JOURNAL OF

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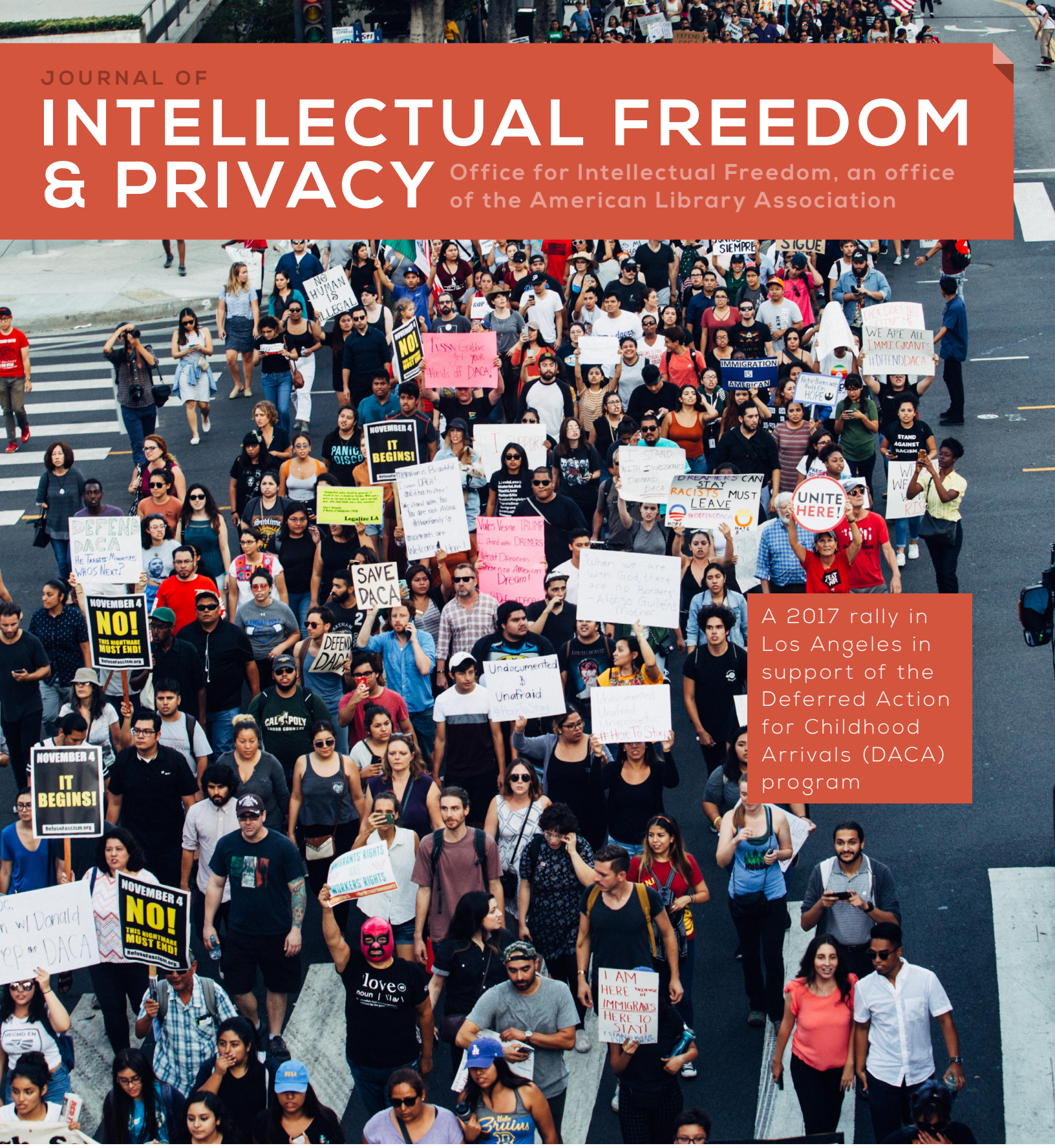
Office for Intellectual Freedom, an office of the American Library Association



A 2017 rally in Los Angeles in support of the Deferred Action for Childhood Arrivals (DACA) program

INSIDE

FALL/WINTER 2020
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NEWS

> "TODAY, WE UNDERSTAND THE STREETS TO BE PUBLIC FORUMS, VENUES THAT CITIZENS CAN USE FOR FREE EXPRESSION, WITH SOME LIMITATIONS ON THE TIME, PLACE, AND MANNER. BUT THIS WAS NOT ALWAYS TRUE."

News: For the Record _ 20

_ When the Trump administration ordered the end of Deferred Action for Childhood Arrivals (DACA) program in 2017, rallies and protests erupted nationwide. This issue's cover shows the September 5, 2017, rally in support of DACA in Los Angeles. Colleges and other entities sued to stop the administration from ending the program. In June 2020, the US Supreme Court ruled that the administration acted impulsively in ending the program and that the repeal be vacated. In July 2020, the Trump administration indicated that it will not process new DACA applications and that it will limit the renewal term for current recipients to one year instead of two. More information can be found on Page 5.

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NEWS UPDATES

FREEDOM TO READ FOUNDATION REPORT TO COUNCIL

EDITOR'S NOTE: This report was presented by Barbara Stripling, president of the Freedom to Read Foundation, on January 25, 2021, to ALA Council at the American Library Association's 2021 Midwinter Meeting & Exhibits Virtual.

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2020 Virtual Annual Conference:

New Litigation

This fall, the Freedom to Read Foundation joined an amicus curiae brief filed in an important appeal pending before the U.S. Supreme Court. The lawsuit, ***Federal Communications Commission v. Prometheus Radio Project***, raises important issues concerning broadcast media ownership by women and persons of color. The brief signed by FTRF urges the U.S. Supreme Court to expand and support media ownership by members of historically disadvantaged groups, particularly people of color and women. We believe that this lawsuit, if successful, will help advance FTRF's strategy for supporting and enabling access to information and materials that reflect diverse voices.

The controversy arises from a number of regulatory decisions by the Federal Communications Commission that relaxed cross-ownership rules in a manner that created barriers to broadcast media ownership by traditionally marginalized groups. The amicus brief asks the Supreme Court to uphold a decision by the Third Circuit Court of Appeals that found that the FCC acted in an arbitrary and capricious manner in 2017 and 2018 when it revised its ownership rules without considering the likely impact of the revised rules on women or people of color. The brief was authored by the Leadership Conference on Civil and Human Rights and joined by 16 other civil liberties groups. The Supreme Court is scheduled to hear the case on January 19, 2021.

The Freedom to Read Foundation has also agreed to serve as *amicus curiae* in the case of ***Christopher Porco v. Lifetime Entertainment***, a lawsuit that threatens to impair the right of authors, artists, and publishers to fashion creative works from real-life events. In this case, a man convicted of killing his father has sued Lifetime Entertainment, claiming that a dramatized version of those events violated his right of publicity under New York law.

The statute, NYS Civil Rights Law section 51, prohibits the use of a person's name, portrait, picture, or voice if the use is nonconsensual and for "advertising purposes or for the purpose of trade." The plaintiff claims that Lifetime Entertainment used his name without his consent and that the film is not protected under the defense of "newsworthiness" defense because he claims the film is "substantially fictionalized."

The trial court ruled in favor of the plaintiff, holding that a creative work violates the rights of a person depicted in the creative work if it is "materially and substantially fictitious," even if the work is identified and presented as a fictionalization. If the court's ruling is upheld, it would significantly expand application of New York's limited right of publicity and could chill the creation of much First Amendment protected expression, including literary nonfiction such as Truman Capote's *In Cold Blood*, graphic novels like John Lewis' *MARCH*, and photographs and visual works of art depicting real people. It would also chill the First Amendment rights of those who distribute those works to the public and those who read, listen to, and watch such creative works.

The *amicus curiae* brief signed by FTRF was authored by the Media Coalition. It explains the First Amendment and free expression harms that would result if the trial court's decision is upheld by the New York appellate court. The appellate court is currently reviewing the briefs filed in the case.

Current Litigation

Since our last report, the courts have decided two of FTRF's pending cases.

The first case, ***United States v. Moalin***, challenged the U.S. government's practice of seizing individuals' phone metadata without a warrant under the PATRIOT Act. The defendant in the case, Basaaly Moalin, was convicted of financing terrorism related organizations but learned that his prosecution was a product of the NSA's phone metadata surveillance program under Section 215 of the PATRIOT Act, a fact that was not disclosed to Moalin or his defense attorneys.

FTRF joined an *amicus curiae* brief that argued that the U.S. government should not be permitted to conduct warrantless searches and seizures of individuals' phone metadata because that metadata reveals sensitive and private information about an individual's expressive and associational activities that should be protected by both the First and Fourth Amendments of the Constitution. The brief also challenged the existing "third party rule" precedents holding that the voluntary sharing of personal data with phone companies forfeits any Fourth Amendment expectation of privacy in that data. It urged adoption of a rule requiring the government to obtain a warrant whenever it seeks to access

metadata that reveals information about a user's associations and expressive activities.

On September 2, 2020, the Ninth Circuit Court of Appeals decided the case in a manner favorable to the position supported by FTRF, holding that the NSA's metadata program was illegal and likely unconstitutional. But sadly, the court upheld Moalin's conviction, ruling that the lack of notice concerning the phone metadata collection did not significantly prejudice his case.

In a second case, the Supreme Court, unfortunately, declined to review ***Austin v. State of Illinois***, leaving in place an Illinois Supreme Court decision upholding the Illinois' statute criminalizing the nonconsensual dissemination of private sexual images, which does not require a showing of malicious intent. That decision holds that the statute is a content-neutral time, place, and manner speech restriction that is only subject to intermediate scrutiny, rather than strict scrutiny, the higher standard of review that is traditionally used to evaluate any law criminalizing or restricting an individual's expressive activities.

Austin was charged and tried after she shared texts and photos sent to her phone by her ex-fiancé with family members in an effort to contradict her ex-fiancé's account of their breakup. The messages included nude photos. The brief signed by FTRF took no position on the facts of the case but argued that the Illinois Supreme Court erroneously held that the law is not a content-based restriction on speech subject to strict scrutiny.

While FTRF, without question, supports laws that punish individuals who deliberately harass or intimidate another person by publishing their intimate photos without consent, it opposes those laws that are written so broadly that they can be used to prosecute librarians, booksellers, publishers, and others for the distribution of images that are newsworthy or educational, such as the image of "Napalm Girl," from the Vietnam War.

Free Expression and Civil Liberties Advocacy

The Freedom to Read Foundation regularly advocates on behalf of fundamental rights and civil liberties through correspondence and statements directed to legislatures, organizations, and government bodies. Our recent advocacy efforts include:

- Joining with the American Booksellers Association to send a letter of support of an incarcerated individual who says that Missouri prison authorities have denied him permission to publish a book unrelated to the crime he is accused of committing, on the grounds that he has forfeited his First Amendment rights.
- Joining members of the National Coalition Against Censorship to send a letter protesting a decision by the officials of the Wylie (TX) Independent School District to remove an editorial cartoon about the history of violence against Black people in the United States from the school website that was part of an assignment for the school's "Celebrate Freedom Week!" The cartoon was removed after complaints filed by the National Federation of Police.
- Signing a letter authored by the Center for Democracy and Technology (CDT) opposing S. 4632, federal legislation that would discourage social media companies from combating and removing disinformation and other content aimed at achieving voter suppression. The letter emphasized the threat the bill poses to the ongoing efforts to fight against voter suppression and urged senators to oppose the bill.
- Joining members of the National Coalition Against Censorship to send a letter opposing a proposal to remove several classic works from the curriculum in Burbank Unified School District in Burbank, CA. The books, which include *The Adventures of Huckleberry Finn*, *To Kill A Mockingbird*, *The Cay*, and *Roll of Thunder, Hear My Cry*, were removed from the curriculum after parents complained about the books' use of racial epithets.
- Signing a letter of dissent written by the ACLU of Washington State opposing implementation of facial recognition surveillance systems at Sea-Tac and other airports operated by the Port of Seattle. The letter of dissent urges the Port of Seattle to reject collaboration with Customs and Border Patrol; withdraw funding for CBP's surveillance systems; prohibit use of facial recognition technology; and ensure that the Port of Seattle's interpretation of and compliance with its principles align with the concerns of marginalized communities.
- Joining the ACLU to submit comments opposing the Department of Homeland Security's proposed regulations that would require all non-U.S. citizens entering and exiting the United States to submit to the collection of facial recognition data and ask U.S. citizens to voluntarily submit their facial recognition data for use by DHS. The proposed regulations would permit DHS to store the information in a database for 75 years and to share it broadly with other foreign governments, agencies, and

contractors, allowing for ongoing and systematic surveillance of individuals who might participate in various First Amendment protected activities such as protests, religious services, and other meetings.

FTRF Task Force on Intellectual Freedom and Social Justice

I am pleased to report that the FTRF Board of Trustees has approved the formation of a task force to explore the complexities involved in the intersection between intellectual freedom and social justice.

Chaired by trustees Loida Garcia-Febo and Jim Neal, the task force is charged with developing an action plan to advance intellectual freedom and social justice initiatives. Some of the programs under consideration are those that would promote books and materials that reflect diverse voices and social justice; support libraries, publishers and bookstores that are threatened by community attacks and legal actions on matters of diversity, equity, and inclusion; and support libraries providing social justice programming and training.

Developing Issues

At each meeting of the FTRF Board of Trustees, members of the Developing Issues Committee choose topics of current and developing interest to inform members of the Board about potential future challenges and legal issues. Among the topics for discussion and consideration during the 2020-2021 term:

- Social Justice Requires Broadband Access
- Librarianship at the Intersection of Intellectual Freedom and Social Justice
- Facial Recognition in the Covid-19 Era
- Academic Censorship from the Left
- Is Replacing the Classics in K-12 a Form of Censorship?

The Judith F. Krug Memorial Fund

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

BANNED BOOKS WEEK GRANTS

A major initiative of the Krug Fund is its support for local Banned Books Week celebrations in schools and libraries across the country. Each year the Krug Fund supports a wide range of read-outs, displays, discussions, performances, and other educational initiatives that will engage communities in dialogues about censorship and the freedom to read.

This past summer, the following institutions were awarded grants of $1,000 to support their 2020 Banned Books Week events:

- **Cambria County Library (Johnstown, Pennsylvania)** for events that will center on the history of the Beat Generation and banned books and commemorate the 65th anniversary of the Six Gallery reading in San Francisco, where one of the most infamous banned books—*Howl* by Allen Ginsberg—was read for the first time.
- **The Center for Transformative Action/Ithaca City of Asylum (Ithaca, New York)** to support a live-streamed presentation and conversation by two internationally acclaimed cartoonists whose works were censored. The featured cartoonists are Pedro X. Molina, who fled Nicaragua in 2018 and is now ICOA's writer-in-residence, and Rob Rogers, who was fired that same year by the Pittsburgh Post-Gazette for his cartoons critical of the president. Both will work virtually with children in library summer programs, judge a cartooning contest, and curate an online exhibit in addition to presenting their work and taking questions in a free online event.
- **Central Washington University Libraries (Ellensburg, Washington)** for Banned Books Week events to raise up LGBTQIA+ voices and stories in literature. The libraries will be working with campus and community partners to create and offer programming around LGBTQIA+ literature, including a moderated panel discussion featuring librarians, students, and community members; an author talk; a book club discussion; and book giveaways.
- **The Kurt Vonnegut Museum and Library (Indianapolis, Indiana)** in support of Banned Books Week events focused on civic engagement and youth writing, including writing workshops, a reading of the original play "Kurt Vonnegut: WordPlay," a reception for the installation of an exhibit celebrating the 100th anniversary of women's suffrage and discussions about censorship and freedom of expression.
- **Manor High School Library (Manor, Texas)** for a Banned Books Week exhibit showing how social taboos change over time and how book banning events reflect the tensions that existed in society at a given moment in time. The exhibit will utilize a self-guided living timeline featuring one banned book in each decade

from 1930 to 2020, for a total of 10 stops in all. In addition to the main exhibit, there will be games, contests, and a book walk similar to a cake walk.

- **The Maricopa Public Library (Maricopa, Arizona)** for a community celebration of Banned Books Week utilizing the 2020 theme, "Censorship is a Dead End." The event will include a "Mystery Hint Search" in collaboration with local businesses and a "Murder Mystery of Banned Book Characters Party" for those who complete the puzzles. In addition to the event, the Maricopa Public Library will create educational and informative multimedia displays that will initially focus on Banned Books Week and will grow to become a Maricopa Public Library staple.

To learn about the 2020 grantees, please visit the FTRF website at www.ftrf.org/Krug_BBW.

LIS AND PROFESSIONAL EDUCATION

The Krug Fund continues to successfully partner with the University of Illinois' School of Information Science and the San Jose State University School of Information to support dedicated coursework on intellectual freedom in libraries. Professor Emily Knox teaches "Intellectual Freedom and Censorship" at the University of Illinois while Professors Beth Wrenn-Estes and Carrie Gardner teach courses on Intellectual Freedom for San Jose State. We thank the University of Illinois and San Jose State University for partnering with the Freedom to Read Foundation to assure that high-quality intellectual freedom curricula and training remain available to LIS students preparing for their professional careers. We also thank FTRF educational consultant Joyce Hagen-McIntosh for her dedicated support for the course instructors and the students enrolled in these classes.

This fall, the Krug Fund awarded six scholarships to students wishing to attend the courses provided by the University of Illinois and San Jose State. Those recipients included Whitney Bevill (Anderson, SC), Daniel Davis (Camas, WA), Samantha (Sam) Kennefick (Lakewood, CO) and Allison Michel (Salt Lake City, UT) who are attending the Fall, 2020 intellectual freedom course offered by Professor Carrie Gardner through the SJSU iSchool. Katie Krumeich (Washington, DC) and Kristina Acosta (Tulsa, OK) will receive scholarships in the Spring of 2021 to attend the seminar led by instructor Beth Wrenn-Estes through SJSU that will focus on intellectual freedom issues for youth, including material on how to defend materials for youth from censorship.

The Krug Fund Education Committee also organized and presented two intellectual freedom webinars for library workers:

- **Collecting and Protecting LGBTQ+ Materials and Programs (August 5, 2020)** featuring speakers Rae-Anne Montague, Sukrit Goswami, and Tom Taylor discussing collection development tools for LGBTQ+ materials and digital resources and how each navigated challenges to LGBTQIA+ themed library programs and materials. Co-sponsors included the American Library Association's Office for Intellectual Freedom (OIF), the Rainbow Round Table (RTT) and the Intellectual Freedom Round Table (IFRT).
- **Legal and Legislative Update Webinar (September 15, 2020)** FTRF General Counsel Theresa Chmara and FTRF Director Deborah Caldwell-Stone shared insights about current legal cases and legislation from throughout the country.

FTRF Membership

The foundation's mission to advocate on behalf of free expression, privacy, and civil liberties is essential in this time of civil unrest and social change. Membership in the Freedom to Read Foundation not only supports the important work of defending our First Amendment freedoms, but it also builds our organizational capacity so that we can advocate on behalf of diverse voices and ensure the rights of marginalized persons.

I encourage all ALA Councilors and all ALA members to join me in becoming a personal member of the Freedom to Read Foundation. I also ask that you invite your institution or organization to join FTRF as an organizational member. You are invited to include a donation in addition to your membership dues. Please send a check ($50+ for personal members, $100+ for organizations, $35+ for new professionals, $10+ for students, $0 for furloughed/unemployed, and $10 for retirees) to:

Freedom to Read Foundation
225 N. Michigan Ave., Suite 1300
Chicago, Illinois 60601

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

I hope you will strengthen the voice and impact of the Freedom to Read Foundation by becoming a member.

Respectfully submitted,
Barbara Stripling, President
The Freedom to Read Foundation

NEWS UPDATES

INTELLECTUAL FREEDOM COMMITTEE REPORT TO COUNCIL

EDITOR'S NOTE: This two-part report was presented by Martin Garnar, chair of the American Library Association's Intellectual Freedom Committee, on January 26, 2021, to ALA Council at the American Library Association's 2021 Midwinter Meeting & Exhibits Virtual. The resolved clauses of the "Resolution in Opposition to Facial Recognition Software in Libraries" is published in this issue as amended and voted on by ALA Council.

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

Information

PUBLICATIONS

The Intellectual Freedom Committee and the Office for Intellectual Freedom work together to keep ALA and the library community apprised of evolving intellectual freedom issues through an ongoing publications program that features both print and online resources. Foremost among these is the 10th edition of the *Intellectual Freedom Manual,* now available from the ALA Store. Edited by IFC Chair Martin Garnar with Assistant Editor Trina Magi, the manual is a living document that serves as the authoritative reference for day-to-day guidance on maintaining free and equal access to information for all people. The new edition of the manual features eight new interpretations of the *Library Bill of Rights*—which address urgent issues such as internet filtering, public performances, political activity, religion, and equity, diversity, and inclusion—as well as an expanded glossary and updated content about developing library policies. The editors and contributors to the manual will discuss its revised content at this Midwinter's *News You Can Use* session "Practical Answers for Evolving Issues: Introducing the 10th Edition of the Intellectual Freedom Manual." Co-sponsored by the Office for Intellectual Freedom and ALA Editions, the session will also review the IFC's process for crafting resources. ALA Midwinter attendees viewing the session will receive a code to purchase the manual at a discounted price. A follow-up virtual Q&A session is scheduled in February as an opportunity for ALA members to ask contributors questions.

Online, the Intellectual Freedom Blog offers perspectives and updates about intellectual freedom topics. Recently, it has also reported on IFC activities, including the committee's revision of "Access to Digital Resources and Services Q&A," reported on by IFRT liaison to IFC Steph Barnaby. The Choose Privacy Every Day blog provides perspectives and resources for protecting and advocating for users' privacy. This fall, the IFC Privacy Subcommittee recruited its first team of bloggers to offer guidance and share experiences about privacy topics. Recently, the blog has provided perspectives on the California Consumer Privacy Act, the Right to Be Forgotten in digital archives, and the balance of privacy and usability. Both the Intellectual Freedom Blog and the Choose Privacy Every Day blog publish a roundup of news items every Friday.

The *Journal of Intellectual Freedom & Privacy* continues to update readers with peer-reviewed articles, book reviews, legal briefs, and opinion pieces, as well as serving as the publication of record detailing the latest incidents of censorship, court rulings, legal controversies, and success stories. Reports to Council from IFC, COPE, and FTRF are also included. The latest issue of the journal covered stories on social media and COVID-19 misinformation, as well as a history of censorship in the United States. More information about personal and institutional subscriptions can be found at journals.ala.org/index.php/jifp/index.

MERRITT FUND

The LeRoy C. Merritt Humanitarian Fund was established in 1970 as a special trust in memory of Dr. LeRoy C. Merritt. It is devoted to the support, maintenance, medical care, and welfare of librarians who, in the trustees' opinion, are denied employment rights or discriminated against on the basis of gender, sexual orientation, race, color, creed, religion, age, disability, or place of national origin, or denied employment rights because of defense of intellectual freedom. The Fund is wholly supported by individual donations from concerned members of the wider library community and is administered by a Board of Trustees elected from those contributing to the fund. This year's trustee election will take place in January 2021.

The trustees meet regularly to consider requests for assistance. Applications for assistance are available at www.merrittfund.org, or applicants can call 312-280-4226 for assistance. Trustees keep all requests in strict confidence.

To learn more about the history and work of the Merritt Fund, or to make a donation, please visit www.merrittfund.org.

Censorship and Recent Challenges

TRENDS

Since 1990, the ALA Office for Intellectual Freedom (OIF) has been collecting data about banned and challenged library materials and services. ALA collects information from two sources: media reports culled from news outlets and social platforms;

NEWS UPDATES

and reports submitted by individuals through the online form. The office presents Censorship Reports to inform members of trends and activities. From June 1, 2020 to Dec. 29, 2020, OIF has tracked 75 unique cases. OIF provided support and consultation on 53 cases. The office has noted the following censorship trends:

- Challenges to anti-racist materials
- Challenges that involve Black Lives Matter
- Challenges publicly shared on social media

Books	50
Graphic Novels	5
Films & Magazines	3
Programs	4
Displays	3
Social Media	4
Other (Databases, Filtering, Hate Crime, & Online Resources)	6

SNAPSHOT OF RECENT PUBLIC CHALLENGES AND BANS

Lake Norman Charter School (North Carolina): Parents of a Lake Norman Charter School ninth grader have filed a federal lawsuit to remove *Poet X* by Elizabeth Acevedo from the classroom. They claim the book is overtly anti-Christian and that the school's use of the book is a violation of their freedom of religion.

Burbank Unified School District (California): Continuing from a challenge that was initiated in September at the Burbank Unified School District, OIF sent a letter of support to the superintendent to retain *Roll of Thunder, Hear My Cry* by Mildred D. Taylor, *To Kill a Mockingbird* by Harper Lee, *The Adventures of Huckleberry Finn* by Mark Twain, *Of Mice and Men* by John Steinbeck, and *The Cay* by Theodore Taylor in the curriculum. The letter stated that "we respectfully suggest that rather than removal of these books from the curriculum, the actual need is for improved teaching and discussion of these works of literature that places their use of racial epithets in context and highlights the harms of racist actions both in the past and in current society."

Despite feedback from the teachers, petitions from the students, and advice from national organizations, the five books were removed from the curriculum. In addition, BUSD has banned the use of, and reading of the n-word in all classes, regardless of context.

Sullivan County Schools (Pennsylvania): During a live-streamed school board meeting, a heated debate arose about an LGBTQIA+ display in the school library, where a school board member criticized the subject and stated that it should be dismantled.

OIF provided support to the school librarian and a letter of support to the superintendent and school board expressing support for the display and her commitment to creating an open, inclusive, and collaborative learning environment.

Lincoln Parish Public Library (Louisiana): After temporarily removing children's books with LGBTQIA+ content from the general shelves of the Lincoln Parish Public Library to satisfy a small group of complaining patrons, the library board voted to affirmatively reinstate the books for everyone to access.

Allegheny County Jail (Pennsylvania): The Allegheny County Jail in Pittsburgh reversed a recently implemented policy to prohibit incarcerated people from purchasing physical copies of books or having physical books purchased on their behalf from pre-approved third parties.

Kent State University (Ohio): Two Ohio state representatives admonished Kent State University for assigning the book *Anime from Akira to Howl's Moving Castle: Experiencing Contemporary Japanese Animation* by Dr. Susan Napier in the school's College Writing I classes.

MEMBER SUPPORT–DOUGLAS COUNTY PUBLIC LIBRARY (NEVADA)

In addition to providing support to libraries and library workers addressing censorship and violations of users' privacy, OIF and ALA's intellectual freedom groups frequently provide support to library workers defending the profession's core values. This past fall, Library Director Amy Dodson and staff of the Douglas County Public Library faced enormous public criticism after proposing adoption of a diversity statement to its library board via the library's Facebook page.

Public criticism of the post began after the Douglas County Sheriff published a letter stating that library staff should no longer call 911 for help with disturbances because he viewed the library's diversity proposal and its statement of support for the Black Lives Matter movement as a lack of support for the Sheriff's Office. Dodson was ordered to take down the diversity statement.

After the sheriff's letter spurred national media coverage and a number of protests in Douglas County, the library board met to review the situation. OIF provided support to Dodson and her staff, working with ALA President Julius C. Jefferson Jr., the Nevada Library Association, and United for Libraries to send a letter to the library board outlining the

profession's commitment to equity, diversity, and inclusion and backing the proposal of the diversity statement.

Despite the support provided by national and state library associations, the Nevada Attorney General, the ACLU, and local residents, the library board voted to initiate an investigation of Dodson's actions, using $30,000 of the library's budget to pay for the third-party investigation. Throughout the investigation, OIF staff continued to monitor developments and support Dodson and her staff. This past December, the law firm conducting the investigation filed a report concluding that neither the library, its director, or its staff had violated any laws or policies in introducing the diversity statement for the board's consideration.

Initiatives

BANNED BOOKS WEEK

Despite restrictions imposed by the ongoing pandemic, this year's Banned Books Week (Sept. 27—Oct. 3) highlighted activism, embraced creativity, explored technology and virtual outlets, and recognized the voices that others attempted to silence through censorship.

Before the celebration, OIF staff ensured that library workers and readers had the resources needed to participate in Banned Books Week. In September, the Intellectual Freedom Blog published a detailed list of 40 virtual program ideas. Physical and digital products designed by ALA Production Services were available in the ALA Store and ALA Gift Shop. The ALA Connect Live session on intellectual freedom promoted ALA members' access to thousands of searchable public challenge entries. OIF's "Free Downloads" webpage was stocked with activities and shareable statistics and attracted 30,720 pageviews during September. IFRT also created Zoom backgrounds.

To kick-off Banned Books Week, OIF released the list of the top 100 most banned and challenged books of the past decade, as well as an accompanying Buzzfeed quiz. The list was covered by major news outlets, including the Associated Press, CNN, The Guardian, and NBC News.

During the week, there was an array of online opportunities for libraries and readers, including the Dear Banned Author letter-writing campaign, a themed week of #BannedBooksWeek in Action, and videos of read-outs, watch parties, and livestreams with banned author Alex Gino (organized by the Banned Books Week Coalition) and documentary director Cody Meirick. GNCRT, IFRT, and Image Comics also produced a week-long webinar series featuring conversations with creators and librarians.

Libraries celebrated throughout the week online by creating powerful videos, hosting virtual programs such as bingo and trivia, showcasing fiery displays, posting on social media, creating virtual Bitmoji libraries, and streaming webinars. This year's theme—"Censorship is a Dead End. Find Your Freedom to Read"—inspired creative activities, such as digital escape rooms, scavenger hunts, and even outdoor physical mazes.

ALA extended the reach of Banned Books Week by collaborating with other organizations, including Little Free Libraries, American Booksellers Association, SAGE Publishing, Kouvenda Media, City Lit Theater, and Amnesty International USA. The office continually works closely with members of the Banned Books Week Coalition—an international alliance of diverse organizations joined by a commitment to increase awareness of the annual celebration of the freedom to read—to support one another's work.

This engagement continues to highlight the work of libraries and the association, and makes Banned Books Week an ever-present staple in critical First Amendment discussions. Planning for Banned Books Week 2021 is underway, and the IFC provides helpful feedback on artwork and messaging.

IFC Resolutions, Guidelines, Q&As, Statements, and Working Groups

The Intellectual Freedom Committee continues to respond to new and ongoing threats to intellectual freedom and user privacy by updating and revising resources offering guidance to library workers.

LIBRARY PRIVACY GUIDELINES AND CHECKLISTS

The IFC Privacy Subcommittee is reviewing its series of privacy guidelines and checklists. The subcommittee plans to update all of these resources by ALA Annual Conference 2021.

The Privacy Subcommittee recently revised and the IFC approved "Library Privacy Guidelines for Students in K-12 Schools" and "Library Privacy Checklist for Vendors." These resources are included in this report as information items.

PRIVACY TOWN HALL

The Privacy Subcommittee hosted a privacy town hall, "Surveillance in Academic Libraries?! A Search for Better Ideas," on December 1. The town hall provided a forum to discuss recent proposals to surveil library users for security purposes and to broker patron data to secure lower prices on subscription resources. Privacy Subcommittee member Michelle Gibeault moderated the program,

which featured information security engineer Roy Hatcher. Hatcher provided an analysis of the proposal and discussed how libraries can work with information security to protect user privacy.

ACCESS TO DIGITAL RESOURCES AND SERVICES Q&A

The IFC created this set of questions and answers to clarify the implications and applications of "Access to Digital Resources and Services: An Interpretation of the *Library Bill of Rights*," last revised on June 25, 2019. This Q&A was created in 1997 by the IFC, and it was last revised in 2010. This newest revised resource is divided into four sections: Rationale for Digital Access, Rights of Users, Equity of Access for Users, and Selection and Management Issues. It answers questions such as "What is the library's role in facilitating freedom of expression through digital resources and services?" and "Does my library have to provide digital material on all subjects, for all users, even if those users are not part of the library or the material does not meet the library's collection development policies?"

The IFC voted to approve the revised "Access to Digital Resources and Services Q&A" on November 16, 2020. The Q&A is available on the ALA website and is included in this report as an information item.

EXECUTIVE ORDER ON COMBATING RACE AND SEX STEREOTYPING

On September 22, the White House issued its Executive Order On Combating Race And Sex Stereotyping, prohibiting federal employees, contractors, and grant recipients from discussing or considering concepts such as critical race theory and white privilege and discouraging diversity education and training.

In response, the IFC created a statement for the ALA Executive Board's consideration that opposes the order and rejects the patently false and malicious claim that diversity training—which is aimed at fostering a more equitable and just workplace and dismantling systemic racism and sexism—reflects a "Marxist doctrine" that is itself racist and sexist.

"ALA Statement on Executive Order on Combating Race and Sex Stereotyping" was released by the Executive Board on October 29, 2020, and in part states, "We are painfully aware that libraries and the profession of librarianship have been—and still are—complicit in systems that oppress, exclude, and harm Black people, indigenous people, and people of color, and deny equal opportunity to women. We assert that a commitment to learn from the painful and brutal legacies of our history is essential to the fulfillment of our promise as a country of equal rights and opportunities."

RESOLUTION ON FORMING A WORKING GROUP TO ALIGN VENDOR PRIVACY POLICIES WITH ALA POLICIES AND ETHICS

In compliance with the mandate contained in the Resolution on Forming a Working Group to Align Vendor Privacy Policies with ALA Policies and Ethics (CD#19.5) adopted by the ALA Council during Midwinter 2020, the Intellectual Freedom Committee and its Privacy Subcommittee has formed the Working Group to Align Vendor Privacy Policies with ALA Policies and Ethics. The working group includes library workers, as well as representatives from OverDrive, Ex Libris, Cengage, EBSCO, and OCLC. The original timeline outlined in the resolution was to complete a study of current vendor privacy policies and identify key issues within twelve months of the passing of the resolution. The pandemic has delayed this goal.

The working group held its first meeting on January 4. It reviewed the working group's charge and goals, and began to define privacy, study privacy policies, and identify key issues. The working group plans to complete the task of completing a study of current vendor privacy policies and identifying key issues within the next twelve months.

SOCIAL JUSTICE AND INTELLECTUAL FREEDOM

During its monthly meetings, the IFC has discussed the intersection of social justice and intellectual freedom. The committee is forming a working group with confirmed representatives from the IFC and COPE and is identifying potential representatives from groups connected to ODLOS. The purpose of the working group is to develop messaging and a framework that proactively demonstrates the interdependence of intellectual freedom and social justice.

IFC PROGRAMMING WORKING GROUP

The IFC Programming Working Group has submitted three proposals for consideration at the 2021 ALA Annual Conference. The proposed programs cover topics such as social justice, broadband access, free speech in the workplace, and the First Amendment.

"RESOLUTION CONDEMNING U.S. MEDIA CORPORATIONS' ABRIDGEMENT OF FREE SPEECH" WORKING GROUP

At ALA Virtual 2020—Community Through Connection, ALA Council referred "Resolution Condemning U.S. Media Corporations' Abridgement of Free Speech" (ALA CD#46)

to IFC and IRC "to form a working group that shall include members from both committees as well as the original mover and seconder of the resolution with a report due back at Midwinter 2021." A working group was created and has met several times to review the resolution and suggest revisions.

The working group's discussions about the resolution's scope and implications continue. Recent events such as the insurrection at the Capitol on January 6, 2021, the subsequent decision by Amazon and other platforms to deny services to the Parler chat platform, and social media platforms suspending specific individuals and groups have brought comments and discussions about broadening a statement on corporate speech and free expression in both domestic and international context.

The working group would like to continue discussing the scope and potential revisions of the resolution. The working group requests a continuance of its charge to provide an updated report at ALA Annual Conference 2021.

"RESOLUTION IN OPPOSITION TO FACIAL RECOGNITION SOFTWARE IN LIBRARIES"

The use of facial recognition technology is inherently inconsistent with the *Library Bill of Rights* and other ALA policies that advocate for user privacy, oppose user surveillance, and promote anti-racism, equity, diversity, and inclusion. In early 2020, the IFC Facial Recognition Working Group distributed a survey to determine the library community's level of knowledge and concern about facial recognition software. This survey was distributed on social media, as well as through ALA Connect and several mailing lists; it was open from February 14 through March 14 and received 628 responses. The working group reviewed and coded these responses, and used them to inform the language used in "Resolution in Opposition to Facial Recognition Software in Libraries." A summary of the comments from Facial Recognition Survey (404 comments out of 628 total responses) is included in this report as an information item.

The resolution was posted on ALA Connect to invite member feedback, and was taken to ALA Council Forum. The working group discussed the comments received. "Resolution in Opposition to Facial Recognition Software in Libraries" is included in this report as an action item. The Committee on Library Advocacy voted to endorse the resolution, and the resolution is endorsed in principle by the Intellectual Freedom Round Table.

SURVEILLANCE WORKING GROUP & "RESOLUTION ON THE MISUSE OF BEHAVIORAL DATA SURVEILLANCE IN LIBRARIES"

A recent keynote given at the virtual security summit of The Scholarly Networks Security Initiative (SNSI) caused concern among library workers and other privacy and intellectual freedom advocates. Prompted by the article "Proposal to install spyware in university libraries to protect copyrights shocks academics," the IFC Privacy Subcommittee created a working group that included Privacy Subcommittee members, those working in academia (including representation from the ACRL Professional Values Committee), and members from the Library Freedom Institute and Digital Library Federation. The three groups sponsored a town hall titled "Surveillance in Academic Libraries?! A Search for Better Ideas" on December 1. Moderated by IFC Privacy Subcommittee member Michelle Gibeault and featuring guest speaker and security engineer Roy Hatcher, the town hall reviewed how libraries can work with information security to protect patron privacy. Attendees also asked questions.

This working group also crafted a resolution to address the concerns raised during the SNSI presentation. The group acknowledged the issue of behavioral data surveillance was larger than academic libraries and wrote a resolution to address the core issues that impact libraries of all types.

The resolution was taken to ALA Council Forum, and a working group discussed the comments received. "Resolution on the Misuse of Behavioral Data Surveillance in Libraries" is included in this report as an action item. It is endorsed in principle by the Intellectual Freedom Round Table.

Action Items

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

CD # 19.2 Resolution in Opposition to Facial Recognition Software in Libraries

CD # 19.3 Resolution on the Misuse of Behavioral Data Surveillance in Libraries

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

Respectfully Submitted,
ALA Intellectual Freedom Committee
Martin L. Garnar, Chair
Glen J. Benedict
Peter D. Coyl
Jim DelRosso

NEWS UPDATES

M. Teresa Doherty
Holly Melissa Eberle
Steven Greechie
Dana Hettich
Leslediana Jones
Sophia Sotilleo
Julia M. Warga
Lisa Mandina, Committee Associate

SUMMARY OF COMMENTS FROM FACIAL RECOGNITION SURVEY

In early 2020, the IFC Facial Recognition Working Group distributed a survey to determine the library community's level of knowledge and concern about facial recognition software. This survey was distributed on social media, as well as through ALA Connect and several mailing lists; it was open from February 14 through March 14.

This summary is focused entirely on the response to the final question: **"What other comments would you like to share about libraries and facial recognition software?"**

Of the 628 respondents to the survey, only 404 left additional comments. Members of the working group worked through all responses, counting comments with similar content. (Note, since commenters often made multiple points, a single comment may have been counted several times, once under each of the themes it contained.)

The responses can be found in the table below, with "no comment" removed. If you have questions or concerns, please contact Jim DelRosso.

Comment Summary	Similar Responses (cumulative)	% of Total	% of Actual Responses
General negative opinion	285	45.38	70.54
Threat to privacy (patron, user, worker)	61	9.71	15.10
No need for it in libraries	22	3.50	5.45
Racial bias	16	2.55	3.96
How would this be useful? How would this committee work?	15	2.39	3.71
ALA should take an official stance against FRT	13	2.07	3.22
Timely Topic / Thank you	13	2.07	3.22
Weighing pros and cons	12	1.91	2.97
General positive opinion	12	1.91	2.97
How can we prevent abuse?	11	1.75	2.72
Technology ineffective	10	1.59	2.48
Information unprotected/security concerns	10	1.59	2.48
Less welcoming environment	8	1.27	1.98
Gender bias	7	1.11	1.73
Negative outcomes	6	0.96	1.49
Uses the word ban	5	0.80	1.24
Curious about alternatives to FRT	5	0.80	1.24
Patron safety	4	0.64	0.99
General neutral comment	4	0.64	0.99
Connection to other systems unclear	3	0.48	0.74
What information is being provided?	3	0.48	0.74

Comment Summary	Similar Responses (cumulative)	% of Total	% of Actual Responses
ALA should lobby for legislation banning FRT	2	0.32	0.50
Canadian Concerns	2	0.32	0.50
Are Facial Recognition Solutions being marketed to libraries?	2	0.32	0.50
Already in use	2	0.32	0.50
Facial recognition used in other areas, like FB	2	0.32	0.50
Cost	2	0.32	0.50
Will not be in use at my library	2	0.32	0.50
Libraries should teach people how to fool it	2	0.32	0.50
Unrelated comment to ALA in general	1	0.16	0.25
What if facial features change	1	0.16	0.25
Would family members be able to pickup materials	1	0.16	0.25
Can FRT be used without revealing identities?	1	0.16	0.25
Nothing invasive about FRT but needs to think more	1	0.16	0.25
Know of libraries being pressured into this	1	0.16	0.25
Survey is bad	1	0.16	0.25
Government overreach	1	0.16	0.25
Off topic	1	0.16	0.25
Not in use	1	0.16	0.25
Help prevent fraud on the part of patrons	1	0.16	0.25
Comment on survey	1	0.16	0.25
Don't panic	1	0.16	0.25
It's inevitable	1	0.16	0.25

RESOLUTION IN OPPOSITION TO FACIAL RECOGNITION SOFTWARE IN LIBRARIES

Whereas facial recognition is defined as computer programs that analyze images of human faces for the purpose of identifying them[1];

Whereas the American Library Association (ALA) Policy B.2.1.17 (Privacy) states that "Protecting user privacy and confidentiality is necessary for intellectual freedom and fundamental to the ethics and practice of librarianship";

Whereas the *Library Bill of Rights* states, "All people, regardless of origin, age, background, or views, possess a right to privacy and confidentiality in their library use. Libraries should advocate for, educate about, and protect people's privacy, safeguarding all library use data, including personally identifiable information";

Whereas ALA's *Library Bill of Rights* and its interpretations maintain that all library users have the right to be free from unreasonable intrusion into, or surveillance of, their lawful library use;

Whereas there have been efforts in Congress—including those by Senator

1. "Facial Recognition Technology," ACLU.

Edward J. Markey (D-MA), along with Senator Jeff Merkley (D-OR), Congresswoman Pramila Jayapal (D-WA) and Congresswoman Ayanna Pressley (D-MA)—to regulate and restrict facial recognition and biometric technology[2];

Whereas ALA advocates for users to have the right to access library materials and spaces without having their privacy invaded;

Whereas facial recognition data is often collected without the informed consent of the individual, creating opportunities for the unauthorized surveillance and monitoring of library users[3];

Whereas the use of facial recognition technology has expanded without sufficient oversight standards being put in place, especially for law enforcement[4];

Whereas the mechanisms of facial recognition software are rarely revealed because of proprietary status and intellectual property law;

Whereas current studies[5] on facial recognition software show extreme gender and racial bias, a shocking prevalence of racist misidentification[6], and the use of prejudicial algorithms and harmful stereotypes that can lead to consequences for those misidentified[7];

Whereas the use of facial recognition technology is inherently inconsistent with the *Library Bill of Rights* and other ALA policies that advocate for user privacy, oppose user surveillance, and promote anti-racism, equity, diversity, and inclusion;

Whereas current federal law would not prevent library use data from being shared with third parties[8], thus opening it up to mining, monetization, and malicious misuse;

Whereas 70% of the 404 respondents who offered comment in an ALA Intellectual Freedom Committee survey distributed on February 24, 2020 on facial recognition software expressed a negative opinion of the use of such software in libraries[9];

Whereas the implementation of facial recognition software also impairs the privacy of the library workers through compelled consent to the submission and use of their biometric data;

Whereas ALA Policy B.1.2 (Code of Professional Ethics for Librarians) states in Article V that as a profession we ". . . advocate conditions of employment that safeguard the rights and welfare of all employees of our institutions"; and

Whereas use of facial recognition systems is invasive and outweighs any benefit for library use; now, therefore, be it

Resolved, that the American Library Association (ALA):

1. opposes the use of facial recognition software in libraries of all types on the grounds that its implementation breaches users' and library workers' privacy and user confidentiality, thereby having a chilling effect on the use of library resources;

2. "Senators Markey and Merkley, and Reps. Jayapal, Pressley to introduce legislation to ban government use of facial recognition, other biometric technology," markey.senate.gov, June 25, 2020.

3. Kashmir Hill, "The Secretive Company That Might End Privacy as We Know It," *New York Times*, February 10, 2020.

4. Clare Garvie, Alvaro Bedoya, and Jonathan Frankle, "The Perpetual Line-Up: Unregulated Police Face Recognition in America," Georgetown Law, 2016; ACLU, "ACLU of Louisiana Obtains E-mails that Confirm NOPD's Use of Racially Biased Facial Recognition Technology," December 14, 2020; ACLU, "ACLU of Washington Calls on Mayor Jenny Durkan to Ban Face Recognition Technology after the Seattle Police Department's Apparent Violation of the City's Surveillance Ordinance," December 2, 2020; Kevin Rector, "Police Commission to review LAPD's facial recognition use after Times report," Los Angeles Times, September 22, 2020.

5. "NIST Study Evaluates Effects of Race, Age, Sex on Face Recognition Software," National Institute of Standards and Technology, May 18, 2020; Larry Hardesty, "Study finds gender and skin-type bias in commercial artificial-intelligence systems," MIT News, February 11, 2018; Erik Learned-Miller, Vicente Ordóñez, Jamie Morgenstern, and Joy Buolamwini, "Facial Recognition Technologies in the Wild: A Call for a Federal Office," Algorithmic Justice League, May 29, 2020; Nicolás Rivero, "The Influential Project That Sparked the End of IBM's Facial Recognition Program," Quartz, June 10, 2020.

6. Alex Najibi, "Racial Discrimination in Face Recognition Technology," Harvard University, October 24, 2020; Steve Lohr, "Facial Recognition Is Accurate, if You're a White Guy," New York Times, February 9, 2018; James Vincent, "Google 'fixed' its racist algorithm by removing gorillas from its image-labeling tech," The Verge, January 12, 2018.

7. Bobby Allyn, "'The Computer Got It Wrong': How Facial Recognition Led to False Arrest of Black Man," NPR, June 24, 2020; Paul Lewis, "'I Was Shocked It Was So Easy': Meet the Professor Who Says Facial Recognition Can Tell If You're Gay," The Guardian, July 7, 2018.

8. Alicia Puente Cackley, "Facial Recognition Technology: Privacy and Accuracy Issues Related to Commercial Uses," GAO Reports, August 11, 2020.

9. "Summary of Comments from Facial Recognition Survey," Intellectual Freedom Committee's Facial Recognition Working Group, November 16, 2020.

2. recommends that libraries, partners, and affiliate organizations engage in activities to educate staff, users, trustees, administrators, community organizations, and legislators about facial recognition technologies, their potential for bias and error, and the accompanying threat to individual privacy;
3. strongly urges libraries, partners, and affiliate organizations that use facial recognition software to immediately cease doing so based on its demonstrated potential for bias and harm and the lack of research demonstrating any safe and effective use; and
4. encourages legislators to adopt legislation that will place a moratorium on facial recognition software in libraries.

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Chris Gilliard, Emily Dreyfuss, and Ben Ewen-Campen, "The Fight To Ban Facial Recognition Technology," WGBH Educational Foundation, July 31, 2020.

Martin Garnar and Trina Magi, eds., *Intellectual Freedom Manual*, 10th ed. (Chicago: ALA Editions, 2021).

Jonathan Hernandez-Perez, "Facial Recognition, Libraries, and Intellectual Freedom," IFLA, August 19, 2019.

Troy Lambert, "Facing Privacy Issues: Your Face as Big Data," Public Libraries Online, May 19, 2016.

Steve Neavling, "Detroit police arrest wrong Black man based on facial recognition technology error, ACLU says," Detroit Metro Times, June 24, 2020.

David P. Randall and Bryce Clayton Newell, "The Panoptic Librarian: The Role of Video Surveillance in the Modern Public Library," In iConference 2014 Proceedings (2014): 508–521.

RESOLUTION ON THE MISUSE OF BEHAVIORAL DATA SURVEILLANCE IN LIBRARIES

Whereas the *Library Bill of Rights* states, "All people, regardless of origin, age, background, or views, possess a right to privacy and confidentiality in their library use. Libraries should advocate for, educate about, and protect people's privacy, safeguarding all library use data, including personally identifiable information.";

Whereas the American Library Association's (ALA) "Privacy: An Interpretation of the *Library Bill of Rights*" states, "All users have a right to be free from any unreasonable intrusion into or surveillance of their lawful library use.";

Whereas the ALA's "Privacy: An Interpretation of the *Library Bill of Rights*" states, "Libraries should not monitor, track, or profile an individual's library use beyond operational needs. Data collected for analytical use should be limited to anonymous or aggregated data and not tied to individuals' personal data.";

Whereas ALA Policy Manual B1.2 (Code of Professional Ethics for Librarians) states, "We do not advance private interests at the expense of library users, colleagues, or our employing institutions.";

Whereas ALA has long affirmed that the protection of library users' privacy and confidentiality rights is necessary for intellectual freedom and is fundamental to the ethical practice of librarianship;

Whereas behavioral data surveillance is defined as the collection of data about an individual's engagement with the library that, alone or with other data, can identify the user, for purposes of monitoring, tracking, or profiling an individual's library use beyond operational needs;

Whereas some vendor products require behavioral data surveillance as a condition of use;

Whereas libraries face financial pressure to monetize user data to secure discounts from vendors;

Whereas inequities exist within libraries that may limit those with less scale, money, or power to resist the monetization of user data;

Whereas behavioral data surveillance disproportionately impacts minority and marginalized populations who may be identified or misidentified when utilizing these technologies;

Whereas it is now technologically feasible to use behavioral data surveillance as a mechanism to deny access to library resources; now, therefore, be it

Resolved, that the American Library Association, on behalf of its members

1. stands firmly against behavioral data surveillance of library use and users;

2. urges libraries and vendors to never exchange user data for financial discounts, payments, or incentives;
3. calls on libraries and vendors to apply the strictest privacy settings by default, without any manual input from the end-user;
4. urges libraries, vendors, and institutions to not implement behavioral data surveillance or use that data to deny services;
5. calls on libraries to employ contract language that does not allow for vendors to implement behavioral data surveillance or use that data to deny access to services;
6. calls on libraries to oversee vendor compliance with contractual obligations;
7. calls on library workers to advocate for and educate themselves about library users' privacy and confidentiality rights; and
8. strongly urges libraries to act as information fiduciaries,[10] assuring that in every circumstance the library user's information is protected from misuse and unauthorized disclosure, and ensuring that the library itself does not misuse or exploit the library user's information.

COMMITTEE ON PROFESSIONAL ETHICS REPORT TO COUNCIL

EDITOR'S NOTE: This report was submitted by Stephen Matthews, chair of the American Library Association's Committee on Professional Ethics, to ALA Council at the American Library Association's 2021 Midwinter Meeting & Exhibits Virtual.

As chair of the Committee on Professional Ethics (COPE), I am pleased to report on the committee's activities since the virtual event in June 2020.

Charge

The council committee on professional ethics shall augment the *Code of Ethics* (ala.org/tools/ethics) by explanatory interpretations and additional statements, prepared by this committee or elicited from other units of ALA. When units of the association develop statements dealing with ethical issues, a copy will be sent to the committee on professional ethics for review so that it may be compared to the existing ALA *Code of Ethics* in order to determine whether or not conflicts occur.

COPE Working Group on Social and Racial Justice

At the PLA Conference in February, COPE, under the leadership of Past-Chair, Andrew Harant, presented a program entitled, "What Would You Do? Ethical Issues in Public Libraries." One of the goals of this program was to demonstrate how ALA's Code of Ethics encompasses and supports Equity, Diversity, and Inclusion along with Intellectual Freedom.

In reviewing the responses to the program, it became clear that the *ALA Code of Ethics* does not address specifically the profession's responsibility to support and advance social justice, especially in regard to racial justice and the professional obligation to ensure equity, diversity, and inclusion.

At its July 6th meeting, the ALA Committee on Professional Ethics voted to establish a working group to explore the creation of a new article of the *ALA Code of Ethics* to address social and racial justice.

In collaboration with member groups of the Office for Diversity, Literacy and Outreach, a working group was created. Current members include Nicole Cooke, Alexandra Gomez, Sarah Houghton, Nancy Kirkpatrick, Liladhar Pendse, Jennifer Shimada, and is co-chaired by Andrew Harant and Sheri Edwards.

ALA Reorganization

COPE continues to review proposed changes outlined in the Forward Together documents and is monitoring the new developments in overall ALA reorganization as they emerge.

Professional Ethics Liaisons

Stephen Matthews serves as COPE's liaison to the ALA Intellectual Freedom Committee. This is a pivotal year for ALA given the reorganization and the need for the IFC and COPE to visibly act and work together. He has actively raised ethical issues and concerns in email conversations, in comments on documents, and in IFC meetings.

During its monthly meetings, the IFC has begun to discuss the intersection of social justice and intellectual freedom. The committee is forming a working group including COPE representative Sarah Houghton and representatives from groups connected to ODLOS. The purpose of the working group is to develop messaging and a framework that proactively demonstrates the interdependence of intellectual freedom and social justice.

The opening line of the *Code of Ethics of the American Library Association* states,

> "As members of the American Library Association, we recognize the importance of codifying and making known to the profession and to the general public the ethical principles that guide the work of librarians, other professionals providing information services, library trustees and library staffs."

10. Martin Garnar and Trina Magi, eds., *Intellectual Freedom Manual*, 10th ed. (Chicago: ALA Editions, 2021), 217.

To this end, COPE relies on the time and energy devoted by liaisons of divisions, round tables, and affiliates. Thank you to Nancy Bolt (RMRT Liaison); Ben Hall (RUSA Liaison); DaNae Leu (ALSC Liaison); Annice Sevett (NMRT Liaison); Jill Sodt (ACRL Liaison); Kelvin Watson (PLA Liaison); and Eboni Henry (ALA Executive Board Liaison).

COPE is seeking additional liaisons to assist in crafting resources, developing and presenting programs, providing feedback on documents and professional ethics concerns, and sharing updates from their particular group. Please see the COPE roster to view the list of representatives (ala.org/groups/committees/ala/ala-profethic). Those interested can contact COPE Staff Liaison Kristin Pekoll at kpekoll@ala.org.

Thank You

The Committee on Professional Ethics thanks the OIF staff for their commitment, assistance, and hard work. COPE thanks President Julius Jefferson Jr. and the Executive Board for their confidence in the committee and for allowing them to serve ALA.

Respectfully Submitted,
ALA Committee on Professional Ethics
Stephen Matthews (Chair)
Natasha Harper
Sarah Houghton
Alexia Hudson-Ward
Nancy Kirkpatrick
Rory Patterson
Catherine Smith
Sheri Edwards (Committee Associate)
Ellen Spring (Committee Associate)

COMMITTEE INFORMATION UPDATE (CIU)

Committee on Professional Ethics Annual Report

Committee Name: Committee on Professional Ethics

Conference Year: 2020-2021

Committee Chair: Stephen Matthews

Staff Liaison: Kristin Pekoll

Committee Members:
Stephen Matthews (Chair)
Natasha Harper
Sarah Houghton
Alexia Hudson-Ward Nancy Kirkpatrick
Rory Patterson
Catherine Smith
Sheri Edwards (Committee Associate)
Ellen Spring (Committee Associate)

Committee Charge: The council committee on professional ethics shall augment the Code of Ethics by explanatory interpretations and additional statements, prepared by this committee or elicited from other units of ALA. When units of the association develop statements dealing with ethical issues, a copy will be sent to the committee on professional ethics for review so that it may be compared to the existing ALA code of ethics in order to determine whether or not conflicts occur.

Objectives of the committee for this conference year, including any planned activities:

1. Draft an additional article for the ALA Code of Ethics that states our profession's responsibility to support and advance racial and social justice and its obligation to ensure equity, diversity, and inclusion.

Describe interactions with other units within ALA:
Annual conference program proposals with ALA's Intellectual Freedom Committee

Synthesis of activities (summarize discussions, decision(s) or motion(s) reached, and note follow-up action(s) required:

1. Working group formed to draft the new article.
2. Discussion of COPE's future in ALA and the reorganizing of the internal governance structure.

If unable to achieve desired committee outcomes, what hampered the ability to achieve stated goals (lack of resources, member participation, communication issues, procedural delays, etc.?)
Objectives are in progress.

NEWS UPDATES

Date of Meeting(s)	Meeting Format (in-person or virtual)	Number of Members Present	Guest Presenters, Speakers
July 6, 2020	Virtual	5	0
January 23, 2021	Virtual		0

Priorities/recommendations for the upcoming year:
Reaffirm the profession's and the association's commitment to equity, diversity, and inclusion with a new article to the ALA Code of Ethics.

Other comments/information you believe will help the Association in its work:
_____

Submitted by: Kristin Pekoll
Date Submitted: January 8, 2021

NEWS FOR THE RECORD

COLLEGES AND UNIVERSITIES

Denton, Texas

The Foundation for Individual Rights in Education (FIRE) asked the University of North Texas' (UNT) College of Music to stop investigating Professor Timothy Jackson, but its request was ignored.

On August 6, 2020, the Philadelphia-based foundation, which promotes and protects the free speech rights of college and university students and instructors, appealed to UNT to drop its investigation into Jackson and the publication he edits, the *Journal of Schenkerian Studies*. The foundation asked the college to respond to its letter by August 13.

"We don't let an ignored letter put an end to our efforts to defend student and faculty rights," said Daniel Burnett, the foundation's assistant director of communications, who said that UNT had not responded.

In late July, the university announced that it was investigating "the conception and production of the twelfth volume of the *Journal of Schenkerian Studies*, which is published by the Center for Schenkerian Studies and UNT Press." The investigation began after graduate students in the UNT Division of Music History, Theory, and Ethnomusicology posted about their distress over the way Jackson and the journal refuted a presentation by music theorist Philip Ewell at a 2019 Society for Music Theory meeting.

Ewell, a Hunter College professor who is Black, presented a plenary talk arguing that Schenkerian analysis promotes "a White racial frame" for music theory. According to Ewell, racism informed the work of Heinrich Schenker, an Austrian composer and theorist who died in 1935. In the latest issue of the journal, Jackson and about a dozen of his peers refuted Ewell's presentation. Ewell said he was never notified about the publication and was not given a chance to respond.

A petition by the UNT graduate students was posted to Twitter, asking the College of Music to investigate and potentially discipline any faculty member involved in the journal issue. Among the grievances were accusations that the journal undermined its own editorial processes to rebut Ewell and that some of the scholarship in selected rebuttals was less than suitable for the publication. Students also said some of the rebuttals fostered racist stereotypes in their criticism of Ewell.

The petition, which garnered support from some music faculty, asserted that the college has a reputation for being racist and sexist. The Society for Music Theory stated that some of the published submissions violated the society's harassment and ethics policies. FIRE stated that Jackson and the journal are protected by the First Amendment and academic freedom and that the best way to counter speech that some deem offensive is scholarly criticism in the classroom and in publication.

Reported in: *Denton Record-Chronicle*, August 17, 2020.

Syracuse, New York

Syracuse University's decision to put a professor on administrative leave while it investigates his use of what the school called "derogatory language" has left some students disgruntled.

Student groups spoke out after Jon Zubieta, a chemistry professor, was reported to have written "Wuhan Flu" and "Chinese Communist Party Flu" on his syllabus. He was removed from the classroom and the school issued a statement.

"The derogatory language used by a professor on his course syllabus is damaging to the learning environment for our students and offensive to Chinese, international, and Asian-Americans everywhere who have experienced hate speech, rhetoric, and actions since the pandemic began," said a joint statement from Karin Ruhlandt, dean of the College of Arts and Sciences, and John Liu, the university's interim vice chancellor and provost. Some said it's not enough.

"A lot of students are uncomfortable with the decision to place Zubieta on administrative leave. We expected him to be fired," said a sophomore who is an organizer for #NotAgainSU and asked not to be identified. Zubieta declined to comment.

The controversy began when Taylor Krzeminski, a graduate student, shared a screenshot, which featured an excerpt of the syllabus, on Instagram. She saw it on The Tab Syracuse, which documents student and campus life through memes and decided to call him out.

"It's not safe for students to be in a classroom with a professor who thinks their ethnicity should be blamed for a pandemic," she said. "I agree he should be on leave, but the investigation better be quick because to me it's incredibly straight-forward. He used political and racist language in a chemistry class."

Undergraduate Zoe Selesi shared Krzeminski's post on Twitter along with a screenshot of an email, which Zubieta sent to students stating that he calls the coronavirus "CCP Virus."

In 2019, racial slurs against Black and Asian people were written on two floors in a Syracuse University dorm building. The university didn't release an official statement for at least five days, according to the student newspaper, *The Daily Orange*. It led to the

creation of the student-led movement #NotAgainSU.

While the #NotAgainSU organizer was encouraged by the swifter response this time, she was astonished by the decision. "There is no need for an investigation if there is proof. It went viral, so the evidence is there," she said. "These stereotypes and biases that are incorporated in the class by faculty will allow for unsafe spaces for students."

Reported in: *The Daily Orange*, August 25, 2020.

GOVERNMENT
Portland, Oregon

On July 20, 2020, then-president Donald Trump announced plans to deploy Department of Homeland Security (DHS) agents in Chicago, as well as cities where protests against police brutality continued. Philadelphia; New York; Portland, Oregon; and Oakland, California, all are cities that Trump characterized as run by "the radical left." Trump called the situation in these cities "anarchic" and asserted that federal agents needed to be on the streets to restore order. The acting head of DHS argued that this granted federal officials wide-ranging authority to deploy in cities against the local officials' wishes.

These actions raise many political and legal questions. Among these are questions about freedom of speech and use of the streets, or whether protesters have a right to occupy those streets. The federal government appears to believe they do not, moving to forcibly remove them in the name of public order. This is, in many ways, a clash over the meaning and extent of the public forum.

Threatened with the suppression of free speech by local officials misusing their power, the Supreme Court formed the public forum 80-plus years ago, designating city streets and parks as venues for citizen expression. Now, when the question of who has the authority to occupy the streets is again disputed, it is worth reexamining how and why the courts felt the need to define city streets and parks as the people's podium. Revisiting this history highlights the unfavorable differences between the political and legal commitments to freedom of speech in the late 1930s and 1940s and today.

Today, we understand the streets to be public forums, venues that citizens can use for free expression, with some limitations on the time, place, and manner. But this was not always true. In fact, the courts did not recognize the right of citizens to assemble and speak in public parks and streets until the late 1930s. Before, it was local officials that claimed broad authority to act as censors, barring assemblies and individual speech that they felt might disrupt public order or that they simply considered too radical. Many of these officials barred socialists, anarchists, and unions from holding public meetings, distributing literature, or displaying red flags.

In the 1910s and 1920s, organizations like the International Workers of the World (IWW) operated to expose the injustices of the economic and political directives of the day. They, as well as other labor and socialist organizations, pointed to the inequalities shaped by industrialization and policies that favored the consolidation of wealth in the hands of a few and punished the poor, immigrants, and Black Americans. But when they assembled in the streets for such work, they were often jailed.

The IWW attempted to use these confrontations to attract even more attention and sympathy to their cause. However, in most cities and courts, public order continued to eclipse the civil liberties of these dissenters.

In 1939, a more comprehensive interpretation of the First Amendment, one that prioritized civil liberties, was adopted by the Supreme Court. One of the landmark cases in this transformation was *Hague v. CIO*. To entice business owners, the mayor of Jersey City, Frank "Boss" Hague, attempted to purge his city of unions. In 1937, when Congress of Industrial Organizations (CIO) organizers arrived to distribute literature and hold a public meeting to organize Jersey City workers, they were arrested or forcibly escorted out of town. The CIO took the city to court. Eventually, the Supreme Court declared the city streets and parks as venues for the advocacy and assembly of the people, though permitting that such assemblies could be controlled or restricted in the name of public convenience or safety. A consciousness of the legal public forum was born, recognized as a space akin to the proverbial town halls of early America, open to public debate, dialogue, and advocacy.

Concerns about the ability of a few people and organizations to control what could be said through these privately owned networks led some policymakers to seek to create alternative channels for marginalized voices (mainly labor). As legal historian Samantha Barba explained, the judges and justices deciding the early cases that established public forum law discussed the public parks and streets as alternate "platforms" for the speech of "the workingman."

Thus, the right to use the streets was born in part out of a recognition that the privately owned channels of public address were not accessible to everyone. In cases such as *Hague v. CIO*, the courts sought to rectify what some judges saw as the systematic exclusion of certain left-leaning viewpoints and disputes from public debates by opening up new outlets for

citizen speech. They envisioned this push as an attempt to address the negative consequences of the rise of commercial mass media and to create auxiliary platforms for citizen advocacy and protest.

Workers and Jehovah's Witnesses took advantage of this new legal disposition. Workers found new legal support for strikes and picketing, with greater protections for marching and gathering in the streets. Jehovah's Witnesses now had legal support in their efforts to evangelize in the streets. These precedents also enabled many 1960s civil rights and antiwar demonstrations.

Today, people in the streets are expressing outrage over deadly violence and racial injustice that has allowed the taking of Black lives. But one of the reasons protesters have taken to the streets parallel those of labor in the 1930s: the stifling of long-standing complaints about unequal treatment by law enforcement and the inability to voice these complaints through a media controlled by relatively few players. The problem of systemic violence in Black communities has not been adequately amplified by media outlets—yet the rise of social media enabled activists to work around the media to bring videos of this violence and make it visible to many White Americans.

The use of the streets to publicize and protest police violence is exactly what the public forum was crafted for: a venue for the voices of those who are structurally denied access from the dominant media of the day. The attacks on and detention of these protesters are exactly the sort of government persecution that the First Amendment is designed to prevent.

Reported in: *The Washington Post*, July 22, 2020.

Washington, DC

The Trump administration indicated that it will not process new applications for the Deferred Action for Childhood Arrivals (DACA) program and that it will limit the renewal term for current recipients to one year instead of two. Critics said that the policy change is in deliberate defiance of a court directive restoring the program.

Established in 2012 under former president Barack Obama, the DACA program provides protection against deportation and work authorization to certain undocumented immigrants, known as Dreamers, who were brought to the United States as children. The Trump administration ordered the end of DACA in 2017, but colleges and other entities sued to stop the administration from ending the program.

In June 2020, the US Supreme Court ruled that the administration acted impulsively in ending the program, ruling that the repeal be vacated. Legal experts argued that the ruling meant the program had to be fully restored, meaning that in addition to processing DACA renewals, the administration had to accept new applications for the program. In light of the Supreme Court ruling, in early July, a Maryland federal judge ordered the restoration of DACA "to its pre-September 5, 2017 status."

But on July 28, 2020, Chad F. Wolf, the acting secretary of the Department of Homeland Security (DHS), issued a memo saying he would make "certain immediate changes to the DACA policy to facilitate my thorough consideration of how to address DACA in light of the Supreme Court's decision."

These steps included directing DHS staff "to take all appropriate actions to reject all pending and future initial requests for DACA, to reject all pending and future applications for advance parole absent exceptional circumstances"—advance parole is essentially advance permission for DACA recipients to leave the country and re-enter—"and to shorten DACA renewals." Wolf wrote that shortening the term of DACA renewals will have the potential benefit of significantly lessening the lasting effects of the DACA policy "if I ultimately decide to rescind it."

Reaction was immediate. "This is patently illegal," the American Civil Liberties Union tweeted. "The Trump administration must accept new DACA applications AND extend legal protection for the full two years. Anything less is in defiance of the Supreme Court."

The American Council on Education tweeted, "We are appalled by the @DHSgov decision to reject acceptance or processing of new DACA applications and to shorten renewal periods of current DACA recipients. This apparent defiance of U.S. Supreme Court is another reason why Congress must act now to permanently #protectDreamers."

The Supreme Court left the door open for the Trump administration to end DACA but insinuated that it would need to provide a reasoned analysis for doing so and to demonstrate that it had considered the "reliance interests" of DACA beneficiaries and others who have come to depend on the program. In justifying his measures, Wolf wrote that new applicants for the program had fewer, if any, dependence interests on the continuation of DACA.

Wolf also argued that current DACA beneficiaries' reliance on the program would not be "significantly affected by shortening the renewal periods from two years to one year." However, he did acknowledge that shortening the renewal period will

increase the cost for DACA recipients. The fee for renewing DACA status is $495.

Wolf wrote in the memo that "DHS personnel should consider whether it is possible to reduce renewal fees during this interim period of reconsideration. In my current view, however, even if renewal fees cannot be reduced, shortening the renewal period is still warranted by my strong desire to limit the scope of the policy during this interim period despite any additional fees incurred by DACA beneficiaries as a result."

In a briefing call with reporters on July 28, a senior administration official described Wolf's memo as "an intervening action" by the administration that changes its obligations in relation to the federal judge's order directing restoration of DACA to the status it had before September 2017.

"Under the judge's order, absent any intervening action from this administration, we would be back to a pre-2017 context," the official said. "This memo is an intervening action that lays out how the administration will proceed both with the substantive review of the underlying conditions that led to the promulgation of those two earlier memos [establishing DACA] and what steps we're going to take in ensuring the program is maintained as it's currently constituted."

Michael A. Olivas, an emeritus professor of law at the University of Houston, said it is "incontestable" the Trump administration is acting in defiance of the Supreme Court. "The Supreme Court said you can't shut it down without going through the proper channels, which they have not yet done," Olivas said. "[Wolf] says he's going to look it over for the next year—that's not enough. That's how they got in trouble in the first place, by single-handedly trying to make changes that require notice and comment at a minimum."

College leaders and higher education groups had strongly advocated for keeping the DACA program in place, and several colleges, including the University of California and Princeton University, were among the institutions that filed lawsuits against the administration, seeking to block its efforts to end DACA.

Jose Magaña-Salgado, the director of policy and communications for the Presidents' Alliance on Higher Education and Immigration, an association of college presidents that advocates for the protection of DACA, said the policy change "represents a stealth rescission of DACA through administrative and bureaucratic policy changes."

"The Presidents' Alliance will, as it did in the previous litigation, rally institutions of higher education to support forthcoming legal challenges," said Magaña-Salgado, a DACA recipient himself. "Immigrant youth courageously won this battle in the court of public opinion and the Supreme Court, and we will do so again."

Reported by: *Inside Higher Ed*, July 28, 2020.

JOURNALISM AND MEDIA
New York, New York

The foreword of *The View* co-host Sunny Hostin's new book, *I am These Truths: A Memoir of Identity, Justice, and Living Between Worlds*, revealed that ABC News executives attempted to have passages expunged.

"Deleting those passages didn't feel right to me—they were all true, and they were some of the battle scars of my experience," Hostin wrote. "My television agent and my book agent emailed me to express confusion that a news organization would try to censor a Puerto Rican, African-American woman's story while they were covering global demonstrations demanding racial equity."

Written with *USA Today* national correspondent Charisse Jones, Hostin chronicles her personal journey as a multiracial woman, including her reflections on the high-stakes cases and stories she worked on as a prosecutor and a journalist.

A native of the Bronx, Hostin, who once served as a federal prosecutor and a Department of Justice trial attorney, was the subject of a *Huffington Post* article about racism allegations within the Disney-owned media giant's top ranks. The veteran legal journalist didn't mince words about how she felt about ABC's actions.

"I was surprised that what was asked of me was to change the truth, like to change my story," she revealed to *Andy Cohen Live* on September 21. "I think it's one thing if I got something wrong and to be clear, they caught things that were wrong, you know, like timing things, and direct quotes that should have been checked more closely. And I appreciate it, those things."

"But then they wanted me to change, things like things that I experienced discriminatory things, you know, and I just felt that that wasn't fair because the title of the book is *I Am These Truths*," she continued. "And I think that we're living in a society at this point where the president has lied over 30,000 times. You know, the media is considered fake news and people want the truth. Like we have to start telling the truth."

Hostin said that as a successful woman of color, she should be able to share her experiences of discrimination as a cautionary tale.

Reported in: *The New York Daily News*, September 21, 2020.

NET NEUTRALITY
Sacramento, California

The Sacramento Chamber of Commerce backed broadband providers and the United States Department of Justice in their attempt to block California's broad net neutrality law.

"Because there is no principled way to limit regulation of the Internet to a single state . . . California's new regulatory regime raises more questions than it answers," the Chamber of Commerce and several other business groups wrote in a friend-of-the-court brief filed in mid-August with US District Court Judge John A. Mendez in Sacramento.

The business organizations urged Mendez to issue an injunction that would prevent the state from enforcing its open internet law. California's law (SB 822) prohibits broadband providers from blocking or throttling traffic, charging higher fees for fast-lane service, and exempting their own video streams from consumers' data caps.

Those provisions largely mirror rules passed by the Obama-era Federal Communications Commission (FCC) but repealed in 2018 by the then-Republican-led agency. When the FCC repealed the Obama-era rules, the agency also attempted to prevent states from imposing net neutrality requirements on broadband providers. FCC Chair Ajit Pai, who shepherded the repeal, said the prior rules were "heavy handed" and claimed that they depressed investment.

But net neutrality advocates say the rules were necessary to prevent broadband providers from limiting consumers' ability to access streaming video, search engines, and other online services and content.

Some groups that examined the carriers' stock reports dispute Pai's assertion that the rules depressed investment. The pro-neutrality advocacy group Free Press, which examined stock reports, said investment by 13 major broadband providers increased in the two years after the Obama-era FCC voted in favor of the regulations.

Despite the FCC's attempted ban on state laws, Governor Jerry Brown signed the California measure in late September of 2018. Within an hour, the Department of Justice sued to block the law from taking effect. Several days later, the four major broadband industry groups—the American Cable Association (ACA), the Wireless Association (CTIA), the Internet and Television Association (NCTA), and USTelecom (the Broadband Association)—also sued.

The lawsuit was stayed while the DC Circuit Court of Appeals considered a challenge to the FCC's repeal of the Obama-era regulations. In 2019, that court partially upheld the decision to revoke the regulations but vacated the part of the FCC's order that would have prevented states from passing or enforcing their own broadband laws.

In early August, the broadband groups restarted the litigation by amending their complaint and renewing their request to block the law. The Chamber of Commerce, which is siding with the carriers, argues it would be "profoundly inequitable to force Internet providers to come into near-immediate compliance" with rules the FCC found were "excessively burdensome and unnecessary."

"That is doubly true when the challenged rules cannot in any meaningful way be limited to California," the group adds. "The most prudent way forward is to freeze the status quo."

Reported by: *Digital News Daily*, August 21, 2020.

PRIVATE INDUSTRY
Huntington, New Hampshire

It was "freedom of speech day" on August 30, 2020, at the Huntington Country Store, and owners Randy and Becky Butler were offering a deal: one scoop of ice cream at half price. But when a group of protesters tried to go into the store to get ice cream and deliver a letter taking issue with the store's use of the term "China coronavirus" on its website, four police officers stood between them and the door. Nearby, a woman in an American flag T-shirt shouted at them, saying they were not welcome.

No formal trespass orders had been served, said Aaren Hawley, an officer with the Huntington Police. But, he said, the store is private property and the store's owners told the police department they would issue trespass notices to the protesters if they came inside the shop.

About 40 people came to protest the store's use of the term "China coronavirus" multiple times on its website, on the grounds that it is racist and xenophobic. Organizer Ali Wicks-Lim said she and others contacted the store and left messages, but never heard back from the owners. "They would not take our calls," she said before the protest. "It just became clear they were unwilling to hear any of our concerns."

In reaction to "No Hate in Huntington," another protest, "Stand with the Huntington Country Store!," was planned; more than 50 people showed up. The person listed as the organizer on the Facebook event did not reply to a message, and she posted on the Facebook event saying she could not attend because she was going to Boston to rally against the mandatory flu vaccine for students.

At around noon on August 30, the two groups stood on a narrow strip

of sidewalk outside the store. "Don't sell hate anymore," yelled several dozen people, and nearly immediately, counter-protesters shouted over them, saying, "Free speech." One man yelled "China virus."

Those supporting the store held signs with messages like "censorship is fatal to our republic," and some held American flags. Some wore face coverings, while others didn't. They cheered when a van pulling a trailer with a Trump 2020 flag, a "Don't Tread on Me" flag, and an American flag drove by the store several times. Protesters who wanted the store's language changed wore face coverings and held signs like "Your words hurt my family," "Make America brown again!" and "Hilltowners against hate." Randy Butler stood at the store's entrance letting in a limited number of customers at a time. He declined to answer questions and directed the media to a statement on the store's website.

In a post titled "Rebutting the Gazette's news article and defending Free Speech," the store's website says Randy and Becky Butler take issue with how the coronavirus was first handled by Chinese government. "It's my way of saying NO to the China Communist Regime," the statement concludes. "Could there be another reason why someone would call COVID-19 the China Coronavirus?" the statement asks. "I'll give you [a] hint. Location on a map. I'll repeat this again, location on a map!"

The pandemic has been a difficult period for the businesses, they wrote, and "being forced to deal with an anti-First Amendment group doesn't help." Protesters took issue with this line of argument.

"A lot is being said on their side about their First Amendment rights," Wicks-Lim said. "My position is that just because you can say something doesn't mean you should say something that's going to harm other people." Many there in support of the store declined to speak to the *Gazette*, but those who did emphasized freedom of speech.

"It's just a freedom of speech thing," said Ed Parr, of Easthampton, who was wearing a pro-Trump hat. He said he likes the store. "I'd like to stand with them."

The language is harmful, said "No Hate in Huntington" organizers. "The rise of racist attacks, verbal and physical assaults on Asians and Asian Americans and the rise of racist rhetoric describing our current pandemic is not a coincidence," Vira Douangmany Cage, one of the event's organizers who also serves as chair of the state's Asian American Commission, said in a statement.

"As an Asian American, I know what it's like to be attacked," said Jeannette Wicks-Lim. She's been called slurs and told to go back to China—though she's actually Korean-American. "It's one thing to see all this hatred through a screen," said protester and Amherst-Regional High School student Monica Cage. In person, she said, it was different. "It's heartbreaking."

Huntington resident Amanda Reynolds was unable to attend the protest on August 30, but said she is disappointed with the store's reaction and won't be going there anymore. "I think instead of ignoring those that wanted the language changed on the website, there could have been more of an understanding and listening and conversation as opposed to reacting in an aggressive way," she said. "This could have been a moment for them to gather more community to create the store to be a safe place for all."

Reported in: *The Daily Hampshire Gazette*, August 30, 2020.

SCHOOLS
Evanston, Illinois

On August 2, 2020, an Illinois lawmaker and community leaders called for the immediate removal of history books and the suspension of history lessons in their school districts because they said that current materials and lesson plans "lead to White privilege and a racist society."

State Representative LaShawn K. Ford joined a group of Evanston leaders to ask the state to cease its current history lessons, saying current history books and curriculum practices "unfairly communicate our history" and "overlook the contributions by women and members of the Black, Jewish, LGBTQ communities and other groups," in a statement to CNN.

"Until a suitable alternative is developed, we should instead devote greater attention toward civics and ensuring students understand our democratic processes and how they can be involved," he said. "I'm also alarmed that people continue to display symbols of hate, such as the recent display of the Confederate flag in Evanston."

The call to action is not new for Ford and community leaders. It's an ongoing initiative that started in February 2020 when Ford helped introduce HB 4954, which calls for amending the school code to include commemorative holidays to observe the principles of nonviolence and human and civil rights.

Meleika Gardner, a board member at We Will, an organization fighting for women and children's rights in local legislation, created an amendment to Ford's bill to add a school code making the study of the American civil rights movement, pre-enslavement history, and additional areas of study to the Black history

portion of the curriculum mandatory rather than an elective, she told CNN.

"It's just very damaging," she said of the current curriculum. "It feeds into systemic racism if you're fed that information."

Gardner testified before the house committee in March for the bill. The August 2 news conference was the third time the group has gathered to talk about the importance of the bill and change in curriculum.

"We want to keep it fresh in people's minds," Gardner said. "With everything going on in the climate, with George Floyd, this is the perfect time now because people are starting to wake up."

Evanston Mayor Steve Hagerty said he isn't comfortable speaking about education, curriculum, and whether history lessons should be suspended, but he does support HB 4954, according to a statement.

"I am interested in learning more and believe the history of Black people should be taught to all children and include all groups, women, LatinX, and Native Indians who helped to build America."

Reported by: CNN, August 3, 2020.

Livingston, Tennessee

A pastor threatened to sue a public high school in Tennessee after his daughter was sent home for wearing an anti-gay t-shirt.

Rich Penkoski, leader of extremist anti-LGBTQ hate group Warriors for Christ, told the *Christian Post* that his daughter's First Amendment rights were violated after she was told to leave Livingston Academy in Livingston, Tennessee.

His daughter Brielle wore a t-shirt with "homosexuality is a sin" written on the front, as well as "1 Corinthians 6:9-10," which is a Biblical passage interpreted by many Christians as outlawing homosexuality; the exact translation is still subject to debate.

"My 15-year-old was thrown out of school for the day for wearing this shirt," Penkoski tweeted in August. "#lgbt wants to trample on your #freespeech rights while they cry for special rights."

Speaking to the *Christian Post*, Penkoski said that Brielle was sent to the school's principal, Richard Melton, who asked her to remove the shirt because of its "sexual connotation." When she refused, she was sent home, he said.

Penkoski complained that one of the school's teachers had an LGBTQ Pride sticker in their classroom featuring the words, "Diverse, Inclusive, Accepting, Welcoming Safe Space for Everyone." He seemed perplexed as to why Melton would allow the sticker, but not his daughter's t-shirt, and said that Brielle wanted to "express her values."

"She wanted to do this on her own. She wanted to go there to . . . express her values like all the other kids do," he said. "They've got kids walking around with the pride symbol on their sneakers and pride clothing and nobody bats an eye." Penkoski continued, "She was basically censored. It's not fair . . . that she's told that she can't wear that shirt and other people can wear the stuff that they wear."

He also complained that his daughter was punished for being a Christian and repeating "what the Bible says," even though her shirt was not a direct quotation. "Simply saying 'homosexuality is a sin' is not hate speech," he said. "That's what the Bible says. And we need to start preaching truthfully." He is now reportedly "contemplating legal action," according to the *Christian Post*.

Penkoski has a history of anti-LGBTQ statements, and has publicly opposed Drag Queen Story Hours, where drag queens read books to children. In 2019, his YouTube page for Warriors for Christ was demonetized after repeatedly posting anti-LGBTQ content, including opposition to gay and transgender people.

He has tweeted accusations that LGBTQ people "prey" on children, including accusing gay people of "always targeting children" and saying they want to "take children from Christian homes to indoctrinate" and branding them pedophiles.

Reported in: *Metro Weekly*, September 14, 2020.

INTERNATIONAL

Paris, France

With his in-depth critique of Western capitalism, detailed in a 700-page book that enjoyed record sales in 2014, France's rock-star economist Thomas Piketty was well regarded by Chinese leaders, until he turned his attention to China.

Piketty said on August 31, 2020, that his follow-up book, *Capital and Ideology*, which broadens his study of the rise of economic inequality to non-Western countries such as China and India, is unlikely to be published in mainland China because he refused requests from Chinese publishers to cut parts of it.

"For the time being, there will be no book in China," said Piketty, one of the most high-profile academics to stand up to China, calling the requests "ridiculous" and equating them with censorship. "They shouldn't be afraid of a book like that, it's a sign of weakness," Piketty said in a phone interview.

Publishing foreign books in China has long been a contentious process, with Chinese publishers often cutting or changing sexual or political content to gain government approval. In recent years, the environment has

grown even more challenging, with the Chinese Communist Party's publicity department unveiling new rules favoring domestic authors and titles that promote the country's political and economic model.

Fearful of being barred from China's vast market, some Western authors and academic publishers have bowed to Chinese censorship. Piketty, who attained worldwide celebrity in 2014 with his book *Capital in the Twenty-First Century*, appears unfazed. "Asking me to cut all this and publishing the rest would make no sense." He added that "to agree to this would amount to be compromised [*sic*] with the regime and to accept to be instrumentalized in their propaganda enterprise."

Mr. Piketty's new book, *Capital and Ideology*, which was published in France in 2019 and in the United States in March 2019, is an attempt to describe what he calls "inequality regimes" across the ages and around the world. Unlike *Capital in the Twenty-First Century*, which was published in 2013 and focused on Europe and the United States, the new book widens the scope and gives an important place to China and its capitalism-infused version of socialism.

"There is a constructive criticism in this book, and, frankly, it does not blame the Chinese model more than other models in the United States, Europe, India, Brazil," Piketty said.

But starting in June, Piketty said, Citic Press sent his French publisher, Les Editions du Seuil, two 10-page lists of requested cuts from the French and English editions of his book. Other Chinese publishers interested in the book sent similar requests, Piketty said. Citic Press and Les Editions du Seuil did not immediately respond to requests for comment.

The requested cuts include parts that point out the "extremely rapid rise of inequality" in China, to levels comparable to those seen in the United States. Others highlight issues like China's lack of an inheritance tax, which Piketty says results in a significant concentration of wealth.

"It is truly paradoxical that a country led by a Communist Party, which proclaims its adherence to 'socialism with Chinese characteristics,' could make such a choice," Piketty wrote in a paragraph that he said Citic Press asked to be cut. The Chinese government has long sought to defend its economic model as best suited to a country of 1.4 billion inhabitants. Writing its own playbook, China has gradually asserted itself as an economic superpower capable of challenging the United States.

Chinese leaders cited Piketty's 2013 book on rising inequality in the United States and Europe as proof of the superiority of their economic model. Several million copies of Piketty's book *Capital in the Twenty-First Century* have been sold worldwide, including tens of thousands in China. Among the requested cuts were sections critical of the Chinese government, which Mr. Piketty wrote, "has yet to demonstrate its superiority over Western electoral democracy."

The appearance of Piketty's book comes as China has been confronted with an unprecedented economic slowdown. A trade war with the United States and the effects of the coronavirus crisis have brought China's nearly half-century-long run of growth to an end.

Piketty said that censoring his book "seems to illustrate the growing nervousness of the Chinese regime and their refusal of an open debate on the different economic and political systems." The book, he said, will be published in Taiwan and, he hopes, Hong Kong, which has come under increasing pressure from the Chinese government in recent months with the introduction of a wide-ranging national security law following large government protests.

"If they're afraid of a book like this, what are they going to do with the demonstrators in Hong Kong or one day in Beijing or Shanghai, as it will eventually happen?" Piketty asked.

Reported in: *The New York Times*, August 31, 2020.

Dhaka, Bangladesh

The Bangladesh government has banned a novel about the sexual abuse of an orphan boy in a residential Islamic school because it could offend religious teachers and may be a threat to public security, officials said.

Saiful Baten Tito, author of the novel *Bishfora*, told *BenarNews* that his work, which details abuse at such schools, was based on interviews of students and teachers at qawmi madrasas. Qawmi madrasas are unregulated, traditional Islamic schools that provide religious education for free. The novel is not against Islam or qawmi madrasa education, Tito added.

The government did not give him a chance to present his case, he said, and on August 24, it published a government notice banning the book, which was launched at the annual Ekushey Book Fair in Dhaka in February 2020.

"The content of the novel *Bishfora* is against peace and quiet in the country. The book is prohibited as [it] has been considered to be a threat to public security," said the notice.

Abu Bakr Siddique, an assistant secretary at the ministry of home affairs, told *BenarNews* the government was informed about the book by security agencies. "Intelligence officials alerted us that the book could hurt the sentiment of madrasa

teachers," Siddique said. "We have gone through the book, and it seemed to us the alert has some justification."

The ban comes even as the number of cases of sexual abuse of boys at madrasas is rising, said Mahmuda Akhther, a prosecutor at the Women and Children Repression Prevention Tribunal in Dhaka. She did not immediately provide numbers to support her claim. "The number of cases relating to abuse of boys has been on the rise, and a significant number of such incidents has been taking place at the qawmi madrasas. Most of the victims are either boys from poor families, or orphans," Akhther told *BenarNews*. "Child abuse is a criminal offense. In the past, the guardian kept mum on child abuse. Now, they have been filing cases."

About 1.5 million students study at qawmi madrasas, Nurul Islam Nahid, former education minister, told parliament in September 2018. Sexual assault cases are widespread at such schools, according to an August 2019 report by the French news agency AFP. "For years these crimes eluded the spotlight due to sensitivity of the subject," AFP quoted Abdus Shahid, the head of child rights group Bangladesh Shishu Odhikar Forum, as saying. "Devout Muslims send children to madrasas, but they don't speak up about these crimes as they feel it would harm these key religious institutions."

Manusher Jonno Foundation, a Dhaka-based NGO working with poor and marginalized communities, documented at least 433 cases of sexual violence against children in 2018, reported AsiaNews in 2019. Most of the victims were aged 7 to 12, it said. The data was not linked to religious schools. The government, for its part, said it dealt alike with all complaints about the abuse of children.

"The law is for everyone. If the police get formal complaints about abuse of children, they arrest people, no matter whether the abusers are from madrasa or [nonreligious] schools," Home Minister Asaduzzaman Khan Kamal told *BenarNews*. Mosharraf Matubbar, the publisher of the novel, said he would contest the ban.

"The book highlights the injustice done to madrasa students," Matubbar told *BenarNews*. "We will appeal to the courts to vacate the government ban on the book." Author Tito likewise said the book contained "nothing malicious" and didn't warrant prohibition. "The novel is about fanaticism, backwardness and inconsistencies inside the madrasa education," he said. "This book is neither against Islam nor qawmi madrasa education."

Matubber, the publisher, said that when the book was launched at the Dhaka book fair, police checked its contents and had no objections. "They did not oppose selling the book after concluding that it contained nothing sensitive," said the publisher. "But some people launched a smear campaign against the book."

Civil society group Ekattorer Ghatak Dalal Nirmul Committee has alleged that the ban was a move to appease religious fundamentalists. The group issued a statement demanding the ban be immediately lifted.

"The book has been prohibited to appease the fundamentalist forces," the group said. "In the past, writings of many famous authors were dropped from textbooks. . . . Thus, the fundamentalist forces have been indulged."

Over the last 30 years, Bangladesh has banned at least five books saying they defamed Islam. Police have also arrested publishers and shut book stalls for publishing and selling books they claim criticized Islam. In 1988, Bangladesh banned the sale and circulation of British author Salman Rushdie's novel *The Satanic Verses*.

Novelist Humayun Azad's collection of feminist essays "Nari" ("Women") and a novel on Islamist militancy, named after Pakistan's national anthem "Pak Sar Zamin Saad Baad," were prohibited by the Bangladesh government in 1992.

In 1993, feminist author Taslima Nasrin's book *Lajja* (*Shame*) was banned for allegedly defaming Islam. The book is about a riot in Bangladesh following the demolition of a 16th-century mosque, the Babri Masjid, in northern India. Nasrin had her literary work proscribed a second time, when the government banned her autobiographical novel *Amar Meyebela* (*My Girlhood*) in 1999, again on the grounds that it defamed Islam. The author has been in exile for more than 20 years.

In 2016, police shut the stall of a publishing house called Badwip and arrested its publisher Shamsuzzoha Manik and two others. A case was filed against them under the Information and Communication Technology Act for publishing a book that police said defamed Islam.

In February 2020, Bangladesh's high court also ordered organizers of the Dhaka book fair to remove two books whose content it said was "harmful to the religious sentiment."

Reported in: *BenarNews*, September 1, 2020.

Hong Kong, China

Beijing's assault on Hong Kong is unfolding rapidly. July 2020 began with the imposition of draconian national security legislation enacted sight unseen, even by Hong Kong's leader, Chief Executive Carrie Lam. It ended with the sacking of a tenured professor, the arrests of four students for social media posts, the electoral disqualification of 12 pro-democracy

politicians, the delay of legislative elections for a year, and the issuance of arrest warrants for pro-democracy activists overseas under the new legislation.

In normal times, each of these acts would spark outrage and protests, but this onslaught has been too fast and too overwhelming to fully report, let alone counter, especially during a pandemic when gatherings of more than two people have been banned. Put simply, within a single month, Beijing has dismantled a partially free society and is trying to use its new law to enforce global censorship on speech regarding Hong Kong.

In delaying Hong Kong's legislative elections, scheduled for September, the authorities are showing their disregard for external voices. The US Secretary of State, Mike Pompeo, had warned that any delay would prove that China's Communist party was turning Hong Kong into just another communist-run city. In Hong Kong, a democratic coalition cautioned that any postponement would mean the "complete collapse of our constitutional system." Parsing its actions, Beijing's intentions seem to be exactly that.

In the past year, millions of people have marched to protect those things that distinguish Hong Kong from China: the constitutional system that prizes an independent judiciary and the rule of law, competitive elections, and the freedoms of speech, thought, and assembly. The sacking of Benny Tai, a Hong Kong University law professor, for criminal convictions relating to the Occupy Central movement marks the end of academic freedom. The manner of his sacking, against the wishes of the university senate, highlights just how little autonomy academic institutions enjoy.

The late-night detentions in unmarked cars of four people, including a 16-year-old, on suspicion of inciting secession in social media posts were the first moves by the police's new national security department. Although the four have been released on bail, the criminalization of certain political posts and slogans heralds the advent of thought crime to Hong Kong.

Every day, the rules of political life are being drastically rewritten and the contours that are emerging are of a system that brooks no dissent. On July 30, 12 pro-democracy politicians were disqualified from running for election, including four incumbent legislators generally seen as moderates. The reasons given show how far the authorities are willing to go to tame the legislature into compliance.

Activist Joshua Wong, who won the most votes in unofficial democratic primaries, says he was barred for using the #internationalbattlefront hashtag in Facebook posts. Some were excluded for actions taken before the national security legislation was even enacted. Others had applications invalidated for criticizing the legislation or, in the case of the lawmaker Dennis Kwok, for vowing to vote down the government's budget or other proposals. The new legislation even classifies "seriously interfering in, disrupting or undermining" the government's business as subversion, which means filibustering could theoretically earn an elected politician life in prison. The very act of practicing politics as normal could be a national security threat.

On July 31, Lam used colonial-era emergency regulations to delay the September elections for a year because of a recent COVID-19 rise. The suspicion is that she is trying to buy time to avoid a stinging defeat of pro-government forces, following the landslide opposition victory in November, when pro-democratic forces won 17 out of 18 district councils.

The new normal is abnormal in the extreme, a city where library books have been pulled from the shelves and a protest song banned in schools. Beijing has lost patience both with Hongkongers and with the Hong Kong government's own inability to restore order after months of sometimes violent street demonstrations. Before the national security law was introduced, Lam promised it would target only "an extremely small minority of illegal and criminal acts," leaving the basic rights and freedoms of the overwhelming majority protected. The hollowness of these words reveals the ineffectiveness and insignificance of her administration.

On August 1, it emerged that Beijing is pursuing national security cases beyond China's borders. Six pro-democracy activists overseas, including US citizen Samuel Chu, are facing warrants for their arrest for allegedly inciting secession and collusion with foreign forces. The act of lobbying overseas has effectively been criminalized. With this application of the law, Beijing is making it clear there are no red lines when it comes to speech about Hong Kong.

The exiled politician Nathan Law, now in the UK, has announced that he will cut off ties with his family in Hong Kong to protect them. The extraterritorial aspect of Beijing's strategy echoes its actions targeting Uighurs in exile, and elements of the national security solution imposed on Xinjiang could foreshadow the government's next steps. The law mandates the introduction of national security education in Hong Kong's schools, as well as moves to strengthen the supervision and regulation of foreign media and the internet in Hong Kong.

One academic, Victoria Tin-bor Hui, has commented that writing about Hong Kong today is like writing obituaries one after the other. But Beijing might be overplaying its hand; the ferocity of its assault on Hong Kong's freedoms can only reenergize civil society at home and may just prompt reluctant governments overseas into action in the interests of defending global freedoms.

Reported in: *The Guardian*, August 2, 2020.

Taipei, Taiwan

On September 9, 2020, several civic groups gathered outside the Ministry of Education (MOE) in competing protests on the issue of a gay-themed children's book that the government provided to schools as part of an extracurricular reading program.

The book, *King & King* by Dutch authors Stern Nijland and Linda De Haan, tells the story of a young prince who faces pressure from his mother to marry a princess but eventually falls in love with a prince and weds him.

Under a government program to encourage extracurricular reading, the book was distributed to first-grade students in elementary schools, drawing praise and criticism from civic groups, parents, and teachers on both sides of an ongoing debate on LGBTQ education in Taiwan schools.

At the demonstrations in Taipei, LGBTQ advocacy groups noted that one of the arguments against *King & King* was that it was not appropriate reading for first-grade students. That argument, however, is "fake packaging for real homophobia," said the LGBTQ advocacy groups, which included Equal Love Taiwan. The book's translator, Lin Wei-yun, who was at the demonstrations, said it had helped to open conversations with her children about the discrimination against LGBTQ people and how to create a more equal society in Taiwan.

Another supporter of the book's inclusion on the reading list, a New Taipei City elementary school teacher surnamed Chi, said the presentation of a nontraditional family in the story was in line with Taiwan's national curriculum guidelines, which emphasize the importance of teaching real-life experiences. As an elementary school teacher, Chi said, she knew students at that level who identified as gay. "To withdraw the book now would amount to negating the existence of those children," she said.

Meanwhile, on the opposite side of the issue, groups such as the Coalition for the Happiness of Our Next Generation and the National Alliance of Presidents of Parents Associations also rallied outside the MOE, calling on the government to withdraw the book. Tseng Hsien-ying, president of the Coalition for the Happiness of Our Next Generation, said *King & King* projects a false narrative that heterosexual marriages are coercive and unhappy.

He said the story was an attempt to "brainwash" children into abandoning their dreams of a traditional marriage and family. "What children need is a family-based education, not one centered on sexual identity," Tseng said. "Taiwan is indoctrinating children into this sexual diversity ideology, and parents have had enough."

The opposing groups called for the book to be withdrawn from the reading program, under which the MOE distributes 400,000 books per year to first-year students at elementary and junior high schools to foster a love of reading. According to the dissenting groups, the ministry should make its selection process more transparent, and the books should be approved by the parents' associations.

Commenting on the issue, a Ministry of Education official said the book selection committee is broadly representative of Taiwan society, as it comprises a scholar, a school principal, two elementary or junior high school teachers, a children's book author, and a critic or representative of a civic organization. In consideration of the public's concerns, however, the MOE will decide whether it is appropriate to include a representative of a parents' association on the committee.

Education Minister Pan Wen-chung said *King & King* would help to teach children about respecting each other's differences and resolving conflicts in relationships.

In May 2019, Taiwan became the first country in Asia to legalize same-sex marriage.

In a 2018 referendum, a majority of voters upheld the Civil Code's definition of marriage as a union between a man and a woman and rejected a proposal to teach LGBTQ topics in Taiwan schools, though they voted in favor of protecting the rights of same-sex couples in ways other than those stated in the Civil Code.

Reported in: Focus Taiwan, September 9, 2020.

New Delhi, India

Bloomsbury India has pulled a book that claimed to tell the untold story of February 2020's Delhi riots after the publisher was accused of giving a platform to unsubstantiated allegations and strengthening an anti-Muslim agenda.

The book, titled *Delhi Riots 2020: The Untold Story*, claims that the riots were the result of a conspiracy by Muslim jihadists and so-called "urban naxals," a derogatory term used to describe left-wing activists, who had a role to play in the riots. The claim contravenes reports by organizations such as Amnesty International and

the Delhi Minorities Commission that Muslims bore the brunt of the violence.

The decision to withdraw the book has prompted many in India to accuse Bloomsbury India of censorship, and the book's author, Monika Arora, denounced the publisher for allegedly falling prey to "leftist fascists." *Delhi Riots 2020* will now be published by the Indian publishing house Garuda Prakashan.

The book began to draw controversy after it emerged that Kapil Mishra, a leader from the ruling Hindu nationalist Bharatiya Janata party (BJP), would be the guest of honor at an online launch event. The BJP's national general secretary, Bhupendra Yadav, was to be the host. Mishra is accused of instigating the riots that ripped violently through northeast Delhi in February and left more than 50 people dead, after he made a fiery public speech calling on his followers to clear away Muslim protestors.

What followed was three days of the worst religious violence in the capital in decades, where Hindu mobs roamed the streets attacking Muslims and burning their homes. Muslims retaliated, but three quarters of those who were killed were Muslims, and thousands of Muslims lost their homes in their violence. The decision to have Mishra as a guest of honor at the launch provoked an outcry in India. Bloomsbury quickly issued a statement denying any involvement in the event, but a backlash began to grow against the book. Among those who voiced concerns was the prominent British writer and historian William Dalrymple, who is published by Bloomsbury.

"I alerted Bloomsbury to the growing online controversy over *Delhi Riots 2020*, as did several other Bloomsbury authors," Dalrymple said. "I did not call for its banning or pulping and have never supported the banning of any book. It is now being published by another press."

Writing on Twitter, the poet Meena Kandasamy said "the literary world must take a stand" to stop Bloomsbury publishing the book. "This is not about cancel culture," she said. "This is about defending literature from fascism. This is about standing up against religious divide, hate speech, islamophobia and false history." Sudhanva Deshpande, a celebrated theatre director and author, was among those who condemned Bloomsbury and accused them of failing to carry out "elementary fact checking."

"Make no mistake about it, this book has nothing to do with the pursuit of knowledge . . . this book is part of a multi-pronged attack on India's secular fabric, on the idea of natural justice, on ethics, on rationality, on humanity," said Deshpande, adding, "The book has blood on its hands."

Bloomsbury India released a statement confirming that it was withdrawing publication of the book. "Bloomsbury India strongly supports freedom of speech but also has a deep sense of responsibility towards society," said the publisher. However, Bloomsbury's announcement was met with derision and accusations of censorship from some quarters.

Arora, the book's main author, claimed that Bloomsbury India had previously had no issues with the book, that it had been cleared by their legal team, and that the publisher had been well aware of the launch event with Mishra, despite its public denials. She accused Bloomsbury of bowing down to "digital fatwas by international leftist lobbies."

The writer and economist Sanjeev Sanyal said he would never publish with Bloomsbury again. Sanyal described the withdrawal of the book as an act of "ideological censorship," which demonstrated "how a tiny cabal controls Indian publishing and constantly imposes ideological censorship. We have just witnessed one example of how this insidious control is wielded."

Another Bloomsbury India author, Anand Ranganathan, said, "This decision by Bloomsbury should be condemned by ALL writers and readers. If Bloomsbury does not retract its decision, my co-author and I have decided that we will return the substantial advance paid to us by Bloomsbury for our forthcoming book."

The Indian publisher Garuda Prakashan announced it would step in and publish *Delhi Riots 2020.* The controversy around the book has proved lucrative. Garuda Prakashan confirmed it had received more than 15,000 orders for the book in less than 24 hours.

Reported in: *The Guardian*, August 24, 2020.

Meath County, Ireland

Meath Councilor Alan Lawes is calling on Norma Foley, Ireland's Minister for Education, to review the place of *To Kill a Mockingbird* and *Of Mice and Men* within the Irish school system, citing their racist language and themes.

Lawes said that some students have become targets of racial abuse after children's classes have read the famous books.

"You have certain racial slurs that are repeated in these books and their classmates all of a sudden started to use these racial slurs to call them names," Lawes told the *Irish Examiner.* Lawes has filed a motion with the Meath County Council calling for the books to be removed.

"Meath Co Council calls on the Department of Education to remove

all literature from the school curriculum that casually and repeatedly uses offensive racial language, such as *To Kill a Mockingbird* and *Of Mice and Men* which have no place in today's curriculum," the motion says. Other councilors argue that the material should be reviewed rather than removed. Irish author and columnist Eamon Delaney, however, believes that removing the books completely misses the point.

"The motion seems to miss the point of these books which are a powerful indictment of racism. The offensive language depicted in them is used to illustrate racism and damn it—the very opposite of the impression formed here," he wrote in a column in the *Irish Independent*.

Both *To Kill a Mockingbird* by Harper Lee and *Of Mice and Men* by John Steinbeck are prescribed texts in the Junior Cert Cycle in Ireland and both are among the most commonly studied books at Junior Cert level.

To Kill a Mockingbird, in particular, is favored by teachers all over Ireland.

Both books, however, have frequently appeared on the American Library Association's list of most challenged books due to their use of racist language and their use of themes considered inappropriate for young people.

Reported by: IrishCentral, July 27, 2020.

Queensland, Australia

Two drag performers have taken an Australian Conservatives political activist to the Queensland Human Rights Commission (QHRC) under the Anti-Discrimination Act over a blog he wrote about why "drag queens are not for kids."

Lyle Shelton, former head of the Australian Christian Lobby, appeared before the QHRC on August 13, 2020, for the compulsory conciliation proceedings. According to the QHRC, "conciliation is a private and informal opportunity for all parties to discuss what occurred, listen to each other's views and come to an agreement about how the complaint can be resolved." The proceedings look for a way to resolve the issue through conciliation in the hopes of avoiding time and money spent pursuing the case before a tribunal.

The ways one could resolve a complaint, the QHRC said, are to apologize, change the organization's policies, organize training in the workplace, or pay compensation for the hurt feelings. In this case, the hearing did not lead to a conciliation.

"The complaint did not resolve and I now have an anxious wait to see if I am to be taken to the Queensland Civil And Administrative Tribunal (QCAT) for the matter to be heard before a judge," Shelton posted on his website. Shelton calls himself a "long-time campaigner against gender queer ideology" and "leader of the campaign to preserve the definition of marriage during the 2017 same-sex marriage plebiscite."

The complainants, Queeny and Diamond Good-rim, now have 28 days to decide if they want to take their case of discrimination before the QCAT for a public hearing. In an email to his supporters, Shelton, who has tried to frame the issue as one dealing with "free speech," claimed that the legal proceedings before the QCAT could cost him between $60,000 and $100,000.

The blog that is at the center of the complaint was written by Shelton, following the death of Wilson Gavin, the president of the University of Queensland branch of the Liberal National Club, in January 2020. Gavin had died by suicide a day after he disrupted and protested a Drag Queen Story Time event at the Brisbane Library.

Meanwhile, the Brisbane City Council has said that it will continue to offer its space for Drag Queen Story Time events. Its statement came in response to petitions that sought to end such events in the council's libraries and a rival petition to keep them.

"Drag Queen Storytime is one of hundreds of different events held in Council libraries each year that foster a diverse and inclusive city. Council remains committed to its values of inclusion, tolerance and diversity and will continue to offer Drag Queen Storytime in libraries as part of the range of events offered in response to community needs," the City Council said.

The Council said that the Drag Queen Story Time events were held in collaboration with Rainbow Families Queensland.

"Council's libraries are welcoming, inclusive community hubs that have a range of events that reflect and support Brisbane's diverse communities. Every family is different, and Council acknowledges this fact and celebrates our different cultures, race, sexuality, genders, and religions," added the Council.

Reported by: *Star Observer*, August 15, 2020

Cork, Ireland

A book about transgender teenagers has been removed from bookshelves in libraries in Cork, Ireland, following a far-right campaign that likened LGBTQ identities to pedophilia.

Beyond Magenta: Transgender Teens Speak Out by Susan Kuklin consists of six interviews with transgender teenagers about their lives and was published in 2014. Since then, the book has been assailed by anti-transgender activists who have called for it to be banned.

Cork City Libraries opted to remove *Beyond Magenta* from its shelves and have it re-processed for "adult/YA lending"—which requires adult consent—after they received a letter from a far-right activist. A woman named Kelly, who has kept her surname private, shared a copy of the letter she wrote to the library on AltFeed.org. In the letter, Kelly said she had "some concerns" about the book being available in the "child/teen section" of the library. "You may be aware that the book has sparked international outrage because of some very disturbing passages," Kelly wrote.

She went on to lament that the book included one teenager's sexual experiences and added, "Alarmingly there is no immediate clarification for young readers that this is illegal and damaging behavior." In the letter, Kelly claimed that *Beyond Magenta* "normalizes abuse and even pedophilia."

"I'm certain many parents would be quite upset if they knew the library is letting children borrow and read this book thinking it must be reviewed by the taxpayer funded library board and suitable for their children." Kelly also labeled Drag Queen Story Time events in Ireland "inappropriate," and suggested that LGBTQ people should be vetted by law enforcement authorities before being allowed to read to children.

"I personally know many people of the LGBT+ community and I have no issues with their life choices," Kelly added. "My only concern is for the innocence of children and what they are being exposed to in the pursuit of acceptance and equality." She went on to push harmful myths linking the LGBTQ community to child abuse, saying that she believes people want to see pedophilia accepted as a sexual orientation. Kelly closed her letter: "I realize raising these issues are often perceived as homophobic which I reject completely."

The library responded to Kelly and told her that "all executive librarians in Cork City Libraries were asked to take the book off the shelf" in response to her complaint. "I reviewed a copy of the book this morning and while I welcome publications that provide support for young transgender people, or indeed any marginalized group within society, I appreciate your concerns regarding the references to pedophilia and abuse in one particular section of the book," the unnamed library official replied, according to a screenshot shared on Twitter by Kelly.

"Taking this into account and having had a discussion with members of the senior management team in Cork City Libraries this morning, *Beyond Magenta* will remain off the shelves in the Cork City Library network." They closed their letter by thanking Kelly for bringing the matter to their attention. In a statement, Cork City Libraries told *PinkNews* that concerns were expressed that the book was available "without any guidance or warning to parents."

"Taking this concern into account the book remains off the shelves in the children's section of Cork City Libraries," a spokesperson said. "It is being re-processed on our database for adult/YA lending, which requires adult consent on joining."

The library service explained that parents or guardians must sign a membership form allowing teenagers to borrow from the young adult section. They added, "Cork City Libraries support all marginalized groups throughout the city, including the LGBT+ community through programming, training and so on." The decision to remove the book has sparked outrage among LGBTQ people and allies in Ireland, with many pointing out that the move will further strip transgender youth of vital resources.

LGBT Ireland, an Irish advocacy organization, criticized the decision to remove the book from Cork City Libraries. In a statement released to *PinkNews*, they said that "Censoring this book, containing stories that confront sexual abuse, will only act as a barrier to a deeper understanding of issues experienced by some in the transgender community."

"The people of Ireland have experienced and witnessed the negative outcomes that can occur when difficult stories and truths are kept from the public. We must ensure these issues are kept in the open, where they can be discussed and awareness raised."

The owner of independent bookstore Gutter Bookshop also lashed out at the decision on social media, saying *Beyond Magenta* does not promote pedophilia or underage sex. "Trans teens deserve books that show them they're not alone. It should not be withdrawn."

Beyond Magenta has been targeted by anti-LGBTQ activists across the world and was among the most banned and challenged books in libraries and schools in 2019 and 2015, according to the American Library Association.

Reported by: *PinkNews*, August 10, 2020.

COLLEGES AND UNIVERSITIES

New Orleans, Louisiana

Tulane University's School of Liberal Arts postponed an August 6, 2020, discussion with National Book Award winner Edward Ball, author of *Life of a Klansman: A Family History in White Supremacy* (2020). In *Klansman*, Ball tells the story of a racist great-grandfather who joins the Ku Klux Klan. Students called for the event to be canceled, arguing that it would center a racist family legacy in a discussion about anti-racism rather than a Black person's perspective and experience.

NPR called the book "resonant and important." The *New Republic*, a progressive magazine, wrote that Ball "builds a psychological portrait of white supremacy, which then radiates outward and across time, to explain the motives and historical background behind racist violence."

Many Tulane University students disagreed, with one student writing on Instagram that "the last thing we need to do is allow someone who is even reflecting on the hatred of their ancestors to speak about white supremacy, even if their efforts come from a place of accountability."

"There is nothing that a book on white supremacy written by the descendant of a Klansman can do to promote or influence an anti-racism atmosphere," wrote another.

But this wasn't just random students leaving comments. In a letter to the administration "on behalf of the entire student body," Undergraduate Student Government Vice President Ingeborg Hyde and Liberal Arts Student Government President Amanda Krantz demanded the event's cancellation. They did not mince words, stating that the event would be "antithetical to the anti-racist work" of students, faculty, and staff members at the university, and they argued the college should rather "prioritize uplifting Black voices."

The university apology came in a statement posted to social media platforms.

Tulane's statement defended Ball's work, stating that the book "addresses painful truths of America's racist past and present and serves as a history of white supremacy in Louisiana" and that the author had engaged in discussion with renowned anti-racism scholars such as Ibram X. Kendi.

"We understand, however, that the event, as planned, has caused distress for many in our community, and we apologize," said the statement, posted on the School of Liberal Arts Facebook and Instagram pages. "Tulane is fully committed to fostering an environment that is equitable, inclusive, and just. Going forward, difficult discussions such as this will be important since, as we know, the work of dismantling racism is layered and complex."

Tulane agreed to postpone the event, and it has not yet been rescheduled.

Reported by: *Reason*, August 6, 2020; *Inside Higher Ed*, August 10, 2020.

SCHOOLS

Burbank, California

In a letter sent to the Burbank Unified School District (USD), the National Coalition Against Censorship (NCAC) urged the school district to retain several books in their curriculum and allow teachers to teach the books while they are under review. The challenged books include Mark Twain's *Adventures of Huckleberry Finn* (1885), Harper Lee's *To Kill A Mockingbird* (1960), Theodore Taylor's *The Cay* (1969), and Mildred Taylor's *Roll of Thunder, Hear My Cry* (1976).

"Burbank USD policy states that, when a book is challenged, the book should remain in use while the challenge is pending. The District has apparently violated its own regulations by instructing teachers to stop using the books while it assesses the merits of the challenge. Parents who file complaints are permitted to ask for alternative assignments for their own students, but should not dictate what all students in the District are allowed to read," stated NCAC.

The books in question grapple with complicated and difficult realities of America's past and present. But curricula have been developed that make it possible to teach the books with sensitivity and compassion. Both *Adventures of Huckleberry Finn* and *To Kill a Mockingbird* are included on the Library of Congress list of "Books That Shaped America" and have been taught in schools throughout the country for many years. *Roll of Thunder, Hear My Cry* was awarded the prestigious Newbery Medal in 1977. *The Cay* is an award-winning young adult novel that tells the powerful story of how an 11-year-old boy learns to reject the racist views of his upbringing and to recognize the humanity of those normally deemed the "other" by society.

Reported by: NCAC, September 17, 2020.

Las Vegas, Nevada

In September 2020, the principal of Palo Verde High School removed *Fun Home* (2006) by Alison Bechdel from the junior English honors reading list immediately upon receipt of a complaint, despite district policy mandating the formation of a review committee to address book challenges. The National Coalition Against Censorship (NCAC) and five co-signing organizations strongly urged its reinstatement.

"Somehow teachers thought it was appropriate to give pornography to my child," said parent Kim Bennett. The term "pornography" usually refers to material that is designed to sexually excite readers; that is not the case with *Fun Home*, a memoir about Bechdel's relationship with her closeted gay father.

Although *Fun Home* deals with mature themes, it had been appropriately assigned to mature sophomores at Palo Verde High under the guidance of trained educators, stated NCAC in its letter. District regulations permit parents who object to the book to request that their children be assigned other works.

The Clark County School District released a statement confirming the book had been banned from Palo Verde High School, saying, "As soon as the school administration received information about the inappropriate material being included in a reading list of one of CCSD's high schools, the school immediately removed the inappropriate content from the reading list, addressed the concerns with parents and staff, and is investigating the matter at the school level."

Critics have praised *Fun Home* as an exemplar of how effectively the graphic novel can advance narrative, as well as its introduction of themes which had previously been largely neglected in LGBTQ literature. The book became the basis for a musical play that was a finalist for the 2014 Pulitzer Prize for Drama and won the Tony Award for Best Musical the following year. In 2019, the book was ranked 33rd on *The Guardian*'s list of the 100 best books of the 21st century.

This removal follows a trend of assaults on LGBTQ stories in schools and libraries. Earlier in 2020, NCAC released a statement signed by more than 40 national organizations condemning nationwide attempts to block young people from accessing LGBTQ stories. Eight of the ten most banned and challenged books of 2019—a list compiled by the American Library Association—were challenged because of LGBTQ content.

Reported by: NCAC, September 23, 2020; *Kirkus Reviews*, September 11, 2020.

Signal Mountain, Tennessee

All American Boys by Jason Reynolds and Brendan Kiely (2015) and *Monster* by Walter Dean Myers (1999), two books that feature police violence and racial discrimination, were removed from the Finding Perspective book club reading list for Signal Mountain Middle-High School after parents raised concerns, officials say.

On September 4, 2020, the school's seventh-grade literature teacher emailed parents telling them not to purchase the books, both of which have African American males as protagonists.

"In an effort to maintain our safe classroom community, I will be removing *All American Boys* and *Monster* from the book club list," wrote the teacher in an email. "If you have already purchased either book, I apologize for the hassle this has caused you. Both books contain mature content that not every student will be comfortable reading."

The email went on to suggest that books with such content might be suitable for students elsewhere in Hamilton County but not in Signal Mountain.

"Generally, Hamilton County gives us texts that are blanket texts for all students in our schools. While the reading level of the book is accessible to seventh-grade students, the content in the books may be inappropriate for some of our students," the email said. "While a shock to us, the books may be relatable and important to other students in our county."

Continuing, the teacher wrote, "I want to keep the environment in our classroom safe and enjoyable for all students. Please have your student choose one of the other books from the list, or they can suggest a good book that is written from the perspectives of multiple characters. Again, I apologize and will be closely monitoring all books given to us by Hamilton County from here on out."

Then she cautioned parents that "If you are still interested in having your child read either book, I would HIGHLY suggest you read reviews on goodreads.com and commonsensemedia.com beforehand."

According to US Census data, Signal Mountain is 97.9 percent White and 0.4 percent Black. Hamilton County as a whole is 76 percent White and 19.3 percent Black.

Shane Harwood, executive principal at Signal Mountain, told the *Times Free Press* that the teacher's book club decision was made due to the books' language and content.

"The teacher had received some parent concerns regarding the language in a couple of the books and some of the mature content," Harwood said by email. "The teacher was not completely familiar with the content of all of the books, and after reviewing them, the teacher herself was not comfortable with the language and mature content in a couple of the selections. As such, the teacher decided to not make those required selections, but instead gave parents the option of having their children continue reading them even with the language and mature content. One of the books—*All American Boys*—was cautioned due to mature language, and *Monster* was cautioned because of the mature content."

Harwood went on to say that "in communications with her parents, the teacher provided options for the students to read or not read the book(s) while providing caution of the language and mature content. The teacher shared about *All American Boys* that 'the book has a message that is current and allows the reader to think deeper about how our lives influence our perspectives' and 'This is a great book based on very current conflicts.'"

At the Hamilton County Schools district office, officials said they were not part of the decision, as the book club is at the school level.

Reported in: *Chattanooga Times Free Press*, September 9, 2020; Channel 9 News, Chattanooga, September 10, 2020.

Springfield, Vermont

After parents objected to the use of *Something Happened in Our Town: A Child's Story About Racial Injustice* (2018) by Marianne Celano, Marietta Collins, and Ann Hazzard, the Springfield School District is determining whether to ban the book, which aspires to help children to better comprehend systemic racism and injustice. Jeremy and Christine Desjardins, parents of a third grader, filed a formal grievance to superintendent Zach McLaughlin and Union Street School principal David Cohn after they became aware that their son's teacher presented the book to his class.

Following the recent concerns about police brutality, the school's librarian offered the book as an option for teachers. *Something Happened in Our Town: A Child's Story About Racial Injustice* follows two families—one White, one Black—as they discuss a police shooting of an unarmed Black man within their community.

According to a redacted email sent to McLaughlin on June 1, 2020—the day of the remote learning class session in question—and the formal grievance submitted to Cohn on June 3, the parents felt that the book was not suitable for their son. Mr. Desjardins, a law enforcement officer, alleges that during the remote instruction the educator, who has not been identified, singled out a student of color and asked the rest of the class, "we want to protect the student from the police, right kids?"

"I find this highly offensive that the school and teachers are presenting this topic [redacted] and had no concern for my son whose father is a police officer," wrote Jeremy Desjardins. "This is not appropriate for this age group, nor an appropriate forum to have in this online learning. . . . As a law enforcement officer, my wife and children have to be extra cautious right now and I cannot believe this would intentionally be brought up as a topic by the teacher when few kids ever understood or knew what was going on when asked."

Published in 2018 by three psychologists at Emory University's School of Medicine, the book provides caregivers and educators with tips on how to discuss specific themes in the book, such as bias, discrimination, injustice, and race.

"Further, the dialog[ue] which I expect will be reviewed, created an environment where children at this impressionable age may develop a negative bias against police officers and fear they may get angry and hurt them," the Desjardins wrote.

Both parents expanded on their comments made in their formal complaint at the Springfield School Board's virtual meeting, where a dozen concerned citizens added their opinions on what the best course of action would be for the benefit of the students.

Maresa Nielson, a second-grade teacher at the Elm Hill School in Springfield and member of the school district equity study group, echoed that while further communication between schools and parents during remote learning is essential and remains of utmost importance, this book would undoubtedly remain as part of her classroom.

"I'm completely for hearing about having an open relationship with parents and hoping that we can continue as we do this hybrid remote option," Nielson said. "But I also just want to say that the equity study group of the school district is working on evaluating our classroom libraries. . . . Most of the things that we're evaluating are things that are racist, that have bias, and that book would not be one of them that I would take off my shelf in a second-grade classroom."

Nielson also said that the book would not be left out for her students to browse through independently.

Riccardo Dorcely, whose three biracial daughters have faced and dealt with acts of racism during all their years in the Springfield School District, encouraged moving forward in the best way possible and to prevent such incidents from occurring by using the available resources to facilitate these difficult conversations.

"It was not our goal to get a book banned," said Jeremy Desjardins. "That was never our intent. However, the imagery of the book for that age group and the way it was portrayed to our child's classroom was not appropriate and why we brought it to this forum."

Reported in: *The Eagle Times*, August 19, 2020.

NEWS FROM THE BENCH

CHURCH AND STATE

Washington, DC

In ***Our Lady of Guadalupe School v. Morrissey-Berru***, together with ***St. James School v. Biel***, the **United States Supreme Court** ruled in a 7-2 vote on July 8, 2020, that US civil rights laws barring discrimination on the job do not apply to most lay teachers at religious elementary schools.

The case was brought by two fifth-grade teachers after they were dismissed by their parochial schools in California. Agnes Morrissey-Berru claimed age discrimination and Kristen Biel said she was fired after notifying her superior she would need time off due to a breast cancer diagnosis—a firing, that if true, would violate the Americans with Disabilities Act.

The schools refuted the allegations, but argued that irrespectively, federal employment laws do not apply to their teachers because all are required to teach religious content for 40 minutes per day.

The Supreme Court agreed.

Writing on behalf of the seven-justice majority, Justice Samuel Alito said "state interference" in religious education would violate the free exercise of religion guaranteed by the First Amendment.

"The religious education and formation of students is the very reason for the existence of most private religious schools, and therefore the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission," Alito wrote.

As the court saw it, federal courts are not allowed to settle employment disputes involving teachers in cases like these, because the religious schools are making "internal management decisions" that are "essential to the institution's religious mission."

The July 8 decision expanded that exception to include teachers who lacked religious titles and training, potentially stripping fair employment protections from many of the roughly 149,000 teachers at religious elementary schools, where they frequently teach religion alongside other subjects.

Justice Alito pointed out that the Archdiocese of Los Angeles, where both of the fired teachers in these cases worked, considers all its teachers catechists "responsible for the faith formation of the students in their charge each day" and expects teachers to infuse Catholic values "through all subject areas."

The ruling leaving lay teachers without antidiscrimination protections was one of three major decisions in recent weeks that rebalance the law when it comes to the separation of church and state.

For much of the 20th century, the Supreme Court's legal opinions enforced a strict separation between church and state. But as the court has grown more conservative in the last two decades, it has increasingly altered that stance. Now the justices tend to focus their opinions on protecting the free exercise of religion and requiring greater accommodations by the government of religious activity.

Justice Sonia Sotomayor, who was educated at parochial schools, wrote the dissent for herself and Justice Ruth Bader Ginsburg, calling the decision "profoundly unfair" for "permitting religious entities to discriminate widely and with impunity for reasons wholly divorced from religious beliefs," even as the court has "lamented a perceived 'discrimination against religion'" in recent opinions.

Sotomayor pointed to specific provisions that Congress wrote into the nation's antidiscrimination laws so that churches, synagogues, mosques, and other houses of worship could choose their ministers, rabbis, imams, and other religious leaders without interference from the government.

In expanding those exceptions beyond their "historic narrowness," Sotomayor said, the court majority has leveled a "constitutional broadside" at hundreds of thousands of employees who work not just at religious schools but also religious hospitals, charities, and universities.

Justice Thomas wrote separately for himself and Justice Neil Gorsuch to say that courts shouldn't second-guess when religious organizations earnestly claim that their employees are carrying out the religious mission of the organization and are thus "ministerial" and exempted from fair employment protections.

Reported by: NPR, *All Things Considered*, July 8, 2020.

Washington, DC

In the matter of ***Chike Uzuegbunam and Joseph Bradford v. Stanley C. Preczewski, et al.***, the **US Supreme Court** agreed to review a suit from two former college students who said they were prohibited from proselytizing their Christian faith by a now-rescinded campus policy that they claimed violated their right to free speech.

Campus police stopped petitioner Chike Uzuegbunam twice while he was trying to proselytize. One instance occurred outside of the school's designated speech zones, while another occurred within. The case alleges that petitioner Joseph Bradford "self-censured" after hearing of Uzuegbunam's plight. Campus free speech policies have garnered legal and other scrutiny, especially involving instances of students who have articulated conservative views.

The case will be heard next term. The justices this term were faced with

the argument that nominal damages for past constitutional violations—awarded when there's been wrongdoing without financial harm—can't be mooted by the wrongdoer's own actions.

In *New York State Rifle and Pistol Association, Inc., et al., v. City of New York, New York, et al.* on Writ of Certiorari to the US Court of Appeals for the Second Circuit, the high court reviewed a New York City law limiting where gun owners could take their guns. After the city—and the state—changed the law, the court nixed the case as moot in April 2020.

But Justice Samuel Alito, joined by Justices Clarence Thomas and Neil Gorsuch, lamented that the court in that case let the city off the hook by allowing it to "manufacture mootness" to avoid an adverse ruling.

It is "widely recognized that a claim for nominal damages precludes mootness," Alito wrote.

The justices were urged to take the campus speech dispute from a broad group of interests filing amicus—or friend of the court—briefs.

Catholic, Jewish, and Muslim groups teamed with the American Humanist Association and the Koch-backed Americans For Prosperity Foundation in urging the justices to overturn the US Court of Appeals for the Eleventh Circuit. They argued that its outlier ruling risks suppressing minority views on campus and fails to hold public officials accountable.

Reported by: Bloomberg Law, July 9, 2020; *The New York Times*, August 17, 2020.

SCHOOLS

Mahoney City, Pennsylvania

A high school student filed a lawsuit after she was kicked off the cheerleading team for cursing the team on Snapchat. American Civil Liberties Union (ACLU) Pennsylvania Senior Staff Attorney Sara Rose tried the case against the school district.

On June 30, 2020, in the **US Court of Appeals for the Third Circuit**, ***B.L. v. Mahanoy Area School District***, the court ruled that students are afforded the same rights as everyone else when they are not in school and can't be punished by their schools for any off-campus speech, including online, that is not related to school. This ruling covers students in Pennsylvania, Delaware, and New Jersey, which are covered by the Third Circuit. Mahanoy Area School District's attorney Michael Levin said that he plans to discuss filing an appeal to the Supreme Court with the district.

According to an ACLU press release, B.L. posted the snap she was punished for over the weekend while at a convenience store. The school suspended her from the team based on their belief that the post was "negative," "disrespectful," and "demeaning."

"I think [this ruling] is the most student speech-protective decision in the country right now," Rose said. "When you censor students in school when they're just learning about their rights, they aren't going to know how to fight for their rights out of school. So, we were very pleased with the decisions the Third Circuit made."

Reported by: The Student Press Law Center, July 16, 2020.

Richmond, Virginia

In the matter of ***Gavin Grimm v. Gloucester County School Board,*** a federal appeals court held in the long-running case of transgender student Gavin Grimm that the school district violated the equal-protection clause and Title IX when he was barred from the boys' restroom while enrolled at his Richmond, Virginia, high school.

A panel of the **US Court of Appeals for the Fourth Circuit** also ruled 2-1 that the Gloucester County district violated Grimm's rights by refusing to amend his school records after Grimm, who was assigned female at birth, had chest reconstruction surgery and the state amended his birth certificate to "male."

"At the heart of this appeal is whether equal protection and Title IX can protect transgender students from school bathroom policies that prohibit them from affirming their gender," US Fourth Circuit Judge Henry F. Floyd wrote for the majority in upholding a series of decisions in favor of Grimm in 2018 and 2019. "We join a growing consensus of courts in holding that the answer is resoundingly yes."

The Fourth Circuit panel became the second federal appeals court to rule in August 2020 that transgender students' rights under Title IX of the Education Amendments of 1972 are supported by the US Supreme Court's June decision that federal employment discrimination law covers transgender workers. A panel of the US Court of Appeals for the Eleventh Circuit, in Atlanta, ruled 2-1 on August 7, 2020, that a Florida district violated Title IX and the equal-protection clause when it barred a transgender male student from using the restroom consistent with his gender identity. In the new decision, the Fourth Circuit majority agreed that the recent Supreme Court decision bolstered Grimm's case.

"After the Supreme Court's recent decision in *Bostock* v. *Clayton County* . . . , we have little difficulty holding that a bathroom policy precluding Grimm from using the boys' restrooms discriminated against him 'on the basis of sex'" Floyd wrote.

The Gloucester County board's policy "excluded Grimm from the

boys' restrooms 'on the basis of sex'" and therefore violated Title IX, the judge said.

Analyzing the case under the 14th Amendment's guarantee of equal protection, the court said the board's policy of requiring transgender students to use either a single-stall restroom or a restroom matching their "biological gender" was not significantly related to its goal of protecting students' privacy.

"The insubstantiality of the board's fears has been borne out in school districts across the country, including other school districts in Virginia," Floyd said. "Nearly half of Virginia's public-school students attend schools prohibiting discrimination or harassment based on gender identity." The majority cited friend-of-the-court briefs filed in support of Grimm by numerous school groups.

Gloucester County "ignores the growing number of school districts across the country who are successfully allowing transgender students such as Grimm to use the bathroom matching their gender identity, without incident," Floyd said.

Grimm is now a 21-year-old college student, and the Fourth Circuit rejected the board's arguments that his claims regarding the bathroom policy were moot. Because Grimm had amended his original lawsuit to seek nominal damages, his case was still a live controversy, the appeals court said. The court also held that the board's refusal to update Grimm's records violated both equal protection and Title IX.

"The board based its decision not to update Grimm's school records on his sex—specifically, his sex as listed on his original birth certificate, and as it presupposed him to be," Floyd said. "This decision harmed Grimm because when he applies to four-year universities, he will be asked for a transcript with a sex marker that is incorrect and does not match his other documentation. And this discrimination is unlawful because it treats him worse than other similarly situated students, whose records reflect their correct sex."

Judge Paul V. Niemeyer dissented, saying that "Title IX and its regulations explicitly authorize the policy followed by [Gloucester County] High School."

"At bottom, Gloucester High School reasonably provided separate restrooms for its male and female students and accommodated transgender students by also providing unisex restrooms that any student could use," Niemeyer said. "The law requires no more of it."

The new member of the panel for this latest appeal in the Grimm case was Judge James A. Wynn Jr., who had made it pretty clear at oral arguments in May that he was inclined to support the student. In a concurrence the opinion, Wynn said the Gloucester County board's policy seemed to favor an "alternative appropriate private facility" for transgender students. Such facilities were akin to "separate but equal" schools and restrooms for Black and White students, said Wynn, who is Black.

"I see little distinction between the message sent to Black children denied equal treatment in education under the doctrine of 'separate but equal' and transgender children relegated to the 'alternative appropriate private facilitites' provided for by the board's policy," Wynn said.

Floyd concluded the majority opinion by noting that many schools have implemented "trans-inclusive policies" without incident, and that adults have been the biggest opponents of such policies, not students.

"The proudest moments of the federal judiciary have been when we affirm the burgeoning values of our bright youth, rather than preserve the prejudices of the past," Floyd said. "How shallow a promise of equal protection that would not protect Grimm from the fantastical fears and unfounded prejudices of his adult community. It is time to move forward."

Reported by: *Education Week*, August 26, 2020

COLLEGES AND UNIVERSITIES

San Diego, California

The University of California San Diego settled a First Amendment lawsuit with a student-run satirical publication on September 8, 2020, which legal experts say secured significant protections for student journalists against financial censorship.

The Koala v. Khosla, et al. case in the **US District Court for the Southern District of California** stemmed from a controversial November 2015 article from *The Koala*, a satirical newspaper on campus. The student government voted to defund every media outlet at the university two days later, clearly targeting the paper known for publishing articles with racist, homophobic, Islamophobic, and anti-Semitic slurs and language.

The settlement affirmed critical protections against a different form of censorship, said David Loy, Legal Director of the American Civil Liberties Union of San Diego and Imperial Counties.

"It's the next frontier of censorship on campus, where sophisticated administrators know they can't openly retaliate or censor controversial speech or speech to which they object, so they look for a way to do it that's superficially neutral," Loy said.

According to the settlement documents, the school agreed to pay *The*

Koala $12,500, covering roughly four years of operating expenses for the newspaper. It also cemented the publication's funding for close to a decade.

While *The Koala's* content is not of good taste and far from journalistic standards, Loy said, the student government clearly violated First Amendment rights of students and their publication. Withholding funding in direct retaliation for exercising free speech rights isn't new to college campuses, though rarely do these cases end up in court.

"This is one of the few cases that have really addressed the issue of cutting off the financial lifeline of the press . . . strangling the financial lifeline is every bit as dangerous as directly censoring it," Loy said. "I think that's why this is an important precedent to send a message to administrators that they can't get away with censorship just by dressing it up in nicer clothes."

The Student Press Law Center (SPLC) filed an amicus brief on behalf of *The Koala*, which played a key role in a federal court ruling that led to the settlement. SPLC Staff Attorney Sommer Ingram Dean said the court upheld fundamental rights of student journalists.

"The conclusion of this ongoing fight between the university and *The Koala* cements the fact that public school officials cannot censor student media through funding cuts or other punitive measures based solely on the content of the publication, whether it is offensive or not," Dean said.

Loy said that young journalists should be shielded from all forms of censorship as they gain experience in the field. Across the United States, student journalists play vital roles in local news coverage and often find themselves subject to administration, direct, or self-censorship.

"The lifeblood of the student press is the ability to report the news without fear or favor," Loy said. "The stakes in this case went way beyond this particular case on this particular campus."

Reported by: The Student Press Law Center, September 18, 2020.

College Station, Texas

The week of August 17, 2020, The Electronic Freedom Foundation (EFF) filed suit in the matter of ***People for the Ethical Treatment of Animals, Inc., v. Michael K. Young*** in the **US District Court for the Southern District of Texas, Houston Division** to stop Texas A&M University from censoring comments by People for the Ethical Treatment of Animals (PETA) on the university's Facebook and YouTube pages.

Due to the COVID-19 pandemic, Texas A&M's spring commencement ceremonies were held online with broadcasts over Facebook and YouTube. Both its Facebook and YouTube pages had comment sections open to any member of the public. But administrators deleted comments that were associated with PETA's high-profile campaign against the university's muscular dystrophy experiments on golden retrievers and other dog breeds.

The First Amendment prohibits government entities from censoring comments on open online forums merely because they dislike the content of the message or disagree with the viewpoint conveyed. In addition, censoring comments based on their message or viewpoint also violates the public's First Amendment right to petition the government for redress of grievances.

This is not the first time EFF and PETA have sued Texas A&M for censoring comments online. Back in 2018, EFF brought another First Amendment lawsuit against Texas A&M for deleting comments by PETA and its supporters about the university's dog labs from the Texas A&M Facebook page. This year the school settled with PETA, agreeing to stop deleting comments from its social media pages based on the content of the comments.

EFF stated that they are disappointed that Texas A&M has continued censoring comments by PETA's employees and supporters without respect for the legally binding settlement agreement that it signed just six months ago and hope that the federal court will make it adamantly clear to the university that its censorship cannot stand.

Reported by: Electronic Freedom Foundation (EFF), August 21, 2020.

Lexington, Kentucky

In June 2020, as many predominantly White institutions in the United States began trying to answer for their histories of racism in the wake of George Floyd's murder, the University of Kentucky in Lexington decided that it was time for a 1934 mural by Ann Rice O'Hanlon to come down.

Many have wanted to see the mural removed for years, asserting that its portrayal of violence against Black people does not belong in a space where students attend classes or participate in celebratory events, while others have countered that hiding it would amount to artistic censorship and an obscuring of Kentucky's history of slavery and racism.

Now, a lawsuit has been filed by Wendell Berry—writer, farmer, and longtime Kentuckian—to stop the University of Kentucky from removing the mural, which depicts enslaved African Americans toiling in tobacco fields and entertaining White revelers.

The vignettes are intended to illustrate Kentucky's history, but in 2015, the administration covered the work with a white cloth until a long-term plan could be decided.

In the matter of ***Wendell and Tanya Berry v. University of Kentucky***, filed in the **Commonwealth of Kentucky, Franklin County Circuit Court**, Berry argued that because it was created through a government program, it is owned by the people of Kentucky and cannot be removed by the university.

The University of Kentucky's president, Eli Capilouto, acknowledged that the work was a "terrible reminder" for many African American students of their ancestors' subjugation and that it provides "a sanitized image of that history." In response to the mural, in 2018, the university commissioned and installed a contemporary painting by Black artist Karyn Olivier, who stated that removing the original mural would "censor" her piece, which she would also want to be removed.

Olivier's work, called "Witness," reproduced the likenesses of the Black and Native American people in the mural and positions them on a dome covered with gold leaf so they appear to be floating like celestial beings. The dome is in the vestibule of the building, just in front of the room where the mural covers the wall.

According to Olivier, her work replicated the Black and brown figures depicted in the mural, positioning them against a gilded background on the dome; without the context of surrounding whiteness, the figures took on new meanings. Four decorative panels beneath the dome were embellished to memorialize historically overlooked Black and native Kentuckians of great accomplishment. The piece was created to inspire reflection—on itself and the mural's content, history, and meaning today. However, students decried it as "not enough."

As the National Coalition Against Censorship (NCAC) pointed out in a July 1, 2020, letter urging that the mural not be removed, "This is the first instance we are aware of in which the removal of a mural by a White artist will have the simultaneous effect of silencing the work of a Black artist."

Olivier stated, "My disappointment as an artist and an educator is rooted in the university's anti-intellectual stance, one that runs counter to the purpose of higher education. Where else, if not in a university setting, should our thinking, opinions and assumptions be challenged? Why this false choice between free speech or racial justice? My goal in creating 'Witness' was to posit: Is it possible to hold opposing ideas and realities in one hand? Can we harness the tough questions they raise to wade into the pain, complexity, and frightening histories of America, and consider the possibilities and resilience of black and brown people?"

Continuing, Olivier stated, "My work was not created to magically dispel or absolve the University of Kentucky from embedded, institutional white supremacy or oppression. It wasn't meant to neatly tie up the 'race problem.' The disparate emotions around O'Hanlon's mural and my work should have been met with a long-term plan and commitment to investigate and address racism on campus and beyond. The day I completed my response to the mural was the day the university's real work needed to begin. Instead, removing the mural chooses silence, erasure and avoidance over engagement, investigation, and real reconciliation. Is the hope that we'll simply *forget* our shared history?"

The NCAC urged the university to reconsider its decision to remove the mural and to instead pursue the university's original goal of engaging in the sustained, difficult, and complex conversations that can arise in contemplation of these old and new works.

Reported by: NCAC, July 1, 2020; *The Art Newspaper*, July 9, 2020; *The New York Times*, July 6, 2020; *The Washington Post*, July 10, 2020.

PUBLISHING

New York

On July 28, 2020, the Internet Archive (IA) responded to a June 1, 2020, copyright infringement lawsuit filed in the **Southern District of New York** by Hachette, HarperCollins, John Wiley and Sons, and Penguin Random House and coordinated by the Association of American Publishers (AAP).

In the matter of ***Hachette Book Group, Inc., et al. v. Internet Archive et al.***, the IA asserted that its long-running book scanning and lending program is intended to fulfill the role of a traditional library in the digital age and is protected by fair use.

"The Internet Archive does what libraries have always done: buy, collect, preserve, and share our common culture," reads the IA's preliminary statement, contending that its collection of roughly 1.3 million scans of mostly 20th-century, mostly out-of-print books is a good faith and legal endeavor to "mirror traditional library lending online" via a process called Controlled Digital Lending (CDL).

"Contrary to the publishers' accusations, the Internet Archive, and the hundreds of libraries and archives that support it, are not pirates or thieves," the lawsuit stated. "They are librarians, striving to serve their patrons online just as they have done

for centuries in the brick-and-mortar world. Copyright law does not stand in the way of libraries' right to lend, and patrons' right to borrow, the books that libraries own."

In publicizing the lawsuit, executives at the AAP portrayed the IA's scanning and lending of library books as an attempt "to bludgeon the legal framework that governs copyright investments and transactions in the modern world" and compared its efforts to the "largest known book pirate sites in the world." In a supporting statement, Authors Guild President Douglas Preston said the IA's program was "no different than heaving a brick through a grocery store window and handing out the food—and then congratulating itself for providing a public service."

CDL practices have agitated authors and publisher groups for years. In late March 2020 those conflicts reached boiling point when the IA unilaterally announced its now-closed National Emergency Library initiative, which temporarily removed the restrictions for accessing its scans of books because of the COVID-19 outbreak.

In its lawsuit, the publishers proclaim that they are not suing the IA over "the occasional transmission of a title under appropriately limited circumstances, nor about anything permissioned or in the public domain," but rather over the IA's "purposeful collection of truckloads of in-copyright books to scan, reproduce, and then distribute digital bootleg versions online."

In its 28-page response, the IA's lawyers denied many of the claims and characterizations made in the publishers' lawsuit.

"The Internet Archive has made careful efforts to ensure its uses are lawful," the lawyers stated, contending that its CDL program is "sheltered by the fair use doctrine" and "buttressed" by traditional library practices and protections. "Specifically, the project serves the public interest in preservation, access and research—all classic fair use purposes. Every book in the collection has already been published and most are out of print. Patrons can borrow and read entire volumes, to be sure, but that is what it means to check a book out from a library. As for its effect on the market for the works in question, the books have already been bought and paid for by the libraries that own them. The public derives tremendous benefit from the program, and rights holders will gain nothing if the public is deprived of this resource."

Under CDL, the IA and other libraries make and lend out digital scans of physical books in their collections. For non-public domain titles, IA lawyers say the site functions like a traditional library: only one person can borrow a scanned copy at a time, the scans are DRM-protected, and the corresponding print book from which the scan is derived is taken out of circulation while the scan is on loan to maintain a one-to-one "own-to-loan" basis. In addition, the IA says it removes scans from the collection at the request of the copyright holder, pointing out that all of the 127 books listed as infringing in an appendix to the publishers' suit have been removed.

The IA's response to the lawsuit came days after a July 22, 2020, Zoom press conference during which IA's founder Brewster Kahle urged the publishers to drop the lawsuit and settle the dispute in the boardroom rather than in the courtroom.

"With this suit, the publishers are saying in the digital world, [libraries] cannot buy books anymore. We can only license them, and under their terms. We can only preserve them in ways that they have granted explicit permission for, and only for as long as they've given permission. And we cannot lend what we've paid for, because we don't own it. It's not the rule of law, it is the rule of license. It doesn't make sense," Kahle said. "We say that libraries have the right to buy books and preserve them and lend them even in the digital world."

John McKay, a spokesperson for the AAP, dismissed Kahle's proposal to talk things out. "[The Internet Archive's] infringements, which are extensive and well-documented, are now appropriately before the court," said John McKay in a statement.

Reported by: *Bangor Daily News*, July 7, 2020.

FILM AND MEDIA
Los Angeles, California

In the **US District Court Central District of California, Western Division, Los Angeles *Disney Enterprises, Inc., et al. v. TTKN Enterprises, LLC, et al.*** case, the streaming service Crystal Clear Media was sued by a group of entertainment powerhouses including Disney Enterprises, Netflix Studios, and Paramount Pictures for purportedly infringing upon their copyrights.

Per the lawsuit, Florida-based Crystal Clear Media illegally offers copyrighted movies and television programs online. It provides unauthorized access to Hollywood blockbusters, including *Frozen II*, *The Amazing Spider-Man*, and *Despicable Me 3,* for a fee.

The streaming platform deliberately masks its video-on-demand service by using public facing labels such as *Virtual Reality Gaming*, which lead users to the protected works. Crystal Clear Media and its resellers advertise customer subscription packages ranging from $15 to $40 per month.

The entertainment companies stated that at the time Crystal Clear Media was offering more than 14,000 movies and more than 3,000 TV series for on-demand viewing, as well as live television, streamed at the same time as the legitimate broadcaster. This programming included ESPN, NBCSN, and other popular channels. The entertainment group maintained that streaming services, such as Crystal Clear Media, which engage in "mass infringement," harm the industry by sidestepping the paid licenses that the law requires.

"The result is television and movie content streamed over the internet in a manner that directly competes with and undermines authorized cable and internet streaming services," lawyers for the entertainment companies wrote.

The companies also accused Crystal Clear Media of unfairly competing with their own video-on-demand services, including Hulu, Netflix, and Amazon Prime.

Reported by: Bloomberg Law, August 13, 2020.

New York

In the case ***Neil Young v. Donald J. Trump et al.***, legendary rocker Neil Young sued Donald Trump's presidential campaign in the US District Court Southern District of New York for copyright infringement for using two of his songs at numerous rallies and political events.

The songs, *Rockin' in the Free World* and *Devil's Sidewalk*, were played at the July 20, 2020, rally in Tulsa, Oklahoma. Young claims that the campaign used his songs without a license and despite him "continuously and publicly" objecting to the use of his songs by Trump since *Rockin' in the Free World* was played when Trump launched his 2016 presidential bid in June 2015.

Young seeks statutory damages for what he described as the willful infringement of his copyrights as well as an injunction barring the campaign for using these two songs "or any other musical compositions" that he owns.

The suit presents a number of interesting questions. First and foremost, is the campaign's use of Young's compositions covered by a blanket license from one of the performing rights organizations (ASCAP or BMI)? Venues such as arenas, convention centers, and hotels usually have blanket licenses that permit the use of recorded music, but these licenses often exclude uses at events organized by third parties, such as political campaigns. This would require the campaign to obtain its own license to use the music in ASCAP or BMI's catalog.

Moreover, both ASCAP and BMI permit songwriters to exclude their music from use in political campaigns. It seems likely that Young invoked his right to such an exclusion, though that is not clear from the legal filing. Indeed, the complaint is so devoid of detail that it comes close to falling short of the pleading standard in the Second Circuit for copyright infringement cases.

The complaint does not specify whether either of the songs was subject to an ASCAP or BMI license or whether Young took advantage of his right to exclude the songs from use for political purposes. It is not clear whether the lack of detail in the complaint is deliberate, designed to see whether such a minimal effort will convince the campaign to stop using Young's songs, or whether Young intends to amend the complaint if the case proceeds.

Young sued only for copyright infringement and did not attempt to claim that the campaign was suggesting that he endorsed or approved of Trump or his campaign under the federal Lanham Act or state law protections against false suggestions of authorization or association. Young (or his lawyers) may have recognized that such a claim would be difficult to win, could require expensive and difficult-to-obtain consumer perception evidence to establish a likelihood of confusion, and might run into some First Amendment concerns.

Young also did not bring a claim for infringement of his right of publicity (i.e., use of his voice or indicia of his persona for commercial purposes), a theoretical claim that might be tenable in certain jurisdictions. Young is a California resident, and the New York federal court would look to California law (which is broader than New York's) to see if such a claim would lie.

Reported by: *Shoot Magazine*, August 13, 2020.

INTERNET
Los Angeles, California

Tech company VidAngel, which had touted itself as a family-friendly streaming service, is asking a federal appellate court to reverse a jury's decision requiring the company to pay four movie studios $62.4 million for piracy.

In papers filed this week with the **Ninth Circuit Court of Appeals**, VidAngel says the damages award is so high it violates the company's right to due process of law.

The filing is the latest development in a battle dating to 2016, when Disney, Warner Bros, and 20th Century Fox sued VidAngel for allegedly infringing copyright by streaming programs without a license. Originally filed in the **US District Court Central District of California Western Division**, the suit names

Disney Enterprises, Inc.; Lucasfilm Ltd., LLC; Twentieth Century Fox Film Corporation; and Warner Bros. Entertainment, Inc. v. VidAngel, Inc.

VidAngel's $1-per-movie streaming service allowed users to censor nudity or violence from videos. The company purchased DVDs like *The Martian* and *Star Wars: The Force Awakens* and then streamed them from its own servers without obtaining licenses from the studios.

The tech company based in Provo, Utah, "sold" movie streams to consumers for $20 but allowed them to sell back the movies for $19 in credit.

VidAngel said it provided customers with a "filtering tool" that allowed users to edit out objectionable portions of movies.

The company argued that its service was protected by the Family Movie Act, a 2005 law intended to allow parents to censor movies by stripping them of inappropriate material. The Family Movie Act provides that copyright infringement laws don't apply to technology that mutes or hides "limited portions of audio or video content" from an authorized copy of the movie.

US District Court Judge Andre Birotte Jr. in Los Angeles initially rejected VidAngel's argument in 2017, when he enjoined the company from operating its streaming-and-filtering service.

VidAngel appealed that move to the Ninth Circuit, which also ruled against the company. That court said VidAngel's interpretation of the Family Movie Act law "would create a giant loophole in copyright law." In March of 2019, Birotte rejected VidAngel's other defenses—including that its service was protected by fair use principles—and awarded the studios summary judgment on their copyright claims. Several months later, a jury awarded the studios $62.4 million in damages.

VidAngel now argues that figure should be vacated because it's more than 20 times the estimated $3 million revenue it received from filtering any of the studios' movies.

"The awards against VidAngel are completely out of kilter with the statute's purposes and the jury obviously did not consider them in any meaningful way," the company writes in its appellate papers.

VidAngel also raises other arguments, including that Birotte should have allowed a jury to decide whether VidAngel's service was a fair use.

"VidAngel used plaintiffs' works for a legitimate purpose: namely, to provide a technology authorized and encouraged by the [Family Movie Act]," the company writes.

"A reasonable jury could have found VidAngel's use was fair," it adds.

Reported in: Digital News Daily, August 13, 2020.

Augusta, Maine

On July 7, 2020, Judge Lance Walker of the **US District Court in Maine** ruled in the matter of ***Aca Connects—America's Communications Association, et al. v. Aaron Frey*** that Maine's pioneering and strict internet privacy law is not preempted by federal law.

However, Judge Walker said he did not have enough evidence in front of him to decide whether the law unfairly regulates commercial speech to dismiss it outright. But his criticism of the plaintiffs' arguments may not bode well for them in the long run.

Four industry associations representing internet service providers sued the state in February 2020 to prevent the law, which is believed to be one of the strictest in the country, from taking effect on July 1, 2020. The "opt-in" law prevents providers from using, disclosing, selling, or permitting access to personal information without a customer's permission.

Judge Walker compared the providers' request to *Harold and the Purple Crayon*, a 1955 children's book whose main character is a boy who can create his own world by drawing it. He said their argument that federal privacy laws preempt the state law is "attempting to create a conflict where none exists."

Maine Attorney General Aaron Frey called the ruling a "huge victory" and said he was confident the law would withstand further scrutiny. The Internet and Television Association—one of the plaintiffs in the suit—said it disagreed with the ruling and that consumers deserved uniform privacy protections across the internet.

The law, sponsored by Senator Shenna Bellows, D-Manchester, faced opposition from national trade groups and the Maine State Chamber of Commerce. It was meant to reinstate rules implemented under former Democratic President Barack Obama that were repealed in 2017 by a Republican-led Congress. Walker was appointed to his post in 2018 by former President Donald Trump, a Republican.

Earlier in 2020, Maine won another broadband court ruling when a federal court judge ruled that a law requiring cable operators to extend service to areas with at least 15 homes per square mile as well as to place public-access channels near local broadcasting stations was intended to protect customers and was in accordance with the state's regulatory powers.

Reported by: *Bangor Daily News*, July 7, 2020.

Washington, DC

In the case of the ***Woodhull Freedom Foundation, et al. v. The United***

States of America and William P. Barr, in the **US District Court for the District of Columbia**, the plaintiffs contend that the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) violates the First and Fifth Amendments and the Constitution's prohibition against ex post facto laws and are working to have the law overturned.

The plaintiffs are represented by The Electronic Freedom Foundation (EFF) and Daphne Keller at the Stanford Cyber Law Center, as well as lawyers from Davis Wright Tremaine and the Walters Law Group.

FOSTA achieved widespread internet censorship by making three major changes in law:

First, FOSTA makes it a federal crime for any website owner to "promote" or "facilitate" prostitution without defining what either word means. Organizations doing educational, health, and safety-related work fear that prosecutors may interpret advocacy on behalf of sex workers as the "promotion" of prostitution. Thus, the plaintiffs are reluctant to exercise their First Amendment rights for fear of being prosecuted or sued.

Second, FOSTA increases the potential liability for federal sex trafficking offenses by adding vague definitions and expanding the pool of enforcers, hindering free speech by nonprofits that fear million-dollar lawsuits. Now website operators and nonprofits might fear prosecution from individuals, as well as thousands of state and local prosecutors.

Third, FOSTA limits the federal immunity provided to online intercessors that host third-party speech under 47 U.S.C. § 230 ("Section 230"). This immunity has allowed for the proliferation of online services that host user-generated content, such as Craigslist, Reddit, YouTube, and Facebook. Section 230 provides for the assurance that the internet supports diverse and divergent viewpoints, voices, and robust debate without website owners having to worry about being sued for their users' speech. The removal of Section 230 protections resulted in intermediaries shutting down entire sections or discussion boards for fear of being subject to criminal prosecution or civil suits under FOSTA.

After Congress passed FOSTA, Craigslist shut down the Therapeutic Services section of its website where Eric Koszyk, a licensed massage therapist, advertised his business. Although his business is completely legal, Craigslist further prohibited Koszyk from posting his ads anywhere else on its site because the new law created too much risk. In the two years since Craigslist removed its Therapeutic Services section, Koszyk's income has dropped to less than half of what it was before FOSTA.

Rate That Rescue, a website created in part by Alex Andrews, was also affected. The website is "a sex worker-led, public, free, community effort to help everyone share information" about organizations that aim to help sex workers leave their field or otherwise assist them. Without the protections of Section 230, in Andrews' words, the website "would not be able to function" because of the "incredible liability for the content of users' speech." Under FOSTA's new criminal provisions, Rate That Rescue's creators could face criminal liability because the website aims to make the work lives of sex workers safer and easier.

Woodhull Freedom Foundation advocates for sexual freedom as a human right, including supporting the health, safety, and protection of sex workers. Woodhull organizes a Sexual Freedom Summit in Washington, DC, with the purpose of bringing together educators, therapists, legal and medical professionals, and advocacy leaders to strategize on ways to protect sexual freedom and health. There are workshops devoted to issues affecting sex workers, including harm reduction, disability, age, health, and personal safety. Due to COVID-19, Woodhull is livestreaming events this year. They have had to censor their ads on Facebook, as well as modify their programming on YouTube just to get past those companies' heightened moderation policies in the wake of FOSTA.

The Internet Archive, a nonprofit library that seeks to preserve digital materials, also faces increased risk because FOSTA has dramatically increased the possibility that a prosecutor or private citizen might sue it simply for archiving webpages that FOSTA would deem illegal. Such a lawsuit would be a real threat for the Archive, which is the internet's largest digital library.

Because the organization advocates for the decriminalization of sex work, Human Rights Watch is also put in danger as they could easily face prosecution for "promoting" prostitution.

After the DC Circuit Court of Appeals reversed the lower court's decision to dismiss the suit, both sides have filed motions for summary judgment. In their filings, the plaintiffs make several arguments for why FOSTA is unconstitutional.

First, they argue that FOSTA is vague and overbroad. The Supreme Court has said that if a law "fails to give ordinary people fair notice of the conduct it prohibits," it is unconstitutional. The law makes it illegal to "facilitate" or "promote" prostitution without defining what those terms mean. The result has been the censorship of speech that is protected by the First Amendment. Organizations like Woodhull, and individuals like

Andrews, are already restraining their own speech. They fear their advocacy on behalf of sex workers may constitute "promotion" or "facilitation" of prostitution.

The government has argued that it is unlikely anyone would misconstrue "promotion" or "facilitation." But some courts interpret "facilitate" to simply mean make something easier. Thus anything that plaintiffs like Andrews or Woodhull do to make sex work safer, or make sex workers' lives easier, could be considered illegal under FOSTA.

Second, the plaintiffs argue that FOSTA's Section 230 exceptions violate the First Amendment. A provision of FOSTA eliminates some Section 230 immunity for intermediaries on the web, which means anybody who hosts a blog where third parties can comment, or any company like Craigslist or Reddit, can be held liable for what *users* say.

As the plaintiffs show, all the removal of Section 230 immunity really does is squelch free speech. Without the assurance that a host won't be sued for what a commentator or poster says, those hosts simply won't allow others to express their opinions. This is precisely what happened once FOSTA passed.

Third, the plaintiffs argued that FOSTA is not narrowly enough tailored to the government's interest in stopping sex trafficking. Congress passed FOSTA because it was concerned about sex trafficking, with the intent of rolling back Section 230 to make it easier for victims of trafficking to sue certain websites, such as Backpage.com. The plaintiffs agree with Congress that there is a strong public interest in stopping sex trafficking. FOSTA doesn't accomplish those goals; instead, it sweeps up a host of speech and advocacy protected by the First Amendment.

Finally, FOSTA violates what is known as "ex post facto" law. FOSTA creates new retroactive liability for conduct that occurred before Congress passed the law. During the debate over the bill, the US Department of Justice (DOJ) even admitted this issue to Congress—but the DOJ later promised to "pursu[e] only newly prosecutable criminal conduct that takes place after the bill is enacted." The government, in essence, is saying to the courts, "We promise to do what we say the law means, not what the law clearly says." But the DOJ cannot control the actions of thousands of local and state prosecutors—much less private citizens who may sue under FOSTA on the basis of conduct that occurred long before it became law.

Reported by: Electronic Frontier Foundation, September 17, 2020.

FREE SPEECH
Greenwich, Connecticut

On August 27, 2020, in the ***State of Connecticut v. David G. Liebenguth*** **(SC 20145)**, the **Connecticut Supreme Court** ruled that a Greenwich man can face criminal penalties for uttering racial slurs at a Black man in 2014, overturning a previous decision by the Appellate Court in a case centered on free speech rights. The court ruled that David Liebenguth could be charged with breach of peace for his words and conduct during an encounter with a Black parking enforcement officer in New Canaan, in which he used the word "nigger" twice, along with obscenities and a reference to the shooting death of a Black man.

The justices concluded in their opinion that the First Amendment right to free speech did not apply to Liebenguth's conduct, and that the slurs fell under the category of "fighting words," which are not protected under the Constitution.

"Because the First Amendment does not shield such speech from prosecution, the state was free to use it to obtain the defendant's conviction of breach of the peace in the second degree, which, as we have explained, is supported by the evidence," the court ruled in a unanimous opinion written by Justice Richard N. Palmer. The attorney for Liebenguth said he believes the case "merits review" by the US Supreme Court.

Liebenguth was ticketed after overstaying at a parking meter in New Canaan on August 28, 2014, and confronted the enforcement officer after finding a $15 parking ticket on his 1999 Ford Escort, according to court documents. Liebenguth said he was targeted because he was White and told the officer to "remember what happened in Ferguson," referring to the fatal shooting of a Black teenager by a White police officer in Missouri, before mumbling a racial slur and an expletive.

As he drove away, Liebenguth again called the town employee the offensive word in a loud voice, preceded by an obscenity, court documents said.

Liebenguth was charged with a misdemeanor count of breach of peace. In a non-jury trial in front of Superior Court Judge Alex Hernandez, he was convicted in May 2016. Liebenguth and his lawyer appealed. In a 2-1 decision, the state Appellate Court determined that as loathsome as his speech, it was constitutionally protected and thus overturned the guilty verdict. Then it was the state's turn to file an appeal with the highest court in Connecticut. The Supreme Court reviewed the concept of "fighting words" and the use of the word "nigger" as specifically harmful.

The judges ruled that this word was particularly "assaultive" when used against a Black person, and inflicted injury by itself alone when uttered. The use of the word, the court ruled, was without Constitutional protection, "because his racist and demeaning utterances were likely to incite a violent reaction from a reasonable person."

Liebenguth's use of obscenities, and his confrontational physical manner that was viewed by a witness, added to the argument that his behavior was not protected by free speech, the court said. "Other language and conduct by the defendant further inflamed the situation, rendering it that much more likely to provoke a violent reaction," Palmer wrote, and the reference to Ferguson was also termed "menacing."

The court noted approvingly an essay by a legal scholar in 1982, that said, "Racial insults, relying as they do on the unalterable fact of the victim's race and on the history of slavery and race discrimination in this country, have an even greater potential for harm than other insults."

Liebenguth's attorney, John Williams, sent the following statement via email: "I believe very strongly that the Supreme Court's ruling in this case is contrary to the First Amendment. I also think it is impossible to draw a rational distinction between the Supreme Court's [2013] holding that shouting the 'C word' at a woman store clerk is protected speech while speaking the 'N word' to an African-American law enforcement officer is not. Be that as it may, Attorney Norm Pattis has agreed to petition the United States Supreme Court for a writ of *certiorari* in this matter. We believe that this case merits review by the nation's highest court."

Liebenguth was also charged with tampering with a witness, in connection with sending an email to the supervisor of the parking enforcement officer attempting to block testimony in the upcoming trial. The parking officer did testify. That charge also ended in a guilty verdict by the lower court trial judge, but it was not considered by the Supreme Court. The Appellate Court upheld the guilty verdict on the tampering charge.

Reported by: CTInsider, September 1, 2020.

Ann Arbor, Michigan

In the matter of ***Gerber v. Herskovitz***, a federal judge in the **Eastern Michigan District Court** ruled that weekly anti-Israel protests outside of a Michigan synagogue are protected under the First Amendment.

"Peaceful protest speech such as this—on sidewalks and streets—is entitled to the highest level of constitutional protection, even if it disturbs, is offensive, and causes emotional distress," wrote US District Judge Victoria Roberts in her 11-page order.

Every Saturday since 2003, a group of protesters has harassed congregants outside of Beth Israel Congregation and placed in front of the synagogue signs that say "Jewish Power Corrupts," "Zionism is Racism," and "RESIST Jewish Power," among other statements.

The judge also wrote, "There is no allegation that the protestors prevent plaintiffs from attending sabbath services, that they block plaintiffs' path onto the property or to the synagogue, or that the protests and signs outside affect the services inside. Plaintiffs merely allege that the defendants' conduct causes them distress and 'interferes' with their enjoyment of attending religious services."

"They fill our sidewalks with hate speech to harass our worshippers, and then claim it's just a good public location," said Rabbi Nadav Caine in a statement following the ruling.

The plaintiffs in the lawsuit were Beth Israel Congregation member Marvin Gerber and Ann Arbor resident Miriam Brysk, a Holocaust survivor. Ann Arbor Mayor Christopher Taylor, protester Henry Herskovitz and his two organizations—Jewish Witnesses for Peace, and Palestinian Friends and Deir Yassin Remembered—were listed as defendants.

The protesters are in violation of the city's existing ordinances; however, Ann Arbor has done nothing to limit the protests.

Reported by: Jewish News Syndicate, August 25, 2020.

Richmond, Virginia

On August 24, 2020, in the matter of the ***United States of America v. Michael Paul Miselis*** and ***United States of America v. Benjamin Drake Daley***, the **Fourth US Circuit Court of Appeals** upheld the convictions of two members of a white supremacist group who admitted they punched and kicked counter demonstrators during the 2017 "Unite the Right" rally in Charlottesville, Virginia, but found that part of an anti-riot law used to prosecute them "treads too far upon constitutionally protected speech."

In its ruling, a three-judge panel of the Richmond-based Fourth US Circuit Court of Appeals rejected a challenge to the constitutionality of the entire federal Anti-Riot Act on its face. But the court said the law violates the free speech clause of the First Amendment in some respects. The court invalidated parts of the law where it encompasses speech tending to "encourage" or "promote" a riot, as well as speech "urging" others to riot or involving mere advocacy of violence.

Congress passed the law as a rider to the Civil Rights Act of 1968 during an era of social unrest, a time the Fourth Circuit noted was "not unlike our own," a reference to months of nationwide protests over racial injustice following the May 25, 2020, police killing of George Floyd in Minneapolis. The Fourth Circuit's ruling is the first time a federal appellate court has found parts of the law unconstitutionally overbroad. While the court was critical of those portions, it left most of the law intact.

The ruling came in an appeal by Benjamin Drake Daley of Redondo Beach, California, and Michael Paul Miselis of Lawndale, California, two members of the Rise Above Movement, a militant white supremacist group known for having members who train in martial arts street-fighting techniques.

Daley and Miselis pleaded guilty in 2019 to conspiracy to riot in connection with several 2017 rallies, including a torch-lit march at the University of Virginia and the "Unite the Right" rally in Charlottesville and rallies in Huntington Beach and Berkeley, California. As part of their guilty pleas, the two men admitted their acts of violence were not in self-defense. Daley was sentenced to a little more than three years in prison; Miselis received more than two years. Their attorneys argued before the Fourth Circuit that the federal Anti-Riot Act is unconstitutional because it is overbroad and vague and infringes on First Amendment activities.

"To be sure, the Anti-Riot Act has a plainly legitimate sweep. The statute validly proscribes not only efforts to engage in such unprotected speech as inciting, instigating, and organizing a riot, but also such unprotected conduct as participating in, carrying on, and committing acts of violence in furtherance of a riot, as well as aiding and abetting any person engaged in such conduct," Judge Albert Diaz wrote in the 3-0 opinion.

"Yet, the Anti-Riot Act nonetheless sweeps up a substantial amount of protected advocacy," Diaz wrote.

The court said it upheld the convictions of Miselis and Daley because their conduct falls squarely under conduct prohibited by the law, including committing acts of violence in furtherance of a riot and participating in a riot.

Raymond Tarlton, an attorney for Miselis, and Assistant Federal Public Defender Lisa Lorish, who represents Daley, said the Fourth Circuit's ruling "has particular significance" because the Department of Justice has used the law to prosecute some demonstrators who have participated in protests since Floyd's killing.

"We are nonetheless disappointed that the Court decided to sever only parts of the statute instead of striking it down in its entirety," said the attorneys via email. They declined to say whether they will appeal the ruling, but said they are "evaluating potential next steps."

Reported in: *The StarTribune*, August 24, 2020.

Panama City Beach, Florida

On August 27, 2020, Judge T. Kent Wetherell II of the **US District Court for the Northern District of Florida** in ***Thompson Jr v. City of Panama City Beach*** ruled that Panama City Beach (PCB) did not violate local talk show host Burnie Thompson's First Amendment rights.

According to a Panama City Beach press release, the lawsuit stemmed from allegations that PCB officials retaliated against Burnie Thompson because of "his critical news reporting," adding that "over a two-day trial, . . . Wetherell II found that although some officials may have treated Thompson with personal animosity, that treatment did not violate Thompson's constitutional rights."

The primary reason that Thompson filed the lawsuit was a 2017 ordinance passed by the then-seated PCB city council that allowed only PCB residents to comment on non-agenda items at the end of each meeting. Thompson, who lives in a nearby, unincorporated area of Bay County, believed this was a personal shot against him.

"Not only did I feel like that the federal judge . . . said so," Thompson said, "the judge said, in his findings, that the city did pass [the resolution, and] that their motivation was to stop me from making public comments." The resolution has since been altered to allow anyone to comment toward the beginning of each city council meeting.

Although the court may have found that some actions were taken out of malice, it ruled that there weren't any constitutional violations because the resolution applied to all nonresidents and not just Thompson, he added.

"I'm disappointed that the judge found in my favor on matters of fact but found no legal remedy because he said actions didn't rise to a constitutional violation," Thompson wrote in a text. "I'm proud of my efforts. I continue to learn a lot and this decision won't slow me down at all."

Reported in: *Panama City News Herald*, August 30, 2020.

PRIVACY

Washington, DC

On September 2, 2020, a federal appeals court ruled that a controversial government surveillance program that had collected millions of Americans' phone records violated the law—and that claims made by FBI

and other national security officials in defense of the program were inaccurate. This addressed several consolidated court cases: ***United States of America v. Basaaly Saeed Moalin***; ***United States of America v. Mohamed Mohamed Mohamud***; ***United States of America v. Issa Doreh***; and ***United States of America v. Ahmed Nasir Taalil Mohamud***.

The three-judge panel ruling from the **US Court of Appeals for the Ninth Circuit** will not have much of an immediate effect on the program it criticizes, given that the record-gathering effort ended in 2015 and was replaced by an alternative method for searching phone records, which was also eventually shut down.

The judges also ruled that government prosecutors must tell criminal defendants when it plans to use evidence gathered or derived from surveillance done overseas. It was not immediately clear how significantly that part of the ruling might impact the Justice Department, because the use of such material in criminal investigations has always been closely guarded.

The ruling also stands as another judicial rebuke of intelligence officials who defended the bulk phone records program after former National Security Agency (NSA) contractor Edward Snowden revealed key details of its workings in 2013.

Even as the judges rejected some of the government's broader arguments, they unanimously upheld the convictions at the center of the case—against Basaaly Moalin and three others guilty of conspiring to send money to al-Shabab, a Somali terrorist group.

That case, and the long-running battles over privacy and security, grew from the federal government's push to detect and prevent terrorist attacks after 9/11. Under Section 215 of the PATRIOT Act, the NSA gathered millions of Americans' phone records—not the content of calls, but the records of who called whom, and for how long—to build a database that could then be searched by counterterrorism investigators. Then Snowden shared documents that showed in greater detail how the program worked, generating fresh debate about whether the government was violating privacy rights in conducting the war on terrorism.

At that time, officials with the FBI and other intelligence agencies defended the Section 215 program as essential to preventing attacks and said it contributed to uncovering the case of the four Somali Americans who sent, or conspired to send, money to al-Shabab.

Then-FBI Deputy Director Sean Joyce told Congress that if not for the information from the phone-records program, the bureau "would not have been able to reopen" the investigation, leading to the arrests.

After reviewing classified records, the court wrote in a 59-page ruling that the phone surveillance program was not so essential to the case and thus, the convictions should be tossed out.

"To the extent public statements of government officials created a contrary impression, that impression is inconsistent with the contents of the classified record," the judges wrote.

Patrick Toomey, an American Civil Liberties Union attorney, said the ruling "makes [it] clear that intelligence officials misled Congress and the public about the value of this mass surveillance program," and he called the judges' decision "a victory for privacy rights."

The court also rejected the Justice Department's argument that the call records were properly obtained because they were relevant to a terrorism investigation.

That argument, they wrote, "depends on an after-the-fact determination of relevance: once the government had collected a massive amount of call records, it was able to find one that was relevant to a counterterrorism investigation." The problem, the judges wrote, is that the Foreign Intelligence Surveillance Act "required the government to make a showing of relevance to a particular authorized investigation before collecting the records."

Therefore, the judges found, "the telephony metadata collection program exceeded the scope of Congress's authorization" and therefore violated the law.

The ruling is the second time a federal appeals court has found a bulk phone records program illegal. In 2015, a federal appeals court in New York issued a scathing opinion finding the program had wrongly gathered a "staggering" amount of information about Americans in an effort to conduct "sweeping surveillance."

That same year, Congress ended the program, replacing it with a system in which phone companies kept such records and provided information about specific numbers when presented with a court order. However, that replacement program was regarded as so difficult and unconstructive that it was essentially shelved in late 2018.

Reported in: *Washington Post*, September 4, 2020.

TARGETS OF THE CENSOR

FALL/WINTER 2020

BOOKS

STUDENT PUBLICATIONS

ARTWORK