

newsletter  
on  
**intellectual**  
**freedom**



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The Thomas Jefferson Center for the Protection of Free Expression is out with its 2014 Jefferson Muzzles, the annual award it presents to those that “forgot or disregarded Mr. Jefferson’s admonition that freedom of speech ‘cannot be limited without being lost.’”

Here are the “winners”:

## Jefferson “Muzzle” Awards for 2014

### 1) The U.S. Department of Justice

The Obama administration has been especially aggressive in pursuing legal action against those who leak classified information. Indeed, the current administration has pursued more prosecutions for leaks under the Espionage Act than all previous administrations combined. Admittedly, finding the proper balance between freedom of the press and effective law enforcement is a difficult endeavor, particularly when the crime is leaking classified information. The government surely has a legitimate interest in identifying those disclosing such information. Yet if the press is to fulfill its role as a government watchdog and report what it sees to the public at large, it has to be able to assure its sources of confidentiality.

To assist in maintaining a proper balance between these competing interests, the DOJ adheres to a number of procedural safeguards when an investigation involves members of the press. For example, before the DOJ seeks a subpoena for press phone records, it will first make “all reasonable attempts” to get the desired information from other sources and/or negotiate a release of the desired records with the organization itself. If these efforts fail and a subpoena becomes necessary, that subpoena will “be as narrowly drawn as possible” and “should be directed at relevant information regarding a limited subject matter and should cover a reasonably limited time period.”

In light of these guidelines, the Associated Press (“AP”) and the media at large were understandably taken aback when it was revealed in May 2013 that the DOJ had obtained two months’ worth of AP telephone records from communications giant Verizon based on subpoenas sought and issued in secret. The disclosed records included the cellular, office, and home telephones of individual reporters and an editor; AP office numbers in Washington, New York, and Hartford, Conn.; and the main number for AP reporters covering Congress.

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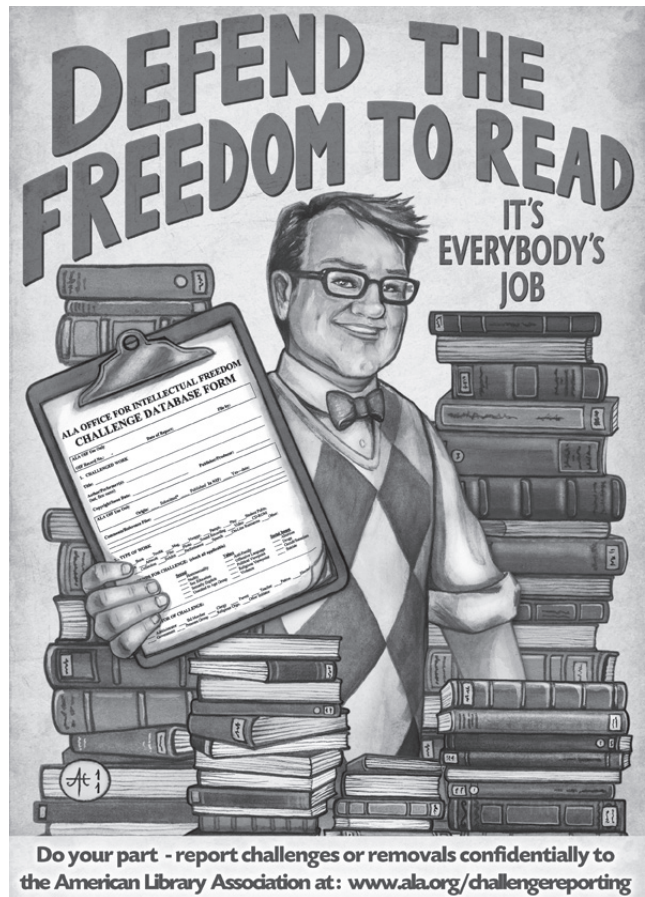
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**READ BANNED BOOKS**



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## FCC backs away from net neutrality

The Federal Communications Commission said April 23 that it would propose new rules that allow companies like Disney, Google or Netflix to pay Internet service providers like Comcast and Verizon for special, faster lanes to send video and other content to their customers.

The proposed changes would affect what is known as net neutrality—the idea that no providers of legal Internet content should face discrimination in providing offerings to consumers, and that users should have equal access to see any legal content they choose.

The proposal came three months after a federal appeals court struck down, for the second time, agency rules intended to guarantee a free and open Internet.

Tom Wheeler, the FCC chairman, defended the agency's plans, saying speculation that the FCC was "gutting the open Internet rule" is "flat out wrong." Rather, he said, the new rules will provide for net neutrality along the lines of the appeals court's decision.

People who have been briefed on the proposal say that while Wheeler opposes the blocking of content by an Internet service provider, his new outline would allow broadband companies to offer some content providers a faster lane through which they can transmit video and services, as long as they do not slow down other content to do so.

Still, the regulations could radically reshape how Internet content is delivered to consumers. For example, if a gaming company cannot afford the fast track to players, customers could lose interest and its product could fail.

The rules are also likely to eventually raise prices as the likes of Disney and Netflix pass on to customers whatever they pay for the speedier lanes, which are the digital equivalent of an uncongested car pool lane on a busy freeway.

Consumer groups immediately attacked the proposal, saying that not only would costs rise, but also that big, rich companies with the money to pay large fees to Internet service providers would be favored over small start-ups with innovative business models—stifling the birth of the next Facebook or Twitter.

"If it goes forward, this capitulation will represent Washington at its worst," said Todd O'Boyle, program director of Common Cause's Media and Democracy Reform Initiative. "Americans were promised, and deserve, an Internet that is free of toll roads, fast lanes and censorship—corporate or governmental."

If the new rules deliver anything less, he added, "that would be a betrayal."

Wheeler rebuffed such criticism. "There is no 'turnaround in policy,'" he said in a statement. "The same rules will apply to all Internet content. As with the original open Internet rules, and consistent with the court's decision, behavior that harms consumers or competition will not be permitted."

Broadband companies have pushed for the right to build special lanes. Verizon said during appeals court arguments that if it could make those kinds of deals, it would.

Under the proposal, broadband providers would have to disclose how they treat all Internet traffic and on what terms they offer more rapid lanes, and would be required to act "in a commercially reasonable manner," agency officials said. That standard would be fleshed out as the agency seeks public comment.

The proposed rules would also require Internet service providers to disclose whether in assigning faster lanes, they have favored their affiliated companies that provide content. That could have significant implications for Comcast, the nation's largest provider of high-speed Internet service, because it owns NBCUniversal.

Also, Comcast is asking for government permission to take over Time Warner Cable, the third-largest broadband provider, and opponents of the merger say that expanding its reach as a broadband company will give Comcast more incentive to favor its own content over that of unaffiliated programmers.

Wheeler had signaled for months that the federal appeals court decision striking down the earlier rules could force the commission to loosen its definitions of what constitutes an open Internet. Those earlier rules effectively barred Internet service providers from making deals with services like Amazon or Netflix to allow those companies to pay to stream their products to viewers through a faster, express lane on the web. The court said that because the Internet is not considered a utility under federal law, it was not subject to that sort of regulation.

Opponents of the new proposed rules said they appeared to be full of holes, particularly in seeking to impose the "commercially reasonable" standard.

"The very essence of a 'commercial reasonableness' standard is discrimination," Michael Weinberg, a vice president at Public Knowledge, a consumer advocacy group, said in a statement. "And the core of net neutrality is nondiscrimination."

Weinberg added that the commission and courts had acknowledged that it could be commercially reasonable for a broadband provider to charge a content company higher rates for access to consumers because that company's service was competitively threatening.

"This standard allows Internet service providers to impose a new price of entry for innovation on the Internet," he said.

Consumers can pay Internet service providers for a higher-speed Internet connection. But whatever speed they choose, under the new rules, they might get some content faster, depending on what the content provider has paid for.

The fight over net neutrality has gone on for at least a decade, and is likely to continue at least until the FCC settles on new rules. Each of the last two times the agency has written rules, one of the Internet service providers has taken it to court to have the rules invalidated.

In the nine weeks since the FCC said it would try, for a third time, to write new rules to secure an open Internet, at least 69 companies, interest groups and trade

associations—over one a day—have met with or otherwise lobbied commission officials on what the rules should specify.

That effort does not count the more than 10,000 comments that individuals have submitted to the FCC

If anything, lobbying over the details of the new net neutrality standard is likely to increase now that the federal court has provided a framework for the FCC to work from as it fills in the specifics of its regulatory authority.

Reaction was swift to the proposed new rules, as consumer groups accused the commission of betraying its promise to maintain net neutrality, or equal treatment for both providers to and users of the Internet. That prompted an immediate rebuttal from Wheeler, who said that speculation that the commission was “gutting the open Internet rule” was “flat out wrong.”

Verizon, which brought the court challenge that prompted the last set of open Internet rules to be struck down in January, issued a statement warning against “unnecessary and harmful” new rules. Consumer advocates reiterated their opposition.

Wheeler stepped up his defense of the commission’s plans. “The proposal would establish that behavior harmful to consumers or competition by limiting the openness of the Internet will not be permitted,” he wrote in a post on the FCC’s blog.

The sparring will be closely watched by every company that depends, even peripherally, on the Internet—which is to say, just about every company. Businesses that use Internet connections to provide consumer services—obvious ones like Google and Netflix but also home alarm system providers, medical equipment companies and even makers of washers and dryers—will thrive or fail based on how much it costs them to maintain easy online contact with households and businesses.

As such, the lobbying ahead of the release of the proposed new rules is certain to be intense. Officials from the National Cable and Telecommunications Association, which represents cable and broadband companies and is led by Michael K. Powell, a former FCC chairman, met with commission staff members April 22 to discuss the pending proposals.

For Internet service providers, video distributors, movie studios and even medical companies, lobbying efforts will center on what it means for a broadband provider to favor some content over another in a “commercially reasonable” way—the standard that the FCC says will determine whether a practice is acceptable.

The FCC says its proposal will show that it is trying to accomplish most, if not all, of the same goals that it pursued in its 2010 Open Internet Order, which the appeals court struck down.

“The court of appeals made it clear that the FCC could stop harmful conduct if it were found to not be ‘commercially reasonable,’” Wheeler wrote in his post. The commission “will propose rules that establish a high bar for what is

‘commercially reasonable,’” he said.

In addition, he wrote, the commission “believes it has the authority under Supreme Court precedent to identify behavior that is flatly illegal.”

For years, many advocates of a free Internet have said that information should never have to pay a toll to ride on the web. But as traffic and competition has increased, much of it from big video providers like Netflix, the Internet has been becoming more congested and regulators have struggled to catch up with new digital realities.

If the FCC fails in this attempt to devise rules that withstand judicial scrutiny, it might have no choice but to try to reclassify broadband for stricter utilitylike regulation, which would likely result in another trip to court.

With no more than vague guidance, many interested companies were reluctant to comment. But Verizon said in a statement that it was “publicly committed to ensuring that customers can access the Internet content they want, when they want and how they want.” However, it added, “Given the tremendous innovation and investment taking place in broadband Internet markets, the FCC should be very cautious about adopting proscriptive rules that could be unnecessary and harmful.”

That position was also put forth by two Republican lawmakers, Fred Upton of Michigan, the chairman of the House Energy and Commerce Committee, and Greg Walden of Oregon, the chairman of the House Communications and Technology Subcommittee.

In a joint statement, they said, in part: “We have said repeatedly that the Obama administration’s net neutrality rules are a solution in search of a problem. The marketplace has thrived and will continue to serve customers and invest billions annually to meet Americans’ broadband needs without these rules. Chairman Wheeler’s approach to regulation seeks to freeze current market practices, which will cast a chill on technological breakthroughs and cause American consumers to lose out.”

But plenty of groups supporting a strict interpretation of net neutrality criticized the FCC’s plans.

Michael J. Copps, a former FCC commissioner who is working with the nonprofit advocacy group Common Cause to keep net-neutrality safeguards in place, said big telecommunications and entertainment companies had spent millions to lobby for rules that would allow them to tilt the scales in their favor.

The FCC’s plan “is a lot closer to what they wanted than what we wanted,” Copps said. “It reflects a lot more input from them.” Based on what the FCC has revealed so far, he said, the commission appears to be going beyond what the appeals court laid out.

“The courts did not tell Chairman Wheeler to take the road that he is reportedly taking,” Copps said.

The proposed rules, drafted by Wheeler and his staff,

*(continued on page 103)*



## lawmakers push for NSA surveillance changes

Several U.S. lawmakers urged the nation's attorney general April 8 to curtail the National Security Agency's collection of overseas electronic communications, saying President Barack Obama's promise to revamp a surveillance program focused on U.S. telephone records didn't go far enough.

The Obama administration should go beyond a limited proposal made in March to restructure the NSA's bulk collection of U.S. phone records and live up to the president's January pledge to overhaul a wider range of surveillance programs, Representative John Conyers Jr., a Michigan Democrat, said.

It's important to end the U.S. phone records collection, but Obama's more recent proposal, along with one made by leaders of the House Intelligence Committee, "focus on one program used to access one database collected under one legal authority," Conyers told Attorney General Eric Holder during a House Judiciary Committee hearing. "To me, the problem is far more complicated than that narrow lens implies."

Conyers called on Holder to make changes to the separate NSA program, called Prism, that allows the surveillance agency to collect Internet and other communications from overseas targets. In a March 28 letter, U.S. Director of National Intelligence James Clapper told Senator Ron Wyden, an Oregon Democrat, that the NSA had used this overseas surveillance program to run queries about U.S. residents, Conyers noted.

Under "any other conditions," the U.S. government would need a court-ordered warrant to get that information, Conyers said. Congress "never intended to authorize back-door surveillance of United States persons," he said.

The prime subject under review before the administration is Section 702 of the FISA Amendments Act, which allows the NSA to collect information about "non-U.S. persons" who are "reasonably believed" to be outside American borders. The law is used to justify the NSA's Prism program, which taps into the servers of nine major U.S. Internet companies including Facebook, Google and other giants, and collects content like emails and photos.

Though the law specifically prohibits targeting Americans, Clapper recently admitted in a letter to Sen. Ron Wyden (D-Ore.) that the effort sometimes used "U.S. person identifiers" to gather "foreign intelligence targeting non-U.S. persons reasonably believed to be located outside the U.S."

Lawmakers and privacy advocates were incensed at the revelation, which they called a back door that lets the agency spy on Americans.

Holder said the administration wants to reform the law, but did not go into details about how. "Our hope would

be to come to Congress with a proposal and to work with Congress ... to make sure that we have the necessary procedures in place so we are ensuring that only non-U.S. persons outside the United States are targeted, to minimize the acquisition, retention and dissemination of incidentally acquired information about U.S. persons," Holder said.

"I don't think we're yet at a position to come to Congress with a concrete proposal. Once we get to that point ... we will be coming back to Congress with that proposal."

Holder said he and Clapper continue to work on a proposal to change the way the NSA conducts overseas surveillance. The DOJ and intelligence community have begun the process of looking at changes, but they have not yet finished a proposal they can bring to Congress, he said.

"This is a process that we are still engaged in," he said.

Congress will overhaul the U.S. telephone records program by redefining the broad way the DOJ and NSA have broadly interpreted what telephone records are relevant to ongoing investigations, Conyers predicted. "We'll amend that statute to correct the mistaken argument that relevance means everything," he said.

The Obama administration has proposed ending the phone records program in its current form, with the information stored at a different place and the information acquired in a different way, Holder said. "That's a simple fact," he added.

Representative Zoe Lofgren, a California Democrat, asked Holder if U.S. email records, Internet searches and other communications were potentially subject to the same collection as telephone records under the USA Patriot Act.

"They're governed by the same law," Holder said.

Representative Jim Sensenbrenner, a Wisconsin Republican, pressed Holder to prosecute Clapper for perjury related to the national intelligence director's testimony before the Senate Intelligence Committee in March 2013, before NSA leaker Edward Snowden revealed details of the agency's surveillance programs.

During that hearing, Wyden asked Clapper if the NSA collects "any type of data at all on millions or hundreds of millions of Americans?"

"No sir," Clapper answered. "Not wittingly."

Clapper later said he responded in the "least untruthful manner" he could.

Sensenbrenner noted that "lying to Congress is a federal offense."

Holder said he's not in a position to confirm any investigation. Sensenbrenner then asked if there was "any circumstance" when Holder would prosecute a fellow member of the Obama administration.

"Sure," Holder said. "If the person lied, and the determination was made that all the other requirements of the perjury statute was met. We take our responsibility seriously to investigate allegations of perjury."

*(continued on page 104)*

## survey confirms librarians' commitment to privacy rights

In conjunction with Choose Privacy Week, the American Library Association's (ALA) Office for Intellectual Freedom (OIF) released preliminary findings from a new survey measuring librarians' views on privacy rights and protecting library users' privacy.

The survey, which builds on an earlier 2008 survey assessing librarians' attitudes about privacy, provides important data that will help ALA evaluate the state of privacy in the United States and libraries' role in protecting library users' privacy. The data will help guide ongoing planning for Choose Privacy Week and similar initiatives aimed at engaging librarians in public education and advocacy to advance privacy rights.

Some of the highlights from the 2012 survey include:

- Librarians remain concerned about privacy and individuals' desire to control access and use of personal information. Ninety-five percent agree or strongly agree that individuals should be able to control who sees their personal information, and more than 95 percent of respondents feel government agencies and businesses shouldn't share personal information with third parties without authorization and should only be used for a specific purpose.
- Librarians affirmed their commitment to the profession's long-standing ethic of protecting library users' privacy. Nearly 100 percent of respondents agreed that "Libraries should never share personal information, circulation records or Internet use records with third parties unless it has been authorized by the individual or by a court of law," and 76 percent feel libraries are doing all they can to prevent unauthorized access to individual's personal information and circulation records. Overall, nearly 80 percent feel libraries should play a role in educating the general public about privacy issues.
- When compared to the 2008 survey, the results showed that the responses given by the 2012 respondents generally mirrored those of the 2008 respondents, with data showing a slight decline in the level of concern over privacy. For example, in both surveys, the vast majority (95 percent in 2008, 90 percent in 2012) of respondents expressed concern that "companies are collecting too much personal information about me and other individuals." However, those who "strongly" agreed dropped from 70 percent in 2008 to only 54 percent in 2012.

*(continued on page 105)*

## people think world media becoming less free

Just one day before World Press Freedom Day, a new poll by Gallup found that people around the world think their media is becoming less free.

Out of adults polled from 132 countries, a median of 26 percent of people said they did not have media freedom in 2013. A median of only 63 percent said that they felt a lot of freedom, representing a new low since 2010.

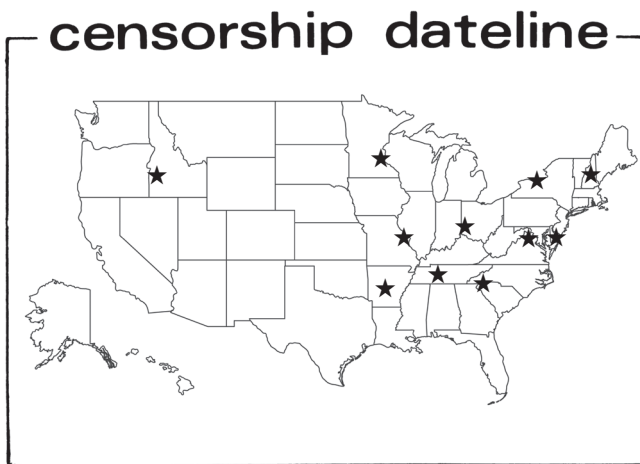
Of the countries polled, the Democratic Republic of Congo, Chad, Gabon and Syria had the lowest perceived media freedom, respectively, according to their residents. 69 percent of adults polled in the Congo said that the media is not free—a 21 percent change since 2010. Syria, the fourth most unfree nation on the list, was the deadliest place for journalists in 2013 for the second year in a row, according to the Committee to Protect Journalists. At least 70 journalists were killed in 2013 worldwide, 29 of whom died covering the crisis in Syria.

On the opposite end, the Netherlands, Finland and Germany had the highest perceived media freedom, with 95 percent of residents in the Netherlands reporting strong media freedom. Eighty-five percent of Americans reported feeling free, while 14 percent said they did not.

Gallup's poll came one day after a new report from Freedom House also showed that press freedom is at the lowest point in a decade.

"In every region of the world last year, we found both governments and private actors attacking reporters, blocking their physical access to newsworthy events, censoring content, and ordering politically motivated firings of journalists," project director of Freedom of the Press Karin Karlekar said. Reported in: [huffingtonpost.com](http://huffingtonpost.com), May 2. □

**READ BANNED BOOKS**



## libraries

### Rosemount, Minnesota

A parent in Rosemount-Apple Valley-Eagan schools wants administrators to pull a book from nine elementary school libraries because it uses a term for people with cognitive disabilities that many say is derogatory.

Jenna Boutain, a Farmington resident and district employee, filed a request April 10 to have *Sixth Grade Can Really Kill You* removed from district elementary schools after it was given to her child as part of an accelerated-reader list.

Boutain's request states the book, by Barthe DeClements, uses the word "retarded" to refer to students with special needs. Her request calls the word a "disrespectful term." The book tells the story of Helen, a sixth-grader with a learning disability, and was first published in 1985.

"As a whole, I feel the book is outdated and uses language that is no longer acceptable," Boutain wrote in her request. "This book serves no educational purpose besides keeping words and behaviors in the minds of our students."

There is a national campaign to ban the "r-word" that is supported by the Special Olympics and other groups. Julie Hertzog, director of the advocacy group PACER's National Bullying Prevention Center, said what was once a clinical term has become a hurtful word. Its presence can also be a way to have a deeper conversation about people with special needs. "In our language, words have impact," Hertzog

said. "Words influence attitudes, and attitudes influence actions."

Boutain works with students with special needs at Falcon Ridge Middle School, according to the district's website.

A school official offered to restrict Boutain's children's access to the book, and she agreed, but decided to continue with her petition to remove the book from district libraries.

Tony Taschner, district spokesman, said there have been five requests to remove materials in his two decades with the district and only one was granted. Typically, school leaders are given guidelines for choosing materials, but decisions about specific materials are left up to building staff.

The review committee can decide to leave the questioned material in the school, limit who has access to it or remove it from the school all together, Taschner said. "It matters to the committee whether it is a required piece or just part of the school's collection that someone can check out," Taschner said. The committee includes teachers, parents and district administrators.

A district policy first adopted in 1987 allows parents, teachers and residents to ask administrators to reconsider instructional materials. Reported in: *St. Paul Pioneer Press*, April 25.

### St. Charles, Missouri

A controversial sex education book available to middle school students has some parents outraged and seeking to have it removed. The book, titled *Perfectly Normal*, contains cartoon drawings of naked people and others involved in sexual acts. It's available at middle school libraries. And although it indicates it's meant for children ten years and up, it's still making some parents uncomfortable.

"Most of the time, when I showed this to parents, their jaws just hit the floor," parent Tim Schmidt said. "They were shocked and then their next reaction was outrage."

According to the authors, the book talks about changing bodies, growing up, sex and sexual health.

"It has a lot of explicit drawings," said Schmidt, a father of two. "Cartoon images, life-like cartoon images. A look of nudity. It actually shows people having sex."

This is the first school year that the book has been in the Francis Howell School District. It's only available in e-form at the middle school libraries and it's not a part of the school curriculum. Schmidt filed a formal complaint to have the book removed. The school district's only comment on this issue mainly addressed the complaint.

District officials say "it was determined to keep the ebook available as a resource for check-out in the library. If a parent determines that he/she does not want to their child to have access to certain materials, we honor that request."

Some parents are OK with the book, including June Tiller. "I feel like if the school teaches them this, and they

have this information available, it's very important, and it will help keep them safe," Tiller said. Reported in: *USA Today*, May 6.

### **Fauquier County, Virginia**

A parent's request to pull from high school libraries a book about the struggle of gay and transgender teens has triggered a public hearing on whether or not the book should remain available to Fauquier public high school students.

Fauquier County Public Schools received a request from a parent to withdraw from student use the book *Two Boys Kissing*, by David Levithan, which is a part of the high schools' library collections. A school committee at Fauquier High School decided to retain the book in its library collection, and the parent is appealing the decision to the superintendent.

*Two Boys Kissing* tells the story of "Harry and Craig, two 17-year-olds who are about to take part in a 32-hour marathon of kissing to set a new Guinness World Record—all of which is narrated by a Greek Chorus of the generation of gay men lost to AIDS. While the two increasingly dehydrated and sleep-deprived boys are locking lips, they become a focal point in the lives of other teen boys dealing with languishing long-term relationships, coming out, navigating gender identity, and falling deeper into the digital rabbit hole of gay hookup sites—all while the kissing (former) couple tries to figure out their own feelings for each other." Reported in: [fauquier.com](http://fauquier.com), April 4.

## **schools**

### **Lewes, Delaware**

An 80-year-old book is whipping up debate in the Cape Henlopen School District, as two board members argued parents should be able to screen their children's curriculum for explicit content before they begin their classes.

Board members Sandi Minard and Jennifer Burton made impassioned speeches against explicit content in district classrooms during the March 27 board meeting. Both expressed their concerns with literature that they said contained violence, despair and sexual references.

In particular, Minard took issue with Aldous Huxley's 1932 novel, *Brave New World*, which is taught in an advanced placement language composition class at Cape Henlopen High School. The novel features a dystopian society of excessive consumerism where individualism is stifled, monogamy is frowned upon and people are doped into a state of happiness through a drug called "soma." In the book, the government bans Shakespeare's works for their tragic and romantic themes.

Both Minard and Burton said they do not wish to ban the book, but to give parents a heads up on a student's syllabus and let them decide if it contains appropriate material for their children. Michael Kelley, district director of curriculum and instruction, said the book has been part of the course's curriculum for the past five years, without previous complaint from parents. There is also a process for parents to take up any objections they find in the curriculum to the board, but Minard said that process doesn't occur until children have already delved into their studies.

While the book has long been a staple in high school classrooms, students can now grasp the sexual and drug-related references through a quick Internet search, Burton said.

"This is not an education issue," Minard said, raising her voice. "This is a social, sexual issue. It has nothing to do with educating this child."

Ron Hagan, a father of a Cape Henlopen High School student, agreed with Minard and also said parents might be able to file suit if they felt the school taught obscene content. He argued the school should choose a different book which would emphasize positive instruction.

"Why would we teach kids what is negative in society?" he said. "Let's teach them what is right, to become good citizens and improve the fabric of society."

Others came to the book's defense, including board member Roni Posner and Lewes resident Esther Shelton. Both women had read and taught the novel, contending it was a classic cautionary tale rather than a book promoting lewd behavior.

"The aim of the book is to show you a society that practices those terrible things and is telling you this is the way not to be a free person," Shelton said. "If you can read the book intelligently, you're not going to say, 'I'm going to have my babies hatched in hatcheries.'" Reported in: [delmarvanow.com](http://delmarvanow.com), March 31.

### **Meridian, Idaho**

A novel about the challenges of a teenage Native American will stay out of Meridian School District's curriculum while school officials look for a replacement. Meridian trustees voted 2 to 1 April 1 to keep in place a hold on *The Absolutely True Diary of a Part-Time Indian*, by Sherman Alexie. The hold was put in place a few weeks earlier after some parents objected to the book.

Board members rejected a recommendation from an earlier committee that said the book should stay on the tenth grade English supplemental reading list, with parental permission required for children to read it.

Trustees made their decision after more than two hours of public testimony. Trustees said they want school officials to look for a book covering Native American cultural issues, but written at a higher reading level than Alexie's book. They also want the district to review its curriculum on cultural diversity, which has included the book.



Alexie's novel tells the story of a Native American who ends up going to high school at a mostly white urban school and faces bullying and other problems. The book makes reference to masturbation, contains profanity and has been viewed by many as anti-Christian.

Some Meridian School District parents and students cautioned the board about banning the book, while others labeled it pornographic and racist. Brady Kissel, a Mountain View High School student, brought a petition with 350 signatures asking the board to keep the book as part of the district's curriculum.

"It is the very idea that our education is being censored," she said.

More than 100 people came to the board meeting, with most speaking against keeping the book. Lonnie Stiles complained that it subjects children to filthy words "we do not speak in our home."

Stacy Lacy, a Meridian teacher, countered that the book appeals to many teenagers. She told the story of one boy who was turned off to reading and was in summer school—a boy who was glued to his cellphone instead of doing his work. But when he got the book, he "devoured it and passed the class," she said.

Trustees grappled with a decision. They offered three motions before agreeing on one from Anne Ritter, who momentarily stepped aside as chair so she could offer a solution that would break the deadlock. Other motions included removing the book or allowing it to continue, but without the requirement for parental permission. Reported in: *Idaho Statesman*, April 2.

### **Gilford, New Hampshire**

Parents said they are trying to understand why Gilford High School is requiring some students to read a book that includes a graphic sexual encounter. School district officials said the book, *Nineteen Minutes*, by Jodi Picoult, has important themes in its story about a school shooting, but parents said the message is overshadowed by one disturbing page.

The book contains a description of rough sex between two teenagers. Although the book has been read by Gilford students in the past, this year parents were not made aware of it until their kids already had a copy of the book.

"I am utterly appalled that this was an oversight, that my son had this book in his hand for a week. (It's) unacceptable," said Sarah Carrigan, a parent.

William Baer, a parent upset over the reading selection was arrested and charged with disorderly conduct when police said he did not leave a school board meeting after being asked. "You are going to arrest me because I violated the two-minute rule?" Baer said. "I guess you are going to have to arrest me."

"I fully understand how he feels. It really is a huge violation," said Barbara Baer, his wife. Shortly before their daughter was supposed to read the book, the Baers found

page 313, which details a graphic sexual encounter.

"Why should those ideas be put in their mind. They can discuss this some other way. They don't need that kind of imagery," Barbara Baer said. William Baer was charged with disorderly conduct.

School district officials said students have read the book before, but the school sent notifications home to parent before the books were distributed. Officials said there was an oversight this time.

"Did that page, 3-whatever is referenced to make my daughters feel uncomfortable. I hope so. I hope so. It brought up conversation," said Joe Redding, a parent. "That page of the book is not relevant to the topic of the whole entire book."

Others said the page overshadows the rest of the story. "You are also cheating the kids out of being exposed to real literature in front of them. This is garbage," said Doug Lambert, a parent.

The school board released a statement saying in part, "The board apologizes for the discomfort of those impacted, and for the failure of the school district to send home prior notice of assignment of the novel. The district will take immediate action to revise these policies to include notification that requires parents to accept controversial material, rather than opt out."

Picoult said the school district has been supportive. Reported in: *wmur.com*, May 6.

### **Wilson County, Tennessee**

The Wilson County School Board on May 5 banned a book from its reading list for ninth-graders taking honors-level English classes. The board said *The Curious Incident of the Dog in the Night-Time*, by Mark Haddon, contains offensive language. The board voted 3-1 to remove the book from the list of approved reading in the school district. One board member was absent.

"The F-bomb is pretty common in that book, and that's what I have a problem with," said board member Wayne McNeese, who received complaints about the book from some of his constituents. "I'm not dumb enough to think students don't hear that language, but it doesn't mean we should promote it."

The book is about a 15-year-old with a type of autism who investigates the death of a neighbor's dog. The story was required reading at Mt. Juliet High School, Wilson Central High School and Lebanon High School.

"I think the school board is micromanaging," said Annette Stafford, the Wilson County Commission's Education Committee chairwoman. "It's a parental decision."

Parents or students are able to opt out of reading any assigned book by talking with the teacher to choose an appropriate replacement, Interim Director of Schools Mary Ann Sparks said.

School Board Chairman Don Weathers said he voted to remove the book because he wants to ensure parents are

involved in approving reading material with questionable content.

Wilson County parent Kristi Dunn supported the board's action. "There is a fine line, and I don't want censorship, but if there is a book parents aren't happy with or feel is inappropriate, then the board should have authority to pull that book," Dunn said. Reported in: *Nashville Tennessean*, May 6.

## student press

### Sheridan, Arkansas

The Sheridan High School administration ordered the school yearbook to scrap six planned student profiles rather than include one on a gay student who talked about his experience. Under Arkansas law, students theoretically have editorial control of their publications and administrators may not censor them.

Junior Taylor Ellis said he doesn't understand why the school has an issue with publishing his story. "I think that it's a good thing for people like me to see that it's OK to be openly gay in school," he said. "(The principal) said that it was personal, but it's really not that personal because everybody knows. It's not that big of a deal...It's just showing other people that it's OK to be who you are."

The principal reportedly met with Ellis to try and talk him out of publishing his story, telling the teen he could be beaten up or bullied. *Yellowjacket* assistant editor Hannah Bruner, however, said that it's school officials who are doing the bullying.

"They don't really care about the law, and they're sending a message to the whole student body and they're just censoring all of us," she said.

Under Arkansas law, administrators can censor obscene or libelous material and material that amounts to an unwarranted invasion of privacy. They may also claim the ability to act to prevent publication of material that might incite unlawful acts or acts against school policy. How a student's willingness to talk about his life fits in those exceptions is unclear.

Taylor sat his mother down on his beloved grandmother's porch swing about a year ago and said, "Momma, I need to tell you something." She recalls: "He was shaking so bad." Like most mothers, she had had her suspicions. And she's wholly supportive. She said she's doubtful of the principal's assertion he'd support his son equally strongly in the same situation. She can't imagine anyone more strongly behind a son than herself.

Taylor said the announcement had been mostly a non-event with fellow students, though he'd been concerned "It's still seen as a bad thing here," he acknowledged. The feeling runs strong in many churches. But his own Baptist church and its pastor have been understanding and welcoming, he and his mother said.

"The world is definitely changing," he said. Reported in: *Arkansas Times*, March 14.

### Rochester, New York

Rochester Institute of Technology (RIT) administrators severely limited distribution of *Reporter* magazine on campus during a weekend festival. Why? Because officials feared the latest edition of the student news outlet—dubbed The Gender and Sexuality Issue—may be too racy for the roughly 10,000 schoolchildren traipsing across campus while attending the school's annual innovation festival, Imagine RIT.

So instead of grabbing a copy of *Reporter* on any of its usual array of newsstands, dissemination was restricted to a single spot: a booth set up for the magazine staff inside the campus field house. People also had to show valid ID proving they were 18 or older.

The extreme nature of these limitations stemmed from an administrative concern that the content may be so risqué it actually falls under New York state's definition of legally obscenity. Bobby Colon, who is the general counsel for RIT, had recommended against distribution at the festival—telling of potential legal liability for distributing indecent materials to minors, even though he doubted anyone would be arrested. He said that of all the pictures he saw in the magazine, two drawings of genitals are potentially indecent. "The fact that these drawings may have come from a medical textbook does not make them any less indecent when shown to individuals under the age of 17," he said.

*Reporter* editors criticized the restrictions as overzealous and censorious, not legally sensible. In a special online editorial plugged on *Reporter*'s homepage, top staff argued passionately that "[a] journalistic publication highlighting gender and sexuality is not obscene. It's educational, it's informative and suppression of it is discriminatory."

The editorial board also pointed out that the Imagine RIT festival is not primarily for children, and that adult attendees could benefit from joining in "a dialogue about sexuality practices and preferences." In addition, they questioned the obscenity argument, given the seriousness of the issue's pursuit:

"By blocking the distribution of our Gender and Sexuality publication as obscene content, RIT's administration directly hinders the creative spirit of the students and writers that have brought this issue into print. According to the New York State Penal Law Article 235, in order for the material to be obscene, the viewer must find that '... its predominant appeal is to the prurient interest in sex ... and considered as a whole it lacks serious literary, artistic, political and scientific value.' Although our publication does display sexual organs, none are portrayed in a pornographic or 'obscene' manner—rather, they are displayed scientifically and informatively."

The editors continued: “[D]uring the printing process at RIT’s on-campus Printing Applications Laboratory (PAL), an individual objected to some of the content of the magazine and copied the file to members of the RIT administration. The file was eventually distributed to several *Reporter* Advisory Board members who reviewed the magazine without the consent of *Reporter*. This act of prior review is highly unethical and is not in the spirit of *Reporter*’s bylaws ... *Reporter*’s bylaws weren’t created for the sake of keeping up appearances or so the institute can proudly claim they support journalistic freedom; if they aren’t followed when they’re actually challenged, then what’s the point?” Reported in: [collegemediainmatters.com](http://collegemediainmatters.com), May 2.

## colleges and universities

### Spartanburg, South Carolina

The University of South Carolina Upstate announced April 7 that it was calling off a planned appearance by a lesbian humorist that was to have been the lighter side of a scholarly event on lesbian and gay studies. The move followed demands by legislators that the event be called off. Some of the legislators making such demands said that they view the humorist’s show—“How to Be a Lesbian in 10 Days or Less”—literally as an event designed to recruit people to become lesbians.

A statement from the university gave this reason for barring the event from taking place: “One aspect of the Bodies of Knowledge Symposium [the larger event] that is garnering negative media attention is, ‘How to Be a Lesbian In 10 Days Or Less.’ The title of the show, while deliberately provocative, is also part of the comedy. The performance is satirical in nature but has not been received as such. The controversy surrounding this performance has become a distraction to the educational mission of USC Upstate and the overall purpose of the Bodies of Knowledge Symposium. As a result, we have canceled this segment of the symposium.”

Organizers of the Bodies of Knowledge Symposium did not respond to requests for comment. Nor did Leigh Hendrix, who developed the show. Organizers have noted that nothing in her description of the program, which was developed at Emerson College and has been performed at other colleges, suggests an effort to recruit people to change their sexual orientations. Rather, the description suggests humor.

Here is how the show’s website describes the work: “‘How to Be a Lesbian in 10 Days or Less’ is a hilarious coming out story for queers and non-queers alike. Motivational speaker and expert lesbian Butchy McDiye deftly guides her captive audience in an exploration of self-discovery and first love, coming out, lesbian sex, queer politics, and a really important Reba McEntire song as they learn to confidently shout, ‘I’m a big ol’ dyke!’ Writer and

performer Leigh Hendrix weaves a story that is one part instructional seminar, one part personal story, and one part wacky performance art. At turns funny and poignant, silly and earnest, ‘How to Be a Lesbian in 10 Days or Less’ is the perfect guide to gay for budding lesbians, no matter their sexual orientation!”

Educators in South Carolina have been worried about colleges getting punished for gay content. Lawmakers are already threatening to cut the budgets of the College of Charleston and USC Upstate for using gay-themed books for programs for freshmen. In those cases, however, legislative anger didn’t get intense until after the books had been read. The colleges have defended the books, but it was too late for lawmakers to try to block their use. In this case, legislators got angry before the event took place.

State Senator Mike Fair, a Republican who is among those who had been demanding that the event be called off, said he was pleased that the university agreed to do so. He said he has long been concerned about “aberrant behavior” and said that the show, being about “recruiting,” contradicted what gay rights advocates have told him about having been “born this way.” He said that he rejected such a view. “All of us have predispositions to do wrong.”

He said that the planned performance was “recruitment” and thus was not appropriate for a campus. Asked if he believed that the aim of the performance was truly to recruit people to become lesbians, he pointed to the title. “I know what it said. Words have meaning,” he said. “And I know what parents read.”

He said it was appropriate for parents to be concerned about the performance.

Ryan Wilson, executive director of South Carolina Equality, a gay rights organization, said that he viewed legislative pressure on colleges as a serious threat. “Any efforts by the legislators to suppress academic freedom or programs on campus is wrong,” he said. “If they do this on one topic, what is to stop them from doing it with others?”

“Legislators should not be meddling in this way,” he added. “I think it is horrible that the university is forced to censor any program.” Reported in: [insidehighered.com](http://insidehighered.com), April 8.

## publishing

### Oxford, Ohio

Cambridge University Press has decided not to go forward with the publication of a Miami University professor’s book exploring corruption in Russia, citing fears that the book could become the subject of a libel lawsuit in the British courts.

In the proposed book, Karen L. Dawisha, a professor of political science and a Russia expert, writes about President Vladimir V. Putin’s alleged links to organized

crime. In March she received a letter from John Haslam, the press's executive publisher for political science and sociology, stating that the press would not proceed with the book.

"The decision has nothing to do with the quality of your research or your scholarly credibility," he wrote. "It is simply a question of risk tolerance in light of our limited resources."

British laws are known for favoring plaintiffs in libel lawsuits more so than American laws are, although there have been efforts to change London's reputation as the "libel capital of the world."

In her reply to the publisher, published as an open letter on the American Association of University Professors' Academe blog, Dawisha said she would pursue publication in the United States. "One is left to conclude that the main lesson to prospective authors is not to publish in the U.K. anything that might be seen as libelous," she said.

A statement from a press representative said that the scholar's manuscript had received an early review "as an initial step in an earlier-than-usual stage in the publishing process given its controversial nature," adding that the work "has never been past the proposal stage." The statement also said that the press had contacted Dawisha after reading her reply, to see if a compromise could be reached. Reported in: *Chronicle of Higher Education* online, April 7; academeblog.org, April 7.

## foreign

### Cairo, Egypt

Three journalists working for Al Jazeera's English channel will appear in court May 3, which was World Press Freedom Day. They are charged with aiding members of a "terrorist organization," with the Egyptian government saying they operated without proper accreditation. The state prosecutor accused them of publishing lies and supplying equipment and money to Egyptian nationals who were allegedly members of the banned Muslim Brotherhood.

There have been allegations of torture, with some detained journalists saying they had been physically abused and not been treated for their wounds.

A fourth Al Jazeera journalist, Abdullah Elshamy, has been on a hunger strike for 100 days. He was arrested in August, without trial. He began the hunger strike by only consuming water, milk, juice and two dates every day. Since March he has only been drinking water, with his weight dropping from 108kg to 74kg. He will also appear on World Press Freedom Day, where the judge will decide to either extend his incarceration or release him.

The news network has been campaigning to get independent medical assistance, but the request has so far been refused and he has not been seen by a physician.

His wife, Gehad Khaled, has joined his hunger strike and said; "Many people talk to me about what may be happening to our bodies and what may happen to us in the future, but this talk doesn't matter, because as long as our freedom is stolen from us, what is there to fear?"

Al Jazeera has also served the government with a \$150-million compensation claim for stopping its operations in the country. In July last year the government detained 28 of its employees and shut down the channel's Egypt bureau, in what it has said is a campaign to stop it covering the Arab world's largest country.

Several international media organisations are supporting the movement to free the journalists, under the #freeAJstaff campaign. Al Jazeera says 40,000 people have been actively involved in the campaign. Reported in: *Mail and Guardian*, May 1.

### Islamabad, Pakistan

A *New York Times* story saying Pakistan's government protected Taliban forces was censored by the publisher's printing partner in that country, resulting in a blank hole on the front page of its international edition.

The article, a 4,800-word excerpt from a forthcoming book by *Times* reporter Carlotta Gall to be published by Houghton Mifflin Harcourt, appeared in the *New York Times* magazine in the U.S. and was intended as a front-page article of the *International New York Times*. While the story appeared in most copies of the international edition, it didn't show up in papers distributed in Pakistan, about 9,000 copies, according to the publisher.

The *Times*'s Pakistan printer, part of the *Express Tribune* newspaper in that country, removed the article without its knowledge, according to *Times* spokeswoman Eileen Murphy.

"We would never self-censor and this decision was made without our knowledge or agreement," she said in an e-mail. "While we understand that our publishing partners are sometimes faced with local pressures, we regret any censorship of our journalism."

It was unclear if the *Times* will continue its partnership with *Express Tribune*.

Gall's reporting looks at the ties between Pakistan's main intelligence service, ISI, and the Taliban. Her article points to former Pakistan President Pervez Musharraf as one of the Taliban's protectors who knew about Osama Bin Laden's whereabouts in Afghanistan.

The missing story played out on Twitter as Gall herself made light of the censorship by posting a photo of the errant edition on her account with the note: "Breakfast in Islamabad."

People in Pakistan generally see the media in a favorable light with 68 percent considering its influence as "good," behind the military at 77 percent and ahead of religious leaders at 66 percent, according to a study from Pew



Research Center.

The *New York Times* re-branded the *International Herald Tribune* as the *International New York Times* in October. The publisher, which has been steadily losing advertising revenue, has looked to establish a broader audience by appealing to readers outside the U.S. Reported in: *Bloomberg News*, March 22.

### **Multan, Pakistan**

For months, a lecturer at a Pakistani university jailed in a blasphemy case was unable to find a lawyer to represent him: They feared violent reprisals and even death at the hands of extremist religious groups. Then a lawyer who initially agreed to take the case stepped aside because of threats.

Finally, a prominent human rights lawyer, Rashid Rehman, agreed in February to defend Junaid Hafeez, and stayed in the case despite death threats made against him in open court April 9.

On May 7, Rehman was fatally shot at his law office in Multan by gunmen posing as clients in a matrimonial case. Reports differ concerning the fate of two assistants in the office with him; *Newsweek Pakistan* said they were also fatally shot. One of the other two victims was an unidentified junior lawyer, according to Reuters.

Police said the shooting was the first time a lawyer has ever been slain in Multan for his work in a blasphemy case. But Rehman, before his slaying, had described his representation of Hafeez as “walking into the jaws of death.”

“There is fanaticism and intolerance in society, and such people never consider whether their accusation is right or wrong,” he told BBC Urdu in April. “People kill for 50 rupees. So why should anyone hesitate to kill in a blasphemy case?”

Zohra Yusuf, who chairs the Human Rights Commission of Pakistan (HRCP), for which Rehman worked, said the high-risk nature of such defense work is well-known. “We have lost four human rights defenders in the last three years. Others are under constant threat. The state does not even notice,” she said.

HRCP says nothing was done by law enforcement authorities in response to courtroom threats from three men—two of them lawyers—to Rehman, concerning his representation of Hafeez. After Rehman’s death, an anonymous pamphlet was circulated in Multan. It said Rehman reached his his “rightful end” for attempting to “save someone who disrespected the Prophet Muhammad. We warn all lawyers to be afraid of god and think twice before engaging in such acts,” the pamphlet also stated.

On May 8, fellow attorneys in Multan went on strike in protest of Rehman’s death.

“We are observing a strike and no lawyer will appear in any court today to mourn and protest the killing of our

colleague,” Sher Zaman Qureshi, who serves as president of the District Bar Association Multan, told *Newsweek Pakistan*. “We demand that the killers of Rashid Rehman should be arrested immediately.”

Allah Dad Khan, a friend of Rehman’s, said that Rehman was known for his extensive *pro bono* work. “He always had a smile at his face when he met people and clients and he used to be very happy when helping the needy,” said Khan of Rehman, adding: “He was never afraid of anything and when colleagues and friends asked him not to take sensitive cases he used to reply that one should not be afraid of death, one can die because of mosquito bite.”

The country’s blasphemy law is controversial, and considered a mechanism for the persecution of religious minorities and the pursuit of personal attacks. Those convicted can be sentenced to death.

At least 16 people in Pakistan are on death row for blasphemy, although none have been executed, and a minimum of 20 are serving life terms, while others are imprisoned but not convicted. In a 2012 report, the Center for Research and Security Studies said more than 50 people accused of blasphemy have been lynched since 1990. Reported in: *ABA Journal*, May 8.

### **Moscow, Russia**

Russia’s parliament has approved measures to tighten control over bloggers, drawing accusations that lawmakers are stifling a final bastion of free speech in the country.

On April 22, the Russian lower house passed a bill that requires all blogs with more than 3,000 daily visitors to register with Roskomnadzor, the state’s agency for media oversight, semi-state-owned network RT reported. The new restrictions were approved as an amendment to an anti-terror bill and will obligate bloggers with a significant following to sign posts with their real name. Blogs will face restrictions similar to those applying to mass media outlets, including bans on extremism, pornography, electoral propaganda, and even “obscene language.” The measures will take effect in August and will also apply to social network sites and personal websites.

The bill effectively bans anonymous blogging on popular sites. In addition, bloggers will be held responsible for verifying the accuracy of all information posted on their sites, including comments posted by others, according to Reporters Without Borders. Blogging services and social networks will also be required to keep user data for six months, raising fears that authorities will use this information to track down Internet users.

Russia’s new bill has come under intense scrutiny, both in and outside the country. International human rights organization Human Rights Watch called the legislation “another milestone in Russia’s relentless crackdown on free expression.” Reporters Without Borders warned that the bill

is likely to reduce the space for free debate in Russia even further. “Like previous reforms, this bill’s sole aim is to increase control over online content,” RWB said.

Internet advocates described the amendment as a recipe for self-censorship, as bloggers do not have the same resources as media organizations to monitor content, fact-check claims and fight costly legal battles.

Within Russia, bloggers reacted furiously. Bloomberg reported that popular opposition blogger Andrei Malgin warned that the law’s goal is “to kill off the political blogosphere by the fall.” Members of a human rights council set up to advise the president have equally criticized the bill, calling it heavy-handed and counterproductive, according to ITAR-TASS.

Amid the government’s increasing clampdown on the press, blogging is refuge for lively and critical debate in Russia. Blogs such as the one kept by Putin-foe Alexei Navalny have gathered a massive following, providing activists with a large platform to formulate dissent.

The Committee to Protect Journalists notes that in recent months, however, the Kremlin has intensified its attacks on dissident voices, bringing down media chiefs and blocking independent news sites. In January, Russia passed a law allowing online publications to be banned if they call for “unsanctioned” protests, a measure that forced the closure of Navalny’s website. Reported in: [huffingtonpost.com](http://huffingtonpost.com), April 24.

### **Riyadh, Saudi Arabia**

Saudi authorities have banned hundreds of books, including works by renowned Palestinian poet Mahmud Darwish, as part of a crackdown on publications deemed threatening to the conservative kingdom.

Saudi Arabia clamped down on dissent following the Arab Spring uprisings of 2011, from which it has been largely spared, and has adopted an increasingly confrontational stance towards the Muslim Brotherhood and other Islamist groups it has long viewed as a threat to its security.

The local *Okaz* daily reported that organizers at the Riyadh International Book Fair had confiscated “more than 10,000 copies of 420 books” during the exhibition.

Local news website Sabq.org reported that members of the kingdom’s notorious religious police had protested “blasphemous passages” in works by the late Darwish, widely considered one of the greatest Arab poets, pressing organizers to withdraw all his books from the fair.

The religious police frequently intervene to enforce the kingdom’s strict conservative values, but the move to ban so many works was seen as unprecedented.

Similar action was taken against works by Iraq’s most famous modern poet, Badr Shaker al-Sayyab, and another Iraqi poet, Abdul Wahab al-Bayati, as well as those by Palestinian poet Muin Bseiso.

The fair’s organising committee also banned a book

entitled *When Will the Saudi Woman Drive a Car?* by Abdullah al-Alami. Saudi Arabia is the only country in the world where women, forced to cover in public from head to toe, are not allowed to drive.

Other banned books include *The History of Hijab* and *Feminism in Islam*.

Activist Aziza Yousef said the crackdown had offered “free advertising to those whose books were banned” as many “rushed to download these works from the Internet.”

Organizers also banned all books by Azmi Bishara, a former Arab Israeli MP who left the Jewish state in 2007 and is now close to authorities in Qatar, where he is based.

The ban came amid escalating tensions between Qatar and three other Gulf Arab monarchies—Saudi Arabia, the United Arab Emirates, and Bahrain—who pulled their envoys from Doha earlier this month, accusing it of interfering in their internal affairs.

The decision to withdraw the ambassadors was seen as driven largely by Saudi animosity towards the Muslim Brotherhood of deposed Egyptian president Mohamed Morsi and its regional affiliates, which are widely believed to receive support from Qatar.

*Revolution*, a book by Wael Ghonim, a secular Egyptian and former Google executive who became an icon of the country’s 2011 uprising that toppled Saudi ally Hosni Mubarak, was also banned from the Riyadh fair.

Organizers of the book fair, which began March 4, had announced ahead of the event that any book deemed “against Islam” or “undermining security” in the kingdom would be confiscated. A few days after the fair opened, Saudi authorities closed the stall of the Arab Network for Research and Publishing, headed by Islamist publisher Nawaf al-Qudaimi, and confiscated all his publications, citing threats to the kingdom’s security.

The crackdown came after the interior ministry published a list of “terror” groups in a move which analysts warned could further curb civil liberties in the absolute monarchy. On the list is the Muslim Brotherhood, Al-Nusra Front, which is Al-Qaeda’s official Syrian affiliate, and the Islamic State of Iraq and the Levant, another jihadist group fighting in Syria and Iraq.

In another development, Saudi Arabia is planning tighter regulation of video content produced in the country for YouTube after an explosion of news, satire and comedy has made the kingdom one of the biggest per-capita global consumers of Google’s video platform.

Viewers in Saudi Arabia watch three times as much YouTube as their peers in the U.S., according to Google, largely because the traditionally government-backed mass media hasn’t produced enough content suited to the country’s large population of young people.

An array of Arabic shows are produced in Saudi Arabia

*(continued on page 105)*

from the bench



## U.S. Supreme Court

The Supreme Court on April 2 continued its abolition of limits on election spending, striking down a decades-old cap on the total amount any individual can contribute to federal candidates in a two-year election cycle. The ruling, issued near the start of a campaign season, will very likely increase the role money plays in American politics.

The 5-to-4 decision, with the court's more conservative members in the majority, echoed *Citizens United*, the 2010 decision that struck down limits on independent campaign spending by corporations and unions.

The latest decision seemed to alter campaign finance law in subtle but important ways, notably by limiting how the government can justify laws said to restrict the exercise of First Amendment rights in the form of campaign contributions.

The court's 88-page decision reflected sharply different visions of the meaning of the First Amendment and the role of government in regulating elections, with the majority deeply skeptical of government efforts to control participation in politics, and the minority saying that such oversight was needed to ensure a functioning democracy.

Chief Justice John G. Roberts Jr., writing for four justices in the controlling opinion, said the overall limits could not survive First Amendment scrutiny. "There is no right in our democracy more basic," he wrote, "than the right to participate in electing our political leaders."

In a dissent from the bench, Justice Stephen G. Breyer called the majority opinion a disturbing development that raised the overall contribution ceiling to "the number infinity."

"If the court in *Citizens United* opened a door," he said, "today's decision may well open a floodgate."

Such oral dissents are rare, and they signal deep disagreements. But Chief Justice Roberts and Justice Breyer noted from the bench that the other sides' arguments were well presented.

The decision did not affect familiar base limits on contributions from individuals to candidates, currently \$2,600 per candidate in primary and general elections. But it said that overall limits of \$48,600 by individuals every two years for contributions to all federal candidates violated the First Amendment, as did separate aggregate limits on contributions to political party committees, currently \$74,600.

In his written opinion, Justice Breyer said the decision would allow "a single individual to contribute millions of dollars to a political party or to a candidate's campaign." He was joined by Justices Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan.

The ruling concerned only contributions from individuals. Federal law continues to ban direct contributions by corporations and unions, though they remain free to spend unlimited sums through "super PACs" and similar vehicles.

The case, *McCutcheon v. Federal Election Commission*, was brought by Shaun McCutcheon, an Alabama businessman, and the Republican National Committee. McCutcheon, who had contributed a total of about \$33,000 to 16 candidates for federal office in the 2012 election cycle, said he had wanted to give \$1,776 each to 12 more but was stopped by the overall cap for individuals. The party committee said it wanted to receive contributions above the legal limit for political committees.

In an interview last fall, McCutcheon said his goal was to encourage the adoption of conservative principles. "To me," he said, "being a conservative means smaller government and more freedom."

Chief Justice Roberts said the core purpose of the First Amendment was to protect political speech from government interference, even if many people might welcome it. "They would be delighted to see fewer television commercials touting a candidate's accomplishments or disparaging an opponent's character," he wrote. "Money in politics may at times seem repugnant to some, but so, too, does much of what the First Amendment vigorously protects. If the First Amendment protects flag burning, funeral protests and Nazi parades—despite the profound offense such spectacles cause—it surely protects political campaign speech despite popular opposition."

The decision chipped away at the central distinction drawn in *Buckley v. Valeo*, the court's seminal 1976 campaign finance decision. Independent spending, the court said in *Buckley*, is political speech protected by the First Amendment. But contributions may be capped, the court said then, in the name of preventing corruption. The court added in passing that aggregate contribution limits were a "quite modest restraint upon protected political activity" that "serves to prevent evasion" of the base limits.

Chief Justice Roberts said that brief passage on overall limits had to be reconsidered in light of regulatory developments and other factors. But he added that the *Buckley* decision's general structure remained intact. "We see no need," he said, "to revisit *Buckley*'s distinction between contributions and expenditures."

The chief justice said that while the \$2,600 base limits were also intact, the overall caps placed an unacceptable burden on "an individual's right to participate in the public debate through political expression and political association."

"The government may no more restrict how many candidates or causes a donor may support than it may tell a newspaper how many candidates it may endorse," he wrote.

Leveling the playing field is not an acceptable interest for the government, Chief Justice Roberts said. Nor is "the possibility that an individual who spends large sums may garner 'influence over or access to' elected officials or political parties," he added, quoting *Citizens United*.

The only acceptable justification, he said, was rooting out "quid pro quo corruption" or the appearance of it.

Justice Breyer said that analysis was too narrow. "The anticorruption interest that drives Congress to regulate campaign contributions is a far broader, more important interest than the plurality acknowledges," he wrote. "It is an interest in maintaining the integrity of our public governmental institutions."

"Where enough money calls the tune," he wrote, "the general public will not be heard."

The Roberts court has been consistently hostile to campaign finance limits. In a half-dozen earlier cases, the five more conservative justices have voted together, though Chief Justice Roberts and Justice Samuel A. Alito Jr. have sometimes taken a more incremental approach than the bolder one called for by Justices Anthony M. Kennedy, Antonin Scalia and Clarence Thomas.

The McCutcheon decision is likely to increase overall campaign spending, but it may also rechannel some of it away from super PACs and toward candidates and parties.

"The existing aggregate limits may in fact encourage the movement of money away from entities subject to disclosure," Chief Justice Roberts wrote. "Because individuals' direct contributions are limited, would-be donors may turn to other avenues for political speech." He was joined by Justices Alito, Kennedy and Scalia. Justice Thomas wrote a concurring opinion.

The main opinions spent many pages arguing over the possibility that the basic limits could be circumvented without the overall caps. Justice Breyer gave detailed examples, which Chief Justice Roberts dismissed as speculative and highly implausible. The chief justice added that Congress could address some perceived loopholes through earmark requirements, transfer restrictions, segregated accounts and mandated disclosure, though he did not say that those efforts would pass constitutional muster.

Justice Breyer said there was little hope that regulators would vigorously enforce even the existing limits.

More broadly, he said the decision was one "that substitutes judges' understandings of how the political process works for the understanding of Congress; that fails to recognize the difference between influence resting upon public opinion and influence bought by money alone; that overturns key precedent; that creates huge loopholes in the law; and that undermines, perhaps devastates, what remains of campaign finance reform." Reported in: *New York Times*, April 2.

The U.S. Supreme Court has declined to hear a lawsuit challenging the U.S. National Security Agency's collection of U.S. phone records filed by a conservative activist, despite a lower court's ruling that the program may be illegal.

The court, without comment, denied the request by activist and former federal prosecutor Larry Klayman, along with Charles and Mary Strange, to immediately hear their case against U.S. President Barack Obama, U.S. Attorney General Eric Holder, NSA Director Keith Alexander, Verizon Communications and Roger Vinson, the judge who signed the order allowing the surveillance.

Klayman had appealed the case directly to the Supreme Court after Judge Richard Leon of the U.S. District Court for the District of Columbia stayed his decision suspending the NSA program, pending appeal by the government.

The case has generated significant attention, with Leon ruling in December that the NSA's large-scale telephone records collection program likely violates the U.S. Constitution.

Leon wrote that the plaintiffs' reasonable expectation of privacy may be violated when the government "indiscriminately collects their telephone metadata along with the metadata of hundreds of millions of other citizens without any particularized suspicion of wrongdoing, retains all of that metadata for five years, and then queries, analyzes, and investigates that data without prior judicial approval of the investigative targets."

Obama has since talked about ending the phone-records collection program, and several lawmakers have backed legislation that would end the program, but it remains in effect.

Klayman is the founder of Judicial Watch. The Stranges are parents of Michael Strange, a Navy SEAL who was killed when his helicopter was shot down by Taliban fighters. Reported in: *PC World*, April 7.

The Supreme Court signaled April 22 that it was struggling with two conflicting impulses in considering a request from television broadcasters to shut down Aereo, an Internet start-up they say threatens the economic viability of their businesses.

On the one hand, most of the justices suggested that the service was too clever by half, with a business that relies on capturing broadcast signals and streaming them to subscribers for a fee.



“Your technological model,” Chief Justice John G. Roberts Jr. told Aereo’s lawyer, “is based solely on circumventing legal prohibitions that you don’t want to comply with.”

But the justices were also clearly concerned with the impact that a ruling against Aereo could have on future technological innovation.

“What disturbs me on the other side,” Justice Stephen G. Breyer said, “is I don’t understand what the decision for you or against you when I write it is going to do to all kinds of other technologies.”

It was not clear whether Chief Justice Roberts’s tone was chiding or admiring as he directed pointed questions at David C. Frederick, Aereo’s lawyer. But it seemed clear that the court was prepared to rule against the service—if it could fashion a legal principle that would leave other technical advances like cloud computing unscathed.

The arguments were the culmination of two years of legal sparring between the networks and Aereo, over an issue television executives and analysts say will have far-reaching implications for the industry. At risk are the billions of dollars broadcasters receive from cable and satellite companies in the form of retransmission fees, the money paid to networks and local stations for the right to retransmit their programming. The networks have said this revenue is so vital that they would consider removing their signals from the airwaves if the court ruled for Aereo.

Aereo uses arrays of small antennas—one for every subscriber—to stream over-the-air television signals to its customers, allowing them to record and watch programs on their smartphones, tablets and computers. The broadcasters say this amounts to theft of their content and violates copyright laws.

Aereo responds that it is merely helping its subscribers do what they could lawfully do since the era of rabbit-ear antennas: watch free broadcast television delivered over public airwaves.

“There’s no content being provided,” Frederick told the court. “There’s equipment that’s being provided.”

Justice Sonia Sotomayor did not seem persuaded. “It’s not logical to me,” she said, “that you can make these millions of copies and essentially sell them to the public.”

Justice Ruth Bader Ginsburg said Aereo’s business was built on taking content without paying for it. “You are the only player so far that doesn’t pay any royalties at any stage,” she told Frederick.

Frederick said the service merely allowed subscribers to rent equipment to make their own individual copies of over-the-air television programs. That did not impress Chief Justice Roberts.

“That’s just saying your copy is different from my copy,” he said. “But that’s the reason we call them copies, because they’re the same.”

The case, *ABC Inc. v. Aereo*, will turn on a part of the copyright law that requires the permission of copyright

owners for “public performances” of their work. The law defines such performances to include retransmission to the public.

Paul D. Clement, a lawyer for the broadcasters, said Aereo’s service violated that provision. “If all they have here is a gimmick,” he said of Aereo, “then they will probably go out of business, and no one should cry a tear over that.”

Frederick said Aereo was not covered by the provision involving public performance. Because it assigns individual antennas to every viewer, he said, Aereo’s Internet streams are not public performances under the copyright law. That means, he added, that it has no obligation to pay retransmission fees.

Clement said Aereo’s arguments were a legal sleight of hand. “They provide thousands of paying strangers with public performances over the TV, but they don’t publicly perform at all,” he said. “It’s like magic.”

Malcolm L. Stewart, a deputy solicitor general, argued in support of the broadcasters on behalf of the federal government. He acknowledged that cloud services that store and perhaps aggregate content were in some ways similar and posed difficult questions under the copyright laws.

“I don’t pretend that there is a bright line between providing a service and providing access to equipment,” he said. “It’s an authentically hard call as to where to draw the line. So I don’t have a good answer for you.”

The justices seemed keenly aware that their ruling will have vast implications for the broadcast industry and for technical innovations. Frederick tried to reinforce the second concern.

“The cloud computing industry is freaked out about this case,” he said. A ruling against his client, he added, would expose “the cloud industry” to “potentially ruinous liability.”

One example of cloud computing services mentioned in the court briefs are the music-storage lockers offered by companies like Google and Apple.

Aereo’s service costs from \$8 to \$12 a month and is available in about a dozen cities. In combination with other Internet services like Netflix and Hulu, it can help replace much of their average viewer’s television diet at a fraction of the cost of a cable television bill.

Some justices said they found the service suspiciously complicated. “Is there any reason you did it other than not to violate the copyright laws?” Justice Antonin Scalia asked Frederick.

A divided three-judge panel of the United States Court of Appeals for the Second Circuit in New York last year ruled for Aereo. In dissent, Judge Denny Chin wrote that the service was “a Rube Goldberg-like contrivance, over-engineered in an effort to avoid the reach of the Copyright Act and to take advantage of a perceived loophole in the law.”

Justice Breyer kept returning to the unknown consequences of a ruling against Aereo. “I’m hearing everybody

having the same problem,” he said of his fellow justices. “I will be absolutely prepared, at least for argument’s sake, to assume” that Aereo’s service is unlawful. “But then the problem is in the words that do that,” he said, referring to the decision the court will issue, probably in June. Justice Breyer went on to express concern that a ruling against Aereo might limit other innovations “that will really change life,” such as the cloud. Reported in: *New York Times*, April 22.

The Supreme Court on April 29 seemed torn as it considered a pair of cases about whether the police need warrants to search the cellphones of people they arrest.

Some justices seemed inclined to apply precedents strictly limiting the privacy rights of people under arrest. Those decisions say warrantless searches in connection with arrests are justified by the need to find weapons and to prevent the destruction of evidence.

“Our rule has been that if you carry it on your person, you ought to know it is subject to seizure and examination,” Justice Antonin Scalia said.

Other justices said the vast amounts of data held on smartphones may require a different approach under the Fourth Amendment, which bars unreasonable searches.

“We’re living in a new world,” Justice Anthony M. Kennedy said. “Someone arrested for a minor crime has their whole life exposed on this little device.”

Several justices noted that modern smartphones contain troves of private materials, including bank and medical records. “Most people now do carry their lives on cellphones,” Justice Elena Kagan said, “and that will only grow every single year as young people take over the world.”

Justice Sonia Sotomayor added that the court’s decisions in the cases would almost certainly apply to tablet computers and laptops seized at the time of arrest.

But Chief Justice John G. Roberts Jr. said phones also contained “information that is specifically designed to be made public,” mentioning Facebook and Twitter.

The pace of change, Justice Samuel A. Alito Jr. said, made the justices’ jobs very difficult. “Smartphones do present difficult problems,” he said, later asking: “So how do we determine what the new expectation of privacy is now?”

The justices proposed various ways to allow searches of cellphones, or parts of them, after some but not all arrests. One idea that seemed attractive to several of them was to limit searches when the arrest was for a minor crime.

“A person can be arrested for driving without a seatbelt,” Justice Kagan said. “And the police could take that phone and could look at every single email that person has written, including work emails, including emails to family members, very intimate communications, could look at all that person’s bank records, could look at all that person’s medical data, could look at that person’s calendar, could look at that person’s GPS.”

Examples like that seemed to trouble Justice Kennedy, who said the police could obtain “the tax return of the jaywalker” they arrested. “Maybe the distinction ought to be between serious and nonserious offenses,” he said. He acknowledged that the approach would be a change. “I don’t think that exists in our jurisprudence,” he said.

Justice Scalia pressed a related approach, suggesting that searches could be limited to information relevant to the crime for which the person was arrested. “That will cover the bad cases,” he said, “but it won’t cover the seatbelt arrest.”

In the first case, *Riley v. California*, a state appeals court in California allowed a search of David L. Riley’s smartphone after he was pulled over for having an expired auto registration. The police found loaded guns in the car and, on inspecting Riley’s smartphone, entries they associated with a street gang.

In the second case, *United States v. Wurie*, the federal appeals court in Boston in May threw out evidence gathered after the police there inspected the call log of a drug dealer’s rudimentary flip phone.

Jeffrey L. Fisher, one of Riley’s lawyers, warned the justices to think hard about a decision he said could fundamentally change “the nature of privacy that Americans fought for at the founding of the Republic and that we’ve enjoyed ever since.”

Justice Alito asked why digital information should be treated differently from its tangible equivalents. “What is the difference between looking at hard-copy photos in a billfold and looking at photos that are saved in the memory of a cellphone?” he asked.

Fisher responded that data are different. “Even the notion of flipping through photos in a smartphone implicates vast amounts of information,” he said, “not just the photos themselves, but the GPS locational data that’s linked in with it, all kinds of other information that is intrinsically intertwined in smartphones.”

Much of the argument concerned whether immediate searches were required to keep police officers safe and to prevent the destruction of evidence.

“Why can’t you just put the phone on airplane mode?” Justice Sotomayor asked.

Michael R. Dreeben, a deputy solicitor general, responded that police officers should not be expected to know how to operate “the 500, 600 models of phones that are out there.” He also urged the justices to avoid fashioning a constitutional principle based on fast-evolving technologies. Justice Sotomayor’s question assumed, he said, “that cellphones are not going to be able to be used in airplanes in the next five years and that manufacturers will continue to make an easily available button for airplane mode.”

The justices seemed less persuaded by the prospect that a phone might be used to summon confederates or to detonate a bomb. “I would assume you need to operate the phone to set off the bomb, so that once the police have the phone the bomb is not going to be set off,” Justice Sotomayor said.

Chief Justice Roberts pressed Dreeben and California's solicitor general, Edward C. DuMont, for examples of phones that had detonated bombs or had been remotely erased. He heard nothing concrete in response.

But the justices seemed receptive to a general point from Dreeben. "It's an arms race between the forensic capabilities of law enforcement labs and the abilities of cellphone manufacturers and criminals to devise technologies that will thwart them," he said. "And they will leapfrog each other."

The justices seemed to have varying degrees of familiarity with their phones' capabilities. Dreeben said he did not know whether Justice Stephen G. Breyer had an iPhone. "I don't, either," Justice Breyer responded, "because I can never get into it because of the password." Reported in: *New York Times*, April 29.

The Supreme Court on April 28 stepped back into the complex area of First Amendment free speech rights of government employees. Its vehicle for doing so was a case from Alabama whose facts and allegations could have come out of a state version of the political drama "House of Cards."

In *Lane v. Franks*, the justices are considering whether the head of a community college's program for at-risk youth had any First Amendment protection for testimony he gave about a state lawmaker who held a no-show job with the program.

The employee, Edward R. Lane, was fired by the president of the community college after he testified at a criminal trial against the legislator. This was just before the at-risk program was due to request more funding from the state legislature.

Lane was hired in 2006 by Central Alabama Community College as acting director of the Community Intensive Training for Youth program. Upon looking over the books, Lane found a state legislator on the program's payroll, but he didn't find her showing up for work very often.

When Lane confronted the lawmaker, state Sen. Suzanne Schmitz, she allegedly told him she got the job through the influence of a top state teachers' union official, court papers say. One of Lane's supervisors at the community college warned him he better tread carefully lest he provoke retaliation from Schmitz or the legislature.

Unbowed, Lane told Schmitz to start reporting for work "from 8:00 to 4:30 on a day-to-day basis." The senator responded in a letter that she would prefer to continue serving the at-risk youth program "in the same manner as I have in the past."

Lane then fired the state senator from the no-show job. Schmitz vowed retaliation, telling another program employee that if Lane ever sought funding from the legislature, she would tell him, "You're fired."

However, Schmitz's no-show job, for which she collected more than \$177,000 over several years, drew the attention of federal prosecutors. Lane was subpoenaed to testify about what he knew, and a grand jury indicted Schmitz on multiple counts of mail fraud and fraud in

connection with a program receiving federal funds.

Lane also testified under subpoena at Schmitz's two criminal trials. After the first one ended in a mistrial, Schmitz was convicted in her second trial of mail fraud and other charges.

In 2009, just after Lane had testified at the first trial, the then-president of the community college, Steve Franks, fired Lane, ostensibly for financial reasons. Lane filed a lawsuit alleging that Franks either collaborated with Schmitz or was pressured by her to terminate Lane in retaliation for his testimony.

Two lower federal courts ruled against Lane, holding that his testimony was speech as an employee, not as a citizen speaking on a matter of public concern, which would draw First Amendment protection under the Supreme Court's precedents.

The National Education Association and other public-employee unions filed a friend-of-the-court brief on Lane's side, saying that the case could affect the freedom of teachers and other education professionals to speak openly about controversial issues.

"NEA and its members further believe that when public sector employees give sworn testimony, such testimony is necessarily a matter of public concern and may not be the basis for any adverse employment action against the employee," the brief says.

At oral arguments the justices heard from no fewer than four advocates, each with slightly different perspectives on First Amendment protection for government employees' speech in the context of testimony.

Lane's lawyer, Tejinder Singh, argued that while Lane testified about things he learned while on his job, such testimony itself was not part of his job responsibilities. Thus, it does not fall under one of the Supreme Court's recent precedents in this area, *Garcetti v. Ceballos*.

In *Garcetti*, the high court held in 2006 that public employees do not speak as citizens when they speak pursuant to their job duties. "I think the fact of a subpoena is strong evidence that when an employee testifies he is not doing so because it's his job to do so," Singh said.

Mark T. Waggoner, a lawyer representing Franks, said that Lane's testimony "was inseparable from his job duties, and we do believe that when he testified, that it was pursuant to his official duties," and thus not protected by the First Amendment.

Waggoner asked the court to also uphold the separate rulings of the lower courts that Franks was immune from Lane's suit because it wasn't clearly established that the speech in question was protected speech.

Somewhere in the middle were lawyers representing the Obama administration and the state of Alabama.

Ian G. Gershengorn, the deputy U.S. solicitor general, said, "In our view, when government employees testify, they sometimes speak as citizens and they sometimes speak as employees." Lane spoke as a citizen in this case,

but there might be times when testimony by a government employee could still subject him to employer discipline.

“There may be lack of candor, there may be belligerency and things like that that the government has to be able to react to,” Gershengorn said.

Alabama Attorney General Luther J. Strange 3rd told the justices that Lane was testifying as a citizen but that Franks merited immunity from personal liability because it wasn’t clearly established that Lane’s speech was protected.

“The situation at the heart of this case was one of the most egregious public corruption situations in Alabama’s history,” Strange said. “It led to a total rewrite of our public corruption laws and our ethics laws.”

The state depends on people like Lane “to feel free to testify as citizens on matters of public concern.”

The justices and the advocates tossed around some of the other key precedents in public-employee speech, especially *Pickering v. Board of Education*, a 1968 ruling which established the multi-part legal test for evaluating whether such speech was protected under the First Amendment.

“If the court says that [Lane’s] speech is protected, would there be any need to go on these facts into a *Pickering* balance?” Justice Ruth Bader Ginsburg wondered.

Under the *Pickering* test, which arose out of a case involving a high school teacher’s letter to a newspaper complaining about the school budget, a public employee’s speech is protected if it is on a matter of public concern and if the employee’s interest outweighs the public employer’s interest in an efficient workplace.

The Justice Department’s brief and Singh’s oral argument said that Lane’s speech would be protected under the *Pickering* test, though Singh said the justices could send the case back for the lower courts to fully apply the test.

“We don’t believe that in the summary judgment record there is any evidence that my client’s speech was at all disruptive, and that’s why the United States has argued that if you perform the balancing test here yourself you can find in our favor,” Singh said.

Waggoner appeared to suggest that a public employee such as Lane might have more protection writing a letter to the newspaper describing the legislator’s no-show job at his agency that he would from testifying about it under subpoena.

“I think the under the citizen-analogue analysis, there is a pretty limited range of speech that would not be protected,” Waggoner said, appearing to perplex the justices. But the exception to speech protection “would apply here, where Mr. Lane testified pursuant to his official duties and relayed information that he only had because of his interactions with Miss Schmitz,” he said.

By the end, it appeared that the justices were inclined to side with Lane on the merits, but with Franks on the question of qualified immunity. Justice Elena Kagan summed up what some of the court’s precedents meant.

“We’ve said several times things like this: Government employees are often in the best position to know what ails

the agencies for which they work,” Kagan said. “In other words, expecting that people will know things because they work in a place and that they can take what they know as a result of working in a place and go out and be a citizen.” Reported in: *Education Week*, April 28.

## **schools**

### **Sabine Parish, Louisiana**

The parents of a Buddhist student in Louisiana ridiculed by a creationist teacher won their lawsuit against the school district, the American Civil Liberties Union revealed March 14.

The student, known as C.C., was asked by sixth-grade teacher Rita Roark to answer the following question on a test: “ISN’T IT AMAZING WHAT THE \_\_\_\_\_ HAS MADE!!” When C.C. failed to respond “Lord,” Roark responded “you’re stupid if you don’t believe in God.” She also frequently denigrated his Buddhist faith, as well as the Hindu faith, referring to both as “stupid.”

When his parents complained to Sabine Parish Superintendent Sara Ebarb, they were told that “this is the Bible belt,” so they should expect to find the Christian God in the classroom. Ebarb advised them that if they wanted an ungodly classroom, they should transfer C.C. to a school where “there are more Asians.”

Judge Elizabeth Foote of the U.S. District Court, Western District of Louisiana sided with C.C. and his parents, citing that Roark’s behavior—and the school’s decision to defend it—clearly violated “the Free Exercise and Establishment Clause of the First Amendment.”

With regard to the specific behavior of Roark, Judge Foot wrote that “[t]he District and School Board are permanently enjoined from permitting School Officials at any school within the School District to promote their personal religious beliefs to students in class or during or in conjunction with a School Event.” Furthermore, “School Officials shall not denigrate any particular faith, or lack thereof, or single out any student for disfavor or criticism because of his or her particular faith or religious belief, or lack thereof.”

She also ordered that all members of the school board, as well as all faculty—both current and incoming—be trained by an attorney approved by the ACLU and the ACLU of Louisiana as to their responsibilities with respect to the First Amendment. The training will emphasize the “the psychological and developmental impact of religious discrimination on students.” Reported in: raw-story.com, March 17.

### **New York, New York**

A federal appeals court, ruling for the sixth time in a long-running case over weekend church services in public



schools, has upheld the New York City school system's rules against opening its facilities to such worship services.

A panel of the U.S. Court of Appeals for the Second Circuit, in New York City, ruled 2-1 against the Bronx Household of Faith, a congregation that has been battling since 1994 over its efforts to hold services in a public school.

In the latest ruling, issued April 3, the Second Circuit majority said the First Amendment's "free exercise clause does not entitle Bronx Household to a grant from the [New York City district] of a subsidized place to hold religious worship services." The city school system "has substantial reasons for concern that hosting and subsidizing the conduct of religious worship services would create a substantial risk of liability" under the First Amendment's prohibition against government establishment of religion, the appellate court said in *Bronx Household of Faith v. New York City Board of Education*.

As the court has noted before, the majority said times when churches did use city school facilities have shown that there is a possibility of the appearance that the school system endorses religion.

The appellate court overturned a federal district court decision that had enjoined the city school system from enforcing its rules prohibiting worship services among the public uses for its buildings during non-instructional hours.

It has become somewhat foggy why the case has led to six opinions by the Second Circuit, though the court's last one, in 2011, was based on a free-speech claim by the church, while the latest claims were under the free exercise and establishment clauses.

U.S. Circuit Judge John M. Walker Jr. dissented, as he has in the past. "In my view, the Board of Education's policy that disallows 'religious worship services' after hours in public schools—limited public fora that are otherwise open to all—violates the free exercise clause because it plainly discriminates against religious belief and cannot be justified by a compelling government interest," Walker said.

He invited the U.S. Supreme Court to take up the case, though the high court has twice before declined to get involved, in 1998 and 2011.

"This case presents substantial questions involving the contours of both religion clauses and the free speech clause of the First Amendment, the resolution of which are ripe for Supreme Court review," Walker said. Reported in: *Education Week*, April 4.

### Plano, Texas

Three years ago, a federal appeals court issued an important ruling that elementary school children have First Amendment free-speech rights to discuss religion with their classmates. The decision stemmed from a now-infamous incident in the Plano, Texas, school system in which a

principal barred a student from distributing candy canes to his classmates with Christian messages attached.

Now, a panel of the same court—the U.S. Court of Appeals for the Fifth Circuit, in New Orleans—has ruled on a separate legal claim stemming from that same day at the 2003 winter break party at Thomas Elementary School in Plano.

The latest appeal involves a claim not by a student but by a parent, Doug Morgan. He was in attendance at the party that led to the 2011 decision by the full Fifth Circuit court on elementary-student rights. The elder Morgan is asserting the claim that his own First Amendment speech rights were violated when Principal Lynn Swanson barred him (as well as his son, Jonathan) from distributing the religious materials.

A federal district court held that the principal had qualified immunity from the parent's claim, and it declined to go further and rule on the constitutional issue. In its April 2 decision in *Morgan v. Swanson*, a three-judge panel of the Fifth Circuit court affirmed the district court.

"The sole question before this court is whether Morgan's asserted right to distribute the material was so clearly established that Principal Swanson is not entitled to qualified immunity," the appeals court said. "The district court did not address the actual constitutionality of Swanson's conduct, and because we find that she is entitled to immunity, we need not reach that question today."

The panel said the elder Morgan has not identified any cases that clearly established a parent's right to distribute materials while visiting a school, and "nor are we aware of such a case." Thus, the court said, the parent could not overcome the principal's immunity from his claim.

Two judges on the panel wrote concurrences suggesting that parents may have some First Amendment free-expression rights when schools create a forum that includes them. But "the contours of those rights" are not clearly established, said Judge Fortunato P. Benavides, and thus the principal is entitled to immunity.

Judge Edith Brown Clement wrote that the elder Brown had the same free-speech right as his son to distribute the religious materials under the circumstances of the case. But she said his claims were bound by the immunity holding of full Fifth Circuit's decision in the student's case.

In that 2011 ruling, which the U.S. Supreme Court declined to review, the full Fifth Circuit had held that despite the existence of a free speech right among elementary school students to discuss religion, the state of the law in this area was so confused that Swanson was immune from the suit filed on behalf of Morgan's son.

Judge Clement, in her concurrence in the parent's case, said that "if Jonathan Morgan's right to share his religious message was not clearly established enough then to deprive Principal Swanson of qualified immunity, the same must be said" for the father's claim. Reported in: *Education Week*, April 4.

## privacy

### Washington, D.C.

A federal judge has admonished the Justice Department for repeatedly requesting overly broad searches of people's email accounts, a practice that he called "repugnant" to the Constitution.

The unusually sharp rebuke by Magistrate Judge John M. Facciola came in a kickback investigation involving a defense contractor. The case highlights the broad authority the government believes it has in searching email accounts, a power that gives the Justice Department potential access to a trove of personal information about anyone it investigates, even in routine criminal cases.

"The government continues to submit overly broad warrants and makes no effort to balance the law enforcement interest against the obvious expectation of privacy email account holders have in their communications," Judge Facciola wrote.

But, he said, prosecutors must show probable cause for everything they seize, adding that Internet companies can easily search for specific emails, names and dates that are relevant to an investigation. He said he had raised similar concerns 20 times between September and December 2013. In this particular case, prosecutors wanted every email, contact, picture and transaction record associated with an account stored on Apple servers.

"The government continues to ask for all electronically stored information in email accounts, irrespective of the relevance to the investigation," Judge Facciola said.

Government searching of email accounts predates the Obama administration, but Judge Facciola, a former state and federal prosecutor who has been reviewing warrants as a judge since 1997, said he was increasingly concerned about the breadth of government searches. He said he was also troubled by the fact that the Justice Department never said how long it planned to keep the seized data or whether it planned to destroy information that proved irrelevant to the case.

A decade ago, searches were more straightforward. If the authorities had evidence that someone was hiding drugs in a storage unit, for instance, prosecutors applied for a

warrant so FBI agents could open the unit, look through the contents and seize any drugs they found.

The Justice Department, however, does not treat email accounts like storage units. Prosecutors asked Judge Facciola for the authority to take everything in the account and search it for evidence of wrongdoing. Even though the government would have everything, it only considered the evidence to be "seized." The argument is similar to the Obama administration's justification for collecting the phone records of every American: that the authorities do not know what is relevant until they have reviewed everything.

"The fact that our data is being held by third-party service providers is allowing the government to engage in fishing expeditions that they've never been able to conduct before," said Nate Cardozo, a lawyer with the Electronic Frontier Foundation.

A Justice Department spokesman, Peter Carr, said prosecutors would respond to the judge in court documents, though it was not clear whether those documents would be public. Warrant applications are typically sealed, so Judge Facciola's decision to make his ruling public offers a rare view of the process.

Investigators argue that, unlike a storage locker, an email account with all of its associated files cannot be fully searched without getting a complete copy of the account. A search of a Google email account, for example, might miss conversations held via the company's chat service, or files saved to its servers.

Judge Facciola acknowledged that other judges have reached different conclusions. In Kansas this year, a judge ruled that federal agents did not need to limit their search of a Yahoo account, as long as they only seized emails that were relevant to their case.

Magistrate judges are typically responsible for approving search warrants during investigations, before charges have been filed. Unlike most federal judges, who are nominated by the president, magistrate judges are appointed by a vote of district judges.

Judge Facciola said issuing the warrant in question would be "repugnant to the Fourth Amendment," which prohibits unlawful search and seizure. Reported in: *New York Times*, March 19. □

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## is it legal?



### colleges and universities

#### Boulder, Colorado

Administrators at the University of Colorado at Boulder violated principles of academic freedom and faculty self-governance when they responded to allegations of sexual harassment in the philosophy department, and they should reverse their decision to suspend graduate-student admissions in the discipline for the coming year, the university's chapter of the American Association of University Professors said in a report it released April 17.

The AAUP chapter condemned administrators as acting without regard for faculty members' rights to due process after receiving a report from a site-visit panel of the American Philosophical Association's Committee on the Status of Women. The panel determined that Boulder's philosophy department "maintains an environment with unacceptable sexual harassment, inappropriate sexualized unprofessional behavior, and divisive uncivil behavior." It noted that there had been 15 complaints to the university about philosophers there regarding sexual harassment or unprofessional sexualized behavior but that the department had done little to deal with the problems.

In response, administrators in January removed the chairman of the philosophy department and suspended graduate-student admission to the program.

Boulder's reaction to the allegations was unprecedented, according to longtime philosophy professors and women in the field who have been complaining about sexual harassment and discrimination for years. But shortly after the campus announced it had suspended graduate admissions,

female philosophy professors at Boulder warned that the university's actions had damaged the department's reputation by leading outsiders to believe that all male philosophers on the campus were harassers.

"That is the kind of decision that has to come from the faculty, who are responsible for curriculum and pedagogy," said Don Eron, a senior instructor in the writing and rhetoric program who wrote the AAUP report, which asks the administration to reinstate graduate admissions.

The AAUP report also accused the university of violating the academic freedom of Bradley Monton, an associate professor of philosophy, when he complained about both the findings of the site-visit committee and about the university's reaction to it.

At a meeting of the Boulder Faculty Assembly's Executive Committee in February, Monton said the site panel's report had exaggerated the philosophy department's problems. Some of the panel's criticisms—including that the department had a culture in which professors frequently drank alcohol with students after hours—referred to practices that had ended years earlier, he added. Shortly after that meeting, Monton said in an interview, administrators began pressuring him to retract his remarks and to resign from the Faculty Assembly, both of which he did. Administrators also removed him from various departmental committees on which he had been serving.

"The chair said he was so angry with me, and the dean was scowling at me," Monton said. "So I gave in to their pressure."

The AAUP report asked the Boulder administration to rescind its recommendation that Monton censor his own remarks and to reinstate him to his university-service positions.

"One of the central tenets of academic freedom is the right of faculty to speak out on matters of institutional policy," says the AAUP report. Without that right, faculty members "cannot enforce the system of checks and balances that is essential for the institution to fulfill its obligation to provide a public good."

The university declined to comment on the situations detailed in the report, saying they were "personnel matters." But it did say it did not plan to follow the report's recommendations. Reported in: *Chronicle of Higher Education* online, April 17.

#### Washington, D.C.

Does a research grant from the National Institutes of Health come with a caveat to block pornography from a campus's network?

The 1,582-page, \$1.1 trillion funding bill signed into law in January was seen as a victory for social science groups and supporters of academic research generally. It even included language on open access. One section later, however, the bill specified that "None of the funds made

available in this act may be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.”

The language caught the attention of an observant grants administrator at the University of Pennsylvania, who forwarded the question to an information security officer. He then posed the question to the Educause security constituent group listserv, on which people said they were confused by the provision. Days later, when the NIH sent out a notice of the new legislative mandate, the provision was also picked up by the biomedical research blog DrugMonkey. Its response: “Congress is losing it.”

Such a restriction could be troublesome to colleges and universities due to the First Amendment implications of censorship, and also because the language does not differentiate between obscenity and pornography. Would anthropologists be able to study ancient fertility idols? Could English professors assign Vladimir Nabokov’s *Lolita*? And would campuses have to prevent the non-scholarly viewing of porn on their networks?

The provision also goes beyond covering just the NIH. The language appears four times in the bill, covering the Departments of Commerce, Education, Health and Human Services, Homeland Security, and Labor, as well as their related agencies.

The porn ban appears to be a response to internal investigations conducted in 2009 and 2010 that showed federal employees of several agencies—including the National Science Foundation—occasionally deviated from their official duties to download and watch porn at work. The backlash came in the form of a ban proposed in the summer of 2010 by Rep. David Obey, the Wisconsin Democrat who chaired the U.S. House Committee on Appropriations until his retirement in January 2011.

A spokeswoman for the NIH indicated Obey’s 2010 amendment is the reason why the provision is included in the 2014 funding bill. She also provided the agency’s interpretation of the language:

“The entire university does not have to be blocked unless the grant funds are specifically requested to support any aspect of development or maintenance of a computer network, in which case that network must block the viewing, downloading, and exchanging of pornography,” the spokeswoman said in an email.

The NIH’s interpretation should exempt most, if not all, of its grant recipients, said Tony DeCrappeo, president of the Council on Governmental Relations. “I can’t imagine there would be many such grants,” he said.

Even so, the interpretation still doesn’t provide a clear definition of what sort of content should be blocked, said Tracy Mitrano, a higher education consultant. “Is there confusion in the mind of the legislators or drafters of this bill between pornography and obscenity—the former being legal and the latter not?” Mitrano, former director of IT policy at Cornell University, said. “Even if we now have an

explanation about it being a divide between money for network construction and not, it still seems a little unusual—and worth exploring.”

The Council on Government Relations helps universities navigate federal policy on research, but DeCrappeo said the restriction could be felt hardest by federal contractors—if agencies decide to enforce the rule. Now that the dust surrounding the budget negotiations has begun to settle, he said, legislative oddities such as the pornography ban are bound to show up.

“We haven’t heard anything from other agencies if they’re . . . considering implementing it,” DeCrappeo said. “At some point you would think those agencies might decide they need to issue something. But again, they may determine that it’s just not something they do.” Reported in: [insidehighered.com](http://insidehighered.com), March 28.

## surveillance

### Washington, D.C.

The Central Intelligence Agency may have violated the Speech or Debate clause of the U.S. Constitution by performing an unauthorized search of Senate Intelligence Committee computers, according to an analysis by the Congressional Research Service.

The Speech or Debate clause (in Article I, Section 6, Clause 1 of the Constitution) generally immunizes members of Congress from liability for actions performed in the course of their legislative duties. But it also provides privileged protection for congressional documents against compulsory or involuntary disclosure. CIA may have unconstitutionally violated that privilege.

As detailed by Sen. Dianne Feinstein in a March 11 floor statement, the CIA carried out a search of Committee computers without notice or consent in an attempt to determine whether or how the Committee had obtained unauthorized access to a particular record concerning the CIA’s post-9/11 prisoner interrogation program.

“The search involved not only a search of documents provided by the committee to the CIA but also a search of the stand-alone and walled-off committee network drive containing the committee’s own internal work product and communications,” Sen. Feinstein said. The search took place in a CIA-leased facility where Committee staff were working.

“According to [CIA Director] Brennan, the computer search was conducted in response to indications that some members of the committee staff might already have had access to the internal Panetta review [a CIA document which CIA had not intended to release to the Committee]. The CIA did not ask the committee or its staff if the committee had access to the internal Panetta review or how we obtained it.”

*(continued on page 107)*



## success stories



### **schools**

#### **Minnewaska, Minnesota**

A school district and a girl represented by the American Civil Liberties Union of Minnesota have settled a lawsuit that claimed school officials violated the student's constitutional rights by viewing her Facebook and email accounts without permission.

The Minnewaska School District has agreed to pay \$70,000 to settle the 2012 case involving former Minnewaska Area Middle School sixth-grader, Riley Stratton, now 15 years old.

According to the lawsuit, Stratton was given detention after posting disparaging comments about a teacher's aide on her Facebook page, even though she was at home and not using school computers. The ACLU also said administrators viewed her online conversations with a boy because of a complaint the two were using computers to talk about sex.

"It was believed the parent had given permission to look at her cellphone," Minnewaska Superintendent Greg Schmidt said. But Schmidt acknowledged the district did not have a signed consent from the parent. That is now a policy requirement, he said.

Stratton said she is happy the case is over and that the school has changed its rules. She said the experience was embarrassing and hard to go through, but that schools elsewhere will hear about the case and will not punish other students the way she was disciplined.

Stratton fell behind on schoolwork because she was too distraught and embarrassed to attend school, according to

the lawsuit, which sought unspecified damages and an order that would stop school officials from attempts to regulate or discipline students based on speech made outside of school hours and off school property.

Schmidt said the fact that the posting occurred at home was a factor in settling the case. "There's lots of questions about whether schools should discipline kids for things that happen out of school," he said.

The \$70,000 settlement will be divided between the Strattons, for damages, and the ACLU of Minnesota. Reported in: msn.com, March 27.

### **colleges and universities**

#### **Kennesaw, Georgia**

Kennesaw State University has reinstalled a controversial artwork that it had removed from its newly opened Bernard A. Zuckerman Museum of Art. The university announced the move March 13. The artwork, which dealt with a university property once owned by a writer known for her defense of lynching, was pulled from the museum's inaugural exhibition two weeks earlier, amid considerable criticism of censorship.

Kennesaw State said the artwork, "A Walk in the Valley," would be put on view by March 25, along with "explanatory materials" and "public programs" that discuss its "complexity and controversial nature."

Ruth Stanford, the sculptor who created the artwork, said in a written statement released by Kennesaw State that she and the university "continue to disagree on certain issues related to the removal of my work." But, she said, she was "proud to be included" once again in the exhibit.

Stanford, who is also an associate professor at Georgia State University, acknowledged that "this has been a difficult experience." For its part, Kennesaw State said it appreciated Stanford's "willingness to remain engaged in dialogue" with the university during the dispute over the artwork, which had been commissioned by museum curators. Although a Kennesaw State spokeswoman initially told a local newspaper that Stanford's artwork "did not align with the celebratory atmosphere of the museum's opening," the university reaffirmed its "full support for academic freedom and the free exchange of ideas." Reported in: *Chronicle of Higher Education* online, March 14.

#### **Norfolk, Virginia**

The Virginia Community College System is abandoning a policy that was challenged by a student who was barred from preaching on a Hampton campus.

Thomas Nelson Community College student Christian Parks claimed in a lawsuit that the policy governing campus demonstrations violates his free-speech and religious rights. Under the policy covering all 23 Virginia community

colleges, only demonstrations by recognized student organizations in designated areas are allowed.

In a proposed consent order filed in April in federal court, the community colleges agreed to suspend enforcement while a settlement is worked out and a new policy is developed. The consent order requires a judge's approval. It was filed the same day Gov. Terry McAuliffe signed legislation limiting public colleges' authority to restrict student speech. Reported in: findlaw.com. □

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*Jefferson "Muzzle" Awards for 2014. . . . from page 73*

Gary Pruitt, President and CEO of the AP, called the DOJ's actions a "massive and unprecedented intrusion" into newsgathering activities. In a letter to the Attorney General, Pruitt charged that the subpoenas had "no possible justification" and were "a serious interference with AP's constitutional rights to gather and report the news." In Congress, Republicans and Democrats alike decried perceived abuses. House Judiciary Committee Chairman Bob Goodlatte (R-VA) argued that the DOJ's investigation was "contrary to the law and standard procedure." Rep. Zoe Lofgren (D-CA) stated that "the actions of the department have in fact impaired the First Amendment." Ranking Democrat John Conyers (D-MI) said that he was "deeply troubled by the notion that our government would secretly pursue such a broad array of media phone records over such a long period of time."

Deputy Attorney General James Cole, responded to the criticism in a letter stating that the subpoenas "were limited in both time and scope," and issued only after a "comprehensive investigation." Cole's defense was somewhat undercut, however, by the fact that one of the subpoenaed phone lines had been shut down years earlier—the sort of detail one might expect a comprehensive DOJ investigation to uncover.

Just a few days after the AP subpoenas became public knowledge, it was learned that the DOJ had also secretly sought and obtained from Google two months' of emails from the Gmail account of Fox News' chief Washington correspondent, James Rosen, regarding a report by Rosen containing information allegedly leaked to him by State Department advisor Stephen Kim. Unlike the AP phone records that only provided information about phone calls (i.e., the incoming or outgoing number, as well as the date, time, and length of calls), some of the information sought on Rosen involved the content of the reporter's communications. The DOJ obtained two full days' worth of Rosen's emails, as well as all of his emails with Kim. The *Washington Post* wrote, "court documents in the Kim case reveal how deeply investigators explored the private communications of a working journalist."

Because the DOJ was seeking the content of Rosen's communications, it needed a court-issued search warrant, as opposed to a subpoena, which would only have required an allegation that the information sought was relevant to an investigation. Pursuant to the Privacy Protection Act, the government was required to establish that probable cause existed to believe the reporter had committed or was committing a criminal offense under the Espionage Act to which the needed materials related. To overcome this hurdle, the DOJ characterized James Rosen as a "criminal co-conspirator." That fact bears repeating: The federal government labeled a reporter a criminal for merely doing his job.

What was truly shameful about the DOJ's investigation was that it never actually considered Rosen a criminal co-conspirator; the accusation was merely a means by which to circumvent the requirements of the Privacy Protection Act. In a letter to Congress, Attorney General Eric Holder stated, "the government's decision to seek this search warrant was an investigative step, and at no time during this matter have prosecutors sought approval from me to bring criminal charges against the reporter."

The political backlash to the revelations of the AP subpoenas and the Rosen search warrant resulted in the Justice Department working with representatives of the press in early 2014 to draft new guidelines that tighten government access to journalists' records. Although the DOJ is to be commended for the new guidelines, the protections they provide are not absolute and some significant exceptions exist that, if exploited, could result in a repeat of last year's shameful actions. Should such temptation ever arise, we hope this 2014 Jefferson Muzzle will inspire the Department of Justice to fully consider the importance of a free press to our nation.

## **2) The White House Press Office**

In November 2013, a group of 38 media organizations came together to protest an Obama White House policy that dramatically limited professional photojournalists' access to the President. According to these groups—among them, major broadcast and cable networks, newspapers such as *The Washington Post* and *The New York Times*, the National Press Club, and the Associated Press—journalists are routinely prevented from taking pictures of President Obama while he is performing his official duties because the White House categorizes such events as "private," thereby barring media access. Then, adding insult to injury, the White House releases official photographs of these supposedly private affairs to millions of followers across various social media platforms.

Journalists have been butting heads with the Obama White House ever since press corps photographers were prohibited from documenting the President's first day in office. In fact, during his first five years in office, the White House has permitted photography of President Obama

alone inside the Oval Office only twice: during telephone calls in 2009 and 2010. Photos of the President and his staff working together in the Oval Office have never been allowed, even though such pictures were routine in the past.

The White House counters that it has released more images of the President at work than any previous administration. While that may be true, the journalistic value of such photographs is a product of their content, not quantity. Writing in *The New York Times*, the current director of photography for the Associated Press, Santiago Lyon, suggested that these glossy official images are at best, visual press releases, and at worst, pure propaganda masquerading as news. By curtailing access to the Oval Office, the White House effectively ensures a visual narrative that “shows the president in the best possible light” and “propagates an idealized portrayal of events on Pennsylvania Avenue.”

For systematically rejecting independent journalistic access in favor of its own sanitized visual record, the White House Press Office has earned a 2014 Jefferson Muzzle.

### **3) The National Security Agency and Department of Homeland Security**

Dan McCall sells T-shirts, mugs, posters, and other products through the website Zazzle.com. Imprinted on his merchandise are humorous images and messages, often of a political nature. One of McCall’s designs juxtaposed an image of the National Security Agency’s (“NSA”) official seal with the words, “Spying On You Since 1952.” Another design featured an altered version of the NSA seal immediately above the words, “The NSA: The only part of government that actually listens.” The Department of Homeland Security (“DHS”) was also a target for parody, with McCall altering the official DHS seal to read, “Department of Homeland Stupidity.”

The NSA and the DHS were not amused. In 2011, both entities sent cease and desist letters to Zazzle.com threatening legal action if the website did not remove the three designs described above. The NSA claimed McCall’s designs violated a federal law making it a criminal offense to misuse the NSA trademark. DHS cited a federal law prohibiting the alteration of a seal of any department or agency of the United States. Essentially, these laws are aimed at preventing the public from attributing the messages of others to government agencies. In response to the cease and desist letters, Zazzle removed the contested products from its website for the rest of 2011, and all of 2012-13 effectively denying McCall any income from the designs during that period. Represented by Paul Levy of Public Citizen Litigation Group, McCall filed a lawsuit in October 2013 against the NSA and DHS asserting his First Amendment right to parody the two agencies in the manner that he had.

At the core of the First Amendment is the right to criticize the government without fear of punishment or retribution. Any law passed by the government must be interpreted

to comport with that constitutional tenet. In addition, the landmark 1987 U.S. Supreme Court case of *Jerry Falwell v. Hustler Magazine and Larry Flynt* clearly established that parody and satire enjoyed full First Amendment protection. Here, the facts were such that the only plausible explanation for the agencies’ cease and desist letters was to suppress government criticism. No reasonable person would believe that the designs were affiliated with, or supported by, the NSA or DHS.

Apparently the Public Citizen lawsuit convinced the two agencies of the error of their ways and, early in 2014, they settled the lawsuit, agreeing not to press charges based on McCall’s designs. Although it is commendable that the NSA and DHS recognized McCall’s First Amendment rights, it took them almost three years to do so and only after they were sued. Moreover, the laws under which they threatened McCall are still on the books. McCall’s attorney Paul Levy concedes that it remains an open question whether, and in what situations, the government might attempt to suppress other uses of official seals. In hopes that the NSA and DHS will fully consider First Amendment principles before sending any more cease and desist letters over the use of their official seals, the two agencies are awarded a 2014 Jefferson Muzzle.

### **4) The North Carolina General Assembly Police**

In early 2013, the North Carolina General Assembly passed a series of budget cutting bills perceived by some as unfairly targeting programs for the poor. In protest, the state chapter of the NAACP, members of the clergy from a variety of denominations, and groups of concerned citizens began staging demonstrations in the lobby of the General Assembly, the home of the state legislature. Although public access to the building is permitted, once inside, it is unlawful to disrupt the business of the General Assembly or to engage in disorderly conduct. By June, the demonstrations had become a regular weekly event known as “Moral Mondays” during which protesters would gather to sing, pray, and be arrested by the General Assembly Police. So routine were the arrests that protesters who wanted to be arrested were advised to wear green armbands so they could be distinguished from crowds of onlookers and supporters.

On June 10, the *Charlotte Observer* sent reporter Tim Funk to Raleigh to cover one of the protests. Funk covered faith and values for the newspaper and wanted to speak with clergymen from the Charlotte area. As Funk was doing so, General Assembly Police Chief Jeff Weaver warned the protesters to disperse or face arrest. That Funk was a reporter and not a protester was readily apparent; he had press credentials around his neck and a pad and pen in his hands. Yet when the police moved in, they went directly for Funk. “Chief Weaver came straight for me,” said Funk. “I remember that I kept saying, ‘I’m a reporter, I’m a reporter.’ But the chief kept coming at me, kept saying, ‘You’re under

arrest; put your hands behind your back.” Officers zip-tied Funk’s hands and led him to a detention center. “I told every uniformed person I saw that I was a reporter, there to cover the protest, not participate in it,” Funk said. “I also asked several times whether I could call the *Observer*. They said ‘no.’ I asked if they could call the *Observer*. ‘No.’ At one point, my cellphone rang. I asked if they could answer it or put it to my ear. ‘No.’” Funk was then locked in a detention cell for two hours before being taken before a magistrate and released.

Had the General Assembly Police arrested Funk because he was causing a disturbance, or even because they mistakenly took him for a protester, a Muzzle probably would not be warranted. But neither scenario existed here. A documentary film crew happened to be filming in the General Assembly on June 10 and caught Funk’s arrest on video. When Wake County District Attorney Colon Willoughby saw the video, he immediately dismissed the charges. “I saw a video of the incident and it appeared to me that he was there as a reporter, and not part of the protest. He was doing his job,” Willoughby said.

Willoughby is exactly right. It is the job of a free press to watch over the government and report on what it sees to the public at large. As Thomas Jefferson wrote, “An informed citizenry is the bulwark of a democracy.” In hopes that it will serve as a reminder of the importance of a free press to a democratic society, the North Carolina General Assembly Police Department is awarded a 2014 Jefferson Muzzle.

##### 5) The Kansas Board of Regents

On the morning of September 16, 2013, a lone gunman fatally shot twelve people and injured three others at the headquarters of the Naval Sea Systems Command inside the Washington D.C. Naval Yard. That same afternoon, University of Kansas associate professor David Guth logged into his personal Twitter account and sent the following message: “The blood is on the hands of the #NRA. Next time let it be YOUR sons and daughters. Shame on you. May God damn you.”

Almost immediately, the NRA and others offended by the tweet began calling for the University of Kansas to fire or otherwise reprimand Guth. Some state legislators reportedly stated that they would vote to discontinue funding the university if Guth was not terminated. The university administration resisted these calls stating, “Faculty have their own social media accounts and use those to express personal opinions, but those opinions do not represent the university.” After receiving a number of death threats, however, Guth was placed on administrative leave. He was later assigned to non-teaching duties for the rest of the fall and would remain out of the classroom for the spring 2014 semester because of a previously planned sabbatical.

In response to the controversy, the Kansas Board of Regents, a nine-member governing body that oversees the

state’s six public universities and some thirty community and technical colleges, voted unanimously to approve a new social media policy that gives the chief executive officer of each institution discretion to discipline or terminate any faculty or staff member for “improper use of social media.” The policy goes on to state that “improper use” includes acting “contrary to the best interests of the university,” and having “a detrimental impact on close working relationships for which personal loyalty and confidence are necessary.”

The Regents adopted this first-of-its-kind policy without consulting university leaders or faculty who, unsurprisingly, were not pleased. The president of Kansas State University wrote the Regents to inform them that “many members of the K-state family feel the policy seriously curtails both academic freedom and free speech.” The University of Kansas Faculty Senate requested that the Regents immediately rescind the policy until a new one could be drafted with faculty input. Reaction to the policy from national academic freedom advocates was also negative. The American Association of University Professors described the policy as “a gross violation of the fundamental principles of academic freedom that have been a cornerstone of American higher education for nearly a century,” while the Student Press Law Center warned that the “breathtaking” sweep of the regulation evidenced “an eagerness to control the off-the-clock lives of employees that is itself cause for suspicion.”

To their credit, in January 2014 the Regents created a workgroup of public university faculty and staff to review the Board’s new policy and make recommendations for changes. That report is to be presented to the Regents by April 16. It is very troubling, however, that the Regents refused to suspend their policy while the workgroup prepares its report. As a result, employees of three dozen educational institutions are left in the dark as to exactly what they can and cannot say on their personal social media accounts. Moreover, it is not at all certain that the Regents will adopt any or all of the workgroup’s recommendations.

Guth’s tweet may have been many things: intentionally provocative, ill-conceived, poorly-worded, even offensive. Nevertheless, it was also undeniably his personal opinion about a hotly debated political issue. The Supreme Court has consistently held that First Amendment rights are at their zenith when political speech is involved and nowhere is the vigilant protection of those rights more vital than at our colleges and universities. Social media is an increasingly common element of these educational environments, as Facebook, Twitter, and other platforms replace the syllabus and office hours as hubs of interaction among professors and their students. This presents new challenges for administrators, to be sure, but no modern university system can avoid the issue. The only question is whether or not their approach will be respectful of protected speech.

The Board of Regents could have issued a strong signal of support for the principles of academic freedom and free expression by suspending the current social media policy



and pledging to implement the workgroup's recommendations. Instead, 36 member schools are left sitting below a virtual sword of Damocles, waiting to see how—or even if—the Regents will remove it. This 2014 Jefferson Muzzle is therefore awarded to the Kansas Board of Regents in hopes that First Amendment principles will guide them in resolving this issue as well as those they may face in the future.

#### **6) Modesto Junior College**

On September 17, 1787, the delegates to the Constitutional Convention met for the last time to sign the document they had created. Two hundred and seventeen years later, Congress passed a law designating September 17 as “Constitution Day” and mandating that all publicly funded schools provide educational programming on the history of the United States Constitution on that day.

Apparently the administration of Modesto Junior College didn't get the memo.

Located in Modesto, California, Modesto Junior College (MJC) is a publicly funded institution with an enrollment of approximately 18,000 day and evening students. To celebrate Constitution Day 2013, MJC student Robert Van Tuinen stood outside the student center passing out free copies of the U.S. Constitution. After about ten minutes, Van Tuinen was approached by a campus police officer who told him that the only place he was allowed to hand out materials on the 58.3 acre campus was a small concrete space designated as the “free speech area,” and even then only if he first scheduled it through the Student Development office. Van Tuinen went to the office where he was instructed to fill out an application and told that the next available dates to use the “free speech area” were September 20 or 27, or some dates in October. None of these alternatives were satisfactory to Van Tuinen who specifically chose September 17—Constitution Day—to distribute copies of the Constitution.

Public colleges and universities such as MJC may surely protect their educational activities, ensure equal access to scarce facilities, and impose content-neutral time, place, and manner regulations designed to maintain safety and order. But in designating a single free speech area on campus, the MJC administration got it backwards: free speech on a public college campus is not the exception but the rule. Restrictions of expressive activity must be limited to specific areas and are permissible only if justified by an overriding need.

The MJC administration had to learn this lesson the hard way. The Foundation for Individual Rights in Education (FIRE) recruited the law firm of Davis Wright Tremaine to represent Van Tuinen in a lawsuit against the school for violating his First Amendment rights. As a result of that lawsuit, Van Tuinen received \$50,000 in damages and MJC agreed to abolish the procedure necessitating administrative permission for free-speech activities, allow free expression

in all “areas generally available to students and the community,” and never reinstitute its old policy.

To be fair, MJC is not the only public college that has attempted to limit expressive activity to specific parts of campus. Indeed, research by FIRE concludes that as many as 1 in 6 colleges maintain similar “free speech zones.” In addition to being clearly unconstitutional, these zones are antithetical to the traditional notion of the academy as a home for the free exchange of ideas. What sets MJC apart from these other schools is that it was forewarned. There was a compelling, unique, and obvious clue that its policy was unconstitutional; namely, that enforcement of its policy prohibited a student from handing out copies of the U.S. Constitution on Constitution Day! For failing to pick up on this tell-tale sign, the Modesto Junior College administration earns a 2014 Jefferson Muzzle.

#### **7) The Tennessee State Legislature**

There is a theory that if you enjoy eating sausage, and you want to continue eating it, then you should never see how it is made. Judging by the plethora of laws proposed and enacted in a number of states that make it illegal to covertly record audio or video of livestock operations, many in the meat producing industry believe that seeing how animals are turned into food would turn a significant number of their carnivorous consumers into vegetarians. Known as “ag-gag” laws by their detractors, seven states already have them on the books and fifteen more were proposed in 2013. Though they vary from state to state, these laws typically include the prohibition of covert recordings noted above, and penalties for those who apply for agricultural employment with the intent to make such recordings or without disclosing ties to animal rights groups. Of the fifteen ag-gag bills proposed last year, only one was actually passed by a state legislature. That bill, sponsored by two Tennessee legislators with strong ties to agribusiness, is illustrative of how ag-gag laws come to be and the risk they pose to constitutionally protected speech.

The history of ag-gag legislation in Tennessee can be traced back to a video recorded in 2011 by undercover investigators from the Humane Society exposing horrific abuses occurring at stables belonging to renowned walking horse trainer Jackie McConnell. The video showed workers applying caustic chemicals and metal chains to the horses' ankles. This illegal technique, known as “soring,” is meant to exaggerate the distinctive gait favored by walking horse breeders. Another worker was shown striking a horse in the head with a large piece of wood. The Humane Society turned the video over to authorities and federal charges were eventually filed, leading to guilty pleas from McConnell and the abusive employees. Prosecutors said that the Humane Society investigation was instrumental in bringing the abuse to light and providing the evidence necessary to punish the offenders.

Having observed the threat posed by unflattering undercover activism, Sen. Dolores Gresham, a stockyard owner, and Rep. Andy Holt, a pig farmer with ties to the nation's largest farm lobbying group, sponsored a bill that sought to cripple future investigations by criminalizing the act of applying for a job with the intent of documenting animal abuses. When that bill failed to pass in 2012, Gresham and Holt returned the following year with an amendment to Tennessee's animal cruelty statute. The amendment required anyone who intentionally recorded video of livestock abuse or animal cruelty for the purpose of documenting such abuse to turn the recordings over to law enforcement officials within 48 hours or face misdemeanor charges.

Proponents of the bill claimed its purpose was to ensure the prompt reporting of animal cruelty to law enforcement. The irony of that claim is crushing. Anyone familiar with the bill and its sponsors knew that the true purpose was to prevent animal-rights activists from making more videos like the one that brought down Jackie McConnell. If preventing animal cruelty was the legislature's goal, why limit the reporting requirement to those who intentionally set out to document abuse rather than applying it broadly to anyone who witnessed an act of animal cruelty? On its face, the Gresham and Holt bill sought to eliminate the ability of animal activists to gather the type of evidence necessary to establish patterns of abuse, leaving offenders free to claim that any videos that did surface depicted only isolated incidents of bad behavior.

The true purpose of the bill was further evidenced by the actions of one of its sponsors. When a Humane Society employee emailed legislators encouraging them to oppose the law, Rep. Holt sent a reply, calling the Humane Society a "fraudulent and reprehensibly disgusting organization of maligned animal abuse profiteering corporatists . . . intent on using animals the same way human-traffickers use 17 year old women." Holt added that he was pleased that the employee's "pathetic excuse for an organization," would no longer be able to engage in a practice he described as "tape and rape." The acerbic hog farmer later got into a fight on Twitter with Carrie Underwood. After the country music star sent a tweet to her 1.5 million followers expressing disappointment in the lawmakers who passed the bill, Holt tweeted back that Underwood should "stick to singing" and leave the politics to him.

Although Tennessee's ag-gag bill passed the General Assembly in April 2013, it still needed Governor Bill Haslam's signature to become law. Haslam faced heavy pressure from individuals and organizations nationwide to veto the bill, but was openly sympathetic to those members of his community who felt "besieged" by activist campaigns. "As our state and country become more urban," he noted, "there are just more people who don't understand what standard agricultural practice looks like." These concerns, however, were ultimately not enough to satisfy Gov. Haslam and Attorney General Robert E. Cooper, Jr. In an

advisory opinion issued at Haslam's request, Cooper concluded that a court could find the bill to be unconstitutional both as a prior restraint on speech and a burden on news gathering. Convinced that the law was "constitutionally suspect," Gov. Haslam vetoed it.

As noted above, Tennessee is hardly the first state to propose or even pass ag-gag legislation. Singling out the General Assembly for a Muzzle may therefore seem unfair. Yet of all the bills proposed in 2013, reporting requirements of the sort found in the Tennessee bill are uniquely troubling from a First Amendment point of view. Furthermore, it came the closest to actually becoming law. Within hours of Governor Haslam's veto, Sen. Gresham and Rep. Holt vowed to introduce new ag-gag legislation in the next session. In hopes that its members will give greater consideration to First Amendment principles when this new bill is introduced, the Tennessee General Assembly is presented with a 2014 Jefferson Muzzle.

## **8) Wharton High School Principal Brad Woods**

The tradition of high school valedictorians and salutatorians speaking at their graduation ceremony is a long and proud one. Unfortunately, more and more schools, including Tampa, Florida's Wharton High School, are establishing a new tradition—one requiring that any student speaking at graduation must clear the exact text of his speech with a school administrator prior to the ceremony.

In April 2013, Wharton salutatorian Harold Shaw Jr. began writing the speech he was to deliver at his upcoming graduation ceremony in June. Shaw's first draft included a reference to what he believed were the unsanitary condition of the school's restrooms. When school administrators rejected his initial effort, Shaw submitted a second draft that did not mention the restrooms. Even without the reference, however, Shaw was informed his latest draft would not be approved unless additional changes were made. Shaw complied and school officials finally approved his speech in mid-May.

Wharton High School's graduation ceremony was held on June 3, 2013 at the Florida State Fairgrounds Expo Hall. In a deep, loud, and enthusiastic voice, Shaw began delivering his speech from the stage set up for the occasion. Sitting behind Shaw on stage were a number of school officials, including Wharton High School Principal Brad Woods. In a video of the ceremony, Principal Woods appears to be reading a draft of the speech as Shaw delivers it. Several minutes into the speech, Shaw stumbles over a few words but quickly recovers and returns to the approved text in a few seconds.

Yet even this brief departure from the approved script caused Principal Woods to spring into action. The instant Shaw stumbled over his speech, the principal stood up and, looking offstage, made a slicing gesture with his hand across his neck, signaling to the sound technician to cut the

power to Shaw's microphone. Baffled, Shaw looked around to see Principal Woods walk to another lectern, say "Thank you, Harold," and then proceed to introduce the class valedictorian even though Shaw was only halfway through his speech. Not understanding what was happening nor why, Shaw returned to his seat. Following the ceremony, Shaw was asked to leave the Expo Hall and was escorted out by two sheriff's deputies. He was not allowed to receive his diploma with his classmates but instead had to pick it up at the high school a few days later.

Principal Woods has yet to publicly explain his actions but Shaw thinks he knows what was behind them: the poor condition of the Wharton High School restrooms, or more accurately, Shaw's efforts to focus public attention on the restrooms. After his statement about the restrooms was stricken from the first draft of his speech, Shaw decided to make a video on the restrooms' deficiencies and post it on Facebook. Shaw believes that the graduation incident was retribution for the video.

Regardless of the specific reason, however, Principal Woods was so determined to control what was said at the graduation ceremony that he was willing to ruin a watershed moment in a young person's life by embarrassing him in front of his family, friends, and classmates. Such a consequence seems excessive even if Shaw had departed from the approved text. Moreover, this was a student with the second highest GPA of his graduating class. He earned the right to deliver his full speech, or at the very least, an explanation as to why he was not allowed to finish. Principal Brad Woods ensured that Harold Shaw would receive neither and in the process ensured his own selection as a recipient of a 2014 Jefferson Muzzle.

### 9) Pemberton Township High School Principal Ida Smith

In the 1988 case of *Hazelwood v. Kuhlmeier*, the U.S. Supreme Court determined that public high school administrators enjoy relatively broad authority to control the content of school-sponsored publications, including school newspapers. Student-editors at Pemberton Township High School in New Jersey experienced the consequences of the Hazelwood decision first hand last fall, when officials censored three articles that were to appear in the school's newspaper, *The Stinger*. The first article concerned students smoking in bathrooms on campus. By all accounts, the piece was well reasoned, researched, and written, but Principal Ida Smith refused to allow its publication. When members of *The Stinger* asked Smith to explain her decision, she declined to comment.

Another article slated for the same issue concerned the departure of the district's athletic director but the final copy was edited by officials to remove two important lines: one indicating that the former director had declined to comment for the piece, and another noting that the district had yet

to hire his replacement. According to Bill Garden, faculty advisor for *The Stinger*, removing these sentences only served to make the piece less journalistically sound because it eliminated a key acknowledgement that the student reporter had done her job and actually attempted to speak with the subject of the article. As before, Principal Smith offered no explanation for this editorial meddling.

Their journalistic endeavors frustrated, the students sought a means by which they could turn the experience into something positive. Two *Stinger* staff members proposed a story examining student expression rights and censorship issues. Once again, Principal Smith stepped in and—somehow avoiding being crushed under the weight of all the irony in the world—declared that no article concerning censorship of student publications would appear in *The Stinger*.

The students brought the matter to the attention of school district superintendent Michael Gorman, but to no avail. When asked to comment on the situation, Gorman claimed that district guidelines governing student publications were in place to preserve the "integrity of instructional process" and to ensure that student articles are "grounded in fact." Gorman refused, however, to elaborate on how the censored articles were in any way contrary to the instructional process, or to identify any factual errors contained within them. This institutional reticence does little to dispel the belief that the actual motivating factor behind the censorship is a desire on the part of school officials to quash any article that threatens to cast the school or those who run it in a negative light.

Even if a court were to conclude that Principal Smith's actions did not violate her students' First Amendment rights, the culture of censorship that has emerged at Pemberton Township High School is still wrong. In their zeal to preserve the "integrity of instructional process," school officials have offered students little reason to believe in the integrity of the constitutional principles of freedom of speech and freedom of the press.

For embracing a pattern of censorship that prioritizes public relations over academic and constitutional integrity, the Administration of Pemberton Township High School earns a 2014 Jefferson Muzzle. □

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*FCC backs away from net neutrality. . . . from page 76*

were circulated to the agency's other four commissioners beginning April 24 and were scheduled to be released for public comment on May 15. They are likely to be put to a vote by the full commission by the end of the year.

In an April 30 speech to broadcast and cable executives Wheeler argued that a lack of competition in their industry has hurt consumers. He said that the FCC intended to

address the problem by writing tough new rules to enforce so-called net neutrality, preventing big broadband and cable companies from blocking access to innovative new technologies and start-ups that might emerge as competitors.

In addition, Wheeler told the group that he would use the agency's federal authority to override state laws that restrict municipalities from offering inexpensive broadband service to residents. Cable companies have aggressively funded efforts to put those laws in place.

The aggressive stance by Wheeler represented his most vigorous attempt yet to convince both consumers and the industry he regulates that he intends to closely watch and protect open access to the Internet.

It comes as the FCC has faced vigorous criticism and lobbying not only over net neutrality but also over the effect that a proposed merger between Comcast and Time Warner Cable would have on cable and broadband competition. A combined Comcast-Time Warner Cable would control about 40 percent of the broadband market in the United States, and the leverage it would have in the industry will be one of main factors the FCC will study as it considers whether to approve the merger.

"For many parts of the communications sector, there hasn't been as much competition as consumers and innovation deserve," Wheeler said at the annual meeting of the National Cable and Telecommunications Association. That echoed his statement on the FCC's blog on Tuesday that "there remains a shortfall in adequate broadband competition."

Those statements represented the first time that Wheeler has gone beyond encouraging competition in the broadband business to definitively stating that he finds it lacking.

Consumer groups and other critics have accused Wheeler of being soft on the industry in part because he formerly was head of the very trade association he was addressing April 30. But at that time, Wheeler said, cable was the insurgent technology rather than the incumbent. Now, he said, both his and the industry's responsibilities are different.

"As a result of the importance of our broadband networks, our society has the right to demand highly responsible performance from those who operate those networks," Wheeler said.

In addition, he said, "as chairman of the FCC, I do not intend to allow innovation to be strangled by the manipulation of the most important network of our time, the Internet."

Wheeler sought to emphasize that there were limits to how the lanes could be developed.

"Let me be clear," he said. "If someone acts to divide the Internet between haves and have-nots, we will use every power at our disposal to stop it." That includes the possibility of reclassifying broadband service so that it could be subject to the same strict regulation as utilities like electricity providers.

After the new net neutrality proposal was disclosed, Wheeler said the FCC would have to ability to act if a

company was not providing a "commercially reasonable" service. In his blog post, Wheeler specified behaviors that would fail that criterion, including degrading overall service to build a new "fast lane" or to force consumers to buy a higher-price subscription.

Critics say that the issue is still too murky. "It's hard to understand how the FCC's proposal, as reported, can allow avenues for paid prioritization and yet still serve as a pillar for net neutrality," Michael Weinberg, a vice president at Public Knowledge, said in a statement. "Standards that allow the web to have two lanes, with one for preferred traffic, seem to go against the principles that the FCC and the chairman himself have said they stand for."

Net neutrality has been an issue since at least 2002, when the FCC classified broadband as an information service, subject only to light regulation. On April 29, Michael Powell, the chief of the National Cable and Telecommunications Association, harshly warned against the idea of reclassifying the Internet so that it is regulated like a utility.

Citing the examples of the interstate highway system, the electric grid and drinking water, he told an audience at the industry conference that government regulation was not the answer. "These systems were built with the help of government, as was the Internet," he said. "But they have suffered terribly chronic underinvestment."

Many consumer advocacy groups and liberal lobbying groups have pressured Wheeler by calling on President Obama to fulfill his campaign promise to uphold net neutrality. In 2007, in response to a question at a town-hall meeting sponsored by MTV, Mr. Obama said he was "a strong supporter of net neutrality." Reported in: *New York Times*, April 23, 24, 30. □

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*lawmakers push for NSA. . . . from page 77*

Sensenbrenner read off the requirements of the perjury statute. "What more do you need besides an admission from General Clapper that he lied?" he said, as time ran out on his turn to question Holder.

The work of revising the FISA legislation could be helped by a study from the Privacy and Civil Liberties Oversight Board, a small government watchdog agency. The panel, which called the NSA's bulk phone records program illegal, is currently working on an analysis of the Section 702 law, set to be released in coming months.

The five-member executive branch board released a scathing report in January, arguing that the NSA must cease the bulk collection of the phone numbers of all calls, the international mobile subscriber identity number of mobile callers, the calling card numbers used in calls, and the time and duration of those calls to and from the United States.



By a 3-2 vote, the presidential panel concluded that, among other things, the program “implicates constitutional concerns.”

While the panel’s conclusions were not binding, President Obama responded favorably and said he would move to dismantle one of the biggest spying programs that has ever come to light.

But is the government moving fast enough, or is it paying lip service to end the program the board concluded has “a chilling effect on the exercise of First Amendment rights?”

“The important thing is we get there and stop collecting the bulk information,” board chair David Medine said. “Sounds like there is a commitment to getting it done. Hopefully it won’t be a long transition period.”

There are more than two dozen legislative proposals to end the program, and the president could cease it with an executive order. But for now, it continues unabated. Reported in: *PC World*, April 8; *The Hill*, April 8; *arstechnica.com*, April 8. □

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*survey confirms. . . . from page 78*

The 2012 survey also revealed some limitations in libraries’ handling of privacy issues. While nearly 80 percent of the responding librarians said libraries should play a role in educating the general public about privacy, only 13 percent said their library had hosted a privacy information session, lecture, seminar or other event addressing privacy and surveillance. Similarly, while 100 percent agree that libraries should not release library records without a court order, only 51 percent indicate that their libraries offer training on handling requests for user records and only 57 percent indicate that their libraries effectively communicate the library’s privacy policies to their patrons.

The 2012 study was funded by a generous grant from the Open Society Foundations and managed by Dr. Michael Zimmer, an assistant professor at the University of Wisconsin-Milwaukee’s School of Information Studies, and co-director of its Center for Information Policy Research.

The survey is part of ALA’s Choose Privacy Week and “Privacy for All” initiative, which conducted with the generous support of the Open Society Foundations. Its website, [www.privacyrevolution.org](http://www.privacyrevolution.org), provides access to privacy-related news, information and programming resources.

The American Library Association’s Office for Intellectual Freedom established Choose Privacy Week in 2010 to help libraries work with their communities in navigating these complicated but vital issues. It is a national public awareness campaign that aims to educate the public about their privacy rights and to deepen public awareness about the serious issue of government surveillance. The theme for Choose Privacy Week 2012 was “Freedom from Surveillance.” □

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*censorship dateline. . . . from page 86*

by online content creators that have, until now, been given a measure of freedom compared with the traditional media in the conservative Islamic kingdom.

But YouTube’s popularity has brought it under the scrutiny of Saudi authorities, who plan to regulate all forms of audiovisual media, a move that could stifle creativity among creators who have increasingly pushed the boundaries of satire in the Middle East.

The General Commission for Audiovisual Media will monitor the quality and quantity of content produced in Saudi Arabia on platforms such as YouTube via a code that will include guidelines on alcohol, tobacco, nudity and sexual acts, said Riyadh Najm, the commission’s president. It will also promote private-sector-led investment in the media industry.

The “penguin dance” has become an Internet phenomenon in Saudi Arabia. Saudis post videos of themselves online—often dancing in traditional garb. The trend offers a peek into the lighter side of life in this very private kingdom.

“We will make them aware of what’s acceptable in Saudi Arabia and what’s not acceptable,” Najm said. “As long as it’s professional and constructive.”

The growth in the YouTube production industry in Saudi Arabia has caught the attention of both Google and advertisers. Individual YouTube shows can average more than two million views in Saudi Arabia, where strict interpretation of Islamic law means diversions such as nightclubs and cinema are banned.

Google in March conducted its first YouTube roadshow in the region to educate content creators on how to best monetize their shows and improve the quality to attract views. Google declined to comment on the plans for regulation.

“I hope it will not be restrictive or stop creativity,” said Kaswara Al-Khatib, chairman and chief executive of U-Turn, a Saudi-based network that produces 30 shows and has 15 million subscribers and followers on YouTube and social media. “We do not want to step back.”

The commission, which was established in September 2012, will issue licenses under the printing and publishing law to any production company operating in the kingdom, according to Najm.

A new media law that will extend the old law’s oversight to online and broadcasting is also being reviewed by the kingdom’s advisory Shoura Council—a king-appointed body that is Saudi Arabia’s closest thing to a parliament.

Najm comes to his job from the Ministry of Culture and Information, where he was previously the deputy minister. The commission would begin issuing licenses before the end of the year, he added.

“I think it’s about security and making sure they control whatever content is out there,” said Amgad Husein, a Saudi-based partner at law firm Dentons.

Saudi Arabia's first attempt to regulate online expression with specific laws came in March 2009 when the Ministry of Culture and Information announced plans for a new electronic-publishing law to be applied to local news websites.

The new e-publishing law wasn't passed until January 2011 amid criticism by many bloggers and online activists who anticipated that new sweeping regulations would put restrictions on free speech. In March, the ministry started blocking local news websites that didn't apply for a government license.

Saudi Arabia said that it had detained nine Saudis who had recorded videos critical of the government. Since March 22, about a dozen Saudis have recorded and posted YouTube videos of themselves criticizing the royal family or complaining of low salaries, corruption and unemployment.

The autocratic countries of the Persian Gulf have become increasingly uneasy about social and online media since 2011, when the platforms helped fuel the Arab Spring uprisings across the region. Reported in: *Agence France-Presse*, March 16; *Wall Street Journal*, April 24.

### **Ankara, Turkey**

Turkish authorities defied court orders and reaffirmed a ban on YouTube imposed after the posting of illicit recordings of top secret security talks that was cited by Prime Minister Tayyip Erdogan as part of a "dirty campaign" to topple him.

Authorities imposed the ban on Google's video-sharing site on March 27 in the build-up to local elections, after weeks of leaked wiretaps which had emerged online, allegedly uncovering corruption in Erdogan's inner circle. Erdogan emerged from the polls with his popularity largely intact.

Turkey's telecoms regulator said it would not end a block on YouTube, despite court rulings lifting the ban.

"The measure blocking access to the youtube.com Internet site remains in place," the Information and Communications Technologies Authority (BTK) said in a statement on its website.

Access to Twitter had also been barred until the Constitutional Court ruled last week that this violated the law.

Erdogan accuses a U.S.-based Islamic cleric of using a network of supporters to orchestrate an Internet campaign and a police corruption investigation to undermine him. The cleric, Fethullah Gulen, denies any involvement and criticizes Erdogan over a purge of his followers from state bodies.

On April 4, a lower court in Ankara ruled that the YouTube ban violated human rights and ordered most of the restrictions be lifted, citing the constitutional court ruling, and instead specifically blocked access to 15 videos. Despite a prosecutor's challenge to lifting the ban, imposed on grounds of state security, a higher Ankara court also ruled April 9 in favor of removing the general block on YouTube.

However, the BTK said that while some of the offending links had been removed, access to others had only been

blocked in Turkey and they could be viewed abroad. It said the ban would remain place "because some of the said content continues to be available on the Internet site."

The posting that triggered the ban was an illicit audio recording of a meeting of top security officials at the Foreign Ministry over possible military intervention in Syria. Erdogan condemned the recording as an act of treason.

Erdogan, who has been battling the graft scandal swirling around his government since a police investigation emerged in December, has said the constitutional court decision on Twitter was wrong and should be overturned. Reported in: *New York Times*, April 10.

### **London, United Kingdom**

Eminent writers from Mark Haddon to Philip Pullman have poured scorn on "despicable" new rules from the Ministry of Justice, which effectively ban prisoners from being sent books from outside.

Calling the rules a "malign and pointless extra punishment, which is not only malign and small-minded but desperately counterproductive," Haddon, author of *The Curious Incident of the Dog in the Night Time*, has begun a mission to get "every writer in the UK publicly opposed to this by tea time."

A Change.org petition, calling on justice minister Chris Grayling to "urgently review and amend your new rules which restrict prisoners access to books and family items," quickly gathered over 5,000 signatures.

Those calling for change include Philip Pullman, who called the situation "one of the most disgusting, mean, vindictive acts of a barbaric government." "Words nearly fail me on this," he said. "It comes from the mind of a man with the outlook of the sort of school bully who is indulged and favoured by the teachers, who can see perfectly well how noxious his behaviour is, but allow it to continue on the grounds that at least he's keeping order. Any government worth having would countermand this loathsome and revolting decision at once, sack the man responsible, and withdraw the whip from him."

Billy Bragg tweeted, "People in prison need rehabilitation, not retribution," while Mary Beard wrote that "Books educate & rehabilitate. Crazy to ban them being sent to prisoners in jail." The award-winning poet Ruth Padel said: "It reminds me of the Greek junta: and even worse dictatorships. Is this government going to ban books for the people who need them most?"

The protests began after Frances Crook, chief executive of the Howard League for Penal Reform, wrote an essay for the website *Politics.co.uk* laying out how "from now on, any man, woman or child in prison will not be able to receive a book from outside," and calling the situation "part of an increasingly irrational punishment regime orchestrated by Chris Grayling that grabs headlines but restricts education or rehabilitation."

“Book banning is in some ways the most despicable and nastiest element of the new rules,” she wrote. “An inspection report published on 18 March on Wetherby prison, which holds 180 young boys, praised the jail for only containing the children in their cells for 16 hours a day during the week and 20 hours a day at weekends. While many will not want to read a book to pass these endless hours, many boys I have met in prison do indeed read avidly. Of course prisons should have incentive schemes to reward good behavior. But punishing reading is as nasty as it is bizarre.”

The rules were introduced in November, putting in place a blanket ban on families sending in small items to prisoners. “The general presumption will be that items for prisoners will not be handed in or sent in by their friends or families unless there are exceptional circumstances,” runs the text from the Ministry of Justice.

Haddon asked: “Do you want people released into the community who have been retrained, who are more liberal and humane, or people who have been relentlessly deprived of the things we all feel are important in life? People tend to think there’s us, and then there are prisoners, but these are people who will be our future neighbours and colleagues.”

Grant said banning books from being sent into prisons “seems to me manifestly wrong.” “It just seems to me to be part of a system of denying rehabilitation, saying it doesn’t matter,” she said. “I know there are prison libraries but all libraries are facing cuts . . . Education is a really important part of rehabilitation in my view, and [not allowing it] seems to me to be vindictive.”

Crook said that she was “very pleased” to see the amount of support her piece had generated. “Because of overall cuts in prison resources it means people are locked in cells from Friday lunchtime to Monday morning, and during the week they are locked up for 20 hours a day. If you are stuck in a cell the size of a small lavatory—which includes a lavatory—you can watch television or read a book—there’s nothing much else you can do,” she said. “So reading is literally a lifeline and a lifesaver for some people.”

Of course there are prison libraries, but “1,600 prisoners with one small library will only get there once every two to three weeks, if they are lucky, and they are only able to take a limited number of books out,” said Crook. “Also, prisoners might have a particular interest, like trains or bird watching or foreign languages, and a small prison library wouldn’t have books for their interests.”

The ban, she said, is “bizarre, and nasty . . . and is having a real effect on people’s lives.”

At English PEN, director Jo Glanville said the situation was something the free speech organization had “real concerns” about. “We do a significant amount of work in prisons and we have seen the extraordinary importance of books and literature and access to creative expression,” she said.

Prisons Minister Jeremy Wright said: “The notion we

are banning books in prisons is complete nonsense. All prisoners can have up to 12 books in their cells at any one time, and all prisoners have access to the prison library. Under the Incentives and Earned Privileges scheme, if prisoners engage with their rehabilitation and comply with the regime they can have greater access to funds to buy items including books.” Reported in: *Guardian*, March 24. □

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*is it legal? . . . from page 96*

“Instead, the CIA just went and searched the committee’s computers,” Sen. Feinstein said.

Through the Speech or Debate clause, the Constitution “has imposed [limitations] on executive branch attempts to interfere with legislative activities, including Congress’s authority to conduct oversight and investigations,” the new CRS analysis explained.

The Speech or Debate clause has been interpreted variously by two appellate courts, with different implications for the current circumstance, CRS said. The CIA search of Senate Intelligence Committee computers “could arguably be viewed as violating the non-disclosure privilege recognized by the court in *Rayburn*,” CRS said, referring to a 2007 D.C. Circuit case involving an FBI search of the House office of Rep. William Jefferson.

However, under a different reading of the Speech or Debate clause from a Ninth Circuit opinion in a case called *U.S. v. Renzi*, the potential CIA violation “is less clear,” the CRS memorandum cautioned.

In any event, the possible violation by the CIA of the non-disclosure privilege provided by the Speech or Debate clause is not legally actionable at this time, CRS said. Rather, it “would only come into play in the event of a subsequent legal proceeding.”

CIA Director John Brennan sent an email message to CIA employees containing what was understood to be a conciliatory signal towards Congress. “It is appropriate for the Intelligence Committees in the Senate and the House to carry out their oversight responsibilities thoroughly and comprehensively, and CIA needs to do all it can to assist the Committees in that regard,” Director Brennan wrote.

“Regarding the SSCI’s RDI [rendition, detention and interrogation] report, I want to assure you that the entire CIA leadership team is committed to addressing any outstanding questions or requests from SSCI members so that the Committee can complete its work and finalize the report as soon as possible.”

“I expect the Committee will submit at least some portion of the report to the CIA for classification review, and, if that happens, CIA will carry out the review expeditiously,” he wrote in the March 21 email message. Reported in: *Secrecy News*, March 24. □

# intellectual freedom bibliography

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