisiveness into a classroom of young teenagers."

The Columbia County School District's student population is 60 percent white, 20 percent black and 10 percent Hispanic, according to the Georgia Board of Education. The school board is 100 percent white.

After Carraway removed the three books from the list of suggested reading for students, she also decided they weren't appropriate for the district's educators to use in their English curriculum and shouldn't be available in the district's media centers.

"*Dear Martin* . . . is not a book that we would want sitting on a shelf," she said. "We're a public school district charged with educating children, and we have a certain level of responsibility for ensuring that the material that they have access to that's provided by us is appropriate."

Carraway said the district does not have a process to decide what books are allowed in the media centers, but will begin looking at a review procedure.

Sometimes, instead of banning books, the Columbia County school

has teachers redact profanity or other questionable content from all copies of those books. A notice will then go home to parents, giving the option to receive a redacted copy of the novel. "That's our way of being sensitive to different people's values and ideals and that when their children are in school with us they can count on the content of what they're studying or reading to be age appropriate," Carraway said.

When asked why the three books that were not recommended could not be redacted, Carraway said "the content was extreme."

After Carraway removed three "extreme" books from the recommended list, all of the remaining books were approved when she presented them to the board in September. The approved books are:

- *A Long Way Gone: Memoirs of a Boy Soldier* (2007) by Ishmael Beah
- *The Alchemist: A Fable about Following Your Dreams* (1998) by Paulo Coelho
- *Jurassic Park* (1990) by Michael Crichton
- *All the Light We Cannot See* (2014) by Anthony Doerr
- *Alas, Babylon* (1959) by Pat Frank
- *Unbroken: A World War II Story of Survival, Resilience, and Redemption* (2010) by Laura Hillenbrand
- *All But My Life* (1957) by Gerda Weissmann Klein
- *Into the Wild* (1996) by Jon Krakauer
- *Till We Have Faces: A Myth Retold* (1956) by C. S. Lewis
- *The Road* (2006) by Cormac McCarthy
- *True Grit* (1968) by Charles Portis
- *The Hot Zone: A Terrifying True Story* (1994) by Richard Preston
- *The Immortal Life of Henrietta Lacks* (2010) by Rebecca Skloot
- *The Martian* (2011) by Mark Weir



Reported in: *Augusta Chronicle*, October 8, 2019; *The Root*, October 15; WJBF-TV, October 15; *Georgia Recorder*, October 22.

### Nashville, Tennessee

A Tennessee priest who banned the Harry Potter books by J. K. Rowling from a Catholic school's library was accused by parents of causing their children psychological and spiritual harm. The censorship occurred in 2017, but was not widely known until the summer of 2019, when *The Tennessean* obtained a letter that fourteen St. Edward Catholic School parents had sent two years earlier. The parents urged the Nashville diocese to remove the Rev. Dan Reehil.

Their letter, with fifty bullet points, called Reehil a toxic narcissist who hates Pope Francis and views himself as “a soldier of God.” It said, “Our school, however, consists of children, not soldiers.”

Diocesan spokesman Rick Musacchio said Reehil's conservative views, like that of the retired, more liberal pastor he replaced, both have homes in the church.

Reehil didn't respond to the newspaper's interview requests. In an email, he said he removed J. K. Rowling's books because they contain “actual spells and curses.”

There is little legal ground for the parents to have the Harry Potter series reinstated, because St. Edward's is a private school, according to Deborah Caldwell-Stone, director of the American Library Association's Office for Intellectual Freedom. Harry Potter used to be the number one banned book in schools, according to Caldwell-Stone. These days, she said, books with LGBTQ themes are more common targets.

Rebecca Hammel, school superintendent for Nashville's Catholic diocese, said, “Each pastor has canonical authority to make such decisions for his parish school. He's well within his authority to act in that manner.” Reported in: *Forbes*, September 3, 2019, Associated Press, September 7.

### PRISONS Tallahassee, Florida

The Florida Department of Corrections banned *How to Leave Prison Early: Florida Clemency, Parole and*

*Work Release* (2015) by Reggie Garcia, on the grounds that the book names two inmates specifically. Garcia says he has asked the Department of Corrections to reconsider the decision to ban his book.

Garcia said, “I would think we would want to provide information, if for nothing else they've got all the idle time to entertain inmates, inform them, let them know some things they can do when they get out and train them so they don't commit new crimes when they get out.”

The Florida Department of Corrections released a statement saying, “The Literature Review Committee, which meets every two weeks, works under guidelines outlined in *Florida Administrative Code 33-501.401—Admissible Reading Material*. It states inmates can ‘receive and possess publications . . . unless the publication is found to be detrimental to the security, order or disciplinary or rehabilitative interests of any institution of the department . . . or when it is determined that the publication might facilitate criminal activity.’” Reported in: WJHG-TV7, August 12, 2019.





## SUPREME COURT

The US Supreme Court on October 15, 2019, rejected an appeal by a student who said her First Amendment religious freedom was violated when a high school class made her learn about Islam.

In *Wood v. Arnold*, the US Court of Appeals for the Fourth Circuit had ruled against Caleigh Wood's claim that a world history class she took during the 2014-15 school year at La Plata High School in Charles County, Maryland, had compelled her to profess a belief in Islam. The class included a unit comparing some of the world's religions. A fill-in-the-blank assignment required students to write a central belief of Islam, "There is no god but *Allah* and Muhammad is the *messenger* of Allah."

Showing that you know what Muslims believe is not the same as professing that you share that belief. The appellate court said that, in context, the coursework materials that bothered Wood did not violate her First Amendment rights. By declining to hear her appeal, the Supreme Court allowed the Fourth Circuit ruling to stand. Reported in: *Bloomberg Law*, October 15, 2019.

The American Civil Liberties Union (ACLU) in December 2019 asked the Supreme Court to review a decision by the US Court of Appeals for the Fifth Circuit in a lawsuit, *Mckesson v. Doe*, that activists and legal scholars fear could have wide-reaching consequences for protest organizers across the country.

A police officer, who was hit in the head by a rock thrown at a 2016 demonstration in Louisiana, sued prominent Black Lives Matter organizer DeRay Mckesson, on the premise that Mckesson should have foreseen the possibility of violence at the protest and should be held accountable

for it. Mckesson did not throw the rock nor tell anyone else to throw it.

The case initially was tossed by a federal judge, citing a Supreme Court decision widely interpreted as a shield for protesters sued for damages they didn't directly cause. But a three-judge panel with the appellate court ruled in August that a jury should be allowed to hear the case and issue a verdict on Mckesson's alleged negligence.

The ACLU argues that allowing the case to proceed in the face of civil rights protections long guaranteed to protesters could pave the way for similar lawsuits and have a chilling effect on protest organizers nationwide.

"If this is allowed to stand, anybody can show up and throw a rock at a protest to bankrupt a movement they disagree with," said Ben Wizner, director of the ACLU's Speech, Privacy and Technology Project. "People know when they step into the street that they might have to spend some hours in jail or pay a fine. But if they might have to pay a multimillion-dollar civil judgment—that's something they're not prepared for, and can't possibly be expected to prepare for."

In July 2016, Mckesson, a Black Lives Matter activist best known for leading marches in his signature blue vest, led hundreds of people in a march onto a busy Louisiana highway in protest over the death of Alton Sterling, a black man whose shooting by two police officers was captured on video. Police arrested several demonstrators, including Mckesson.

One police officer, identified in court documents as John Doe, suffered injuries to his teeth, jaw, and brain after a demonstrator threw a rock and hit the officer in the head, court documents state. The rock thrower was never identified. Instead, the officer sued Mckesson, who had

become a recognizable face in the Black Lives Matter movement.

The suit does not allege that Mckesson encouraged someone to throw a rock or to commit a violent act, but says Mckesson led a protest that gave someone else the opportunity to attack the officer. According to the lawsuit, Mckesson knew there was a chance someone in the crowd could become violent at the demonstration.

Fifth Circuit Judge E. Grady Jolly wrote in the court's decision allowing the case to proceed to a trial that "Mckesson is liable in negligence for organizing and leading the Baton Rouge demonstration to illegally occupy a highway" and that the lower court had "erred in dismissing the suit on First Amendment grounds."

The federal judge who originally had dismissed the case cited the landmark 1982 Supreme Court decision *NAACP v. Claiborne Hardware Co.*, which created a precedent for blocking lawsuits against protesters because, the Supreme Court ruled, lawsuits could be wielded by the government as a weapon against protesters that would effectively suppress free-speech rights.

The right to protest is among the liberties enshrined in the First Amendment. Violence at protests, however, is not a protected form of speech—and protesters can, and have, been criminally charged for violent acts.

But for decades, courts have ruled against attempts to sue protest organizers for the acts of others.

In this instance, the Fifth Circuit ruled, Mckesson could be held to account because he had led people onto a state highway, breaking the law and opening up the possibility of violence.

"The vast majority of people in the aggregate are peaceful at protests, but there is always a risk of violence," said



Tabatha Abu El-Haj, a law professor at Drexel University. “If the masses really come out in force, there’s a risk of revolution. And that risk is what is supposed to drive governmental responsiveness to concerns raised at these demonstrations. . . . That risk of violence is actually critical to why people pay attention.”

The ACLU’s argument hinges on the fear that until the Supreme Court intervenes, the appellate court’s decision could be cited in future decisions. It will be weeks before the Supreme Court decides whether to hear Mckesson’s case. Reported in: *Washington Post*, December 13, 2019.

## LIBRARIES

### Orange City, Iowa

When Paul Dorr burned four LGBTQ-themed children’s library books [See JIFP, *Summer 2019*, p. 25], he was not simply exercising his First Amendment right to express his religious objections to the books, but was committing a crime. He was found guilty of fifth degree criminal mischief on August 6, 2019, in *Iowa v. Dorr* in **Sioux County District Court**.

In a written statement after the trial, Dorr said he burned the books to exercise his freedom of speech and faith. “My motive was to honor the Triune God in whom my faith resides and to protect the children of Orange City from being seduced into a life of sin and misery,” Dorr said in his statement.

Dorr, a resident of Ocheyedan in northwest Iowa, runs the Christian group “Rescue The Perishing.” He was fined \$65 (the minimum for his misdemeanor charge) plus a 35 percent criminal penalty surcharge and court costs. Sioux County Attorney Thomas Kunstle, who represented the state of Iowa, requested Dorr be fined the maximum penalty of \$625, a 35

percent surcharge, and court costs for destroying the library’s property. The books were “damaged beyond use,” according to the criminal charge.

On October 19, 2018, Dorr burned four children’s books with lesbian, gay, and bisexual themes that he had checked out from the Orange City Public Library. He posted a video of himself burning the books, and the video went viral on social media.

In the following weeks, the library received between 800 to 1,000 book donations (including copies of the books Dorr burned), and more than \$3,700. Reported in: Iowa Public Radio, August 6, 2019.

## SCHOOLS

### Birmingham, Alabama

Public school officials at Childersburg Middle School in Talladega County, Alabama, did not violate the First Amendment when they punished a student for writing “Trump 2016” on his homeroom teacher’s whiteboard, according to the **US District Court for the Northern District of Alabama** in *T.S. v. Talladega County Board of Education*. The district court emphasized that the punishment did not relate to any particular political viewpoint.

The controversy occurred around the time of the presidential election of 2016. Assistant Principal Michael Bynum heard reports of disruptions at other schools over the election. He also heard a report that students at his school were “wound up in the halls and were very loud and rowdy in the halls.”

As a result, Bynum announced a new school rule forbidding any discussion of the election during school except for history classes. T.S., an eighth-grade student, went into his homeroom teacher’s classroom and wrote “Trump 2016” on her whiteboard. He then argued with about

fifteen other students, many of whom objected to the message.

Because of this act, Bynum paddled T.S. Later, T.S. filed a federal lawsuit, alleging a violation of his First Amendment free-speech rights and rights to due process. Regarding the First Amendment claim, Judge Annemarie Carney Axon ruled that school officials were entitled to qualified immunity—a doctrine that protects government officials from liability unless they violate clearly established constitutional rights.

Axon determined that T.S.’s claim must be analyzed under the US Supreme Court’s First Amendment decision, *Tinker v. Des Moines Independent Community School District* (1969). Under the *Tinker* standard, public school officials can censor student speech if they can reasonably forecast that the student speech will cause a substantial disruption of school activities or invade the rights of others.

Judge Axon noted that Bynum “faced reports of actual disruption that the election caused in other schools and at Childersburg Middle School.” The judge also noted that the policy did not single out any particular political viewpoint.

As a result, the judge ruled that Bynum and other school officials were entitled to qualified immunity, which protects government officials from liability unless they violated clearly established constitutional law principles. Reported in: [freedomforuminstitute.org](http://freedomforuminstitute.org), August 13, 2019.

## Denver, Colorado

Victory Preparatory Academy (VPA), a charter school in Colorado, violated the First Amendment by requiring students to stand, salute the flag, and recite the school pledge, and by punishing students and parents for protesting about the overly authoritarian



atmosphere and rigid discipline at the school. In *Flores v. Victory Preparatory Academy*, the **US District Court for the District of Colorado** recognized that students retain free-speech rights at school and refused to dismiss their lawsuit.

The dispute arose in September 2017, when the school held an assembly in the gym. During assemblies, students were expected to stand, salute the flag, and recite the school pledge. Several students sat down and did not recite the school pledge. The school's chief executive officer, Ron Jajdelski, then ordered the protesting students back to the gymnasium. He became frustrated and sent the entire student body home.

Officials expelled one student, known in court papers as V.S., for talking about the protest on Facebook and for sharing a post by another student that Jajdelski "could suck the student's left nut." They expelled another student for posting messages about the protest and encouraging other students to participate. Then school officials banned Mary and Joel Flores, parents of a student at the school, for filming part of the protest at school.

These individuals and others sued the school officials, advancing a number of First Amendment claims.

First, students have a First Amendment right not to recite the school pledge, as a form of peaceful protest, as the US Supreme Court recognized in *West Virginia Board of Education v. Barnette* (1943).

Furthermore, the Supreme Court recognized that students have a right to express themselves through silent passive political speech of the students, when it upheld students' black armband protests in *Tinker v. Des Moines Independent Community School District* (1969).

VPA officials argued that the recitation of the school pledge was a

form of school-sponsored speech and subject to the more deferential standard for school officials from the US Supreme Court's decision *Hazelwood School District v. Kuhlmeier* (1988), allowing school censorship if it is related to reasonable educational purposes.

In September 2019, Judge Raymond P. Moore ruled against VPA. "Refusing to stand and recite the school pledge is an archetypal example of a 'silent, passive expression of opinion' that is protected under *Tinker*," he wrote.

The judge also denied Jajdelski qualified immunity—a doctrine that often shields government officials from liability unless they violate clearly established constitutional law. Here, Jajdelski violated clear constitutional law, punishing students for refusing to recite a pledge. That is the essence of unconstitutionally compelling speech in violation of the First Amendment.

Judge Moore also found that the parents who were banned from campus stated a plausible retaliation claim. He noted "it was beyond dispute that plaintiffs Mary and Joel Flores had a clearly established right to publicly criticize VPA without facing retaliation." Reported in: [freedomforumintstitute.org](http://freedomforumintstitute.org), September 17, 2019.

### **Newport News, Virginia**

The **US District Court for the Eastern District of Virginia, Newport News Division** ruled in *Grimm v. Gloucester County School Board* that the Gloucester County (Virginia) School Board violated transgender student Gavin Grimm's rights under Title IX and the equal-protection clause of the US Constitution with its policy that barred students from using restrooms corresponding with their gender identity.

"There is no question that the board's policy discriminates against transgender students on the basis of their gender non-conformity," US District Judge Arenda L. Wright Allen of Norfolk, Va., wrote in a decision on August 9, 2019. "Under the policy, all students except for transgender students may use restrooms corresponding with their gender identity. Transgender students are singled out, subjected to discriminatory treatment, and excluded from spaces where similarly situated students are permitted to go."

The school board's policy limited male and female locker rooms and restrooms to the "corresponding biological genders" and said students with gender identity issues would be offered "an alternative appropriate private facility."

Grimm, who is now a twenty-year-old college student, has seen his case go up and down the judicial ladder, and it might again be appealed to a higher court. The US Supreme Court had agreed in 2016 to use the case to decide whether courts should defer to Obama-era guidance calling on schools to allow transgender students to use facilities corresponding to their gender identity.

When President Donald Trump's administration withdrew that guidance in 2017, the case returned to lower courts on the more fundamental question of whether Title IX of the Education Amendments of 1972, which bars sex discrimination in federally funded schools, covers transgender students.

Wright ruled on that important threshold issue in Grimm's case in 2018, holding that claims of discrimination on the basis of transgender status may be brought under a gender-stereotyping theory covered by Title IX.



In the new decision Wright granted summary judgment to Grimm. “The board’s assertion that Mr. Grimm has suffered no harm as a result of its policy is strikingly unconvincing,” the judge said. “Mr. Grimm broke down sobbing at school because there was no restroom he could access comfortably.”

Wright said that the school board continues to harm Grimm by refusing to update his school records to reflect his male identity. “Whenever Mr. Grimm has to provide a copy of his transcript to another entity, such as a new school or employer, he must show them a document that negates his male identity and marks him different from other boys.”

Wright issued a permanent injunction declaring that the policy violated Title IX and the 14th Amendment’s equal-protection clause. The injunction awards Grimm \$1 in nominal damages, but also orders the board to change his school records to reflect the male designation on his updated birth certificate. Reported in: *Education Week*, August 11, 2019.

## COLLEGES AND UNIVERSITIES Cincinnati, Ohio

The bias-response team at the University of Michigan at Ann Arbor, designed to help students who feel they have been harassed or bullied, uses “implicit threat of punishment and intimidation to quell speech,” a three-judge panel of **US Court of Appeals for the Sixth Circuit** in Cincinnati ruled in late September 2019. In *Speech First v. Schlissel*, the appellate court sent the case back to the US District Court that had earlier supported Michigan’s right to refer students to its bias-response team. The university argued that the team is not a disciplinary body and that its role is to support and educate students who

agree to participate, but the Court of Appeals vacated that judgment.

Speech First, a membership association based in Washington, DC, that advocates for free speech on college campuses, sued the university in 2018, seeking to force it to discontinue its bias-response team. It also challenged the university’s student disciplinary code, which prohibits harassment and bullying in ways Speech First says are overly broad and potentially discriminatory.

“As used, these concepts capture staggering amounts of protected speech and expression, given that Michigan defines harassment as ‘unwanted negative attention perceived as intimidating, demeaning, or bothersome to an individual,’” Speech First wrote in announcing the lawsuit.

Shortly after the lawsuit was filed, Michigan changed the definitions of the terms “bullying” and “harassment” to match Michigan law, which Speech First does not object to. The new definition for “harassment,” for instance, is “conduct directed toward a person that includes repeated or continuing unconsented contact that would cause a reasonable individual to suffer substantial emotional distress and that actually causes the person to suffer substantial emotional distress. Harassing does not include constitutionally protected activity or conduct that serves a legitimate purpose.”

The lawsuit accelerated a review of the university’s speech policies that was already underway to ensure they were consistent with the First Amendment, the university said.

The appeals court decision said that there is no guarantee that the university won’t revert to its previous definitions of bias and harassment. It also said the timing of the definition changes—after the lawsuit was filed—“raises suspicions that its cessation is not genuine.”

The university has decried what it calls Speech First’s “false caricature” of its free-speech policies and practices. And it criticized the Trump administration for mischaracterizing its bias-response team as a disciplinary body in a statement of interest the administration filed in the case.

But a majority of the three-judge Sixth Circuit panel said that the possibility of punishment “lurks in the background” when someone is invited to meet with the response team.

“Even if an official lacks actual power to punish, the threat of punishment from a public official who appears to have punitive authority can be enough to produce an objective chill,” the ruling states.

Speech First said that the university’s bias-response team had investigated more than 150 reports of alleged “expressions of bias” through posters, fliers, social media, whiteboards, verbal comments, and classroom behavior since April 2017. It argued that the university’s standards for speech and bias reporting are unclear and risk being applied in an arbitrary or discriminatory manner.

Speech First members enrolled at Michigan steer clear of discussing topics including immigration, identity politics, and abortion for fear they might be anonymously reported to the bias team for “offensive, biased, and/or hateful” speech, the group wrote.

A lawyer for the Foundation for Individual Rights in Education, an advocacy group that defends free speech on college campuses, said colleges in the Sixth Circuit—Kentucky, Michigan, Ohio, and Tennessee—“will have to give very careful thought to how they use bias-response teams going forward; having any punitive or coercive elements to the program—or the appearance of them—may open a school up



to a lawsuit,” Marieke Tuthill Beck-Coon, director of litigation, wrote in an email.

Ryan A. Miller, an assistant professor of higher education at the University of North Carolina at Charlotte who has studied and written about bias-response teams, said such teams take on multiple roles on campus, helping assess the campus climate, referring students to support programs, and educating the campus about free-speech issues.

“Some incidents rise to the level of criminal acts and need to be referred to the appropriate authorities, but for those that don’t, team members might refer students to support resources they weren’t aware were available,” he said. As a result of the increased scrutiny, he said, “they have become incredibly sensitive to and aware of the needs of accommodating free speech.”

Hundreds of campuses have bias-response teams, and those numbers appear to be growing, Miller said. A few, though, have changed their policies or disbanded the teams in response to criticism that they inhibit free speech.

“Unfortunately, bias-response teams have come to represent lots of pre-existing stereotypes about higher education,” Miller said, as bastions of liberal indoctrination where conservative views are squelched. Reported in: *Chronicle of Higher Education*, September 24, 2019.

## BOOK PUBLISHING Alexandria, Virginia

The **US District Court for the Eastern District of Virginia, Alexandria Division**, in *USA v. Snowden et al.*, ruled on December 17, 2019, that the US government can seize all the proceeds NSA leaker Edward Snowden is making from his new book, *Permanent Record*. Judge Liam O’Grady ruled that Snowden

violated secrecy agreements he signed with the CIA and the NSA by publishing the book, which recounts his time at both intelligence agencies as a government contractor.

The judge pointed to the “unambiguous” language in the signed agreements, which required Snowden to first submit the book to the CIA and the NSA for approval before publication. If he failed to do so, then under the agreements, the federal government has the power to confiscate any royalties he made from divulging US secrets.

“The terms of these Secrecy Agreements are clear, and provide that he is in breach of his contracts,” wrote in the ruling.

The same ruling says the US government can also confiscate any profits Snowden has made in paid speeches where he’s discussed sensitive details about CIA and NSA spy activities.

Snowden’s defense team had argued in court that both the CIA and the NSA never would have reviewed his book in “good faith and within a reasonable time.” Snowden’s defense also “asserts that this lawsuit is based upon animus towards his viewpoint and that the government is engaged in selectively enforcing the Secrecy Agreements,” the ruling noted. Nevertheless, the arguments failed to convince the district judge.

Snowden’s legal team is reviewing its options to challenge the judge’s ruling.

Snowden’s book, *Permanent Record*, was published in September 2019, and has become a *New York Times* bestseller. Reported in: *pcmag.com*, December 17, 2019; *courtlistener.com*, December 17.

## INTERNET Washington, D.C.

The US Department of Education’s internet filter blocked access to the

website of Public Citizen and other advocacy organizations by categorizing them as “adult/mature content,” alongside porn and gambling. Public Citizen, which was founded in the early 1970s by Ralph Nader and works on such issues as campaign finance reform and consumer safety, on May 14, 2019, filed a lawsuit, *Public Citizen v. US Department of Education*, in **US District Court for the District of Columbia**.

A previous Freedom of Information Act request failed to explain the censorship. Through its lawsuit, Public Citizen learned that the Education Department’s internet filtering is managed by a company called Fortinet, which provides network and content security to companies and government entities. Fortinet’s filter applied classifications for specific websites and then broader categories to those specific classifications. There was no explanation of why Fortinet decided that so-called “advocacy groups” needed to be placed under the “adult/mature” content category.

In search of a resolution, the Department of Education first informed Public Citizen that it was “whitelisting” its website so that it no longer got caught up in their security filters. When Public Citizen became more fully aware of what was happening with those filters, it sought to have Fortinet take “advocacy organization” out of the “adult/mature” content category.

The Department of Education agreed to ask Fortinet not to block advocacy groups on the Department’s networks. As a result, Public Citizen announced on September 10, 2019, that it was dropping its lawsuit against the department. But even though the group is no longer bringing legal action, it said there was no way to know if other groups were also having



their websites blocked. Reported in: *Daily Beast*, September 12, 2019.

## SOCIAL MEDIA Minneapolis, Minnesota

Minnesota's law against revenge porn is unconstitutional and infringes on First Amendment rights, the **Minnesota Court of Appeals** ruled on December 23, 2019, as it reversed the conviction of a man who circulated explicit photos of a former girlfriend. In *Minnesota v. Casillas*, the court ruled that the state law was such a broad violation of First Amendment free-speech rights that it couldn't be fixed by a ruling limiting its scope.

According to court filings, Michael Anthony Casillas used the victim's passwords to access her accounts after their relationship ended to obtain sexual photos and videos of her, then threatened to release them. She later received a screenshot from one explicit video that had been sent to forty-four recipients and posted online.

A Dakota County judge rejected defendant Casillas's First Amendment challenge to the state law and sentenced him to twenty-three months in prison.

The three-judge appeals panel called Casillas' conduct "abhorrent," and said they recognized that the non-consensual dissemination of private sexual images can cause significant harm.

"The state legitimately seeks to punish that conduct," they wrote. "But the state cannot do so under a statute that is written too broadly and therefore violates the First Amendment."

In throwing out his conviction, Judges Michelle Larkin, Peter Reyes, and Randall Slieter said the state's revenge porn statute has the potential to cover conduct that is constitutionally protected, such as sharing images

that appear in publicly accessible media with the consent of the people depicted.

Specifically, they said, the statute lacks a requirement that prosecutors prove an intent to cause harm. They said the language allows for convictions even if the defendant didn't know that the person depicted did not consent to the distribution of that image. And they said it allows convictions when the defendant didn't know that the person depicted had a reasonable expectation of privacy.

Rep. John Lesch, a St. Paul Democrat and chief author of the 2016 law, called on Attorney General Keith Ellison and Dakota County Attorney James Backstrom to appeal the ruling to the Minnesota Supreme Court. He said similar laws have withstood constitutional challenges elsewhere, most recently in Illinois in October.

Ellison said his office was reviewing its options. Reported in: *Associated Press*, December 23, 2019.

## Kansas City, Missouri

In *Campbell v. Reisch* in the **US District for the Western District of Missouri**, Judge Brian Wimes found that a state representative violated the First Amendment rights of a constituent when she blocked him from commenting on her tweet on Twitter.

Judge Wimes largely agreed with another court's reasoning in a similar case, *Knight First Amendment v. Trump*, in which the Second Circuit found that President Trump violated the First Amendment rights of those he blocked on Twitter. Judge Wimes found that the plaintiff's speech was on a matter of public concern; Campbell was disputing a criticism by Representative Cheri Toalson Reisch arising from Reisch's criticism of her political opponent. Further, Judge Wimes ruled that the "interactive space" on the Twitter account is

a designated public forum. Reisch's blocking of the plaintiff because he disagreed with her was viewpoint discrimination prohibited by the First Amendment.

Judge Wimes' opinion considers the "color of state law" requirement under 42 USC. §1983, like the state action requirement, met under this "fact intensive" analysis. The judge stated that the defendant controlled the interactive space of her twitter account in her "capacity as a state legislator." Further, she had "launched her Twitter account alongside her political campaign"; her "handle references her elected district, and her Twitter account links to her campaign webpage." Plus, the "image associated with Defendant's Twitter account is a photo of her on the state house floor," and finally she "used the Twitter account to tweet about her work as a public official."

Along with a case about a county legislator on Facebook in *Davison v. Randall (& Loudoun County)* decided by the Fourth Circuit, this opinion seems to be part of a trend of courts finding that elected officials cannot "curate" the comment sections on their social media posts. Reported in: *Constitutional Law Prof Blog*, August 19, 2019.

## Houston, Texas

A new Facebook feature that lets users clear their browser history was temporarily blocked by the **334th State District Court of Harris County** in Texas over concerns that it would also allow sex traffickers to cover their tracks, in *Doe v. Facebook Inc.* The plaintiff is a woman who claims in her lawsuit that the company didn't do enough to save her from being trafficked after meeting predators on the social network as a teenager.

On August 22, 2019, Judge Tanya Garrison granted the plaintiff's



motion to hit Facebook with a temporary restraining order. Despite this, on January 29, 2020, Facebook officially introduced the “Off-Facebook Activity” privacy tool and promoted it with a blog post by founder and CEO Mark Zuckerberg. That same day, Judge Garrison ordered Facebook to take down the tool. Facebook then requested an emergency appeal with the 14th State Court of Appeals in Houston.

Facebook contends it is protected under Section 230 of the Communications Decency Act, a part of that law that shields the operators of online services from liability due to content posted by users.

The two sides met on February 6, 2020, in San Francisco for the deposition of a Facebook executive. The deposition apparently satisfied Annie McAdams, the attorney who won the temporary restraining order, because on February 7 she filed an unopposed motion to dissolve the temporary restraining order and dropped motions related to it. The Off-Facebook Activity tool is no longer threatened by court action in Harris County.

The privacy tool allows users to separate their internet browsing history from their personal profiles. It’s being promoted as a financial sacrifice that will hurt Facebook’s bottom line while improving user privacy. It had previously been launched in Ireland, Spain, and South Korea.

Facebook has said it doesn’t allow human trafficking on its network and that it works closely with anti-trafficking organizations.

The litigation in Houston is the first in the nation seeking to hold companies liable for the behavior of third parties on their web platforms after Congress carved out an exemption to the Communications Decency Act for sex trafficking in 2018.

Reported in: *Bloomberg*, August 22, 2019; *Houston Chronicle*, February 6, 2020, February 7.

## Seattle, Washington

Prager University, a nonprofit headed by radio host Dennis Prager that produces conservative videos, claims that YouTube is suppressing many of its videos because of their conservative content. In opening oral arguments on August 27, 2019, in *Prager University v. Google* before the **US Ninth Circuit Court of Appeals** in Seattle, Prager challenges YouTube, a subsidiary of Google, for labeling more than one hundred PragerU videos as “dangerous” or “derogatory.”

PragerU’s lawsuit maintains that the organization’s videos have been restricted, not because they are explicit, vulgar, or obscene in nature, or inappropriate for children in any way, but rather because they promote conservative ideas.

In a news release, Prager stated, “Companies like Google/YouTube, Facebook and Twitter have come under increasing scrutiny in recent months amid numerous allegations they have wielded their near-monopoly status with respect to the publication and dissemination of information online to silence those with conservative viewpoints. The lawsuit has placed PragerU at the center of a heated, national debate about free speech on the internet and carries with it profound implications for the First Amendment.”

YouTube has restricted approximately 20 percent of the nonprofit’s videos, meaning that those clips cannot be viewed by the 1.5 percent of users who opt not to see adult material. The tagged videos include “Are 1 in 5 Women Raped at College?” and “Why Isn’t Communism as Hated as Nazism?”

PragerU’s suit says that YouTube is essentially a “public forum” that should be subject to government intervention.

But that line of thinking “flies in the face” of nearly every First Amendment precedent, which is that it curtails the power of the *government*, not private actors, says Jane Bambauer, a professor of law at the University of Arizona. Companies, “no matter how powerful we think they are,” are thus excluded from that particular type of government meddling.

Attorneys for Google argued that a win for PragerU would have deleterious effects on the internet. For one, companies would lose their right to remove pornography and abusive content, which Section 230 of the Communications Decency Act expressly allows them to scrub as they see fit. But they see a more frightening consequence as well: platforms such as their own would have the incentive to abandon current claims of political neutrality to avoid similar lawsuits, and would thus be likely to censor *more* content—not less. Reported in: [prageru.com](http://prageru.com), August 27, 2019; [reason.com](http://reason.com), September 2.

## FREE SPEECH Chicago, Illinois

Four Wheaton College students, who believe it is their duty to share the word of God with others, are suing the City of Chicago for a policy restricting them to limited free speech zones in its downtown Millennium Park. On September 18, 2019, they filed *Swart et al. v. Chicago* in **US District Court for the Northern District of Illinois**, asking the court to declare the Millennium Park rules defining free speech areas invalid and to stop the city from enforcing rules that, they claim, improperly restrict freedom of speech in a traditional public forum and infringe on



the students' right to exercise their religion.

In April 2019, the Department of Cultural Affairs and Special Events, which runs Millennium Park, updated rules for the park. One new rule divided the park into eleven "rooms," or sections, and prohibited "the making of speeches and passing out of written communications" in ten of the eleven sections, according to the city's website. The rules also ban "conduct that objectively interferes" with visitors' ability to enjoy the park's artistic displays, impairs pedestrian traffic, and disrupts the views of art.

Under the rules, people are only authorized to give speeches and hand out information in Wrigley Square in the northwest corner of the park.

The plaintiffs' attorney, John Mauck, said the lawsuit is about more than his clients' rights, but also "the right of the public to receive literature and receive speeches. The public park and sidewalks are the traditional places, and the only places where you can freely communicate, and now they want to take that away," he said.

Mauck said the restrictions are particularly problematic because the sculpture Cloud Gate, commonly known as the Bean, is one of the locations that is off limits. "The Bean is one of the highest tourist attractions in the United States . . . that's where you want to get your message out," he said.

He added that all speech, not just evangelism, is affected. Reported in: *Chicago Sun-Times*, September 18, 2019; *Chicago Tribune*, September 19.

## Richmond, Virginia

The city of Baltimore cannot use the settlement of lawsuits as "hush money" to prevent plaintiffs from exercising their First Amendment rights, declared the **US Court of**

## Appeals for the Fourth Circuit

in its opinion in *Overbey v. Mayor & City Council of Baltimore*.

Writing for the majority, Judge Henry Floyd noted that the Baltimore Police Department has inserted non-disparagement clauses in 95 percent of its settlement agreements, including one with Ashley Overbey. She had sued the city for being arrested in her home when she called 911 to report a burglary, resulting in a settlement of \$63,000, complete with the usual non-disparagement provision.

The *Baltimore Sun* newspaper reported on the settlement as it went before a city agency for approval and published a negative comment about Overbey from the city solicitor. This reporting prompted some anonymous online comments, to which Overbey responded online. The city decided that Overbey's online comments violated the non-disparagement clause and thus remitted only half of the settlement amount, retaining \$31,500 as "liquidated damages."

The court found that the settlement agreement called for Overbey to waive her First Amendment rights (rejecting the City's argument that the First Amendment was not implicated by refraining from speaking), and further held that the waiver was "outweighed by a relevant public policy that would be harmed" by forcing Overbey to remain silent.

The city argued that half of Overbey's settlement sum was earmarked for her silence, and that it would be unfair for Overbey to collect that half of her money when she was not, in fact, silent. "When the second half of Overbey's settlement sum is viewed in this light," according to the court's opinion, "it is difficult to see what distinguishes it from hush money. Needless to say, this does not work in the City's favor. We have never

ratified the government's purchase of a potential critic's silence merely because it would be unfair to deprive the government of the full value of its hush money. We are not eager to get into that business now."

The ruling thus reversed the district judge's grant of summary judgment to the city. The appellate court held that "the non-disparagement clause in Overbey's settlement agreement amounts to a waiver of her First Amendment rights and that strong public interests rooted in the First Amendment make it unenforceable and void."

The court also considered the First Amendment claim of the other plaintiff, *Baltimore Brew*, a local news website, which the district judge had dismissed for lack of standing. The court held that *Brew* had standing based on its allegations that the city's pervasive use of non-disparagement clauses "impedes the ability of the press generally and *Baltimore Brew* specifically, to fully carry out the important role the press plays in informing the public about government actions." The court stressed that its conclusion was based on the allegations in the complaint and that the evidentiary record should be developed by the district judge.

Dissenting, recent appointee to the bench Judge Marvin Quattlebaum stated that since Overbey entered into the settlement agreement voluntarily—a question the majority stated it need not resolve given its conclusion regarding public interest—the courts should enforce it. Quattlebaum argued that the city has an interest in the certainty of its contract and is entitled to have the non-disparagement clause enforced. In a footnote, the dissenting judge found the "hush money" by the majority as "harsh words," suggesting that a better view is that the plaintiff "cannot have her cake and eat it too."





Reported in: *Constitutional Law Prof Blog*, July 12, 2019.

## PRISONS Phoenix, Arizona

In early November 2019, Judge Roslyn Silver of **US District Court for Arizona** gave the Arizona Department of Corrections ninety days to define “bright-line” rules regarding permissible inmate reading material. The directive stems from a 2015 lawsuit, *Prison Legal News v. Ryan*, filed when prison officials didn’t deliver four issues of the monthly journal to its inmate subscribers because the content in those issues was deemed “sexually explicit.”

Prisoner rights advocates say the judge’s decision underscores the indeterminate manner in which jails and prisons prohibit or grant what incarcerated people can read.

In March 2014, copies of *Prison Legal News* weren’t delivered to the 97 inmate subscribers in Arizona because some articles described nonconsensual sexual contact between guards and prisoners, according to court documents. The censorship was due to a policy that prohibits sending prisoners “sexually explicit material,” with no exception for publications that discussed sexual interactions in a factual or legal manner.

The policy was overly broad and the standard too vague to be consistently followed, said David Fathi, director of the American Civil Liberties Union’s National Prison Project, who has represented *Prison Legal News* in past cases.

“You saw in the Arizona case that staff were told to use common sense and good judgment. That’s a recipe for arbitrary or inconsistent decision-making,” he said.

Fathi said the judge’s order is a big improvement, but adding a training on the new policy would be best practice.

Restricting what inmates can read is a decentralized process that can happen on the state or federal level, said Nazgol Ghandnoosh, senior research analyst for the Sentencing Project.

Sexually explicit bans can include biology books and even literary works appropriate for high school students.

Silver’s order could change the previous issues that were part of the original policy.

In her order, Silver wrote that the Arizona Department of Corrections and the state must change its mail policy from allowing agency employees and agents to use their own discretion in determining what’s banned and establish consistency in excluding sexually explicit material.

The department now has to deliver the previously censored issues of the magazine to its subscribers within thirty days of the order.

Under Silver’s directive, the state of Arizona and its corrections department can no longer violate prisoners’ First Amendment rights, which include the right to read—something that also impacts non-incarcerated people once prisoners are released, Fathi said.

“Do we want people who have exercised their minds in prisons? Do we want people who improved their ability to read and think? Or do we want people who have been completely cut off?” he said. “I think the answer is clear.” Reported in: *prisonlegalnews.org*, November 6, 2019; *Washington Post*, November 12.

## New York, New York

The censorship of books at New York City’s Rikers Island prison is so entrenched that correction officers have been arresting visitors who bring books to detainees, accusing the visitors of soaking the pages with synthetic marijuana, according to

a lawsuit, *Camacho et al. v. City of New York*, filed on December 3, 2019, in the **US District Court for the Southern District of New York**.

The plaintiffs are five New Yorkers who tried to bring books to inmates of the Rikers Island. They are suing the City of New York and some prison guards for false arrest. They claim correction officers accused them of soaking the books they brought in with a liquid form of the drug K2.

Each of the five visitors was arrested and held for hours, then charged with felonies, which were later all dismissed, said their lawyer, Julia P. Kuan of Romano and Kuan PLLC. Even after the charges were dropped, they were banned from later visiting inmates. The detainees they were trying to see were also barred from contact visits, Kuan said.

The lawsuit claims that correction officers “embarked on a campaign” of arresting visitors who brought books to people detained in the city jails. The lawsuit seeks class action status, claiming there may be dozens of other people similarly arrested for bringing in books.

“We know there are others out there,” said Kuan. “It’s outrageous and unconstitutional that the Department of Correction would target innocent visitors to Rikers Island and falsely arrest and prosecute them simply because they brought a book to jail.”

The lawsuit specifically names nine correction officers and mentions as many as thirty other potential defendants. It does not identify a dollar amount, but seeks punitive and compensatory damages. Reported in: *New York Daily News*, December 4, 2019.

## Richmond, Virginia

A Virginia prison inmate, Uhuru Baraka Rowe, has filed a lawsuit against prison officials, claiming they censored his writings, violating his



First and Fourteenth Amendment rights. In *Rowe v. Clark et al.*, in **US District Court for the Eastern District of Virginia, Richmond Division**, his attorney, Jeff Fogel, said two essays about poor prison conditions were censored prior to their release.

Neither essay contained anything that could be considered a security risk, the suit alleges, but they do contain information critical of both the Sussex II State Prison and its staff.

The suit claims that as a politically conscious prisoner, Rowe was targeted for the political content of his essays.

Fogel said that in his time as an attorney, he's been a part of more than a dozen similar cases and in every case the suits have worked out in favor of the inmates. Censorship in federal and state prisons is widespread, Fogel said, and even his own writings teaching inmates how to file their own lawsuits have been blocked.

Given the limited literacy seen among many inmates, Fogel said he finds it frustrating that prisons would try to censor both incoming literature and letters sent by inmates.

According to Fogel, prison staff is only allowed to censor or prevent the release of inmate writings that contain directions for criminal activity, escape plans, coded information, or other obvious security risks.

Among the criticisms highlighted in Rowe's essays are: poor-quality water, substandard medical care, overcrowding, misconduct by prison staff, and understaffing. The understaffing has caused the prison to go on lockdown due to insufficient security, forcing prisoners to stay in their cells for longer periods of time than usual, one essay states.

Rowe has been imprisoned for more than twenty years on a ninety-three-year sentence. According to

VDOC's website, Rowe will not be released until 2076. He is not eligible for parole.

In an earlier essay Rowe wrote, which was critical of Virginia's parole system, he said he accepted a blind plea agreement in a case involving robbery and the murder of two innocent people. Barely eighteen years old at the time, Rowe said the sentencing guidelines suggested a maximum prison term of thirteen years. So far, his requests for clemency have not been approved.

Rowe is currently being held at Greensville Correctional Center in Jarratt. No hearings have been scheduled yet in the lawsuit. Reported in: *Daily Progress*, November 23, 2018, August 25, 2019.

## GOVERNMENT SPEECH San Francisco, California

The National Rifle Association (NRA) is suing the city and county of San Francisco and its Board of Supervisors over a unanimous vote to designate the NRA a domestic terrorist organization. In *NRA v. San Francisco*, filed in **US District Court for the Northern District of California, San Francisco Division**, the pro-gun group accuses lawmakers of discrimination "based on the viewpoint of their political speech."

In a resolution on September 3, 2019, the board said San Francisco should "take every reasonable step" to limit any vendors and contractors with which it does business from also doing business with the NRA. It also said it is "urging other cities, states, and the federal government to do the same."

The NRA calls the terrorist designation a "frivolous insult"—but it adds that the lawmakers' actions also "pose a nonfrivolous constitutional threat" to the rights of free speech and association.

The NRA suit also warns against "reasonably expected chilling effects."

Accusing the San Francisco board of using "McCarthyist elements" in an attempt to silence it and carry out a political vendetta, the NRA says the resolution "would chill a person of ordinary firmness from continuing to speak against gun control, or from associating . . . with the NRA."

The resolution accuses the NRA of using its money and influence "to promote gun ownership and incite gun owners to acts of violence," adding that the group "spreads propaganda that misinforms and aims to deceive the public about the dangers of gun violence."

San Francisco's resolution, which lacks explicit enforcement tools, describes the United States as being "plagued by an epidemic of gun violence, including over 36,000 deaths, and 100,000 injuries each year." It also notes the mass shooting in July at the Gilroy Garlic Festival south of San Francisco, in which a gunman killed three people, including two children.

The measure's sponsor, Supervisor Catherine Stefani, a former prosecutor, is a leader in the group Moms Demand Action for Gun Sense in America. She said the NRA uses intimidation and threats to promote its agenda.

"When they use phrases like, 'I'll give you my gun when you pry it from my cold, dead hands' on bumper stickers, they are saying reasoned debate about public safety should be met with violence," Stefani said.

San Francisco's move against the NRA follows recent efforts in Los Angeles and New York State, where officials have sought to pressure businesses to cut ties with the group. In its lawsuit, the NRA notes, "Courts have sustained First Amendment claims in both Los Angeles and New York."



In their resolution, the San Francisco lawmakers state, “All countries have violent and hateful people, but only in America do we give them ready access to assault weapons and large-capacity magazines thanks, in large part, due to the National Rifle Association’s influence.” Reported in: npr.org, September 10, 2019.

## PRIVACY Phoenix, Arizona

Arizonans have a constitutional right to online privacy to keep police from snooping to find out who they are without first getting a warrant, the **Arizona Court of Appeals, Division Two**, ruled in *Arizona v. Mixton* in July 2019.

In what appears to be the first ruling of its kind in the state, the court said internet users have a “reasonable expectation of privacy” that the information they furnish about themselves to internet providers will be kept secret. That specifically includes who they are and their home address. That means police and government agencies need a search warrant to obtain information that reveals who is posting material, the court ruled. And getting a search warrant requires a showing of some criminal activity.

The ruling is particularly significant because federal courts have consistently ruled that once people furnish that information to a third party—in this case their internet service provider—they have given up any expectation of privacy. And that means the Fourth Amendment protections of the US Constitution against unreasonable search and seizure no longer apply, and the government no longer needs a warrant.

But appellate Judge Karl Eppich, writing for the court, said that argument won’t wash in Arizona. The key is the state constitution.

“No person shall be disturbed in his private affairs, or his home invaded, without authority of law,” the provision reads. By contrast, the US Constitution has no specific right of privacy.

This case involves what essentially amounts to a “sting” operation in Pima County where a police detective investigating child exploitation placed an ad on an internet advertising forum inviting those interested in child pornography and incest to contact him. According to court records, William Mixton responded, sending images of child pornography.

The detective then got federal agents to issue an administrative subpoena to obtain Mixton’s IP address, essentially a number assigned to users connected to the internet so that no two are the same. Those numbers can be either static or random.

With the IP address, the detective was able to identify Mixton’s internet provider, which in turn led to his street address. At that point, with a search warrant, police seized computers with images of child pornography.

He was found guilty of twenty counts of sexual exploitation of a minor younger than fifteen and sentenced to seventeen years in prison on each, to be served consecutively.

Mixton argued that the police never should have been able to get his IP address in the first place without an actual warrant.

Judge Eppich acknowledged that Mixton has no basis for his contention under the US Constitution, as he had voluntarily provided information to his internet provider to get service. But Arizona’s constitution, with its specific right of privacy, is something quite different, the judge said.

“In the internet era, the electronic storage capacity of third parties has in many cases replaced the personal desk drawer as the repository of sensitive

personal and business information—information that would unquestionably be protected from warrantless government searches if on a paper desk at a home or office,” Eppich wrote. “The third-party doctrine allows the government a peek at this information in a way that is the 21st century equivalent of a trip through a home to see what books and magazines the residents read, who they correspond with or call, and who they transact with and the nature of those transactions,” the judge said. “We doubt that the framers of our state constitution intended the government to snoop in our private affairs without obtaining a search warrant.”

Eppich specifically rejected arguments by prosecutors that internet users give up their expectation of privacy because they “voluntarily” reveal identity to get service.

“The user provides the information for the limited purpose of obtaining service,” he wrote. “It is entirely reasonable for the user to expect the provider not to exceed that purpose by revealing the user’s identity to authorities in a way that connect it to his or her activities on the internet.”

Eppich warned against giving such broad power, saying it effectively would give the government “unfettered ability to learn the identity behind anonymous speech, even without any showing or even suspicion of unlawful activity.”

And the implications, he said, are broader than that.

“The right of free association, for example, is hollow when the government can identify an association’s members through subscriber information matched with particular internet activity,” Eppich said. “To allow the government to obtain without a warrant information showing who a person communicates with and what websites he or she visits may reveal



a person's associations and therefore intrude on a person's right to privacy in those associations."

Judge Philip Espinosa, in his dissent, said he does not read the state constitutional protections so broadly. On one hand, he acknowledged the vast amount of data being generated through electronics, with everything from cellphones, electronic tablets, smart watches, and even modern automobiles all subject to "pervasive tracking cookies."

"Much of the resulting information is, and should be, constitutionally protected," Espinosa wrote. But he said information like an IP number should not have constitutional protection any more than, for example, a personal telephone number.

Espinosa said the information was legitimately sought by law enforcement solely to reveal the source of suspected child pornography distribution.

And Espinosa said he finds no First Amendment protections at issue, saying this case involves "criminally perverted speech" that is not constitutionally protected.

As it turns out, the appellate court upheld Mixton's conviction because the police, in the end, eventually had a warrant. Reported in: Tucson.com, July 31, 2019.

### Chicago, Illinois

Vimeo is collecting and storing thousands of people's facial biometrics without their permission or knowledge, according to a lawsuit filed in mid-September 2019 in the **Circuit Court of Cook County, Illinois**.

Filed on behalf of Illinois resident Bradley Acaley, the *Acaley v. Vimeo* brief says "highly detailed geometric" facial maps are being collected and stored in violation of the Illinois Biometric Information Privacy Act. The law bars companies from obtaining

or possessing an individual's biometric identifiers or information unless the company (1) informs the person in writing of its plans to do so, (2) states in writing the purpose and length of term for the collection and storage, (3) receives written permission from the user, and (4) publishes retention schedules and guidelines for destroying the biometric identifiers and information.

The complaint alleges Vimeo is violating the law by collecting, storing, and using the facial biometrics of thousands of unwitting individuals throughout the United States whose faces appear in photos or videos uploaded to the Magisto video-editor application. Vimeo acquired Magisto in April and claimed the editor had more than 100 million users.

"Vimeo has created, collected, and stored, in conjunction with its cloud-based Magisto service, thousands of 'face templates' (or 'face prints')—highly detailed geometric maps of the face—from thousands of Magisto users," the complaint alleges. The complaint adds: "Each face template that Vimeo extracts is unique to a particular individual, in the same way that a fingerprint or voiceprint uniquely identifies one and only one person."

Acaley subscribed to Magisto for one year, starting in December 2017, at a cost of \$120. He regularly uploaded videos of himself and his family, including his minor children. He would then edit the uploaded videos or create videos from uploaded photos or videos.

Vimeo analyzed Acaley's videos and photos "by automatically locating and scanning plaintiff's face and by extracting geometric data relating to the contours of his face and the distances between his eyes, nose, and ears—data which Vimeo then used to create a unique template of plaintiff's

face," the complaint alleges. Vimeo also used the data to recognize Acaley's gender, age, race, and location.

The complaint said that Acaley never received notice of this collection or storage of his biometrics and that he never provided his consent.

The company didn't own Magisto at the time Acaley used it, but Vimeo possibly assumed all legal liabilities when it acquired the video-editing service. After that question gets sorted out, the court could address the issue of cloud services using facial-recognition analysis to analyze images and videos users willingly uploaded. Reported in: arstechnica.com, September 26, 2019.

### Boston, Massachusetts

In a major victory for privacy rights, the **US District Court for the District of Massachusetts** on November 12, 2019, ruled that the government's suspicionless searches of international travelers' smartphones and laptops at airports and other US ports of entry violate the Fourth Amendment. The ruling came in a lawsuit, *Alasaad v. McAleenan*, filed by the American Civil Liberties Union (ACLU), Electronic Frontier Foundation, and ACLU of Massachusetts, on behalf of eleven travelers whose smartphones and laptops were searched without individualized suspicion at US ports of entry.

The district court order puts an end to authority asserted by Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) to search and seize travelers' devices for purposes far afield from the enforcement of immigration and customs laws. Border officers must now demonstrate individualized suspicion of contraband before they can search a traveler's device.

The number of electronic device searches at US ports of entry has



increased significantly. Last year, CBP conducted more than 33,000 searches, almost four times the number from just three years prior.

International travelers returning to the United States have reported numerous cases of improper searches in recent months. A border officer searched plaintiff Zainab Merchant's phone, despite her informing the officer that it contained privileged attorney-client communications. An immigration officer at Boston Logan Airport reportedly searched an incoming Harvard freshman's cell phone and laptop, reprimanded the student for friends' social media postings expressing views critical of the US government, and denied the student entry into the country following the search. Reported in: [aclu.org](http://aclu.org), November 12, 2019.

## CHURCH AND STATE Atlanta, Georgia

In early July 2019, the **US Court of Appeals for the Eleventh Circuit** in *Williamson v. Brevard County* determined the practice of invocational prayer that traditionally preceded the Brevard County (Florida) Board of County Commissioners meetings "had run afoul of the Establishment Clause." Several factors led the appeals court to its ruling, but the most clear-cut was the fact that "many members of the board exercised [their] plenary discretion in plainly unconstitutional ways."

The controversy grew from the board's selection of speakers for the religious invocation at the beginning of each board meeting. From January 2010 through March 2016, all of the invocations contained monotheistic content. During that period, all but 7 of the 195 sessions began with an invocation from Christian speakers (and one Mormon "lay leader").

On behalf of the Central Florida Freethought Community (CFFC),

plaintiff David Williamson sent the board two letters in 2014, requesting that secular humanists be invited to deliver an invocation. The board responded with a letter declining CFFC's request, explaining that "their proposal would not fit within the county commission's tradition." The letter elucidated how the custom "invokes guidance . . . [from] a higher authority which a substantial body of Brevard constituents believe to exist." After examining CFFC's website, the board determined CFFC does not share the "beliefs or values" for which the board created the ceremonial invocation practice.

Similar groups sent comparable requests to the board over the next year, leading the board to adopt resolution 2015-101 in July 2015. In response to the various "godless quotes" posted on the [request-sending] organizations' sites," the resolution stipulated:

Secular invocations and supplications from any organization whose precepts, tenets or principles espouse or promote reason, science, environmental factors, nature or ethics as guiding forces, ideologies and philosophies that should be observed in the secular business or secular decision-making process involving Brevard County employees, elected officials or decision makers including the Board of County Commissioners, fall within the current policies pertaining to public comment and must be placed on the public comment section of the secular business agenda. Pre-meeting invocations shall continue to be delivered by persons from the faith-based community in perpetuation of the board's tradition for over 40 years.

The legislative effect of this stipulation was that the board gave

itself license to determine who is a "faith-based" speaker, versus speakers expressing secular "philosophies." Proceeding from those determinations, the board would then relegate some groups and beliefs to the public comment section later in the agenda, and bar them from participation in the opening invocation. In this way, the resolution actually *insisted* upon religious discrimination.

The US Supreme Court dealt with a similar case in *Marsh v. Chambers* (1983). The court in *Marsh* considered it significant that "the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom" since the founding of the country. The Supreme Court allowed religious invocations as long as this was not an unconstitutional exploitation of the invocational prayer practice for the purpose of advancing a specific religious agenda.

The difference between *Williamson* and *Marsh* is that the Brevard County commissioners explicitly used their authority to discriminate against religious views they found unfavorable. What is more, the Eleventh Circuit needed only to read the text of Resolution 2015-101, which literally listed particular philosophical and religious beliefs and persuasions the commissioners meant to exclude from participation.

Accordingly, the Eleventh Circuit ruled the Brevard County Board of County Commissioners' invocation speaker selection practice unconstitutional. Reported in: [freedomforuminstitute.org](http://freedomforuminstitute.org), September 18, 2019.

## EQUAL PROTECTION VS. RELIGIOUS FREEDOM Phoenix, Arizona

An **Arizona Supreme Court** ruling on September 16, 2019, agreed with arguments from the Trump administration ranking claims of "religious



freedom” above gay rights. In *Brush & Nib Studio v. Phoenix*, the Arizona court held that a Phoenix-based company that makes customized wedding invitations has the legal right to reject a gay couple as customers.

Even though Phoenix has a local law that prohibits discrimination against the LGBTQ community, the court ruled that the religious convictions of the business owners exempted them from the obligation to treat all customers equally. According to the court, designing wedding invitations is a creative act; to compel the owners to design an invitation against their will violates their rights both to freedom of religion and freedom of speech.

The opinion treats the business owners—two women—as a beleaguered minority. Their “beliefs about same-sex marriage may seem old-fashioned, or even offensive to some,” the court wrote. “But the guarantees of free speech and freedom of religion are not only for those who are deemed sufficiently enlightened, advanced, or progressive. They are for everyone.”

Legal analyst Jeffrey Toobin, writing in the *New Yorker*, declared, “This, to put it charitably, is nonsense. The owners of Brush & Nib are free to believe anything they want. What they should not be allowed to do is to use those beliefs to run a business that is open to the general public but closed to gay people.”

Toobin added that religious people and business owners for decades have argued that their beliefs entitle them to exemptions from the rules. For example, in 1982, the Supreme Court rejected an attempt by an Amish business owner in Pennsylvania to avoid paying his share of his employees’ Social Security taxes, because his community believed in helping their own and not accepting assistance from

the state. “Every person cannot be shielded from all the burdens incident to exercising every aspect of the right to practice religious beliefs,” Chief Justice Warren Burger wrote in his opinion. “When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity.” Reported in: *New Yorker*, September 19, 2019.

### NET NEUTRALITY Washington, D.C.

The **US Court of Appeals for the District of Columbia Circuit** on October 1, 2019, upheld the Federal Communications Commission’s (FCC) repeal of net neutrality rules, but said the FCC cannot preempt all state net neutrality laws. In *Mozilla v. FCC*, in the judges said, “First, the Court concludes that the Commission has not shown legal authority to issue its Preemption Directive, which would have barred states from imposing any rule or requirement that the Commission ‘repealed or decided to refrain from imposing’ in the Order or that is ‘more stringent than the Order.’” The FCC “ignored binding precedent” when making its preemption order, and “that failure is fatal” to the preemption, the judges wrote.

The ruling does not prevent the FCC from trying to preempt state laws on a case-by-case basis. But the FCC can’t preempt all state net neutrality laws in one fell swoop, judges ruled. Each preemption of a state law must involve “fact-intensive inquiries,” so the FCC would have to conduct a preemption analysis of each one. “Without the facts of any alleged conflict [between state and federal rules] before us, we cannot begin to make a conflict-preemption

assessment in this case, let alone a categorical determination that any and all forms of state regulation of intra-state broadband would inevitably conflict with the 2018 Order,” the judges wrote.

This is a win for California and other states that passed their own net neutrality laws after the FCC repeal. California agreed to delay enforcement of its net neutrality law until after litigation is fully resolved, so the state likely won’t enforce the law just yet. But after appeals in the FCC case are exhausted, California and other states may enforce net neutrality rules that prohibit internet service providers from blocking or throttling lawful internet traffic and from prioritizing traffic in exchange for payment.

The District of Columbia judges remanded portions of the repeal order to the FCC, saying that the agency has to do more justification of the net neutrality repeal. But importantly, the judges remanded the repeal to the FCC without vacating it, and said that the FCC’s opponents’ objections are “unconvincing for the most part.” While the judges vacated the FCC’s preemption of state laws, the FCC decision to deregulate broadband at the federal level and eliminate net neutrality rules remains in effect.

The decision was made with a 2-1 vote by a three-judge panel at the US Court of Appeals for the District of Columbia Circuit. All three judges agreed that the FCC can repeal its own net neutrality rules, but Senior Circuit Judge Stephen Williams dissented from the decision to vacate the preemption of state laws. The decision could be appealed to the full Court of Appeals and eventually to the Supreme Court.

On remand, the FCC must address three problems with the net neutrality repeal. Specifically, judges wrote that the FCC “failed to examine the



implications of its decisions for public safety” and failed to “sufficiently explain what reclassification will mean for regulation of pole attachments.” The FCC also did not address opponents’ concerns about the effect deregulation will have on the FCC’s Lifeline program that subsidizes phone and internet access for low-income Americans, judges wrote.

But the judges did not dispute the FCC’s decision to classify broadband as an information service instead of a telecommunications service. Classifying broadband as an information service essentially deregulated the industry and helped the FCC repeal the core net neutrality rules. The judges said that the FCC decision to reclassify broadband was “a reasonable policy choice.”

Led by a Trump appointee, the FCC voted to reclassify broadband and eliminate net neutrality rules in December 2017, leading to the rules coming off the books in June 2018.

The FCC repeal was challenged in court by a coalition of state attorneys general, consumer advocacy groups, and tech companies such as Mozilla

and Vimeo. Oral arguments were held in February 2019.

Mozilla said it may appeal the ruling. “Our fight to preserve net neutrality as a fundamental digital right is far from over,” Mozilla Chief Legal Officer Amy Keating said in a statement. “We are encouraged to see the Court free states to enact net neutrality rules that protect consumers. We are considering our next steps in the litigation around the FCC’s 2018 order.” Reported in: arstechnica.com, October 1, 2019.

## CAMPAIGN FINANCING Portland, Oregon

The **US Court of Appeals for the Ninth Circuit** ruled on August 13, 2019, in *National Association for Gun Rights, Inc. v. Mangan* that Montana’s electioneering disclosure requirements did not violate the First Amendment. The ruling keeps the requirements in place, but the case is one of several new First Amendment challenges to campaign finance laws designed to spur the new Supreme Court to limit how government may regulate money in politics.

The case arose when the National Association for Gun Rights (NAGR) sought to spend more than \$250 on an “electioneering communication.” Montana law requires that any such organization register as a political committee. And such registration, in turn, subjects the group to requirements to disclose expenditures.

The NAGR argued that the state’s definition of electioneering communication was facially overbroad and unconstitutional as applied to it. In particular, the NAGR said that the First Amendment permits states to require disclosure only of express advocacy for or against a specific candidate, not the kind of general information that it sought to distribute.

The Ninth Circuit rejected the challenge. The court said that disclosure requirements are valid, even as to non-express-advocacy communications, because, under “exacting scrutiny,” they are designed to promote the state’s interests in transparency and discouraging circumvention of its electioneering laws. Reported in: *Constitutional Law Prof Blog*, August 13, 2019.



## LIBRARIES Buckner, Missouri

Is an event to educate people about what it means to be transgender appropriate for a public library?

The Mid-Continent Public Library held its first ever Trans 101 event on September 3, 2019, at the library system's Colbern Road branch in Lee's Summit, Missouri; about thirty people attended. A second Trans 101, scheduled for September 26 at the Buckner branch in Buckner, Missouri, was postponed after a contentious library board meeting.

Trans 101, a free event in a library meeting room, "is a presentation to talk about what it means to be transgender. It's to share a little bit about my life story," said Riley Long, the host of the program. One of the organizers of the event at the Colbern Road branch said that the turnout was high for an afternoon event scheduled on a weekday.

At the library board meeting on September 17, four people spoke out against the program; five spoke in favor of Trans 101.

"It's an inappropriate endorsement of a controversial topic," said State Representative Dan Stacy, a Republican from Blue Springs, "a political topic that should have had an opportunity for opposing views."

Inoru, a PhD candidate from Gladstone, said, "It is very apparent that people do not believe that this is a public library but their specific church."

When the second Trans 101 was postponed, "I was shocked," said Long, who had been planning the Trans 101 events with the library for the past year.

Later, a library board member from Platte County, Rita Wiese, penned a lengthy letter to the editor calling for an end to programs focused on topics dealing with gender identity.

"A once safe community setting known as the public library has become a space that, in the guise of intellectual freedom, wants to change thinking on voyeurism and gender confusion, while promoting materials and programs that lead children toward being sexually exploited," Wiese wrote in the November 6, 2019, edition of *The Landmark* newspaper.

Wiese closed out her letter urging others to attend the next library board meeting to speak on out the issue.

Library board meetings usually are sparsely attended, but dozens of people came to the meeting in November. An equal number spoke in favor of and against Trans 101 programs.

Crayola Bolger, a youth librarian with the Mid-Continent Library System, spoke in support of Trans 101. "Every single one of these Mid-Continent Public Library programs, whether we think they should be or not, they are all optional, no one has to go to one," she said.

The board didn't vote on the issue at the November meeting.

Steve Potter, who has been the CEO and library director of Mid-Continent for nine years, says it is the library's intention to get the program rescheduled after the board has time to think about the issue. Reported in: *The Pitch*, September 29, 2019; fox4kc.com, November 19.

## Lebanon, New Hampshire

Should internet filters be installed on public library computers to limit the potential for children to access pornography?

The Library Board of Trustees at the Lebanon (New Hampshire) Public Libraries formed a task force to examine the question after concerns were raised in 2018 that two middle-school-age children might have viewed pornography at the downtown Lebanon library.

The panel concluded that filters "are expensive and don't work," according to Amy Lappin, deputy director of the Lebanon Public Libraries, who chaired the task force.

Or as the American Library Association puts it, "Content filters are unreliable because computer code and algorithms are still unable to adequately interpret, assess, and categorize the complexities of human communication, whether expressed in text or in image." The result, said Lappin, is that the software either fails to block inappropriate content or restricts access to legitimate information.

"As a steward of taxpayer funds," Library Director Sean Fleming told *Valley News*, "I don't want to use funds in a way that would be ineffective in addressing the concerns the community may have."

So what's the answer? Lappin says city libraries "intend to up our education game," including hosting an internet security event for parents next month. A *Valley News* editorial approved, stating,

That seems to us a better approach than filters, and it also aligns with ALA guidance, which says that internet safety, for both children and adults, "is best addressed through educational programs that teach people how to find and evaluate information." That advice also reflects the reality that, when it comes to children, pornography is far from the only internet content that parents and the community at large need to worry about.

It also strikes us that when an individual accesses inappropriate content on a library computer, the correct response is to address that behavior on an individual basis, rather than restricting access more broadly. Lebanon already has a policy on the books





that bars the display of “obscene or objectionable material” on library computers, which appears to cover that base.

Reported in: *Valley News*, October 26, 2019.

## Seattle, Washington

Should library meeting rooms be open to groups spreading what many people call “hate speech”?

The Seattle Public Library is resisting calls to cancel an event held by a group called the “Women’s Liberation Front” (WOLF). WOLF booked the Microsoft auditorium at the library for an event to be held on February 1, 2020. Critics say the talk, called “Fighting the New Misogyny,” is anti-transgender.

The library emphasizes it’s not hosting the event and doesn’t endorse it, but said any group can book meeting spaces at the library.

On the library’s Facebook page there are more than a thousand comments, with many people asking, how can a group that’s spreading what they consider hate speech be allowed in a city building?

The Women’s Liberation Front’s Eventbrite page for their event questions transgender activism, saying, “Are the claims made by these activists actually true, or even coherent? What does it mean to say that people can be ‘born in the wrong body’?”

Trans rights activist group, the Gender Justice League, said in a statement on their website, “A hate group using the library as a venue to ‘critique’ the existence of a minority group creates a hostile environment and is unacceptable.”

The American Civil Liberties Union (ACLU) of Washington says the case is fairly cut and dry.

“If the public library canceled it based solely on the views espoused by

WOLF, then yes, I think it would be problematic and in violation of the First Amendment,” said Lisa Nowlin, a staff attorney for the ACLU. Nowlin has worked on both First Amendment cases and cases involving transgender rights.

“The views espoused by WOLF are harmful to the transgender and gender non-conforming intersex community,” Nowlin said. She added, “I will fight for people’s rights for free speech, and the ACLU will also fight to end discrimination.” Reported in: KIRO-7 TV, December 10, 2019.

## SCHOOLS

### Loudoun County, Virginia

Should diversity—including diverse sexual orientations—be brought into classroom libraries in a community where many parents don’t want their children exposed to LGBTQ themes?

Loudoun County Public Schools’ (LCPS) diverse classroom libraries program was a prominent topic at Loudoun County School Board meetings on September 24, October 8, October 24, and November 12, 2019.

Superintendent Eric Williams and the LCPS administration introduced a list of “diverse books,” organized by grade level, sorted into three categories: “Diverse Race, Culture, Language [and] Religion,” “Disabilities/Abilities” and “LGBTQ.”

A number of parents and students have voiced concerns about certain titles in the collection that feature content they consider gratuitously sexual or violent, with some speakers reading such passages verbatim before the dais. Some of these speakers said they support diversity in reading materials and wish only for certain titles to be reviewed; others have asked for the removal of the diverse classroom libraries altogether.

Conversely, other citizens have decried efforts to remove or modify

the new collection as censorship and “book burning,” opining that the collection should be preserved as is. They argue that the personal, often religious convictions of some parents should not dictate how LCPS controls the reading materials available to all students.

Assistant Superintendent for Instruction Ashley Ellis said that the LCPS Department of Instruction has begun division-level reviews of ten particularly controversial books in the high school diverse libraries. She explained that titles under review will ultimately either be maintained at its current level, “re-leveled” to another grade-level classroom library, moved from classroom libraries to general school libraries, or ousted from circulation altogether.

Board member Joy Maloney said she anticipates policy revisions to ensure uniform solutions to the issue, particularly involving the review process.

“Obviously it’s concerning to me to see elementary school books moved to the school counseling office in some schools and not in others,” she said. “To me that’s something where we should be looking at something more division-wide as opposed to leaving that decision up to the school level.”

Two books that drew much comment, both for removing and for keeping them, are picture books at the elementary level: *My Princess Boy* (2009) by Cheryl Kilodavis and *Prince & Knight* (2018) by Daniel Haack, both of which have been subject to numerous requests for reconsideration and division-level reviews.

Vice Chairwoman Brenda Sheridan said, “They’re kids’ books, they’re fairy tales, and they’re LGBTQ, and they’re for the kids who need to read them.” She added, “There’s nothing graphic in these, there are no bad



words in these, there's no sex, there's nothing. It is just a story about a little boy who likes to wear a princess dress, and a prince and a knight."

Sheridan concluded by saying, "It is anti-LGBTQ when it comes to some of these book challenges."

Chairman Jeff Morse tried to keep the debate from turning into personal attacks, and to keep either side from making judgmental generalizations about the other. "When I hear the comment that, 'Oh, it's all about hate, that's the only reason those people are against those books,' that's not true," he said. "There are people with deep moral convictions that hold strongly to their faith, and [if] you don't agree with their faith that's fine, but that is their belief, and we support all of our communities and all of our religions and all faiths." Reported in: *Loudoun County Time-Mirror*, November 13, 2019.

## COLLEGES AND UNIVERSITIES Tuscaloosa, Alabama

When an African American university administrator is accused of racism for comments about race relations—his area of study—and immediately leaves the university, is that a violation of academic freedom?

The resignation of the dean of students of the University of Alabama (UA) at Tuscaloosa over a series of tweets about racism threatens to chill academic speech, PEN America said in a statement on September 9, 2019.

On September 4, Dr. Jamie Riley, assistant vice president and dean of students at the University of Alabama, resigned from his position "by mutual agreement" with the university. His resignation occurred the same day that rightwing media outlet Breitbart published an article featuring a series of tweets Riley wrote in 2016 and 2017, in which he

commented on the issue of race in the United States.

"It is difficult to see Dr. Riley's 'resignation by mutual agreement' as anything other than a punitive outcome occasioned by the content of his speech," said Jonathan Friedman, project director for campus free speech at PEN America. "Prompted by a Breitbart story aimed to discredit Riley on the basis of past tweets, the university's acceptance of his resignation under pressure sends a chilling message to professors and administrators alike that expression of a controversial opinion could cost them their job."

It later came to light that University of Alabama will pay Dr. Riley \$346,200 as a part of his resignation terms. The total sum is made up of \$43,750, one quarter of Riley's salary, \$175,000 in lost wages equal to one year's salary, and \$127,450 as "compensatory damages."

The agreement prohibits Riley or UA from discussing the nature of his resignation or disparaging either party. The resignation agreement was made public in response to a state open records act request filed by AL.com.

Riley, who wrote his doctoral dissertation for his PhD on the subject of black male students on predominantly white campuses, had previously worked in student affairs and taught courses at numerous other colleges and universities prior to his time at University of Alabama.

"Dr. Riley's tweets were related to his area of academic expertise and his speech on political subjects is of precisely the type that a university must vigorously defend," said PEN America's Friedman. "The University of Alabama appears to have opted to have Dr. Riley fall on his sword rather than shoulder its own responsibility to stand up for academic freedom in the face of criticism."

In one of his tweets, from September 2017, Riley wrote, "The [American] flag represents a systemic history of racism for my people. Police are a part of that system. Is it that hard to see the correlation?" In a tweet from October 2017, Riley wrote that he was "baffled about how the 1st thing white people say is, 'That's not racist!' when they can't even experience racism? You have 0 opinion!" and in October 2016, Riley wrote, "Are movies about slavery truly about educating the unaware, or to remind Black people of our place in society?" Reported in: pen.org, September 9, 2019; AL.com, October 12.

## Washington, D.C., and Chapel Hill, North Carolina

Does the federal government have a right to influence the content of federally funded college courses and programs that some politicians feel favor Muslims over Christians and Jews, or that may include criticism of Israel? Or is this a violation of academic freedom?

The US Department of Education threatened on August 29, 2019, to strip federal funding from a Middle East studies program run by Duke University and the University of North Carolina (UNC) at Chapel Hill. This has alarmed academics, who are worried about the federal government's apparent interest in the content of college courses and programs—Middle East studies in particular.

After an investigation prompted by a Republican congressman's complaint, the department warned the universities that the Duke-UNC Consortium for Middle East studies lacked viewpoint diversity and didn't offer enough courses and programming that presented the "positive aspects" of religious minorities in the Middle East, such as Christians and Jews.



That supposed lack of balance, a department official wrote in a letter to UNC's vice chancellor for research, suggested that the consortium was out of compliance with the terms of its annual \$235,000 Title VI grant. Those grants support foreign-language and international studies programs and centers at many colleges, as well as fellowships for graduate students. The Duke-UNC consortium's funding was renewed in 2018 for four more years.

Under Title VI, federal "resource centers" like the Duke-UNC consortium must "provide a full understanding" of their areas and regions, said the department's letter.

The department's letter has prompted scholars to condemn what they see as a direct threat to academic freedom. While state governments sometimes weigh in on controversial course content, typically in elementary and secondary schools, many academics said this level of federal interest in details of campus offerings crosses a new, troubling frontier.

The letter has also put the field of Middle East studies on edge. Some professors fear that a chilling effect could discourage debates about controversial issues like the Israeli-Palestinian conflict.

Besides the Duke-UNC consortium, fourteen other Middle East centers receive Title VI funding. One is the Middle East Institute at Columbia University. Brinkley Messick, that institute's director and a professor of anthropology, said he was reluctant to comment much on the Duke-UNC investigation because he didn't want to draw the government's attention to the program.

"This concerns the essential role of the research university in a democratic society," Messick wrote in an email. He described the department's letter as "an aggressive demand for program

'balance' from an administration that is itself decidedly unbalanced."

The federal investigation began after the Duke-UNC consortium held a conference called "Conflict Over Gaza: People, Politics, and Possibilities" last spring. The event, which used \$5,000 from the center's Title VI grant, according to the university, featured a performance by a Palestinian rapper during which he made anti-Semitic comments. A video of the performance was shared online. Those remarks were later condemned by the consortium itself and by UNC's interim chancellor. Reported in: *Chronicle of Higher Education*, September 22, 2019.

## PRISONS Florida, Nevada, Ohio, West Virginia, and other states

When prisons limit inmates' access to printed books, are e-books the solution—or does the cost of electronic editions still limit prisoners' ability to read the books they want?

Prisons sometimes justify limiting the distribution of physical books to inmates by claiming that drugs or other contraband may be smuggled in with the books. As an alternative, on November 1, 2019, JPay (a Securus Technologies company) began to grant free access to e-books for incarcerated individuals in Florida, Nevada, Ohio, and other states that are part of the National Association of Procurement Officials and the Multi-State Corrections Procurement Office.

E-books previously cost \$0.99 per title, according to the contract signed by representatives of each state. That \$0.99 fee went to JPay and was not distributed among state corrections departments.

The policy change gives those in Ohio prisons, for example, greater access to materials once inaccessible.

In early 2019, Ohio prisons began rejecting book donations from trusted partners, allowing book access only through JPay tablets. Print books were returned to volunteer organizations that work directly with prison systems nationwide, and so those books did not reach incarcerated individuals in Ohio.

Sara French, Deputy Communications Chief for the Ohio Department of Rehabilitation and Corrections (ODRC), said those decisions weren't made on a statewide basis, but instead, were made institution by institution.

In many states, significant latitude is given to individual institutions, while green-lit donors are vaguely defined as "publishers" or "distributors."

E-books do not always guarantee access. In West Virginia, incarcerated individuals are charged \$0.05 per minute for access to e-books via state-provided "free" tablets, under a 2019 contract between the West Virginia Division of Corrections and Rehabilitation and Global Tel Link (GTL). Depending on how long it takes to read, an e-book may end up costing more than the price of a mass market paperback.

The Appalachian Prison Book Project, a nonprofit that offers free books and education to inmates, calls the fee structure exploitative.

"If you pause to think or reflect, that will cost you," says Katy Ryan, the group's founder and educational coordinator. "If you want to reread a book, you will pay the entire cost again. This is about generating revenue for the state and profit for the industry. Tablets under non-predatory terms could be a very good thing inside prisons. GTL does not provide that."

The Prison Policy Initiative estimated in 2017 that wages in West Virginia prisons range between \$0.04 and \$0.58 an hour, so inmates may not be



able to pay for everything they want to read.

GTL is one of JPay's biggest competitors in the market, which may have something to do with JPay's decision to offer e-books for free.

What JPay doesn't say is that it still collects money from incarcerated populations, and has profited off the free work of Project Gutenberg volunteers.

"Project Gutenberg has been informed by third parties that items from its library are being bundled with non-free, for-profit products. In particular, we have been informed that prison populations are being sold electronic tablets, and Project Gutenberg e-books make up some of the content on those tablets," said Gregory B. Newby, chief executive and director of Project Gutenberg. "Project Gutenberg has no relationship with any company that is selling content in prisons." Reported in: *Reason*, November 22, 2019; bookriot.com, December 5.

## PRIVACY

### Sacramento, California

How much will consumers' privacy be improved when the data brokers who collect and sell personal information are publicly identified?

The largely unregulated industry of data brokers that make billions of dollars annually buying and selling people's personal information will no longer be secret in California. In October 2019, California Governor Gavin Newsom signed into law a bill—AB 1202—that requires data brokers to register with the state attorney general. Their names and contact information for the first time will be available to the public after January 1, 2020.

Only one other state, Vermont, has similarly shined a light on data brokers. There is no similar law at the federal level.

The California bill had bipartisan backing.

"We have an entire data-collecting, data-sharing industry operating in the shadows," said Dylan Gilbert, policy counsel for the advocacy group Public Knowledge. "The average consumer has no idea these companies even exist, let alone what their names might be."

The data broker industry is believed to be worth about \$200 billion. Some of the biggest players are known to all, such as the credit bureaus Experian, Equifax, and TransUnion, which maintain files on millions of Americans.

Others are smaller, quieter firms that specialize in gathering people's personal information from public and private sources and making it available to other companies for marketing, employment, financial, and other purposes.

California's new privacy law will allow consumers to instruct companies to delete their personal information and to opt out of having their information shared. It is unclear how this would be enforced.

The law applies to any company doing business in the state. This means consumers will be able to contact their phone or cable company, for example, and tell them to no longer make the consumer's personal information available to others.

The privacy law says consumers can opt out of having their data shared by companies with third parties. But what if that company got its information from elsewhere? Is there still a third party if the first party (the consumer) isn't the direct source of the data?

"I'd say you could still opt out," said Paul Schwartz, co-director of UC Berkeley's Center for Law and Technology. "But there's a little ambiguity."

The onus would be on consumers to contact potentially hundreds of data brokers and opt out from each one individually—a task few people would have the time or patience to embark upon.

"Creating a list of data brokers is a first step in helping consumers know who these actors are, but that does nothing to constrain their practices," said Jen King, director of privacy at Stanford Law School's Center for Internet and Society. Reported in: *Los Angeles Times*, November 5, 2019.

### Washington, D.C.

Will the federal government recognize the value of data encryption and stop seeking a backdoor for law enforcement to read private personal and business communications?

On October 22, 2019, the former general counsel of the FBI, Jim Baker, now director of national security and cybersecurity at the R Street Institute, published a lengthy piece called "Rethinking Encryption." In that article, he advised the Justice Department and law enforcement to "embrace reality and deal with it" when it comes to encrypted communications.

Running counter to decades of sporadic pursuit by the Justice Department and law enforcement for a backdoor that would allow access to encrypted communications, Baker wrote that encryption "is one of the few mechanisms that the United States and its allies can use to more effectively protect themselves from existential cybersecurity threats, particularly from China. This is true even though encryption will impose costs on society, especially victims of other types of crime."

What triggered Baker to write the piece is a renewed push by the Justice Department under William Barr to warn that law enforcement is "going



dark.” Barr said the rise of end-to-end communications encryption prevents the tracking of terrorists and predators as they carry out their misdeeds. Barr gave a speech on July 23, 2019, in which he called for “lawful access” to encrypted communications. He asked Silicon Valley to come up with technological solutions, warning that a significant incident would sooner or later “galvanize” public opinion against encryption.

In early October, the Justice Department sent a letter to Mark Zuckerberg asking Facebook not to proceed with its end-to-end encryption plans for its Messenger service after the United States agreed with the United Kingdom to allow the two countries’ respective law enforcement agencies to demand electronic data regarding serious crimes. The next day, the Justice Department held what it called a Summit on Lawful Access, during which Barr and FBI Director Christopher Wray raised again the need for some encryption solutions that would give law enforcement access to secured communications.

Baker in his piece spelled out a number of reasons why he thinks the feds should just give up on the notion of encryption backdoors. He also wrote, “There is no law that clearly empowers governmental actors to obtain court orders to compel third parties (such as equipment manufacturers and service providers) to configure their systems to allow the government to obtain the plain text (i.e., decrypted) contents of, for example, an Android or iPhone or messages sent via iMessage or WhatsApp.” Reported in: *csoonline*, November 4, 2019.

### Las Vegas, Nevada

Is facial recognition technology accurate enough for the US Transportation Security Administration (TSA) to

proceed with plans to use biometrics to identify 97 percent of travelers flying out of the country by 2022?

TSA will conduct a short-term “proof of concept” test in Las Vegas’ McCarran International Airport to examine how effective facial recognition technology could be at automating travelers’ identity verification, according to an August 2019 publication from the Department of Homeland Security (DHS).

For passengers who opt in, the agency will assess the technology’s capability to verify travelers’ live facial images taken at security checkpoints against the images on their identity documents.

“To participate, passengers will voluntarily choose to enter a lane dedicated to the proof of concept,” TSA said.

Ultimately the agency plans to collect live photos of passengers’ faces, photos from traveler documents, identification document issuance and expiration dates, travel dates, various types of identification documents, the organizations that issued their identification documents, and the years of passengers’ births, as well as the gender or sex listed in the identification documents.

TSA plans to store the data on encrypted hard drives that it will remove daily and transfer to DHS Science and Technology Directorate personnel weekly. Biometric information cannot be recovered from the templates produced and the information will only be used for the purpose of the pilot, it said. The agency also plans to consult with the National Institutes for Standards and Technology during the assessment of the algorithm and to ensure that all methodologies meet industry standards.

“TSA envisions that facial recognition ultimately will deliver a significant increase in passenger throughput

and improvement in security at the checkpoint,” it said. “This proof of concept will help determine next steps for implementing further automation of the TDC process.” Reported in: *nextgov.com*, August 27, 2019.

### Redmond, Washington

Will California’s data privacy law give people in other states more control over how their personal data is shared online?

Microsoft said on November 11, 2019, that it plans to follow the California Consumer Privacy Act (CCPA) throughout the United States.

The CCPA, seen as establishing the most stringent data privacy protections in the nation, allows people to request that data be deleted and gives them the opportunity to opt out of having their information sold to a third party. Passed in June 2018, the law went into effect on January 1, 2020.

“CCPA marks an important step toward providing people with more robust control over their data in the United States,” Julie Brill, Microsoft’s chief privacy officer, wrote in a blog post. “It also shows that we can make progress to strengthen privacy protections in this country at the state level even when Congress can’t or won’t act.”

The European Union last year rolled out new privacy regulations for its citizens, called the General Data Privacy Regulation, but the United States doesn’t have a similar law at the federal level. Reported in: *cnet.com*, November 11, 2019.

### INTERNATIONAL Hong Kong, China; Israel; United Kingdom

How do countries around the world balance citizens’ wish for privacy with law enforcement monitoring of citizens’ behavior?



The emergence of facial recognition technologies and the fast adoption of street cameras around the world has led to significant enhancement of surveillance and tracking strategies. An overview published on [calcalist.com](http://calcalist.com) finds that more than sixty-four countries are using facial recognition technologies today, with China in the lead.

The Hong Kong government issued an order in September 2019 that prohibits demonstrators from wearing masks, so that law enforcement authorities can identify them. Demonstrators were also reported to have knocked down smart lamp posts across the city for fear the Chinese government was using the posts to spy on them. Deployed initially to track illegal waste disposal and traffic conditions, including through capturing license plates, the lampposts in Hong Kong have embedded sensors and cameras. As an alternative to masks, demonstrators have resorted to more creative ways, such as jamming the facial recognition cameras by shining laser lights onto the lens.

Non-democratic governments are not the only ones investing heavily in facial recognition technologies. Chinese tech company Huawei Technologies Co. Ltd.'s website lists quite a few European cities as clients among the company's customer success stories in implementing facial recognition technologies.

Most democratic states protect the right to demonstrate under their laws or constitution, based on the understanding that demonstrations allow people, who have no access to decision-makers, to voice their opinion and impact public policy and agenda.

In Israel, the freedom to demonstrate is an integral part of the freedom of speech, classified under Basic Law: Human Dignity and Liberty. The Israeli courts consider freedom of

speech a supreme right since it constitutes a precondition for exercising other rights. Nonetheless, it is not unlimited. The right to demonstrate is protected only as long as people exercise it in peaceful ways and according to the instructions of law enforcement. When this is not the case, the police are authorized to take action to ensure the public order is maintained.

In the United Kingdom, the UK Supreme Court ruled that the use of facial recognition cameras for maintaining public order and detecting criminals is lawful under both the European Human Rights Convention and the General Data Protection Regulation (GDPR). (The ruling does not indicate whether Britain will obey the provisions of the GDPR after Brexit is fully implemented.) British police made sure the facial recognition cameras complied with the GDPR prior to implementing them. Among other measures, the British police held a privacy impact assessment and used the findings to design a framework for data collection, processing, and retention policies that would comply with the law.

Opponents of facial recognition technologies argue that use of the technology should be regulated, that the technology is being used disproportionately, and that other means to the same ends exist and have a lesser impact on privacy. They also stress that people are not giving their consent to be photographed and have no control over the biometric data the cameras collect. Worse still, research shows that some software programs base their matches on biased data, which may lead to false positives, in particular when it comes to people of color and women.

There are also concerns that the authorities might retain data and compile blacklists in a manner that infringes on human rights. Even more

disturbing is the possibility of using artificial intelligence to combine facial recognition with personal data. While the use of biometric identification on millions of people may help track down a few suspects, thus ensuring the safety of many, it might also create a society that is under constant surveillance, raising grave concerns for democracy and the right to privacy.

Such concerns led California to prohibit the police from using facial recognition technology in the police officers' body cameras, at least for the next three years. Reported in: [calcalist.com](http://calcalist.com), October 11, 2019.

### Luxembourg City, Luxembourg

Does the European Union's "right to be forgotten" apply to online personal information held in US databases if the US company does business in Europe?

On September 24, 2019, the Court of Justice of the European Union (CJEU) said there are limits on the geographical scope of the right to erasure under Europe's General Data Protection Regulation (GDPR). The court decided that a US-based search engine does not need to remove ("de-reference") search results displayed on all the search engine's global versions. According to the court, it suffices for search results to be deleted from the search engine's European or EU versions (i.e., EU domain name extensions, such as .eu, .fr or .de).

This decision comes in a long-running set of appeals of a case where the French Supervisory Authority on March 21, 2016, imposed a fine of €100,000 euros on Google for not de-referencing a website from its search results on all Google search engine versions. The search engine appealed the decision before the French courts, which led to a referral to the CJEU.



The CJEU decided that “there is no obligation under EU law, for a search engine operator . . . to carry out such a de-referencing on all the versions of its search engine.”

The court pointed out that the search engine should use measures that “effectively prevent or, at the very least, seriously discourage an internet user conducting a search from one of the Member States on the basis of a data subject’s name from gaining access, via the list of results displayed following that search, to the links which are the subject of that request.” In this way, the CJEU addresses the concern that non-EU versions of the search engine may still be accessible in the EU through, for example, a VPN connection or other technologies that disguise the location of the search engine user. Search engines must make reasonable efforts to prevent access to de-referenced results, but are not held to guaranteeing that all searches will be blocked.

However, the court does not specifically comment on whether the use of techniques such as “geo-blocking” are sufficient, but instead the court provides that “it is for the referring court to ascertain whether . . . the measures adopted or proposed by Google meet those requirements.”

The CJEU also highlighted that the right to erasure must be weighed against other rights (e.g., freedom of information). This potentially leads to different outcomes in different Member States. To avoid this outcome, however, the court provides

that Supervisory Authorities should follow the cooperation procedure under the GDPR “to adopt, where appropriate, a de-referencing decision which covers all searches conducted from the territory of the Union on the basis of that data subject’s name.” In other words, French or other national authorities should not on their own require de-referencing of search results across all the search engine’s EU versions.

Finally, the CJEU also clarified that EU law does *not prohibit* a Member State’s Supervisory Authority or courts to order a search engine to de-reference search results from *all* its versions worldwide. Thus France (for example) could thus still decide that the relevant search results must be de-referenced on all versions of the search engine on the basis of French fundamental rights standards, but not on the basis of the GDPR. Reported in: *Inside Privacy*, September 25, 2019.

### Moscow, Russia

Will the global internet, originally known as the World Wide Web, be broken into separate national webs as some countries try to control their citizens’ access to information?

Over the past year, Russian lawmakers and Kremlin officials have discussed an internet that can be tightly controlled by the state—and potentially disconnected from the global net entirely. In October 2019, Russia planned a so-called disconnection test of the internet sometime in October—right ahead of November 1, when a

new law about Russia’s domestic internet took effect. Russia plans to repeat this test at least once a year.

In February 2019, a draft law was introduced in the Russian Parliament that aimed to give broader and deeper regulatory oversight of the internet to Roskomnadzor, the Russian internet regulator (“RuNet”). Since then, “equipment is being installed on the networks of major telecom operators,” Alexander Zharov, head of Roskomnadzor, told reporters.

Tests will be carried out “carefully” in the first round, he said, in order to ensure that traffic and servers are not affected. Then, “combat mode” tests will be initiated. It’s unclear what combat mode means, but presumably this is something closer (at least in theory) to total isolation of the RuNet, perhaps in response to an emergency.

The Russian government has also purportedly started rolling out deep packet inspection, a more sophisticated internet filtering technique.

“Testing a domestic internet,” according to a “Future Tense” analysis published in *Slate*, “is not just another step in the pursuit of a practical goal—a controlled, isolatable domestic internet—it signifies the Russian government’s commitment to technological sovereignty, especially from the West. . . . As it moves toward the capabilities for an internet disconnection test, this could mark a significant moment in the history of the network we once called truly global.” Reported in: *Slate*, October 24, 2019.



## LIBRARIES Warsaw, Indiana

The Warsaw (Indiana) Community Public Library Board supported librarians' decision to retain *Jacob's Room to Choose* (2019) by Sarah Hoffman and Ian Hoffman, a picture book that deals with transgender bathroom issues, in the children's section of the library.

At a board meeting on November 18, 2019, Board Vice President Jill Beehler inquired about a complaint after reading about it in documentation provided by the Warsaw Public Library for the board meeting.

Director Ann Zydek said the proper paperwork was submitted by the person who complained, and the library decided not to remove the book.

There is a form a person has to fill out to get the library to consider removing a book, Zydek said. One of the requirements for the book to be considered for removal is the person has to have read the book.

Assistant Director Joni Brookins said what people complain about goes in cycles, and most people do not go past complaining at the circulation desk once they find out the process of getting the book reviewed.

Zydek said that after the library looks at a complaint, books that are complained about may be moved.

Brookins said a book has never been put behind the circulation desk because of a complaint made against it. Reported in: *Times Union*, November 18, 2019.

## SCHOOLS Ocala, Florida

The Marion County School Board on August 24, 2019, voted 4-1 to support Superintendent Heidi Maier's decision to retain nine books that the Florida Citizens' Alliance and a group called "It's Your Tea Party"

had advocated removing from school libraries. Their complaint, sent to the county school superintendent in February 2019, claimed that the books included graphic sexual content that bordered on obscenity and pornography, as well as racial slurs and other provocative content (see JIFP, *Summer 2019*, page 13).

The challenged books are:

- *Almost Perfect* (2009) by Brian Katcher
- *Angela's Ashes* (1996) by Frank McCourt
- *The Awakening* (1899) by Kate Chopin
- *Beloved* (1987) by Toni Morrison
- *The Bluest Eye* (1970) by Toni Morrison
- *A Clockwork Orange* (1962) by Anthony Burgess
- *Dreaming in Cuban* (1992) by Cristina Garcia
- *Killing Mr. Griffin* (1978) by Lois Duncan
- *The Women of Brewster's Place* (1980) by Gloria Naylor.

A special committee composed of parents and district and school staff vetted the books. The panel recommended all nine books remain in high schools, and about half should stay in middle schools. Maier slightly disagreed. She accepted the findings on the high schools, and believed *Angela's Ashes* and *Killing Mr. Griffin* should remain in middle schools. But she endorsed pulling three books from middle schools: *Beloved*, *The Bluest Eye*, and *Dreaming in Cuban*.

Over the critics' objections, the school board backed Maier's recommendations. Member Nancy Stacy dissented, declaring that all of the books ought to be pulled from all of the schools. Reported in: *Ocala Star-Banner*, August 25, 2019.

## Kalamazoo, Michigan

Kalamazoo Public Schools (KPS) in December 2019 reversed a controversial decision to drop LGBTQ-centered books out of a reading initiative focusing on diversity.

Among the books named during the controversy were *George* (2015) by Alex Gino, a novel about a child who's born male but wants to play Charlotte in the school play, "Charlotte's Web," and *Julián is a Mermaid* (2018) by Jessica Love, a picture book about a little boy who dresses up as a mermaid.

On December 17, KPS officials released a statement that said, "The Diverse Classroom Libraries project had a narrow focus to increase the racial and ethnic diversity represented in books in the classroom." It added that the book about a transgender character read by a teacher to a third-grade class "was not included in the classroom libraries because it did not meet the basic criteria for that project—it was not written by nor was it about a person of color."

The district said the present program would focus only on racial and ethnic diversity, and would also leave out themes of disability and economic status.

The limited definition of diversity quickly drew condemnation from some parents, teachers, students, and other community members. At a packed board meeting on December 19, the district made it clear that its position had changed.

President Patti Sholler-Barber said KPS' initial statement was "poorly worded."

"On behalf of the Board of Education, I sincerely apologize. Heartfelt. Let me emphasize that. We sincerely apologize," she said.

At the meeting, which ran about three hours, roughly two dozen people





told the board they supported a more inclusive program. Some said that books with LGBTQ representation made all the difference to them, or would have made all the difference to them, when they were young. Several said that KPS' statement turned identity into a zero-sum game. Reported in: WMUK, December 17, 2019; BBC, December 17, December 20.

### Westwood, New Jersey

The Westwood (New Jersey) Regional School Board voted to accept school administrators' decision to retain *Thirteen Reasons Why* (2007) by Jay Asher and *Boot Camp* (2006) and *Can't Get There from Here* (2004) by Todd Strasser at the board meeting on July 25, 2019—but the decision remained an issue in a subsequent school board election.

Michelle Sembler was one of a group of parents trying to get the three novels removed from the middle school. Another member of that group was Westwood Police Chief Michael Pontillo. The parents had said they should get permission slips sent home when a child requests mature or sensitive materials from the school library.

*Thirteen Reasons Why* is the story of a young high school student as she descends into despair brought on by betrayal and bullying, culminating with her suicide.

*Boot Camp* is about a boy who is subjected to physical and psychological abuse when his parents send him to a boot camp.

*Can't Get There from Here* is a look at teen homelessness, complete with abuse, abandonment, cold, hunger, and constant danger.

After the board accepted the middle school administrators' judgment that the books are part of a vetted range of materials that overall are suitable for the age group—and also the judgment that parents should get

more information (via the school's Genesis Parent Access portal) about all the books kids have at hand—Semblor and Pontillo both ran for seats on the school board in a November 5 election.

Campaigning to make it easier for parents to get books removed from school libraries and classrooms, Sembler, who is an electrical contractor vice president, a mother of three, and a former teacher, won a seat on the board. Pontillo lost.

Board member Roberta Hanlon—who won reelection in the same November 5 election—said at the July 25 meeting that the administration's plan was sound: "Having a list such as this is a great tool for the parents." Hanlon, who is an independent banking professional as well as a local crossing guard and former Westwood councilwoman, is chair of the board's committees on finance and facilities and negotiations. Reported in: *Passack Press*, August 6, 2019; [www.nj.com](http://www.nj.com), November 7.

### Cornelius, North Carolina

*All American Boys* (2015) by Brendan Kiely and Jason Reynolds, a young adult novel that looks at the repercussions of an act of police brutality, was challenged at Bailey Middle School in Cornelius, North Carolina, by two parents, one of whom is a police officer. High ranking local police officers were included in the review process, which decided in September 2019 to keep the book as assigned reading in a new eighth-grade unit focusing on social injustice.

The school is part of the Charlotte-Mecklenburg Schools, which has a policy of involving faculty members and community members in the review process when an objection is raised about a book. In this instance, not only were police officers included in the review, but also the school will

"invite police officers to participate in the classroom conversations" when the book is taught, Bailey Middle School principal Chad Thomas wrote when announcing the decision to retain the book.

Board members at their monthly meeting on September 24 agreed with the review decision.

"It deals with contemporary issues that students may face," said board member Carol Sawyer. "The book presents lots of different viewpoints."

Board members and school leaders said the book opens eighth-graders' minds to start thinking about topics of social injustice just before they enter high school.

The district says at any point in time that the district uses an outside text, there is a permission slip that goes home with the student, and a parent can sign that and say they want their child to opt out of reading that text. The district says they then will supply the student with a secondary text and secondary assignment that goes along with it. Reported in: WBTB-3, September 25, 2019.

### Marietta, Ohio

*The Handmaid's Tale* (1985) by Margaret Atwood narrowly survived a challenge to be removed from the Marietta City Schools curriculum on August 27, 2019.

The novel depicts a world in which religious leaders have absolute authority and women are, for the most, relegated to roles of servitude and reproduction. It includes strong language and disturbing scenes of oppression and sexual violence. The book has seen a resurgence in public attention because of contemporary events, a recent television series, and a sequel.

Inclusion of *The Handmaid's Tale* in a new curriculum for juniors and seniors at Marietta High School came under fire from two members of the



public, both former school district employees, at the regular August school board meeting. The new curriculum, written by teachers, replaced the long-standing junior and senior English textbooks with an array of eleven one-semester courses based on specific works or types of writing. A study of *The Handmaid's Tale* was one of the courses, but students also have other options, including the lesser known works of Shakespeare, creative writing, the works of Stephen King, and the poetry of Bruce Springsteen.

Board president Doug Mallett, who brought the matter before the board, said part of his concern is that teaching the book might amount to an endorsement of it.

"I appreciate your mission," he told the teachers, "but I'm concerned about the vulgarity. It might be real, but people may get the impression that we think that's OK. I like that it's thought-provoking, but I'm not feeling real good about this."

Board member Mark Duckworth also expressed opposition to teaching a course that involved the book.

"Profanity isn't needed to make people think," he said. "There's got to be a better way than this."

Taking the opposite side, board member Russ Garrison said, "We live in a profane world, and that might not be reflected in our houses, but I don't think we can clean up literature that makes us uncomfortable and have it keep its meaning."

District curriculum director Jona Hall urged the board to look past the complaints and view the value of the book as an entirety and as an asset for teaching.

"This is a book that elicits conversations, about what happens when the government takes this kind of control, that is the purpose of this book," she said. "It was popular in the 1980s because of the rise of feminism . . .

she didn't write about anything that hasn't already happened."

English language arts teachers Meradeth Bidwell and Joe Rabbene spoke to the board about their choices in developing the curriculum.

"We give students choice; these are elective courses. Dystopian literature really appeals to adolescents. The point of it is, how does an ideal society go wrong?" Bidwell said.

"The fundamental question is, what is the purpose of teaching literature?" Rabbene said. "It's the human conversation, what binds us as a society, to get kids to think about themselves, their relationships to others and to society."

Superintendent Will Hampton added a warning before the vote was taken: "If we select this on the basis of profanity, then that opens a door, and we don't know what else might be behind it," Hampton said. Earlier conversation had alluded to other books that included discomfiting language, such as *Huckleberry Finn* by Mark Twain and *Of Mice and Men* by John Steinbeck.

The vote ended in a 2-2 tie, and the book remains part of the curriculum. Reported in: *Marietta Times*, August 28, 2019.

## BOOK PUBLISHING Washington, D.C.

On November 4, 2019, the US Department of Justice (DOJ) sent a letter demanding that Hachette Book Group not publish *A Warning* without first providing evidence that the book's author—an unnamed senior Trump administration official—did not violate a nondisclosure agreement and did not have access to classified information. Hachette refused to back down, indicating that it would still publish the book in November 2019 and would protect the author's anonymity.

The unidentified author first made headlines in September 2018 when the *New York Times* published the author's op-ed, entitled, "I Am Part of the Resistance Inside the Trump Administration," anonymously.

In its response to the Justice Department, Hachette reaffirmed its commitment to the author and said it is not aware of any nondisclosure agreements the author has with the US government. The statement continues, "Please be assured that Hachette takes its legal responsibilities seriously and, accordingly, Hachette respectfully declines to provide you with the information your letter seeks."

In the letter to Hachette, Assistant Attorney General Joseph Hunt asked Hachette to provide evidence that the author neither signed a nondisclosure agreement nor had access to classified information. "If you cannot make those representations we ask that you immediately provide either the nondisclosure agreements the author signed or the dates of the author's service and the agencies where the author was employed, so that we may determine the terms of the author's nondisclosure agreements and ensure that they have been followed," the letter adds.

If the anonymous author did sign a nondisclosure agreement, "such agreements typically require that any written work potentially containing protected information be submitted for pre-publication review," Hunt's letter cautioned.

Commenting on the DOJ warning, David Grogan, director of the American Booksellers for Free Expression said, "We firmly support Hachette in publishing *A Warning*, written by an anonymous senior official in the Trump administration. The right of someone to publish under a pseudonym or anonymously is crucial in any free and democratic society."



Grogan went on to explain that the United States has a long history of authors publishing anonymously. The US Supreme Court has upheld the right of an author to remain anonymous, he said, pointing to *Talley v. California*.

Grogan also characterized the DOJ's actions as unwarranted. "The Department of Justice's demand that Hachette provide details about the author is a clear overreach. It would potentially intimidate the author into not publishing what could be very important information about the actions and policies of a sitting president and that president's administration. It should be up to the public to decide whether *A Warning* is worthy as a book—not the government." Reported in: [bookweb.org](http://bookweb.org), November 6, 2019.

## INTERNATIONAL Ankara, Turkey

Political cartoonists Musa Kart and four of his colleagues at the *Cumhuriyet* [the Turkish word for "Republic"] daily newspaper were freed from prison by Turkey's highest Court of Appeals on September 12,

2019—142 days after turning themselves in on fabricated charges.

In total, fourteen staff members had been charged after a failed coup d'état in Turkey, which the paper had nothing to do with. The Comic Book Legal Defense Fund wrote, "It was the independent nature of the *Cumhuriyet* as well as their critical pieces about Turkey's President Recep Tayyip Erdogan that landed everyone in jail, surprising no one, as Turkey is listed as one of the worst countries in freedom of the press year after year."

Cartoonists Rights Network International (CRNI) and Cartooning for Peace released a joint statement after the news came out:

CRNI and Cartooning For Peace are relieved, gratified and overjoyed to hear that Musa Kart has been released from prison after a Supreme Court decision overturned his criminal conviction for "support of a terrorist organization without being a member." The process of his acquittal is not yet fully complete—the original criminal court must formally quash their verdict—but in effect his innocence has been restored in the eyes of the law.

The imprisonment came at the end of three years of persecution. After their initial set of appeals failed, Kart and his colleagues were alerted to the arrest warrant issued for them. To avoid giving the Turkish authorities a chance to claim they weren't cooperating, they handed themselves over. As Kart walked into jail almost five months ago, he was reported to have said,

I believe people will see the injustice that is being done here. Several brave reporters have recently summarized what's happening in Turkey: People who punch the leader of a major political party are permitted to go free while those who draw cartoons or report the news are put in prison. We look forward to the day when journalists need not make proclamations such as these in front of prison gates.

Many cartoonists around the world wrote, draw, and spoke about the imprisonment, and #FreeMusaKart became a rallying cry against the censorship of political cartoonists. Reported in: [cblfd.org](http://cblfd.org), September 16, 2019.



*EDITOR'S NOTE: This is only a small sampling of the many recent challenges to "drag queen storytimes," where the controversy usually focuses at least as much on who is reading the books as on the books themselves. As with traditional library storytimes, picture books are read aloud to children, but the readers are performers dressed in drag (usually men dressed in theatrically feminine costumes). Their goal is to encourage both a love of reading and acceptance of diversity. Some of these events are officially sponsored by Drag Queen Story Hour, a network of local organizations that began in San Francisco; others are independent.*

## LIBRARIES

### Lexington Park, Maryland

If libraries cancel drag queen storytimes due to worries about protests and the costs of security, this may violate the First Amendment, according to Kathryn M. Rowe, assistant attorney in the Office of the Attorney General of Maryland.

She issued this legal opinion after the Lexington Park Library in St. Mary's County, Maryland, held a drag queen story event where so many protestors were expected that the local sheriff decided (without being asked by the library) to send sixteen deputies to provide security. The county's Board of Commissioners—which funds both the sheriff's office and the library—in a board meeting held on July 16, 2019, voted to take funds from the library budget to cover the sheriff's extra expenses.

As Rowe summarized when giving her legal opinion, "At the same meeting, at least one Commissioner suggested to representatives of the library that they should avoid having such controversial events and that their funding may be affected if they continued to have controversial events."

This prompted Delegate Brian M. Crosby, a Democrat who represents

St. Mary's County in the Maryland legislature, to ask the attorney general's office about the First Amendment implications of such actions.

In her letter to Crosby, Rowe noted, "The pressure to avoid controversial events at the library did not come from the Board as a whole and was not voted on by the Board, and thus cannot be said to be an official action." Yet she stated,

If, however, the library were to refuse controversial events in order to avoid having their budget reduced, that action would most likely violate the First Amendment. As a public institution, the library is subject to the restrictions of the First Amendment. . . . Libraries are generally considered designated, or limited, public forums.

Citing a range of court cases and law review articles, she said that in such a forum, limitations on speech may not be based on viewpoint. Further, she wrote, "Nor is the avoidance of controversy a valid ground for limiting speech in a limited public forum. . . . Limits on those rights can be upheld only if they are narrowly tailored to serve a significant governmental interest, and . . . leave open ample alternative channels for communication of information."

This led Rowe to conclude, "In short, it is clear that the library cannot constitutionally deny meeting space to organizations solely because the organization or the subject matter of the meeting is controversial."

On the question of the cost of providing security for controversial events, she found no cases specifically dealing with public libraries, but said the issue has come up on college and university campuses. Judgments in such cases, she said, indicate that "charging the library for the police

presence they did not request, and which was deemed necessary only because of the anticipated reaction of others, is also constitutionally problematic. . . . In light of these cases, it is my view that charging the library for security added based on the Sheriff's conclusion about the likelihood of opposition raises serious constitutional questions." Reported in: *Southern Maryland News Net*, October 8, 2019.

### Floyd, Virginia

Officials of the Montgomery-Floyd Regional Library withdrew their sponsorship of a story hour featuring drag queen Dreama Bell, scheduled for December 20, 2019, at Jessie Peterman Memorial Library in Floyd, Virginia.

Originally, the event was supposed to be co-sponsored by the library and PFLAG, an organization for LGBTQ families and allies. (The acronym comes from the national group's original name, Parents and Friends of Lesbians and Gays.)

On Monday, December 9, the event listing was submitted to the *Floyd Press* by local PFLAG Chapter President Jim Best and Jessie Peterman Branch Manager Lori Kaluska. The event listing did not mention the story hour program being co-sponsored by the library. However, on Wednesday morning, Kaluska called the *Press* to request that the event listing be removed from the newspaper's community calendar and any online editions or digital versions of the same, saying the event had not been properly approved.

According to Best and PFLAG treasurer Christina Alba, PFLAG's impression at that point was that the event had been entirely cancelled.

After the *Floyd Press* inquired via email into the reason behind the cancellation, Kaluska clarified that PFLAG would still be allowed to hold the story hour in the community room of the



library, but it could not be advertised as a library-sponsored event. According to Kaluska, the library's sponsorship of the event was cancelled after she spoke with the regional director of the library system, Karim Khan, who told Kaluska she hadn't followed the proper procedure for event approval.

Khan outlined a fear of political fallout from hosting such an event at the library and described how funding for the regional library system is approved by the Floyd and Montgomery County Boards of Supervisors. He said, "The elected officials in the two counties are duly elected by the people . . . some of whom have publicly stated positions that may not always be in sympathy with what PFLAG has proposed."

Khan emphasized the distinction between an event held in a library community room and one sponsored by the library. Community rooms can be reserved for any not-for-profit group or event, and "permission to use the community rooms does not constitute an endorsement by the Board of Trustees of the group's beliefs or policies."

Events such as a drag queen storytime, Khan said, "have been very controversial" and "because it can affect your funding, you should really check with the board before you authorize it."

Thus Floyd PFLAG could hold its story hour event on December 20 in the library, but without the library's sponsorship. According to Best, PFLAG is glad to have the space in the library's community room, but continues to question why Kaluska could not decide to co-host the event on behalf of the library. Reported in: *swvatoday.com*, December 19, 2019.

**Morgantown, West Virginia**  
Violent threats prompted the Morgantown (West Virginia) Public Library

System to cancel a Drag Queen Story Time event that was scheduled for Saturday, November 16, 2019.

The cancellation was announced in a Facebook post the day before the scheduled event. The library's statement said it "remains committed to fostering a love of reading for all ages" and will have its staffers (instead of a drag queen) read for the event Saturday morning.

That Saturday, more than one hundred people filled the sidewalk in front of the Morgantown Public Library for the Drag Queen Storytime Support Rally.

Morgantown Third Ward councilman Zack Cruze attended the event and expressed disappointment that protests from groups outside Morgantown made participants feel unsafe.

Cruze told WAJR Radio News the rally had been planned well in advance of the cancellation.

"There was already a plan to have a rally and help people get into the library," Cruze said. "Because the protesters were threatening violence and saying they were going to bring pepper spray and bullhorns." Reported in: Associated Press, November 16, 2019; *wvmetronews.com*, November 16.

### **CITY FACILITIES** **New Port Richey, Florida**

The city council of New Port Richey in Pasco County, Florida, blocked a request to move monthly Drag Queen Story Hour events from a bookstore in Port Richey to a city-owned meeting space.

Supporters of Pasco Pride and the Drag Queen Story Hour organizers asked to hold the event in Peace Hall in Sims Park. The city's website, in its section on city parks and facilities, describes Peace Hall as "a perfect venue for your events," with a capacity to hold 102 people, available for

rent by the half day or full day. The historic building is a former church, adjacent to a city park.

Organizers were informed that they would need to apply for a special event permit, even though the children's reading events attract small crowds of ten to fifteen people each month.

Because of protestors who gather outside to condemn the event and the people attending it, city staff deemed that a police presence would be necessary. Therefore, they asked the event organizers to apply for a special event permit.

Nina Borders, president of Pasco Pride, said,

Making us issue a special permit for an event that houses ten to fifteen people—it's one of the smallest events housed at Peace Hall—making us do that is discriminatory in itself because you're judging us based on actions of other individuals. We do not protest, we do not cause violence, we do not destroy property. All we're asking is to be equal. Just allow us to rent it out and if the protesters come, they come. That has nothing to do with us. That's in the police chief's hands and I fully have my faith in him and I believe he'll do the right thing.

Mayor Rob Marlowe said, "The policy of the city, as we expressed in the resolution we passed last month, is that all city services and facilities are available to everyone regardless of faith, creed, color, sex, national origin, gender identity, gender expression . . . basically we don't discriminate." Marlowe added,

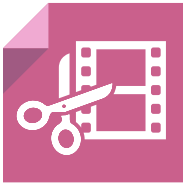
Regardless of the size of the event itself, as a publicly promoted event it was very clear we were going to pick up protesters and were going to have to deal with the police and other security concerns that normally we



only have to deal with much larger events. Nonetheless, the safety of the participants, particularly the children, is first and foremost. And if that requires that our staff makes arrangements to have the proper number of police officers on duty in the park

during the event, that's part and parcel of the planning that goes into a special event that's not normally part of the planning if you're just having a private party in one of the pavilions or even Peace Hall.

The mayor and city council members said they were not taking any stand on the content or agenda of the event. "It's a staff decision," Councilman Jeff Starkey said. Reported in: [cityofnewportrichey.org](http://cityofnewportrichey.org), n.d.; *Suncoast News*, August 14, 2019.



**EDITOR'S NOTE:** *Censorship that may violate the First Amendment is reported in "Censorship Dateline." In the private sector, editorial, business, or social decisions that may affect the free flow of information are legal, but still worth noting "For the Record."*

## BOOKSELLING Washington, D.C.

White supremacist and "pro-Confederate" books such as *The Politically Incorrect Guide to the Civil War* (2008) by H. W. Crocker III should not be promoted by mainstream booksellers, according to a campaign launched by the Council for American-Islamic Relations (CAIR), with headquarters in Washington, D.C., on December 9, 2019. Other titles challenged by CAIR include the nonfiction book *The South Was Right!* (1991) by James Ronald Kennedy and Walter Donald Kennedy and *The Turner Diaries* (1978) by William Luther Pierce, the notoriously racist and anti-Semitic novel about the violent overthrow of the US government, credited with inspiring the 1995 Oklahoma City bombing.

Robert McCaw, CAIR's director of government affairs, called it "inexcusable for internet retailers like Amazon, Google, Audio Books, and Barnes and Noble to profit from the mainstreaming of white supremacist historical revisionism that celebrates the treason of the Confederacy and excuses the abomination of slavery."

In CAIR's press release, McCaw said the retailers "should immediately remove all white supremacist and pro-Confederacy digital audio books and related social media ads."

Amazon, which sells or offers through its vendors any number of controversial titles, including *Mein Kampf* by Adolph Hitler, and the anti-Semitic tract *The Protocols of the*

*Elders of Zion*, referred to its policy on "Content Guidelines for Books":

As a bookseller, we provide our customers with access to a variety of viewpoints, including books that some customers may find objectionable. That said, we reserve the right not to sell certain content, such as pornography or other inappropriate content.

The publisher of *The Politically Incorrect Guide to the Civil War*, Regnery Publishing, based in Washington, D.C., issued its own statement:

Regnery strenuously objects to the insidious and dishonest smear campaign being waged by CAIR against our author, our book, and millions of Americans. Conflating "white supremacy" with "confederate" is a loathsome and despicable tactic, used to discredit and slander anyone who dares to voice support for the South or the ideals of liberty and self-determination embraced by so many patriots during the Civil War and ever since.

Reported in: *Washington Times*, December 11, 2019.

## BROADCAST MEDIA Studio City, California

In a change of heart, the Hallmark Channel will allow television commercials produced by wedding-planning website Zola that show two brides kissing.

The cable network had pulled the ads in mid-December 2019 after the conservative group One Million Moms complained that the ads promoted "the LGBT agenda," according to the Associated Press.

That decision prompted an immediate backlash from people including Ellen DeGeneres and Democratic presidential candidate Pete Buttigieg.

The company has apologized and will reach out to Zola to reinstate the commercials, it said in a statement.

"The Crown Media team has been agonizing over this decision as we've seen the hurt it has unintentionally caused," Mike Perry, president and chief executive officer of Hallmark Cards Inc., said in a statement. "Said simply, they believe this was the wrong decision."

The wedding website had submitted six ads, and four featured lesbian couples, AP reported. After Hallmark pulled those ads, Zola canceled its remaining ads. Reported in: *bloomberg.com*, December 15, 2019.

## MOVIES Universal City, California

Less than two months before the scheduled late-September 2019 release of *The Hunt*—in which "elites" hunt "normal" people for sport—Universal Pictures decided to indefinitely postpone it. Universal announced its decision one day after President Donald Trump tweeted a complaint about Hollywood, in which he claimed that movie makers "create their own violence, and then try to blame others."

A few hours before that tweet, Fox News anchor Laura Ingraham (whom President Trump is known to watch) expressed outrage over the premise of the film on her show. Thus it is likely that Trump was commenting on *The Hunt*, which may have been a factor in Universal's self-censorship.

The film, which had originally been titled *Red State vs. Blue State*, previously garnered a smattering of criticism from left-leaning social media accounts for its apparent intent to valorize violent protagonists similar to some of Trump's red state supporters.

In a carefully worded statement released August 10, 2019, the studio announced, "We stand by our



filmmakers and will continue to distribute films in partnership with bold and visionary creators, like those associated with this satirical social thriller, but we understand that now is not the right time to release this film.” (The statement did leave the door open to a future release.)

In its report on Universal’s decision not to release the movie, *Vox* commented,

Ostensibly, the move had something to do with recent mass shootings in

El Paso, Texas, and Dayton, Ohio (particularly because the El Paso shooting was apparently politically motivated). But even if (and it’s a big if) the timing was accidental—even if the plan to halt the film’s release was underway before President Trump’s thumbs started tapping—in the public eye, correlation seems awfully close to causation.

Movies have seen their release dates pushed before because of tragic news events, but a major movie studio putting the kibosh on a high-

profile release right after the president seemingly tweeted about it is something new altogether. And the precedent it sets—in which powerful government leaders can theoretically shut down a movie’s release because they heard something on TV about a trailer for a movie nobody’s seen—is a move toward government censorship that flies in the face of First Amendment freedoms.

Reported in: *Vox*, August 14, 2019.





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