newsletter on intellectual freedom

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# fewer books banned in Texas schools

The number of books banned in Texas schools decreased during the 2011-12 school year as more school districts have turned to "review committees" to rule on book challenges.

Texas schools banned 12 books last school year, a decrease from the 17 taken from shelves the previous year and the lowest number in a decade. Subjects that concerned parents, teachers and even a bus driver, included topics such as LGBT, teen and race issues; cursing and bad behavior; as well as "creepy illustrations."

"There's more awareness on the part of librarians and school administrators about how to handle complaints from parents," said Terri Burke, executive director of the Texas ACLU, which conducts an annual survey of school book censorship in the state. "Administrators are learning how to engage parents in the process when objections are raised by those who want to ban books with messages that are contrary to their personal beliefs."

"The ACLU of Texas absolutely respects parents' right to choose what books their children read and work with teachers to find alternate titles when parents have concerns. But efforts by a single parent or small group to ban a title and keep all students from reading it infringes on the rights of other parents to make their own choices. That is the effect of banning books," said Dotty Griffith, ACLU public education director.

The ACLU of Texas annually requests information on challenges to books from all Texas school districts and compiles the data in its banned books report, "Free People Read Freely."

The banned books were: *Dark Rivers of the Heart,* by Dean Koontz; *Dash and Lily's Book of Dares*, by Rachel Cohn; *Call Me Hope*, by Gretchen Olson; *Love and Other Four Letter Words*, by Carolyn Mackler; *Num8ers*, by Rachel Ward; *Sidekicks*, by Dan Santat; *10,000 Dresses*, by Marcus Ewart; *The Adventures of Super Diaper Baby*, by Dov Pilkey; *The Boy Who Couldn't Sleep and Never Had To*, by D.C. Pierson; *The Storm in the Barn*, by Matt Phelan; *Vampires*, by Jennifer Besel; and *When is it Right to Die?* by Joni Eareckson.

Many of the challenged books, which might not have been intended for an elementary reader in the first place, such as D.C. Pierson's *The Boy Who Couldn't Sleep and Never Had To*, or Dan Santat's *Sidekicks*, found their way to library shelves or classrooms of younger readers. Some schools indicated they "restricted" these books from the elementary schools, either moving to a higher grade level or restricting only for the child whose parents protested its use. Some chose to ban the challenged books all together.

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*Published by the ALA Intellectual Freedom Committee, Martin Garnar, Chair*

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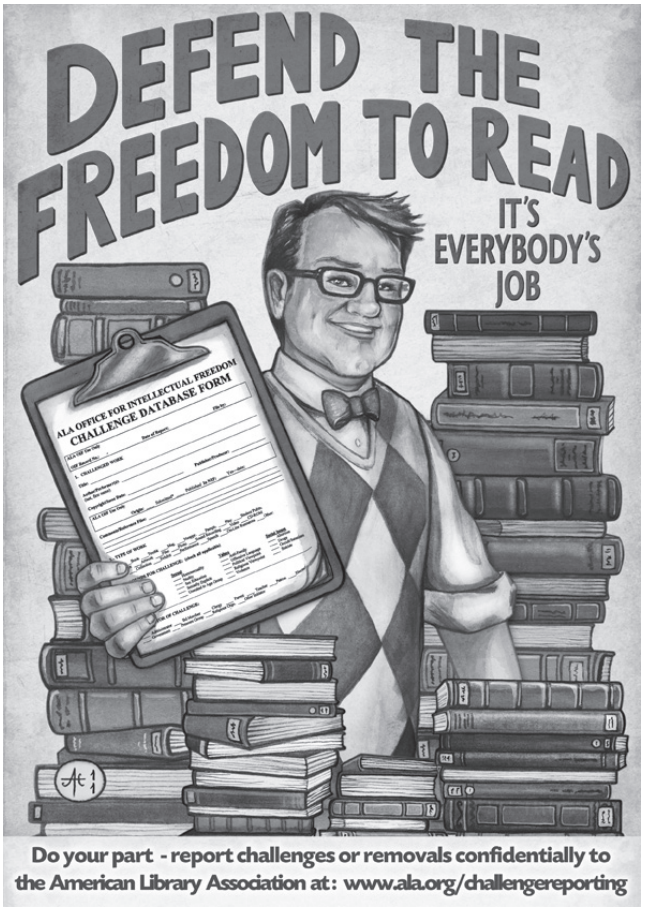





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## state of the First Amendment

About two-thirds of Americans oppose unlimited campaign spending by corporations and unions, according to the 2012 State of the First Amendment national survey released July 17 by the First Amendment Center.

Campaign spending is a volatile issue in this year's presidential and congressional campaigns. Asked whether corporations and unions should be able to spend as much as they want in support of or opposition to political candidates, 63% said "no," 30% said "yes" and 7% were undecided. In a controversial 2010 ruling, the U.S. Supreme Court—in *Citizens United v. Federal Election Commission*—removed spending limits on those groups, citing the First Amendment's protection for political speech.

The survey also found that 59% of Americans oppose—with 44% saying they "strongly oppose"—the government's being allowed to take control of the Internet and limit access to social media and Web outlets such as AOL and Yahoo in the event of a national emergency.

The latest results in the First Amendment Center-sponsored surveys, conducted since 1997 on public knowledge and opinion about the First Amendment, were released at the National Press Club in a presentation by First Amendment Center President Ken Paulson and Senior Vice President Gene Policinski.

On other social-media issues, the survey found:

- 62% said public schools should not be able to punish students for posting offensive content on social media.

- 46% said people should be allowed to post copyrighted material without paying rights fees as long as no money is being made, with 42% opposed. However, 64% would not approve of such postings if money was being made, and 59% favor prosecution of those who illegally distribute copyrighted music and movies.

- "The survey results suggest that most Americans see unauthorized downloading as a crime, but a plurality also want to protect the right to use copyrighted content as part of their free expression, a legal principle called 'fair use,'" Paulson said. "Free speech and copyright are not mutually exclusive."

Other results from the national survey:

- Only 4% of those surveyed could name "petition" as one of the five freedoms in the First Amendment, the lowest percentage this year for any of the five freedoms. Only freedom of speech was named by more than half of respondents, 65%. Freedom of religion was named by 28%, while just 13% named the freedoms of press and assembly

- 75% agreed it is important for our democracy that the news media act as an independent "watchdog" over government on behalf of the public; 62% disagreed with the statement, "The news media try to report the news without bias."

- 57% opposed public schools' having the authority to discipline students who use their own personal computers at home to post material that school officials say is offensive.

"While Americans remain generally supportive of First Amendment freedoms, it's clear that as a nation we need to re-energize our efforts to provide education about those rights, starting with understanding what they are," said Policinski. "We need to prepare our fellow citizens for the tasks of defending and applying those five freedoms in the 21st century."

The 2012 national survey of 1006 adults was conducted in June by telephone by the PERT Group, and directed by Dr. Kenneth Dautrich. The sampling error is +/-3.2%. The PERT Group is headquartered in Bloomfield, Conn., with offices in Pittsburgh and Kansas City, and personnel in Stamford, Conn., Caldwell, N.J., and Philadelphia.

The First Amendment Center works to preserve and protect First Amendment freedoms through information and education. The center serves as a forum for the study and exploration of free-expression issues, including freedom of speech, of the press and of religion, and the rights to assemble and to petition the government. The center, with offices at Vanderbilt University in Nashville and Washington, D.C., is an operating program of the Freedom Forum and is associated with the Newseum. □

## publishers and Google end lawsuit

The Association of American Publishers (AAP) and Google officially laid down their arms October 4 ending a seven-year legal war with a peace agreement that both parties plan to keep sealed from the public and the courts.

The AAP first sued Google in fall 2005, a year after it announced Google Book Search (also known as Google Books), a project the company had jump-started by scanning hundreds of thousands of books from the shelves of university libraries without seeking permission from the publishers or the authors. The publishers and authors teamed up to file a class action against Google and, after years of negotiating, agreed on a settlement—only to have a judge reject it last year.

The latest agreement does not involve the Authors Guild, which is now engaged in separate litigation with Google, nor does it require court approval or public disclosure.

According to Tom Turvey, director of strategic partnerships for Google's search services division, the basic thrust of the accord is this: All the books with publisher-owned copyrights that Google initially scanned into its database from university libraries will now be either removed from the company's database or made more easily available through the Google Books interface, which lets visitors read 20 percent of each book for free.

Prior to the agreement much smaller "snippets" of those works had been available through Google, said Turvey in an interview.

The exact terms of the deal are mysterious. Turvey and Tom Allen, the president of AAP, declined to expand on the terms of content licensing or whether the settlement involved any kind of additional payout. The agreement pertains to all publishers that are members of the AAP, as well as some that are not, according to a spokeswoman for the association.

If the agreement was momentous, it was also expected. "Google and the publishers made their peace a long time ago," said James Grimmelmann, a professor at New York Law School. "This is just the formal announcement of it."

Still, the implications for libraries and researchers should be positive, said Barbara Fister, a librarian at Gustavus Adolphus College.

"This potentially could be helpful, mostly because it signals a détente between publishers and Google—which isn't always a good thing for consumers but could mean some things will be more accessible or discoverable," said Fister.

The fact that 20 percent of each book will be accessible free is also encouraging, she said. "It's very different from what trade publishers have said to public libraries, which basically has been, 'Drop dead,' " said Fister. "If they do this and it doesn't hurt their bottom line," she said, "then it could help librarians make the case that sharing is good for business."

Kevin Smith, the scholarly communications officer at Duke University, said the lack of specific information offered up by the two parties makes it difficult to predict how the new agreement will affect academe in particular. "Presumably some titles will be less accessible and some, maybe, will be more," Smith said. "In the general scheme of how research is currently being done I don't think it will make a big difference, but it might affect the results for specific research projects."

Also unclear is how the settlement between the publishers and Google could affect the other raft of plaintiffs, the authors. The Authors Guild has continued with its own litigation after last year's ruling dismantled its alliance with publishers.

Paul Aiken, the executive director of the guild, said he is confident the AAP deal will not harm his group's lawsuit. "The publishers' private settlement, whatever its terms, does not resolve the authors' copyright infringement claims against Google," said Aiken in an e-mail. "Google continues to profit from its use of millions of copyright-protected books without regard to authors' rights, and our class-action lawsuit on behalf of U.S. authors continues."

But Jonathan Band, a Washington-based copyright lawyer, is not so sure. When the publishers and the authors were suing Google together, the murkiness of copyright ownership across the body of scanned library books worked in the plaintiffs' favor. "You could say, 'Either way, Google is infringing someone's copyright,' " said Band. Without the publishers on board, things get messier, he said. The Authors Guild could lose some of the clout it needs to show a degree of moral injustice that would warrant an injunction, said Band.

"It just sort of says, 'Gee, how bad could Google's conduct be when all these publishers are settling on this much broader arrangement?' " he said. Reported in: insidehighered.com, October 5. □

## free speech in the YouTube era

The storm over an incendiary anti-Islamic video posted on YouTube has stirred fresh debate over the nature of free expression on the Internet. Google, which owns YouTube, restricted access to the video in Egypt and Libya, after the killing of a United States ambassador and three other Americans. Then, it pulled the plug on the video in five other countries, where the content violated local laws.

Some countries blocked YouTube altogether, though that didn't stop the bloodshed: in Pakistan, where elections are to be scheduled soon, riots left a death toll of 19.

The company pointed to its internal edicts to explain why it rebuffed calls to take down the video altogether. It did not meet its definition of hate speech, YouTube said, and so it allowed the video to stay up on the Web. It didn't say very much more.

That explanation revealed not only the challenges that confront companies like Google but also how opaque they can be in explaining their verdicts on what can be said on their platforms. Google, Facebook and Twitter receive hundreds of thousands of complaints about content every week.

"We are just awakening to the need for some scrutiny or oversight or public attention to the decisions of the most powerful private speech controllers," said Tim Wu, a Columbia University law professor who briefly advised the Obama administration on consumer protection regulations online.

Google was right, Wu believes, to selectively restrict access to the crude anti-Islam video in light of the extraordinary violence that broke out. But he said the public deserved to know more about how private firms made those decisions

in the first place, every day, all over the world. After all, he added, they are setting case law, just as courts do in sovereign countries.

Wu offered some unsolicited advice: Why not set up an oversight board of regional experts or serious YouTube users from around the world to make the especially tough decisions? Google has not responded to his proposal, which he outlined in a blog post for The New Republic.

Certainly, the scale and nature of YouTube makes this a daunting task. Any analysis requires combing through over a billion videos and overlaying that against the laws and mores of different countries. It's unclear whether expert panels would allow for unpopular minority opinion anyway. The company said in a statement that, like newspapers, it, too, made "nuanced" judgments about content: "It's why user-generated content sites typically have clear community guidelines and remove videos or posts that break them."

Privately, companies have been wrestling with these issues for some time. The Global Network Initiative, a conclave of executives, academics and advocates, has issued voluntary guidelines on how to respond to government requests to filter content. And the Anti-Defamation League has convened executives, government officials and advocates to discuss how to define hate speech and what to do about it.

Hate speech is a pliable notion, and there will be arguments about whether it covers speech that is likely to lead to violence (think Rwanda) or demeans a group (think Holocaust denial), just as there will be calls for absolute free expression.

Behind closed doors, Internet companies routinely make tough decisions on content. Apple and Google earlier this year yanked a mobile application produced by Hezbollah. In 2010, YouTube removed links to speeches by an American-born cleric, Anwar al-Awlaki, in which he advocated terrorist violence; at the time, the company said it proscribed posts that could incite "violent acts."

On rare occasions, Google has taken steps to educate users about offensive content. For instance, the top results that come up when you search for the word "Jew" include a link to a virulently anti-Jewish site, followed by a promoted link from Google, boxed in pink. It links to a page that lays out Google's rationale: the company says it does not censor search results, despite complaints.

Susan Benesch, who studies hate speech that incites violence, said it would be wise to have many more explanations like this, not least to promote debate. "They certainly don't have to," said Benesch, director of the Dangerous Speech Project at the World Policy Institute. "But we can encourage them to because of the enormous power they have."

The companies point out that they obey the laws of every country in which they do business. And their employees and algorithms vet content that may violate their user guidelines, which are public.

YouTube prohibits hate speech, which it defines as that which "attacks or demeans a group" based on its race, religion and so on; Facebook's hate speech ban likewise covers "content that attacks people" on the basis of identity. Google and Facebook prohibit hate speech; Twitter does not explicitly ban it. And anyway, legal scholars say, it is exceedingly difficult to devise a universal definition of hate speech.

Shibley Telhami, a political scientist at the University of Maryland, said he hoped the violence over the video would encourage a nuanced conversation about how to safeguard free expression with other values, like public safety. "It's really about at what point does speech becomes action; that's a boundary that becomes difficult to draw, and it's a slippery slope," Telhami said.

He cautioned that some countries, like Russia, which threatened to block YouTube altogether, would be thrilled to have any excuse to squelch speech. "Does Russia really care about this film?" Telhami asked.

One of the challenges of the digital age, as the YouTube case shows, is that speech articulated in one part of the world can spark mayhem in another. Can the companies that run those speech platforms predict what words and images might set off carnage elsewhere? Whoever builds that algorithm may end up saving lives. Reported in: *New York Times*, September 22. □

## does press freedom lead to happiness?

Freedom of the press is viewed by many as a cornerstone of democracy. But can it actually help improve people's lives and make them happy? Researchers at the University of Missouri have found that citizens of countries with press freedom tend to be much happier than citizens of countries without free presses. Edson Tandoc, Jr., a doctoral student in the MU School of Journalism, says that press freedom directly predicts life satisfaction across the world.

"We already know that having reliable, objective news sources can benefit democracy, but in this study, we found that press freedom also benefits communities by helping improve the overall quality of life of citizens and, in the process, by also making them happier," Tandoc said. "People enjoy having an element of choice about where they get their news. Citizens of countries without a free press are forced to rely on the government for information, when what people really want is diversity in content where they are free to get the information they want from the source of their choosing."

Tandoc and his co-author, Bruno Takahashi from Michigan State University, analyzed data from 161

countries using a 2010 Gallup Poll evaluating happiness levels around the world. Tandoc and Takahashi compared those happiness levels with Freedom House's press freedom index which rates the level of each country's press freedom. They also examined human development statistics gathered by the United Nations as well as the Environmental Performance Index created by researchers at Yale Center for Environmental Law & Policy. Tandoc found that the more press freedom a country enjoyed, the higher the levels of life satisfaction, or happiness, of its citizens tended to be.

"The road to happiness isn't direct; it is a complex path or web that includes many different influences and interrelationships," Tandoc said. "Things like improving the economy alone are insufficient for increasing happiness. Protecting press freedom is also an important component of the happiness web."

Tandoc also found that countries with higher levels of press freedom enjoyed better environmental quality and higher levels of human development, both of which also contribute to life satisfaction. He credits this to the watchdog function of the press, which helps expose corruption of all levels in a community.

"A country with a free press is expected to be more open about what is wrong in their societies and with their environments," Tandoc said. "A free press is likely to report about poor human conditions and environmental degradation, bringing problems to the attention of decision-makers. It should not come as a surprise, therefore, that press freedom is positively related to both environmental quality and human development."

The study was published in the *Social Indicators Research Journal* and presented at the International Communication Association 2012 conference in Phoenix. □

## censorship dateline

## library

**Georgetown, Texas**

Some children's books in the Georgetown Public Library are causing a bit of a stir with two local parents. They say several books are too graphic and explicit to be in the children's section of the library.

It took a few weeks for Tami Brett and her friend Ann Elizabeth Elz to get over their shock about what they found in their local library: books with titles like *Mommy Laid an Egg*, *Dear Larissa* and others. They say the books' artwork depicts in graphic nature a variety of subject matters too inappropriate for children.

"I found books that explicitly show in cartoon-type drawings," said Brett, "clowns in various sexual positions explaining specifically where anatomies meet up." Brett said these books don't need to be banned from the library, but they don't belong in the children's section and should be re-categorized. "These books from the covers of the books and the titles of the books," Brett added, "you are not aware that you're going to be seeing this type of information."

"I cannot believe these books," said Elz. "We read about climaxing, we read about masturbation. We read about rape, we read about the act of creating a baby and I [reacted], 'Can you believe this is in a children's section?'"

They decided to bring it up to the head librarian last spring but said nothing was done. Brett said she then filed a formal complaint last June.

According to the city, the library director reviewed the books in question and decided they were age-appropriate and decided the books would stay in place. But these parents say they're frustrated with the city's inaction and can't believe the librarian doesn't recognize their concerns.

"I'm not asking for removal of the books at all. I'm just simply asking that they help parents out, work with us—we all want to have our children's best interest at heart," said Brett.

On October 2, Brett met with the Georgetown city manager who told her there is a process to follow beginning with a formal complaint with the library advisory board, and subsequently, City Council if a resolution isn't found. Reported in: kxan.com, October 2.

## schools

**Enfield, Connecticut**

The video game-themed graphic novel *Sidescrollers*, by Matthew Loux will be removed as an option on a Connecticut school district's ninth grade summer reading list after a parent complained of profanity and sexual references in the book. The Enfield Board of Education will also change its policy so that a board committee must approve the reading lists drawn up by schools.

*Sidescrollers* was chosen as one of the Young Adult Library Services Association's Great Graphic Novels for Teens in 2008, and was praised by Publishers Weekly as "wholesome…but still entertaining for young teens or those with a sense of humor." It recounts the adventures of three teenaged slacker geeks who are roused to action when a female friend becomes romantically involved with loutish quarterback Dick. Along the way, the trio engages in mildly vulgar but realistic teenage banter and vandalizes Dick's car with anatomically correct graffiti.

Enfield parent Christie Bosco claimed that her effort to have the book removed was "not a question of censorship," even though it was not required reading and her son could simply choose a different book. It is unclear whether the Board of Education followed its own policy on Challenges to the Use of Educational Resources, which states in part that "no parent nor group of parents has the right to negate the use of educational resources for students other than his/her own child." The policy document also states that challenged materials should be read and considered by a committee composed of six teachers, two librarians, and one principal. Reported in: cbdlf.com, September 5.

**Nampa, Idaho**

After complaints from parents, a popular novel has been taken off the reading list at Nampa High School. *Like Water for Chocolate* became a major motion picture twenty years ago. But now it's considered too racy for sophomores who already started reading it.

The book has been considered a contemporary classic in Latin American literature. In the past, parents say teachers would read edited excerpts. Parents said when free reading

was permitted is when the complaints started pouring it.

"We were saying how crazy it was," said Megan Chandler, a Nampa High sophomore. "Our other English classes had already pulled it today, but we (our class) still read it. I don't know if my class is going to pull it."

Chandler said she skipped several of the racier parts of the book because it made her feel uncomfortable. "I still think we shouldn't have been able to do it," Chandler said. "There are just some things that are in there that are inappropriate for sophomores in high school."

*Like Water for Chocolate* is described as earthy and romantic. When a local television station asked why it was pulled, the school district replied with just two words: "Sexual Situations."

"I actually read a few passages from the book today in an email that was sent to me and I was shocked and appalled that it was something in the school," said Jan Lakey, a local parent.

One of those "sexual situations" described comes from Page 55. "Naked as she was, with her loosened hair falling to her waist, luminous, glowing with energy, she might have been an angel and devil in one woman," the book reads. "The delicacy of her face, the perfection of her pure virginal body contrasted with the passion, the lust, that leapt from her eyes, from her every pore."

And on Page 66: "Under her blouse, her breasts moved freely, since she never wore a brassiere. Drops of sweat formed on her neck and ran down into the crease between her firm round breasts."

News of the book's removal spread quickly to several Nampa parents. "It does bother me, I mean this is a public school—there's no place for that sort of thing in a public school," said Bob Solberg, another parent.

But not everyone agreed.

"Sex is everywhere and I think it...they're going to get it one way or another," said Andrew Hollingsworth, a Nampa resident.

The book isn't a stranger to controversy. In the past, the book has been pulled from school districts in Wisconsin and Arizona. Reported in: kval.com, September 26.

**Knoxville, Tennessee**

A Knox County parent is concerned about a book students at Hardin Valley Academy are required to read this year. The book is national bestseller *Robopocalypse*, by Daniel H. Wilson. Sam Lee is trying to get it removed from the required reading list because of the book's language.

Lee's son will be a freshman at Hardin Valley Academy this year. He says his wife was the first to notice the content of the book. "She decided to read some of it so she could ask him questions and make sure he knew what he was reading," said Lee. "When she started reading we were shocked. We got one chapter in, there was all kind of inappropriate language for minors."

Lee says he is furious his son was required this type of book. "This should had been brought to our knowledge before assigned and forced on our kids," said Lee, "That's my problem."

Lee personally started counting all the "f-words" in *Robopocalypse*. By the time he got half-way through the book he had already counted fifteen.

"We always consider the appropriateness of the theme, the content, the maturity of the audience depending on the grade level," said Knox County Schools Acting Superintendent for Curriculum and Instruction Elizabeth Alves. Alves says she was unaware the book had been chosen by teachers at Hardin Valley Academy. She says they are now looking into the process of how the book was selected.

Lee contacted school officials at Hardin Valley Academy. Debbie Sayers, a chemistry teacher and STEM academy dean, responded in an e-mail, saying, "I have read the book and am aware of the inappropriate language. *Robopocalypse* was one of several books proposed by teachers in the STEM Academy." Sayers said three choices were given to students and "they overwhelmingly picked *Robopocalypse*."

"In our selection of the book choices for students, we discussed adult-level language, and decided that most (not all) students of this age group are exposed to profanity through much more graphic means than the written text ," Sayers added.

Lee said he feels students should not have any say on what books they read and hopes more parents will be aware of *Robopocalypse*. "I would like to see it taken off the reading list," said Lee. "I don't know if that will happen, depends on if parents care."

He is planning to make an official complaint with the school system.

*Robopocalypse* author Daniel H. Wilson responded to Lee's complaint. "I'm sorry to hear that *Robopocalypse* has upset any parents. The novel is a thriller set in a post-apocalyptic world in which the characters are fighting to survive and they do use strong, realistic language. The novel does not contain drug use or sexual content, and the story revolves around a diverse group of people who emerge from a global catastrophe as heroes of humanity."

*Robopocalypse* has been popular with young adults, Wilson said. It was awarded the Alex Award by the Young Adult Library Services Association in 2011.

"I recently spoke to nearly two hundred student readers at Madison High School here in Portland, Oregon, and they were all very excited about the novel (and the upcoming movie adaptation from DreamWorks)," Wilson said. He added that parents should decide what is best for their children. "I am glad to say that *Robopocalypse* has been able to help encourage high school students to read," he said.

Lee said school officials have given his son an opportunity to read an alternative book. Reported in: wate.com, August 9.

**Salt Lake City, Utah**

A backlash over a high school performance of "Dead Man Walking" has prompted a Utah school district to give parents a greater role in approving student plays. The conservative family-values group Utah Eagle Forum objected to the play at South Jordan's Bingham High School last spring. The Eagle Forum says "Dead Man Walking"—about a Catholic nun who counsels a death-row inmate in Louisiana—contained profanity, slurs and sexual language.

District officials said much of the profanity was stripped from the play and drama students were allowed to change their lines. Nonetheless, the Jordan School Board revised its drama policy on August 28. The board will require actors to get a parent's permission slip and drama teachers to seek clearance for plays not on an approved list. It also will put more parents on a committee that selects plays.

"It brings everybody together to the table," district spokeswoman Sandy Riesgraf said.

Eagle Forum President Gayle Ruzicka called the changes "a huge step in the right direction" but said the board or district should issue an apology and acknowledge the play was inappropriate for high school students.

"I'm glad to see the district respond so positively to the concerns of parents," she said. State Sen. Aaron Osmond (R-South Jordan) has said he also wants an apology from school officials.

Riesgraf said only one district patron complained about the show before the Eagle Forum voiced its displeasure.

Michael Woodruff, a senior who was in the play, said he didn't see anything wrong with "Dead Man Walking" but thinks it's a good idea to have parents sign off on their children's participation. "It discusses the complexity about an issue that usually no one really talks about," Woodruff said of the play. "It evaluates both sides."

The 1995 American drama film, directed by Tim Robbins from a book of the same name, was based on a true story that raised questions about the morality of the death penalty. In the original drama, the nun tells the condemned man that redemption is possible only if he takes responsibility for killing a teenage couple. The man—played by actor Sean Penn—admits guilt for the first time just before his execution, appeals for forgiveness and expresses hope that his death brings the teens' parents peace. Reported in: firstamendmentcenter.org, September 2.

## retailing

**Burbank, California**

Comedian Joan Rivers has never had a problem expressing her opinions, however controversial they may be, and the TV personality made it known in August that Costco was her latest target. The actress protested outside a Costco in Burbank – complete with a bullhorn – because she claims the bulk retailer has banned her new book from its shelves.

"My book has been banned from Costco which is ridiculous because they're funny," Rivers said, explaining that the retailer took issue with two fake testimonials printed on the back cover. The mock reviews of the book, which she penned under the names Wilt Chamberlain and Marie Antoinette, both contain curse words.

*I Hate Everyone… Starting With Me* has been on the *New York Times* best seller list for six weeks and is carried by other large retailers, but Rivers said it wasn't about getting her book into the bulk goods giant for the money.

"This is an anti-First Amendment freedom of speech issue. I thought Costco buyers should have right to decide whether to read it. They should not censor our books," Rivers said.

Costco customers bought 100 copies of the book from Rivers before the store manager and police escorted her out as she proceeded to handcuff herself to a shopping cart.

"She was signing books, saying crazy stuff, looked like she was protesting," said James Clifton, who was shopping there with his wife, Samantha.

"It's kind of cool. I only get to see her on TV," Samantha said.

Although Rivers is known for her no-holds-barred humor, she said she's serious about this fight. "This is a company that sells [toilet paper] by the pallet and condoms by thousands and they won't sell Joan Rivers' book," the author said.

Burbank police confirmed that they were called by Costco management to ask Rivers to go outside. Reported in: kcbs.com, August 7.

## theater

**Lapham Peak State Park, Wisconsin**

A local theater group called SummerStage was scheduled to put on a play at Lapham Peak State Park at the end of August and in September, but the Department of Natural Resources banned it.

The play, written by the Reduced Shakespeare Company almost two decades ago, is called "*The Bible: Complete Word of God, Abridged*." It's very light-hearted fare.

For instance, it has Moses coming down from the mountain, saying, "Children of Israel, I've got good news and bad news. The good news is I talked Him down to 10. The bad news is adultery is still one of them."

The play has been performed hundreds of times in this country without incident, until Vic Eliason raised a stink. Eliason is an evangelical clergyman in Milwaukee who runs the VCY (Voices of Christian Youth) America Radio Network. He has a show, "Cross Currents," in Milwaukee, and on August 9, he dedicated his hour-long program to condemning the play as "blasphemous" and "diabolical."

He urged his listeners to contact the board members of SummerStage, and he gave out their numbers. He also urged listeners to call the businesses where some of the board members worked and ask them, "How can you have someone on the board who will literally spit in the face of the Bible?"

Eliason also gave out the phone numbers of the DNR's top two officials and told listeners to ask them why the state was allowing this play to go on, and why it was profiting from it. (The agreement with SummerStage and the Lapham Peak State Park is that 5 percent of ticket sales go to the park, Eliason said.)

As a result of this broadcast and subsequent broadcasts by Mark Belling, another rightwing talk radio host in Milwaukee, SummerStage was inundated with negative calls, and the DNR pulled the plug on the show.

"SummerStage will not be performing 'The Bible – the Complete Word of God, Abridged' at Lapham Peak as the event did not meet the provision of the Department agreement requiring all productions to be family oriented," said Bill Cosh, spokesperson for the DNR.

"It turned into a horrible fiasco," says Susan Marguet, general counsel of SummerStage. "There was a lot of harassment."

Brian Faracy, the founder of SummerStage and the producer of the film, was in shock about the decision. "You can't believe it's happening," he says. "This play has been performed at the Kennedy Center in Washington. It's been performed by church groups in churches. It's a simple little comedy. The jokes are as old as Moses's toes. There's never been a problem with this play anywhere in the United States for 17 years until this guy decided that he alone knows what's blasphemy."

Faracy, who also acts in the play, feels for the other people involved in the production. "These people have given up their time, their money, and their efforts, and one bully with a microphone has dismissed them," he says.

"The DNR wilted" under the pressure, he says. And though he sympathized with the board of SummerStage, he wishes the members would have put up more of a fight: "The brave thing to do would have been to say, 'Hey, wait a second.' "

Some veterans of the Wisconsin theater community are putting up a fight. David Cecsarini, who founded Next Act Theatre in Milwaukee 23 years ago, sent a letter to other artistic directors in southern Wisconsin.

"I find it absolutely frightening that such public-opinion censorship can occur, so swiftly and inexorably, over a piece that's lighter-than-air and just for fun," he wrote. "What might happen when we produce something that actually merits attention because it does indeed take on controversial subject matter? I believe we all have a stake in this, as producers, as artists, and as citizens."

Cecsarini found another venue for the play. "The play needs to be done," he says. He noted that the Milwaukee Chamber Theatre put the play on seven years ago. "There was nary a peep," he says. "That some loudmouth can shut this down is just frightening."

For his part, Eliason applauded the DNR's decision. "I commend the state of Wisconsin for taking this response," he said.

Eliason admitted he never saw the play or read the script. "Sir, let me tell you this: I saw enough of the trailers alone to turn my stomach," he said. The trailer he broadcast on August 9 ran the joke about Moses and the Ten Commandments. Eliason prefaced it by saying: "I almost hesitate to play these words on a Christian station."

Eliason railed against what he views as a double standard. "If we were to make fun of the holy book of the Sikhs, we'd be hung in effigy," he said. "If you make even a hint of anything disrespectful of the Koran, people die in the streets over that. And yet these people felt they had the right to insult the holy word of God to Christians and people of God all over the area."

He claimed it is "open season on Christians" in America. "Christianity is under attack, and we at VCY will do everything we can to defend." And he had a warning for the playwrights and the producer and the actors: "For someone to make mockery of the book that Christians regard as the Holy Word and as the title of that debauched play indicates, if you read in the Book of Revelation, it talks about the people who add to, or take from, it. They are condemned to hellfire." Reported in: *The Progressive*, August 23.

## art

**Sausalito, California**

The Sausalito Art Festival abruptly pulled a painting of a human figure falling from the Golden Gate Bridge from its website after a complaint from an outraged Marin resident that it could encourage suicides from the famed span.

Titled "Jump the Golden Gate Club," the painting by San Francisco artist Douglas Brett was chosen by a panel of three judges as one of four honorable mentions in the painting category for the festival's first "American Icon" art contest.

The decision to remove it sparked cries of censorship from the artist and raised questions of whether the well-being of the community takes precedence over freedom of expression and free speech.

"I think it's wrong to censor my work," Brett said, noting that he created the painting in 1980 to commemorate the 1,000th suicide from the bridge, which has long been a powerful attraction to people intent on taking their lives. "It's a beautiful image of dark subject matter."

Corte Madera resident Craig Love was "outraged" when he saw the image and so disturbed by it that he demanded that the festival take it off its website. "I am a firm believer in free speech, but what if this pushes someone over the

railing?" said Love, a 65-year-old retired lighting technician who entered a photograph of the bridge in the contest. "My concern was that some troubled teen would see the image of someone going over the side of the bridge and decide to join the club."

Trustee Zeny Cieslikowski said he wasn't willing to take that chance and made the decision to remove the controversial image, a child-like "naive" oil painting showing a blackened human figure, arms raised, falling toward the water from between the two bridge towers. "On a personal basis, if anything close to that happened as a result of the painting it would be a key moment in my life and I didn't want to have to deal with that," Cieslikowski said. "There are too many troubled people around."

The bridge, one of the world's most iconic structures, was chosen for the first "American Icon" competition to celebrate the span's 75th anniversary as well as the 60th anniversary of the art festival, a Labor Day weekend tradition on the Sausalito waterfront. The festival plans to make the competition an annual event featuring different iconic subjects.

Some 70 amateur and professional painters, photographers and videographers, including 26 from Marin, entered the contest, which was open to contestants of all skill levels. First-place winners received a $500 prize. The winning images were posted online at www.americanicon.net and had been public for less than a day when Brett's offending painting was removed. His name, however, will continue to be listed as an honorable mention in the contest.

During the Septemberr 1-3 festival, the winners—except for Brett's painting—were shown digitally on large screens accompanied by ambient sounds from the bridge and bay.

Brett, a sculptor and jewelry artist as well as a painter, was exhibiting his work at the festival for the first time. He said he will have the bridge painting in his booth for festival-goers to see.

Cieslikowski, who has been acquainted with Brett through Bay Area art organizations, said he was sorry to pull his painting, because it could have reopened the long-standing debate over suicide barriers on the bridge to prevent jumpers such as the one depicted in Brett's piece.

"But it's important to our festival to celebrate the joy of living and this wasn't the appropriate time for that discussion," he said.

Even Love, the only person to have registered a complaint before the image was removed, had second thoughts about having the painting taken from public view. "I'm still really torn," he said. "Maybe it was the wrong thing to do. Maybe it would have saved a life if someone saw that. I don't know. It's an interesting topic." Reported in: *Marin Independent Journal*, August 24.

**Overland Park, Kansas**

On September 4, a group trying to force the Overland Park Arboretum to remove a bronze statue of a partially nude woman, turned in signatures it gathered. The American Family Association said it collected 4,700 signatures from people who either disagree with the statue and want it removed or want the decision to go before a grand jury.

The statue was donated by Chinese artists. The piece is called "Accept or Reject." It shows a partially nude woman taking a picture of herself with a camera. The American Family Association believes the statue encourages "sexting" and believes it violates community standards on obscenity.

"Beyond inappropriate," said Phillip Cosby of the Association. "When it comes to sexting and children it's a serious issue," he said. "It's beyond comprehension why a city would put a statute that's celebrating sexting."

After the petition is turned in, Johnson County then has 60 days to convene a grand jury, if all is in order. "Ultimately the grand jury will be speaking on behalf of the community in making this decision," said Steve Howe, Johnson County District Attorney. Reported in: fox4kc.com, September 4, 5.

## foreign

**Jerusalem, Israel**

A simmering debate over the fate of the department of politics and government at Ben-Gurion University of the Negev has roiled Israeli academe and prompted cries by scholars both in Israel and the United States that academic freedom is under assault by the government of Prime Minister Benjamin Netanyahu.

The long-running dispute over the department may come to a head when a resolution to close it will be discussed by Israel's Council for Higher Education, a government body that accredits and oversees colleges in Israel. On October 23, the council was set to consider a controversial recommendation from its Subcommittee for Quality Assurance to halt student registration at the department, effectively shutting it down, unless it undertakes more changes. The proposal has ignited accusations that the move is motivated more by politics than pedagogy.

"This struggle is not only about Ben-Gurion University of the Negev, but rather it is a struggle of the entire Israeli academic community," Rivka Carmi, president of Ben-Gurion, wrote in a letter to the heads of Israeli universities. "The approval of this decision by the Council for Higher Education will constitute a devastating blow to academic independence in Israel."

Dr. Carmi is pressing for a swift rejection of the "extreme" proposal to help dissolve a cloud of uncertainty that has hovered over the department for nearly a year.

Ben-Gurion's troubles in the matter began in November 2010 with the council's appointment of an international committee to evaluate political-science and international-relations departments at eight colleges in Israel, as part of

the organization's periodic review procedures. The committee, chaired by Thomas Risse, a professor at the Otto Suhr Institute for Political Science at the Free University of Berlin, reported in its assessment that the departments generally "are doing very well."

But the committee expressed grave misgivings about the standards of teaching at Ben-Gurion, saying it was "concerned that the study of politics as a scientific discipline may be impeded by such strong emphasis on political activism." The committee found the department "weak in its core discipline of political science in terms of number of faculty, curriculum, and research," criticized the university's library resources and its research record, and recommended "major changes toward strengthening its disciplinary and methodological core through both hiring more faculty and altering its study programs."

"If these changes are nevertheless not implemented, the majority of the committee believes that, as a last resort, Ben-Gurion University should consider closing the department of politics and government," the committee stated.

Department faculty members have been criticized for their left-wing views. In 2009, right-wing groups called for the dismissal of Neve Gordon, a professor of political science at Ben-Gurion, when he announced his support for a boycott of Israeli institutions over Israel's policy toward Palestinians.

Despite its reservations, the university began making the proposed changes to strengthen the department, in consultation with the council and two members of the international committee—Risse and Ellen M. Immergut, a professor of social sciences at Humboldt-University in Berlin. It updated the department curriculum, expanded the variety of courses, and hired three new faculty members. In July, Risse and Immergut applauded the new appointments, expressing hope that the faculty would assist "the department's commitment to building a pluralistic curriculum" while still urging it to "increase its diversity in terms of methods and theoretical orientations in future recruitments."

Meanwhile, the membership of the Council for Higher Education had been replaced, introducing new candidates appointed by the education minister, Gideon Sa'ar, who had publicly criticized the department at Ben-Gurion after a political-activist group issued a report accusing the department of having a "post-Zionist" bias.

The council's subcommittee welcomed the changes at Ben-Gurion but noted that none of the new faculty endorsed a "positivist approach" and determined that the department teaching was still dominated by too much critical theory. It recommended appointing a monitoring committee that would report back by December. Meanwhile, the subcommittee said, registration for the 2013-14 academic year should be suspended.

Dr. Carmi, of Ben-Gurion, described the recommendation as "totally at odds with the evaluation written by the two international members who had been appointed to oversee the process."

Indeed, Risse and Immergut strongly objected to the subcommittee's recommendations, noting they had "not been consulted" about the appointment of a new monitoring committee or the proposal to suspend student registration. They pointedly requested to be consulted about future developments and wondered aloud whether their future services would be required at all. "Does the Sub-Committee's recommendation imply that our task is finished or shall we continue?" they asked.

Risse and Immergut also reminded the subcommittee that other universities whose departments needed improving were not being pursued with the same vigor. In a similar report on the political-science department at Bar-Ilan University, they had voiced "substantial" criticism and "many concerns" but that university had failed to respond to "our comments to their strategic plan from May 2012."

From its inception, the council's process has been suspected of political bias. Robert Y. Shapiro, a professor of political science at Columbia University, resigned as chairman of the international committee after Ian Lustick, a political-science professor at the University of Pennsylvania, was removed for unexplained reasons.

Galia Golan-Gild, a professor at the Interdisciplinary Center Herzliya, another committee member, issued a minority report demurring from several of the committee's conclusions and challenging the demand for a "balance" of views in the classroom as "directly counter to the principle of academic freedom."

"I felt that some of the committee members, with specific political opinions, were trying to find fault with the place," Golan said. "I felt that things were not being conducted fairly."

Moshe Maor, a political-science professor at Hebrew University who was recently appointed to the Subcommittee for Quality Assurance, said the decision to reinforce the closure sanction was made "because the original threat by the international committee didn't help."

"We don't want to close the department; we want to improve it," Maor said. "We have a completely professional academic problem, which is embedded in a political context because the department in question is at the center of the political debate in Israel because of the political opinions of its members. But I am forbidden to deal with the political context. I have to follow only professional considerations."

But David Newman, dean of social sciences at Ben-Gurion who was the first chair of the department in 1998, said the council procedure was flawed. "What has happened has discredited the Council for Higher Education in the eyes of a large percentage of Israel's scientific community." Reported in: *Chronicle of Higher Education* online, September 30.

**Moscow, Russia**

Three young women who staged an anti-Putin performance in Moscow's main Orthodox cathedral, and whose jailing became a cause célèbre championed by artists around the world, were convicted of hooliganism August 17 and sentenced to two years in a penal colony.

In the most high-profile Russian rights case in years, the imprisonment and trial of the women, members of a punk band called Pussy Riot, drew worldwide condemnation of constraints on political speech in Russia. Rallies in support of them were held in dozens of cities around the world, including Paris, New York and London, where demonstrators appeared outside the Russian Embassy wearing balaclavas, the band's trademark headgear.

Human rights groups and Western governments, including the United States, immediately criticized the verdict as unjust and the sentence as unduly severe. Because the women acted as a group, they had faced a maximum sentence of seven years in prison. Prosecutors had urged a three-year sentence. The stiff punishment was handed down by a Moscow judge, Marina Syrova, who described the women as posing a danger to society and said they had committed "grave crimes" including "the insult and humiliation of the Christian faith and inciting religious hatred."

As word of the sentences spread, a crowd of protesters outside the courthouse howled angrily, and then seemed to fall into a stunned silence. Sporadic protests and violent arrests continued throughout the evening.

While the courtroom emptied, the three women were left in their glass enclosure, nicknamed the aquarium, and photographers were allowed to take pictures. As she was finally led away, the most outspoken of the three, Nadezhda Tolokonnikova, said, "We are happy because we brought the revolution closer!" A police officer snapped back, "Well done."

Lawyers for the women said they intended to appeal the decision.

Russia has seen an upwelling of dissent since disputed parliamentary elections last December, including demonstrations that drew tens of thousands of people onto the streets of Moscow. But the Pussy Riot case in recent weeks morphed into an international sensation, and focused intense attention on the efforts of the recently reinstalled president, Vladimir V. Putin, to clamp down on the opposition.

This was partly because of the sympathetic appearance of the defendants—two are mothers of young children—and partly because their group uses music to carry its message. But it also set them in a David-and-Goliath struggle against a formidable power structure: the Kremlin and the Russian Orthodox Church.

But while the case allowed critics of Putin to portray his government as squelching free speech and presiding over a rigged judicial system, it has also given the government an opportunity to portray its political opponents as obscene, disrespectful rabble-rousers, liberal urbanites backed by the West in a conspiracy against the Russian state and the Russian church.

The extent of the culture clash was evident when Madonna paused during a concert in Moscow to urge the release of the women, who have been jailed since March, and performed in a black bra with "Pussy Riot" stenciled in bold letters on her back. The next day, Dmitry Rogozin, a deputy prime minister, posted a Twitter message calling Madonna a "whore."

The Russian Orthodox Church issued a statement that referred to Nazi aggression and the militant atheism of the Soviet era, and said, "What happened is blasphemy and sacrilege, the conscious and deliberate insult to the sanctuary and a manifestation of hostility to millions of people."

The case began in February when the women infiltrated the Cathedral of Christ the Savior wearing colorful balaclavas, and pranced around in front of the golden Holy Doors leading to the altar, dancing, chanting and lip-syncing for what would later become a music video of a profane song in which they beseeched the Virgin Mary to rid Russia of Putin.

Security guards quickly stripped them of their guitars, but the video was completed with splices of footage from another church.

Because of the support they have received from stars like Madonna and Sting, the women of Pussy Riot have become more famous, at least outside Russia, than other political opposition leaders here, some of whom are also the subjects of investigations and prosecutions.

But while the women became minor celebrities, Pussy Riot is far more political than musical: Its members have never commercially released a song or an album, and they do not seem to have any serious aspirations to do so.

When their trial opened in July the women apologized, saying they had never intended to offend the Orthodox church but rather sought to make a political statement against Putin and against the church patriarch, Kirill I, for supporting Putin's campaign for a third term as president. But Judge Syrova, delivering her decision, said that the political comments were spliced into the video later, and that the action in the church was therefore motivated by religious hatred. She also cited evidence that the women had psychological disorders, and she criticized them for embracing feminism, though she noted that "belonging to feminism in the Russian Federation is not a legal violation or a crime."

Although the guilty verdict was widely expected, there were several heartbeats of silence in the courtroom after Judge Syrova finished reading her decision. Then, from somewhere in the gallery came shouts of "Shame!" and "Disgrace!"

The defendants, Tolokonnikova, 23, Yekaterina Samutsevich, 30, and Maria Alyokhina, 24, standing in the glass-plated enclosure in which they were held throughout the trial, smiled to each other as the sentences were announced and rolled their eyes.

Outside the courthouse, supporters of the group chanted "Free Pussy Riot!" and clashed with the riot police. Dozens were arrested, including the former chess champion Garry

Kasparov, who is active in the Russian political opposition. Kasparov fought with the police and appeared to be beaten as he was bundled into a police vehicle.

In Washington, where Obama administration officials followed the trial closely, seeing it as a measure of Putin's new presidency and its own troubled relations with Russia, the White House and the State Department each criticized the verdict. The State Department all but called on Russia's higher courts to overturn the conviction and "ensure that the right to freedom of expression is upheld."

A White House spokesman, Tommy Vietor, said the verdict was disappointing and the sentences disproportionate. "While we understand that the group's behavior was offensive to some, we have serious concerns about the way these young women have been treated by the Russian judicial system," he said.

Amnesty International condemned the sentences, which a spokeswoman said showed "that the Russian authorities will stop at no end to suppress dissent and stifle civil society."

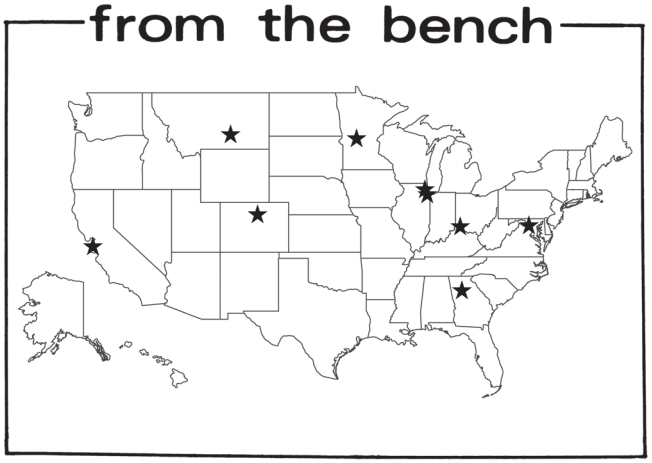
Putin, commenting on the case briefly while in London for the Olympics, had said that he hoped the women would not be judged "too severely," but that the decision was the court's to make.

Putin's spokesman, Dmitry Peskov, said after the verdict that the president had made his views on the case clear. But Peskov told the Interfax news agency, "He does not have the right to impose his view on the court." The trial also showcased the often tilted nature of the judicial system. Defense lawyers were barred from calling most of the witnesses they wanted, including experts and some eyewitnesses, even as prosecutors were allowed to call witnesses who had seen the Pussy Riot performance only on video.

The women were given limited time to meet with their lawyers and also complained that they were not sufficiently fed or well rested.

Stanislav O. Samutsevich, the father of the oldest defendant, said that he had hoped for leniency. "Given that they have been imprisoned for five months, I hoped the sentence would be suspended," he said in an interview outside the court.

Mr. Samutsevich said that the women were at once going through a classic case of Russian repression, while also getting caught up in a new alliance between church and state. "This is the experience all generations of Russian people went through," he said. "Our people were sent to prisons under all governments." But, he added, "I think that we are rolling down to the practices of Iran, where one can get into prison for religious crimes, or Saudi Arabia. Is that what we want to see here?" Reported in: *New York Times*, August 17. □




## U.S. Supreme Court

The Supreme Court's fall session began October 1 without any direct First Amendment cases on the argument docket, signaling a possible respite from free-speech and religion cases for the near-to-middle future.

Recent terms of the Court have featured numerous free-speech cases involving controversial expression, campaign expenditures and the rights of public employees, as well as occasional forays into both the establishment and free- exercise religion clauses.

It would be hard to say the absence of First Amendment cases is intentional on the part of the Court since, as justices often say, its docket is at the mercy of the petitions that come in the door, and whether those specific cases merit review. And the Court's argument calendar for this term is far from full, so new First Amendment cases could still be added.

But still, some First Amendment scholars say the hiatus may reflect the justices' general sense that the Court's doctrines on both speech and religion clauses are fairly stable and settled, without major divisions that require repair.

The Court has not ruled on a press-freedom case in more than a decade, for example. Media organizations are generally content to leave it that way, with pro-press precedents such as *New York Times v. Sullivan* firmly in place. And even the fight over campaign finance, which has been the subject of numerous Supreme Court First Amendment battles in recent years, may have run its course for now. In a Montana case decided in June, the Court passed up a chance to revisit its controversial *Citizens United* ruling loosening restrictions on campaign expenditures by corporations.

"Maybe they have free-speech fatigue," said Notre Dame Law School professor Richard Garnett. "Seriously, though: I am not aware of any speech or religion cases that have granted, or even of any potentially hot-ticket speech or religion petitions that are pending." Garnett said that may be because, "as I see it, at least in the Religion Clauses context, we have actually … reached a point of relative doctrinal stability and completeness, for better or worse."

University of Virginia School of Law professor Leslie Kendrick offered another possible explanation. "An argument could be made that the Court's First Amendment docket has been artificially inflated lately," and it may be returning to normal this term, she said.

In a number of notable recent First Amendment cases—involving restrictions on virulent speech at military funerals, and on violent video games, for example—the Court granted review, only to uphold the lower court decision. They are "interesting, eye-catching cases" that invite consensus among the justices, Kendrick said, and have a "pedagogical purpose" of reminding the nation that the First Amendment protects even the most objectionable speech. "It may not be a bad thing if they lay off the First Amendment for awhile," she added.

Thomas Baker, professor at Florida International University College of Law, said the dearth of First Amendment cases could also mean that the justices "are turning in other directions after having decided some important speech and religion cases the last couple of years. The idea is that they decide some big cases, like the ministerial-exemption case and then back away to allow the lower courts to work out the details."

The dearth of cases does not mean that First Amendment advocates are totally on the sidelines. In *Clapper v. Amnesty International*, set for argument October 29, the Court will consider who has standing to challenge the expansion by Congress of federal authority to wiretap foreign nationals in national security investigations. The Reporters Committee for Freedom of the Press filed a brief stating that the law could jeopardize newsgathering and the ability of journalists to promise confidentiality to sources.

The Court in September granted review in *Maracich v. Spears*, a dispute over drivers' privacy that could implicate state freedom of information laws. *Kirtsaeng v. John Wiley & Sons*, a copyright dispute, has drawn amicus curiae briefs from publishers and movie makers.

And on the horizon, several other First Amendment disputes could turn into Supreme Court cases. There are simmering disputes over "net neutrality" and the Food and Drug Administration's controversial regulations requiring graphic tobacco warnings on cigarette packaging. The Court has asked for the solicitor general's views in *Roe v. United States*, a knotty dispute over the sealing of court documents in a case involving a government witness. In *Agency for International Development v. Alliance for Open Society International*, the Court is being asked to reinstate a federal law that requires public health groups receiving federal AIDS funding to pledge their opposition to prostitution.

Reported in: firstamendmentcenter.org, October 1.

The Supreme Court will decide whether Virginia can keep out-of-staters from using its Freedom of Information Act law to get government documents.

The high court agreed October 5 to hear an appeal from Mark J. McBurney of Rhode Island and Roger W. Hurlbert of California. They tried to use the Virginia law to request documents from state officials, but were both denied because they are not Virginia citizens.

The Virginia law limits access to state citizens and some news-media outlets. The two men say it is unconstitutional not to allow everyone use of a state's FOIA law. The U.S. Court of Appeals for the Fourth Circuit disagreed, saying the state law's limitations were legal. Reported in: firstamendmentcenter.org, October 5.

The Supreme Court is leaving in place a federal law that gives telecommunications companies legal immunity for helping the government with its e-mail and telephone eavesdropping program.

The justices said October 9 they will not review a court ruling that upheld the 2008 law against challenges brought by privacy and civil liberties advocates on behalf of the companies' customers. The companies include AT&T, Inc., Sprint Nextel Corp. and Verizon Communications, Inc.

Lawsuits filed by the American Civil Liberties Union and Electronic Frontier Foundation accused the companies of violating the law and customers' privacy through collaboration with the National Security Agency on intelligence gathering. The case stemmed from surveillance rules passed by Congress that included protection from legal liability for telecommunications companies that allegedly helped the U.S. spy on Americans without warrants. Reported in: firstamendmentcenter.org, October 9.

## schools

**Minnewaska, Minnesota**

On September 6, U.S. District Coujrt Judge Michael Davis ruled that the Minnewaska Area School District violated the First Amendment and Fourth Amendment rights of a 12-year-old student by forcing her to hand over her Facebook password to school officials who in turn used it to search for messages they deemed inappropriate. If the alleged facts are proven to be true, the school will likely have to write a settlement check, and will also be subject to claims of invasion of privacy. Claims for "intentional inflection of emotional distress" were dismissed by the judge.

Because of her young age, the girl's full name was not disclosed; she's merely referred to by her initials: R.S. The American Civil Liberties Union (ACLU) of Minnesota sued Minnewaska Area Schools and Pope County officials on behalf of R.S.

The school disciplined the girl after she posted on Facebook that she "hated" a hall monitor who was "mean" to her. School principal Pat Falk said the comment constituted bullying; R.S. was given detention and told to apologize. The sixth-grade student was at home when she posted the comment: no school computer or school connections were used. Afterwards, she posted another comment, cursing that someone had shown her first one to school officials. The school district responded by giving her an in-school suspension and prohibiting her from attending a class ski trip. The ACLU argued the discipline violated the girl's free speech rights.

In a second incident, the ACLU said school administrators forced R.S. to hand over her Facebook login credentials (e-mail address and password) and e-mail accounts after a boy's mother complained that her son and the girl were talking about sex. The ACLU noted that while an unidentified school employee, a school counselor, and a local deputy sheriff were present, a warrant was not. Furthermore, the girl's mother allegedly did not consent to the search of her daughter's Facebook chat logs. The group claimed this violated the girl's right to privacy and right to be free from unreasonable search and seizure.

At the time, an ACLU spokesperson said: "Students do not shed their First Amendment rights at the school house gate. The Supreme Court ruled on that in the 1970s, yet schools like Minnewaska seem to have no regard for the standard." The judge agreed.

The court had no trouble concluding that assuming the facts as alleged as true, school officials violated R.S.'s First Amendment rights. The judge said that posts on social networks are protected unless they are "true threats" or are reasonably calculated to reach the school environment and pose a safety risk or a risk of substantial disruption of the school environment. R.S.'s posts were not true threats. Even assuming the statements were reasonably calculated to reach the school audience, there was no possibility of disruption.

The court acknowledged, however, that R.S. wasn't allowed on Facebook in the first place. The Children's Online Privacy Protection Act (COPPA) requires that websites which collect information about minors aged 13 or younger gain explicit parental consent to access commercial websites. As a result, Facebook's terms of service (Statement of Rights and Responsibilities) clearly states under the "Registration and Account Security" section: "You will not use Facebook if you are under 13."

The rule leaves a loophole open for Facebook: if parents give their children permission, and they do so on a consistent basis, the social network isn't responsible as its rules were violated. Millions of preteens and children use the service by simply lying to get past sign-up restrictions. Facebook has said time and again that it's a problem that can be solved overnight, and Mark Zuckerberg wants the

minimum age limit removed anyway. Reported in: thenext-web.com, September 14.

## colleges and universities

**Boulder, Colorado**

The Colorado Supreme Court on September 10 rejected an appeal in which Ward Churchill sought to get back his job as a tenured professor of ethnic studies at the University of Colorado at Boulder.

The court's fifty-page decision focused on whether the University of Colorado had acted in a "quasi-judicial" fashion when it reviewed charges of research misconduct against Churchill. The state's highest court ruled that the university did act in that way, and so was entitled to immunity from being sued, much as judges are immune from being sued for their decisions. The university's Board of Regents fired Churchill in 2007, based on the findings of a faculty panel, which found that he had engaged in repeated instances of research misconduct—including plagiarism, fabrication and falsification.

Churchill has maintained from the start that the investigation and his dismissal were motivated by outrage over his political views, and that the university had violated his First Amendment rights and taken away his academic freedom. The Colorado Supreme Court's ruling didn't weigh these claims directly, but several times in the opinion cited evidence that the university's procedures gave Churchill important due process rights and reflected the legitimate needs of a university to assure professional conduct by its faculty members.

As the Churchill case has dragged on, the various rulings have had an impact beyond the plaintiff. In fact, several college associations had urged the Colorado Supreme Court to rule as it did, arguing that failure to respect the university's quasi-judicial role would open up many other universities to lawsuits by anyone found to have engaged in research misconduct.

But some civil liberties and faculty groups—including the Colorado chapter of the American Association of University Professors—backed Churchill. They argued that affirming the university's quasi-judicial status would effectively enable public universities to fire controversial professors without appropriate opportunity for them to bring grievances to the courts. Both the college groups and the faculty associations argued in their briefs to the court that academic freedom was at stake in the case, although they argued for opposite outcomes.

In the ruling, the Colorado Supreme Court noted the lengthy process that the university used to investigate the allegations against Churchill and to determine that dismissal was appropriate. "The proceedings against Churchill took more than two years and included five separate opportunities for Churchill to present witnesses, cross-examine adverse witnesses, and argue his positions," the Supreme Court opinion said. "It possessed the characteristics of an adversary proceeding and was functionally comparable to a judicial proceeding." For this reason, the justices ruled, the university was acting sufficiently closely to the judicial function of government that it was immune from being sued.

The ruling cited a series of procedural and fairness tests in case law to determine whether the Board of Regents acted in a judicial manner, and said that the governing board met all the relevant tests. While that finding was the crucial one, various parts of the decision also suggested that the Supreme Court viewed the findings against Churchill to be reasonable ones. For instance, the Supreme Court said that the trial judge in the case—who rejected Churchill's request for reinstatement—had acted on the basis of "credible evidence" about Churchill's conduct.

The University of Colorado hired Churchill in 1991, and promoted him to full professor in 1997. He was active in Native American political movements, and gave lectures on college campuses nationwide—regularly criticizing U.S. policies but doing so largely without attention in the mainstream press.

Then early in 2005, he became a flashpoint in the culture wars. He had been invited to give a talk at Hamilton College—the kind of speaking invitation Churchill had accepted for years. Hamilton professors unhappy about the invitation circulated some of his writings, including the now-notorious "little Eichmanns" speech in which he derided the people killed at the World Trade Center on September 11.

The attention led both to calls for Colorado to fire him and to reports of incidents of research misconduct. The university said it couldn't fire him for the essay, but could investigate the allegations—and that started the process that was reviewed by the Colorado Supreme Court.

David A. Lane, Churchill's lawyer, issued a statement blasting the decision and vowing an appeal to the U.S. Supreme Court.

"This is an incredibly dangerous precedent for an allegedly free society. This decision emboldens government officials to violate the First Amendment with impunity knowing that they cannot be sued for their disregard for the rights of citizens. It is an unprecedented decision which diminishes freedom of speech for all of us. Professor Churchill will request that the United States Supreme Court review this dangerous precedent," Lane said.

Philip P. DiStefano, chancellor at Boulder, issued a statement praising the Supreme Court ruling. "Today's decision by the Colorado Supreme Court upholds the high standards of academic integrity practiced every day by our faculty, and helps us to ensure the quality of instruction for all our students," he said. "It is vital that what is published and what is taught in the classroom be based on research

and scholarship grounded in honest, accepted and time-tested methods.This was always what was at stake in this case for the university, and the winners today are our faculty and students."

The university was backed before the state's high court by a joint brief from the American Council on Education, the American Association of State Colleges and Universities, the Association of American Universities and the National Association of Independent Colleges and Universities. They argued that the quasi-judicial status that the Supreme Court affirmed was essential for colleges and universities to have.

"Churchill would have this court decline to apply quasi-judicial immunity to university determinations regarding research misconduct. Such a holding would expose these institutions to repeated claims by dissatisfied faculty members and would ignore the constitutional tradition of deference to universities," the brief said. "A ruling in Churchill's favor ... would not only infringe on the institutional autonomy that is the cornerstone of academic freedom, but would chill universities' motivation to promulgate robust internal processes for faculty misconduct proceedings."

Cary Nelson, past president of the American Association of University Professors and a frequent speaker on academic freedom issues, said via e-mail that he was deeply concerned by the Colorado ruling.

"In affirming the astonishing idea that a university's senior administrators and Board of Regents possess quasi-judicial immunity from legal redress once a quasi-judicial campus review has taken place, they empower administrators to appoint biased review committees chosen to produce a preordained result and then stand protected by the courts," Nelson said. "Of course the Colorado administrators and regents displayed precisely the opposite of judicial neutrality. They urged that Churchill be fired even before campus reviews had taken place. The Colorado court has lent its authority and approval to a corrupt process and a politically motivated result. Its decision will inevitably be cited in cases in other states. The threat to academic freedom is substantial." Reported in: insidehighered.com, September 11.

**Atlanta, Georgia**

A U.S. District Court judge on August 12 slapped down three scholarly publishers as they tried to salvage spoils from the wreckage of a four-year copyright lawsuit against Georgia State University.

Judge Orinda Evans, who in May ruled for the university in all but five of 99 alleged violations resulting from its library e-reserve policies, rejected a proposed injunction that would have imposed exacting guidelines on professors who wish to make portions of certain copyrighted course readings for free.

The court also ordered the plaintiffs, who were backed by the Association for American Publishers and the Copyright Clearance Center, to pay Georgia State's attorneys' fees. The order did not cite a specific dollar amount, but it will likely prove expensive for publishers given the duration of the case.

In the course of explaining her decision to make the publishers foot the bill for the university's legal defense, the judge declared what observers have been opining for months: "On balance," she wrote, "the court finds that the defendants are the prevailing party in this case."

The case tilted dramatically in Georgia State's favor in May when the judge ruled that the vast majority of violations alleged by the publishers qualified as educational "fair use" by the university, exempting them from normal copyright restrictions.

The publishers then proposed an injunction that would bar professors from making copies that are not "narrowly tailored to accomplish the instructor's educational objectives" or that constitute the "heart of the work." The injunction would also have placed a greater burden on professors to "investigate the availability of digital permissions before it may determine that a proposed use of an excerpt of a work is protected by the fair use doctrine."

Judge Evans cited four reasons for denying the injunction. She rejected the idea of a single standard that could apply to all possible cases. She took the small number of violations as evidence that Georgia State tried in good faith to comply with the law after revising its e-reserve policies in 2008 under threat of litigation. She suggested that the defendants in the case should not be held responsible for dictating "individual fair use choices."

Finally, perhaps validating the reservations of some observers about the wisdom of taking aim at a cash-strapped public university, the judge said it was unreasonable to task public employees with policing the issue with the degree of rigor sought by the publishers.

"Georgia State's officers and employees work at taxpayer expense to carry out their duties," she wrote. "There is insufficient reason to impose a burdensome and expensive regimen of record-keeping and report-making based on the totality of the circumstances."

The publishers have argued that Georgia State's victory was not as decisive as the 95 percent compliance rate would suggest because the judge disqualified many other examples of infringement from evidence on technical grounds. Also, the publishers charged that the 99 examples that did make it into evidence occurred during a very narrow window—one semester in 2009—after Georgia State had cleaned up its act substantially under threat of litigation.

The judge acknowledged that the publishers' legal posturing did scare Georgia State straight prior to 2009. "On the other hand, defendants prevailed on all but 5 of the 99 copyright claims which were at issue when the trial of the case began," she wrote. The publishers knew the court would only rule on alleged infringements that occurred

under Georgia State's revised policies and chose to pursue those claims anyway, Evans pointed out.

"Although the court does not doubt plaintiffs' good faith in bringing this suit, and there was no controlling authority governing fair use in a nonprofit educational setting, plaintiffs' failure to narrow their individual infringement claims significantly increased the cost of defending the suit," the judge wrote—hence the decision to make the publishers pay Georgia State's bill.

The judge also weighed in on the publishers' suggestion that her May ruling not apply to textbooks. While agreeing with the "thrust" of the requests, "the court believes that the term 'textbook' is best avoided." However, the term did not seem to apply to any of the infringing works.

In a statement, the university declared the judge's order a win for libraries in general. "The judge's order is a validation that the university has acted in good faith within the bounds of fair use," said Mark Becker, the president of Georgia State, through a spokeswoman. "We are pleased to have helped set the bar going forward." Reported in: insidehighered.com, August 13.

**Cincinnati, Ohio**

In a major victory for student rights, a federal district court issued a final ruling August 22 prohibiting the University of Cincinnati (UC) from reinstating its tiny "free speech zone." In the order, United States District Judge Timothy S. Black issued a permanent injunction against UC's unconstitutional system of speech restriction.

The court's decision came hard on the heels of the startling resignation a day earlier of UC President Gregory H. Williams, who reportedly did not provide any explanation for his sudden decision to quit a mere week before students return to campus.

"Limiting student expression to just 0.1% of campus was bad enough. Threatening to call the police if students were caught gathering signatures for a petition was even worse. The decision to waste taxpayer money defending such unconstitutional censorship was completely indefensible," FIRE President Greg Lukianoff said. "President Williams' surprise decision to step down should be welcomed, as the University of Cincinnati should have never picked this doomed fight with the Bill of Rights."

Per the ruling, UC may not restrict student speech in the outdoor areas of UC's campus unless the restriction is "narrowly tailored to serve a compelling University interest."

Prior to the lawsuit, UC had required all "demonstrations, pickets, and rallies" to be held in a "Free Speech Area" that comprised just 0.1% of the university's 137-acre West Campus. University policy further required that all expressive activity in the free speech zone be registered with the university a full ten working days in advance, threatening that "[a]nyone violating this policy may be charged with trespassing."

The University of Cincinnati chapter of Young Americans for Liberty (YAL) and its president, student Christopher Morbitzer, filed suit on February 22, 2012, in the United States District Court for the Southern District of Ohio, Western Division, challenging UC's policy. The lawsuit was coordinated by Ohio's 1851 Center for Constitutional Law in cooperation with the Foundation for Individual Rights in Education (FIRE).

In February, YAL and Morbitzer had sought permission to gather signatures and talk to students across campus in support of a statewide "right to work" ballot initiative, but the request was denied. Morbitzer was told that if any YAL members were seen "walk[ing] around campus" gathering signatures, campus security would be alerted.

UC had been on notice that its policy was unconstitutional for more than four years. FIRE named UC's policy its "Speech Code of the Month" in December 2007, calling it "truly shameful" that a public university "threatens students with criminal prosecution merely for exercising their constitutionally protected rights outside of the paltry area it has designated for free speech." FIRE also wrote to UC in December 2008, explaining that UC's free speech zone represented a serious threat to liberty on campus. After the court issued a preliminary injunction against UC on July 12, the university revised its speech code to comply. The August ruling made this change permanent. Reported in: thefire.org, August 22.

## church and state

**Billings, Montana**

The state of Montana has acknowledged that a century-old law limiting the speech of clergy regarding candidates and ballot issues is unconstitutional.

U.S. District Court Judge Richard Cebull approved a settlement on October 2 in the case of a Billings minister who sued the state after being arrested on trespassing charges while gathering signatures for a ballot measure seeking to amend the state's constitution to define unborn children as persons.

Calvin Zastrow, a minister for the Assemblies of God, was arrested on trespassing charges after he refused to leave a location near MetraPark commonly used to gather petition signatures. Zastrow tried to convince voters that they had a religious duty to support anti-abortion initiatives and candidates.

The charges were dropped.

County officials did not allege that Zastrow violated the 1913 law on coercion or undue influence that limits the speech of ministers, clergy and churches regarding candidates and ballot issues. But Zastrow's lawsuit sought to prevent the state from threatening to enforce it.

Assistant Attorney General Michael Black, who handled the case for the state, said he did not believe the statute had ever been enforced.

"Based on our review we chose to allow the court to enter the judgment that it was unconstitutional," Black said.

Cebull granted a permanent injunction that prevents the state and county from enforcing the statute and prohibits its text from being included on "warning posters" which are displayed at polling places throughout the state, the newspaper reported.

"We are very pleased that yet another absurd, anti-free speech Montana election law has been struck down," said Bozeman attorney Matthew Monforton, who represented Zastrow. "This means that Cal and other pastors have the same right to engage in the political process that everyone else has." Reported in: firstamendmentcenter.org, October 8.

## freedom of assembly

**Chicago, Illinois**

A judge tossed out charges September 27 against 92 Occupy protesters arrested in a Chicago park last October, severely criticizing what the city had proudly held up as a better way for dealing with demonstrations.

Cook County Associate Judge Thomas Donnelly ruled that the city's curfew law was unconstitutional and that the city selectively enforced it. He noted police had cracked down on the protesters' tent camp when the park closed at 11 p.m., but had not moved against others who stayed in the same park past that hour at other times—including those who had come to see Barack Obama after he won the presidency three years earlier.

"The city arrested no one at the Obama 2008 presidential election victory rally, even though the Obama rally was equally in violation of the curfew," Donnelly wrote.

Roderick Drew, spokesman for Chicago's Law Department, said the city would appeal the ruling. He said officials believe the curfew is "an important part of the city's efforts to maintain and protect public health and safety," and they would continue to enforce it. "The city is disappointed with the decision," Drew said.

The protesters and their lawyers said the ruling was a slap to claims by Mayor Rahm Emanuel and the city's top leadership that they were upholding First Amendment rights in their handling of the protests.

"It demonstrates beyond any reasonable doubt just what a flagrant violation of people's rights these arrests were," said Andy Thayer, an anti-war and gay-rights activist who was among those arrested. "The city was busy patting itself on the back about how they had handled the Occupy protests, and it puts the lie to their claims … about respecting people's rights."

The protests were an offshoot of the Occupy Wall Street movement and a demonstration against corporate greed. Several thousand protesters gathered in Grant Park on two consecutive Saturdays last October. Each night, in the hours leading up to 11 p.m., police repeatedly warned the protesters they would be arrested after the park closed. Some left, and police gave others an additional two hours to leave.

A total of 173 people were arrested the first Saturday, and 130 the next week. Only 92 of them still were fighting the charges in court.

Chicago officials contrasted the police warnings and calm handling of the arrests with previous problems the city had with demonstrations, all the way back to the 1968 Democratic National Convention, when officers clashed violently with protesters.

Earlier this year, the city settled a lawsuit for $6.2 million in connection with the arrest of 700 people during a 2003 Iraq war demonstration. The settlement came after a federal judge called the department's handling of the protests "idiotic."

In interviews leading up to this spring's NATO Summit, Chicago Police Supt. Garry McCarthy had boasted about the way his department handled the Occupy demonstrators. McCarthy praised his department for treating the protesters as individuals and his officers for keeping their cool.

In his 37-page ruling, the judge said that city's 11 p.m. to 6 a.m. curfew violated both the U.S. and Illinois constitutions' right to free assembly. He rejected the city's claim that it needs to shut the park for safety and maintenance because it routinely closes the park for fewer than seven hours a night.

He noted Grant Park's long history as a gathering spot for protests and other assemblies. "It constitutes the quintessential public forum," he wrote, adding that the city curfew failed to allow other opportunities for late night assemblies.

Donnelly also criticized the city for subjecting the protesters to "constantly changing rules and regulations that ended in a directive that they had to be constantly moving in order to protest." He said that implied the city was attempting to discourage the protest.

Sarah Gelsomino, a People's Law Office attorney representing the protesters, said the activists were legally participating in free speech. "Hopefully this sends a clear message to the city that they must better respect the First Amendment rights of protesters no matter what their message might be," Gelsomino said. Reported in: firstamendmentcenter.org, September 28.

## privacy

**San Francisco, California**

On August 8, the United States Court of Appeals for the Ninth Circuit, in San Francisco, tossed one of the few remaining lawsuits fighting the Bush Administration's warrantless wiretapping program. The court unanimously ruled in Al Haramain Islamic Foundation v. Obama that the (now-defunct) Muslim charity could not bring a lawsuit against

the government itself, but rather against individual government officials. Further, it said, the specific claims against FBI Director Robert Mueller were not sufficient and could not be changed after the fact. In legal circles, this is known as the principle of "sovereign immunity."

Previously, in December 2010, a federal judge had ruled that the warrantless program was illegal, a decision that the government then appealed in February 2011. Coincidentally, the existence of the NSA's wiretapping was initially discovered by a technician blocks away from the courthouse, and was later exposed in more detail in 2005.

Not surprisingly, the Electronic Frontier Foundation, which has been extensively investigating and pursuing legal action against the NSA over the warrantless wiretapping program, disagreed with the ruling.

"First, the Court ruled that Congress in passing this section of FISA created a cramped statute that, at least in section 1810, only allows a claim for redress if the government uses the information it illegally gathers, and creates no remedy against the government for the unlawful collection of information," wrote Cindy Cohn, an EFF staff attorney, on the organization's blog.

"Apparently, when it came to granting a legal claim for damages, Congress intended to allow the government to do as much wiretapping in violation of the law as it wanted to, and only allow individuals to sue for use of the information illegally collected. It seems unlikely that the American people believe that the line should be drawn in this strange way."

The EFF is currently pursuing a related case, known as Jewel v. NSA, where it seeks an injunction against the entire warrantless surveillance program.

"So while we don't agree with the Ninth Circuit's ruling here, it will not prove a roadblock to our efforts to stop the spying," Cohn added. "We've moved for a ruling in the Jewel case that FISA preempts the state secret privilege and hope to have that motion heard by the District Court in the fall." Reported in: arstechnica.com, August 8.

**San Francisco, California**

In a blow to video-streaming giant Hulu, a federal judge has ruled that the federal Video Privacy Protection Act applies to companies that stream video on the Web.

U.S. Magistrate Court Judge Laurel Beeler in the Northern District of California ruled that the 24-year-old law was aimed at protecting the privacy of people who watch video—regardless of technical format. The decision, issued August 13, denied Hulu's motion to dismiss the lawsuit at an early stage.

The decision was issued in a potential class-action lawsuit alleging that Hulu violated the federal video privacy law by sharing data about users' video-watching history with ad networks, as well as companies engaged in analytics and market research. The VPPA prohibits providers of video tapes or "similar audiovisual material" from disclosing information about consumers' movie-viewing history without their written permission. Hulu argued that streaming media wasn't covered by that language.

But Beeler ruled that lawmakers used the phrase "similar audiovisual material" in order to guarantee that the law's "protections would retain their force even as technologies evolve."

The decision marked the first time that a court has explicitly ruled that streaming video services are covered by the 1988 privacy law, said University of Minnesota law professor William McGeveran. "The technology is still new enough that it hadn't been tested in court yet," McGeveran said.

He added that he agrees with Beeler that the law was meant to apply broadly. "Congress was really clear about wanting the interpretation to be technology neutral," he says.

Lawmakers passed the federal statute in 1988, after a newspaper in Washington obtained and published the video rental records of Supreme Court nominee Robert Bork.

Hulu also argued that—even if it was covered by the VPPA—the law allows for disclosures made in the ordinary course of business. But Beeler ruled that "market research and Web analytics are not in the ordinary course of Hulu's business of delivering video content to consumers."

At the same time, the judge left open the possibility that Hulu could prevail in its legal argument at a later stage of the case. "Whatever the merits are to Hulu's contentions that it uses the challenged services to deliver targeted advertisements to its users, Plaintiffs alleged unauthorized tracking of Plaintiffs' data (including video content information). The court cannot resolve this factual issue in a motion to dismiss," Beeler wrote.

The litigation against Hulu dates to last summer, when the company was accused of using ETag technology to track people—even users who deleted their cookies. ETags store information in users' browser caches, so that when users delete their cookies, the information contained in them can be recreated.

Hulu was among the companies that worked with KISSmetrics; dozens of others also face litigation stemming from their deals with the analytics company.

The lawsuit against Hulu originally alleged that it violated a variety of laws. But earlier this year, Beeler dismissed all of the consumers' claims except for the allegation that Hulu violated the video privacy law. The judge delayed issuing a decision regarding that count until August. Reported in: mediapost.com, August 13.

**Palatine Village, Illinois**

A federal appeals court has reinstated a class-action privacy suit, ruling that police departments who put too much private data on parking citations are violating U.S. privacy law.

The U.S. Court of Appeals for the Seventh Circuit decided against the police department of Palatine Village,

a Chicago suburb. When issuing electronically produced parking citations, the department lists the vehicle owner's name, address, driver's license number, date of birth, sex, height and weight. That ticket and accompanying information is usually left underneath a vehicle's windshield-wiper blade.

The case dates to 2010, when a cited motorist sued Palatine Village, alleging the disclosure of his identity was a breach of the Driver's Privacy Protection Act of 1994. Congress adopted the privacy legislation in response to the death of actress Rebecca Schaeffer. She was killed by a stalker who had obtained her unlisted home address through the California DMV.

The appeals court, ruling 7-4 August 7 said it didn't matter whether passersby even looked at the ticket to acquire personal data. The majority opinion, by Judge Kenneth Ripple, added that the citations could be a boon for stalkers.

"There are very real safety and security concerns at stake here. For example, an individual seeking to stalk or rape can go down a street where overnight parking is banned and collect the home address and personal information of women whose vehicles have been tagged. He can ascertain the name, exact address including the apartment number and even other information such as sex, age, height and weight pertinent to his nefarious intent," Ripple wrote.

In a blistering dissent, Judge Richard Posner of the Chicago-based appellate court mocked the majority. "Palatine's printing of drivers' names and addresses on parking tickets that are then placed on violators' windshields does not encourage or facilitate stalking," Posner wrote. "Only with difficulty can one imagine a stalker who, noticing a woman he'd like to stalk, get into her car and drive off, follows her and when she parks lurks behind her car in the hope that it will be ticketed and that if that happens he'll be able without being observed to peek at the ticket and discover the owner's name and address. Has this ever happened? Stalkers are not the only invaders of privacy, but who are the non-stalkers who peek at tickets on windshields and write down the information they find there? Are there any such?"

The court's decision, Posner said, could be costly for the city. He noted that the law allows for damages of up to $2,500 per violation. At 32,000 citations issued the past four years, that equals $80 million the city might be on the hook for, he said.

Before the case reached the appellate court, U.S. District Court Judge Matthew Kennelly ruled that the parking ticket did not constitute a disclosure under federal law. "What the statute is talking about is what people would commonly call a disclosure, which is turning something over to somebody else," Kennelly said. Reported in: wired.com, August 8.

**Cincinnati, Ohio**

A federal appeals court ruled August 14 that police do not need a warrant to track the location of a suspect's phone.

The United States Court of Appeals for the Sixth Circuit ruled that the Drug Enforcement Administration did not violate the constitutional rights of Melvin Skinner when it collected his phone's GPS data. DEA agents tracked Skinner's pay-as-you-go phone as he transported drugs between Arizona and Tennessee. They arrested him at a rest stop in Texas with a motor home filled with more than 1,100 pounds of marijuana.

Skinner's lawyers argued that the police violated his Fourth Amendment right against unreasonable searches by collecting his phone's GPS data without first obtaining a warrant. But the appeals court ruled that Skinner has no reasonable expectation of privacy for his cellphone's location data.

"When criminals use modern technological devices to carry out criminal acts and to reduce the possibility of detection, they can hardly complain when the police take advantage of the inherent characteristics of those very devices to catch them," Judge John Rogers wrote in his opinion for the panel.

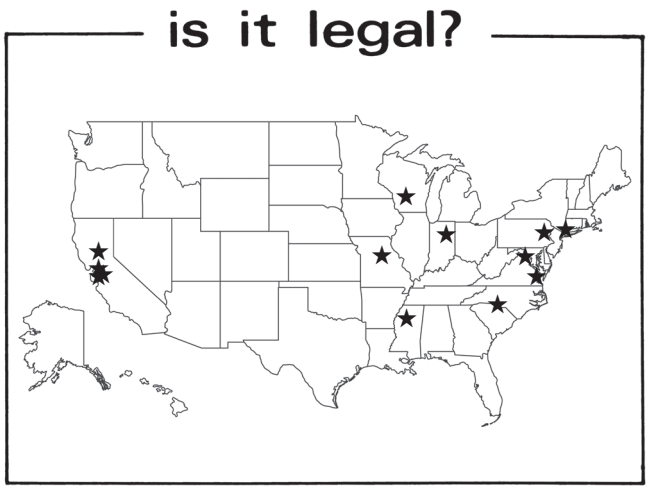
The Supreme Court ruled earlier this year in United States v. Jones that planting a GPS tracking device on a suspect's car qualifies as a search under the Fourth Amendment. But the appeals court distinguished Skinner's case by saying that planting a GPS device is more of an invasion of privacy than merely collecting a phone's location data.

"No such physical intrusion occurred in Skinner's case. Skinner himself obtained the cellphone for the purpose of communication, and that phone included the GPS technology used to track the phone's whereabouts," the court wrote.

Judge Eric Clay joined in the court's opinion. Judge Bernice Donald concurred in part, but in a separate opinion, she argued that Skinner had a reasonable expectation that his cellphone's GPS data would be kept private.

Catherine Crump, a staff attorney for the American Civil Liberties Union, argued that collecting cellphone data is even more invasive than attaching a GPS device to a car because people carry their cellphones everywhere.

"Contrary to the court's alarming conclusion, Americans do not forfeit their privacy rights in their movements by choosing to carry a cellphone. We have a reasonable expectation of privacy in our movements, which can reveal a great deal about us," she said in a statement. Reported in: *The Hill*, August 14. □




## library

**Fort Wayne, Indiana**

An Indiana attorney is suing a public library for refusing to allow him to use its plaza for a demonstration to educate people about the federal health care law. The American Civil Liberties Union of Indiana filed the lawsuit against the Allen County Public Library October 5 in federal court in Fort Wayne.

Attorney David J. Kolhoff's complaint claims a library policy banning demonstrations and exhibits on the plaza violates his First Amendment right to free speech.

"Given the broad use of the library's public spaces, we don't believe it can sincerely assert that Mr. Kolhoff's educational activity would be disruptive," ACLU of Indiana Executive Director Jane Henegar said in a statement.

Court documents said officials offered to let Kolhoff use a library meeting room or air a program on the library's public access television channel. "We do provide ample opportunities for people to convey their views," library Director Jeffrey Krull said.

The ACLU said Kolhoff would be willing to accept an offer to use the library's Great Hall, but would prefer the outdoor plaza. The other options "will not permit him to reach the same number of persons or his intended audience in the manner of his choosing," ACLU attorney Gavin Rose argued in court documents.

Kolhoff believes library patrons would be more likely to listen, Rose wrote. But Krull said officials haven't allowed such activities in the past and don't want anyone approaching patrons as they arrive or depart. "We have not regarded the plaza as a place for just anybody to set up shop and demonstrate," Krull said. Reported in: San Francisco Chronicle, October 5.

## schools

**Charlotte, North Carolina**

After years spent trying to shield students from online bullying by their peers, schools are beginning to crack down on Internet postings that disparage teachers. Schools elsewhere in the U.S. have punished the occasional tweeter who hurls an insult at a teacher, but North Carolina has taken it a step further, making it a crime for students to post statements via the Internet that "intimidate or torment" faculty. Students convicted under the law could be guilty of a misdemeanor and punished with fines of as much as $1,000 and/or probation.

The move is one of the most aggressive yet by states to police students' online activities. While officials have long had the ability to regulate student speech at school, the threat of cyberbullying teachers, which typically occurs off-campus, has prompted efforts to restrain students' use of the Internet on their own time.

School officials in North Carolina and elsewhere say the moves are necessary to protect teachers in an age when comments posted online—sometimes by students pretending to be the teachers they are mocking—can spread quickly and damage reputations.

The North Carolina law makes it a crime for a student to "build a fake profile or web site" with the "intent to intimidate or torment a school employee."

Critics, however, argue the law risks trampling on mere venting and other less inflammatory forms of expression. "Our concern is that we don't throw the First Amendment out the window in our haste to get the kid who is calling the principal bad names on Facebook," said Frank LoMonte, executive director of the Student Press Law Center in Arlington, Virginia, a national group that advocates for students' free-speech rights.

Traditional issues of free speech on public-school grounds are largely settled, thanks to a 1969 Supreme Court ruling in Tinker v. Des Moines. That ruling held that students' First Amendment rights are generally protected on campus, but that administrators can punish them for speech on school grounds when they can clearly show it caused significant disruption to school activities or violated others' rights.

But while past off-campus insults about a school employee were largely undetected and unpunished, cyber-insults are digitally preserved and on display for many to see. The wide use of social media, particularly among teens, makes such platforms the go-to place for such incendiary comments.

While nearly every U.S. state has now passed measures to curb student-on-student cyberbullying, North Carolina is apparently the first to pass a law aimed at students bullying teachers online.

Courts have been mixed on the issue. Last year, the U.S. Court of Appeals for the Third Circuit, in two separate decisions,

said two schools, both in Pennsylvania, had encroached on students' free-speech rights by punishing them for creating social media profiles mocking their school principals. The court held that the students' parodies, which were created off-campus, didn't significantly disrupt the schools.

In one case, Justin Layshock, a high-school student, mocked his principal in a Myspace profile parody, writing, among other things, that the principal was "too drunk to remember" his own birthday. In the other case, a middle-school student identified in court documents only by initials J.S. created a Myspace page to make fun of her school principal. using his photo and including among his general interests: "hitting on students and their parents."

Yet in a separate case in Connecticut last year, the U.S. Court of Appeals for the Second Circuit found administrators were within the law when they disciplined Avery Doninger, a high-school student, for posting a message to her blog encouraging people to call school officials a profanity in order to protest the school's "jamfest" being canceled.

Even though Doninger wrote the post off campus, the court held that it created a substantial disturbance at school to warrant a punishment. Layshock and Doninger, whose cases garnered national attention, have gone on to graduate from college, attorneys for them said.

In the past year, the U.S. Supreme Court has turned down opportunities to hear those three cases, as well as a fourth about student speech, which might have brought some clarity. In the fourth case, the U.S. Court of Appeals for the Fourth Circuit found it permissible for administrators in West Virginia to suspend a student who had created a Myspace page ridiculing another student.

The Classroom Teachers Association of North Carolina, based in Charlotte, lobbied for the teacher-bullying provisions to be included in the state's School Violence Prevention Act of 2012 after fielding complaints about students using social media sites and email to make false accusations about school employees, said Judy Kidd, the group's president. In one case Kidd cited, a sixth-grader sent sexually explicit emails about a teacher to other students. In another, a high-school student posted false allegations on Facebook that an instructor for the Reserve Officers' Training Corps had groped her while fitting her for a uniform.

"It became apparent that we had to get some kind of protection," said Kidd, a high-school science teacher in the Charlotte-Mecklenburg Schools.

Some free-speech advocates say the North Carolina law gives administrators wide latitude to go after students and possibly infringe on free speech. They say the law, which was passed in July, could be enforced against students who are making truthful statements or posting undoctored photos of staff.

Thomas Wheeler, an Indiana lawyer who represents school districts, said he hoped a case will be heard by the Supreme Court and result in clear guidance from the justices on how far schools can go to police what students say online and on social media sites. "The times have changed and we are trying to get caught up," he said. Reported in: *Wall Street Journal*, September 17.

**Easton, Pennsylvania**

A full federal appeals court will weigh an eastern Pennsylvania school district's efforts to ban breast-cancer fundraising bracelets that say "I (heart) boobies!" A three-judge panel of the U.S. Court of Appeals for the Third Circuit has been considering the case since April. Legal filings now indicate the entire 14-judge court in Philadelphia will hear it.

Then-13-year-olds Kayla Martinez and Brianna Hawk were suspended and banned from a school dance for wearing the popular breast cancer awareness bracelets. The two Easton Area Middle School students say their freedom of speech rights were violated when they were suspended for wearing the bracelets. District officials say the word is vulgar.

A federal judge ruled for the students last year. The district appealed to the three-judge panel. Attorneys for both sides said the panel's draft opinion must have created enough disagreement to spur the full court to hear the case. No date has been set. Reported in: nbcphiladelphia.com, August 17.

## colleges and universities

**Oakland, California**

The University of California says it won't support a resolution condemning anti-Semitism on campus—approved unanimously by the state Assembly August 28 because the resolution says "no public resources will be allowed to be used for any anti-Semitic or any intolerant agitation."

"We think it's problematic because of First Amendment concerns," said Steve Montiel, a university spokesperson.

The nonbinding resolution, says, in effect, that UC and other public universities should ban activity that could be interpreted as intolerant or anti-Semitic, including certain demonstrations, from taking place anywhere on its property.

The move was the latest chapter in a debate that arose this summer over whether students create an intolerable, anti-Semitic environment by staging annual, anti-Israel protests mimicking Israeli guards questioning Palestinians. The Assembly resolution thrust lawmakers into that prickly First Amendment debate.

"California schools need to recognize that anti-Semitism is still a very real issue on college campuses," said Assemblywoman Linda Halderman (R-Fresno), who wrote the resolution with Bonnie Lowenthal, (D-Long Beach)

Among the examples Halderman cited was the annual Israel Apartheid Week held on many campuses, in which

"students pretending to be Palestinians collapse as if they had been murdered en masse by Israeli Jews." She referred to a study commissioned by UC to evaluate Jewish students' experiences after swastikas were found on several campuses.

Released in July, the report said students have a right to protest against Israel, but that such demonstrations often cross the line into discrimination. While not illegal, they violate "principles of community" that mandate a safe, humane environment for all students, according to its authors from the Anti-Defamation League and the NAACP. The report urged UC to ban hate speech on campus and to adopt a definition of anti-Semitism.

Thousands of students and faculty members, many of them Jewish, responded with a petition condemning the report and urging UC President Mark Yudof to reject its recommendations.

Yudof, a First Amendment scholar, said he wouldn't violate the Constitution. His representative, Montiel, said UC's stance is similarly neutral on the Assembly resolution.

Yet the debate continues.

Student groups and the Council on American-Islamic Relations planned to send a letter asking the legislature to reconsider its "highly ideological resolution." At the same time, a Los Angeles nonprofit called Stand With Us, which fights anti-Semitism, said its petition urging UC to ban hate speech has 1,600 signatures so far.

The dispute centers around a collision between civil rights and free speech, where allegiances can't always be sorted out by religion. And it suggests a microcosm at UC of the conflict in the Middle East: angry, defensive, intractable.

Mistrust among student groups has festered for years. But 2010 was especially rough for multiethnic harmony:

Swastikas appeared in numerous locations at UC Berkeley and UC Davis. Also at Davis, someone defaced the Lesbian, Gay, Bisexual, Transgender Resource Center with derogatory words.

At UC San Diego, students used racial slurs and caricatures of black people in Facebook invitations to two "Compton Cookouts" ridiculing Black History Month. A student used slurs on campus TV to mock those who complained. Someone hung a noose in the Geisel Library.

At UC Merced, students posted a cartoon video lampooning classmates who requested a Chicano studies minor.

The incidents were "quite simply the worst acts of racism and intolerance I've seen on college campuses in twenty years," Yudof said at the time. "We must—and will—deal with the causes of the offending behaviors."

Yudof convened an Advisory Council on Campus Climate, Culture and Inclusion to study students' experiences and offer solutions. On July 9, two teams of experts reported to the council on the experiences of Jewish students and of Muslim and Arab students across UC. One team concluded that Muslim and Arab students feel "marginalized and alienated on campuses" and that many experience "daily harassment," from classmates, faculty and staff.

No objections have surfaced to the proposals addressing Muslim and Arab students, which focus mainly on sensitivity training and doing more to recognize their needs. By contrast, the report on Jewish students offers dramatic solutions to a more circumscribed brand of animosity: anti-Israel virulence and its ripple effect.

The report identifies extensive diversity among Jewish students, from participation in Orthodox groups to pro-Palestinian activism. Yet, "Jewish students at all campuses were clear that the most pervasive negative issue impacting their daily experiences on campus were intergroup challenges related to political disagreements about the state of Israel and Palestine," said the report by Richard Barton of the Anti-Defamation League and Alice Huffman of the California NAACP.

For example, a willingness to denounce Israel is often a litmus test for acceptance into social-justice groups on campus, the report found. Tension also exists with faculty, the authors found, with students describing "instances of overt hostility toward Jewish or other students" who express pro-Israel views.

The report points to anti-Israel protests where activists erect "apartheid walls" to simulate the West Bank barrier, portray Palestinians being killed by Israeli soldiers, distribute flyers accusing Israel of genocide or combine a swastika with the Star of David. Such protests hurt students because they are "devoid of context, with the unmistakable message that Israelis/Jews are carrying out a unilateral campaign of violence directed against innocent Palestinians," the report says.

To address the problem, Barton and Huffman recommended banning hate speech, perhaps banning campus sponsorship of "unbalanced and/or biased events," and requiring everyone to take "cultural competency training."

"The team recognizes that changes to UC hate speech policies may result in a legal challenge, but offers that UC accept the challenge," the report says. Barton likened the situation to "allowing the Klan to walk around campuses and say things about black people."

But those backing the petition said they are outraged by such conclusions. "The report is a distortion," said Sarah Anne Minkin, a Berkeley doctoral candidate in sociology who is Jewish. "The authors omitted a great part of the Jewish community on campuses—Jews who are critical of Israel, supportive of Palestinian rights, and also deeply committed to Jewish life and culture."

The petition to Yudof accused the report's authors of emphasizing right-wing views and ignoring bullying of anti-Israel Jews from their pro-Israel counterparts at UC. And it opposes the recommendations to outlaw hate speech and define anti-Semitism.

"We believe in the principles of free speech and that these principles stand on their own and do not require any

additional regulation," the petition said.

Halting anti-Israel activism would harm the free speech of Arab, Muslim and Palestinian students, according to the letter to Yudof from those student groups, the National Lawyers Guild and the Council on American-Islamic Relations.

"We're concerned with speech restrictions," said attorney Liz Jackson of the National Lawyers Guild. She said students want to be free to criticize Israel and use the Israeli flag—with its Star of David—as a prop in political protests. "Yes, many Jews strongly identify with the nation-state of Israel. But that does not mean that any criticism of Israel is a criticism of Jews," said Jackson, who is Jewish.

"I believe our current policies may go as far as they can, given constitutional limitations," Yudof wrote in response to the letter from Jewish students, who applauded the news. And in answer to the letter from Muslim and Arab students, Yudof said the job of his Advisory Council on Campus Climate is to ensure that campuses are welcoming to everyone.

"I am a vigorous defender of free-speech rights," he wrote. "While hurtful speech may make that goal difficult to achieve at times, the answer is not to restrict speech, but rather to see that all our community members feel supported." Reported in: *San Francisco Chronicle*, August 9, 28.

## freedom of assembly

**Madison, Wisconsin**

On September 5, eight people were arrested, handcuffed, and ultimately given citations for holding signs in the Wisconsin State Capitol. This may come as a surprise to the hundreds of thousands of people who marched through the Capitol in February and March of 2011 holding homemade signs that denounced Governor Scott Walker's attack on collective bargaining rights, but there's a new sheriff in town—a new Capitol Police chief to be exact.

David M. Erwin was named as the new Chief of the Wisconsin Capitol Police Department, succeeding Chief Charles Tubbs, who was widely applauded for maintaining public safety while allowing protesters to exercise their First Amendment rights in the Capitol during Wisconsin's historic labor uprising. Chief Erwin previously served as the captain in charge of Governor Walker's security with the Wisconsin State Patrol.

Chief Erwin made it clear from the beginning that under his watch, the Department of Administration's controversial access policy for the Capitol would be followed more strictly. The group of citizens who participate in the daily sing-along, and those who visit the Capitol to hold signs and socialize have been expecting a crackdown, and it has arrived.

On September 4 a small group of people were given warnings by the Capitol Police, and told that they could not display their signs on the first floor of the rotunda. The next day Bart Munger, one of those warned the day before, was arrested and handcuffed for holding a 3' x 7' sign that said "An unjust law is itself a species of violence. Arrest for its breach is more so.—Mahatma Gandhi."

After being cited and released Munger returned to donate blood for the Red Cross, which has a permit to be in the Capitol for the whole week to do a blood drive. Shortly thereafter Joseph Skulan was arrested and handcuffed for holding an 8.5" x 11" sheet of paper with Article I, Section 4 of the Wisconsin State Constitution which says, "The right of the people peaceably to assemble, to consult for the common good, and to petition the government or any department thereof, shall never be abridged."

Over the next few hours six more people were arrested, handcuffed, cited and then released. Each of them was given a ticket for $200.50 for violating Administrative Rule 2.07(2), which states "No displays, signs, banners, placards, decorations or graphic or artistic material may be erected, attached, mounted or displayed within or on the building or the grounds of any state office building or facility without the express written authority of the department."

The DOA enforcing Rule 2.07(2) against people holding signs appeared to be at odds with a recent court decision. On September 5, Dane County Judge Frank J. Remington ruled in a motion for summary judgment that Rule 2.07(2) does not apply to handheld signs, only signs that are affixed to walls or free-standing. Though the word "display" could arguably apply to handheld signs, Judge Remington wrote that "the term 'displayed' implies something like a free-standing exhibit showcased in the Capitol, not an individual holding a handmade sign over their head."

Jeri Troia and Chris Taylor (a grandmother and frequent visitor to the Capitol, not the State Representative) were arrested for holding shirts made and distributed by "Muslims for Life," a group partnering with the Red Cross to help with the blood drive. Ultimately four of the eight people who were cited donated blood to the Red Cross.

During one of the arrests a Capitol Police officer told a citizen "If you are holding a sign today or any day in the future, you will be issued a citation and you will be arrested." Each of those arrested was given a similar warning. One man was given a warning for holding a blank 3' x 1' posterboard.

Former Wisconsin Attorney General Peg Lautenschlager, who negotiated with the Capitol Police and the Walker administration and helped return the Capitol to normalcy after it was locked down in March 2011, shook her head at the latest developments. "Tragically, this administration and its appointees take themselves more seriously than their duties and obligations under the Wisconsin Constitution." While many expect that Dane County judges may toss out these citations, others suspect that the Walker administration will find new ways of attempting to enforce the rules

perhaps by sending the cases to the Republican Attorney General.

The daily "Solidarity Sing-Along," a loosely organized group of people who meet at the Capitol every weekday to sing songs about unions and social justice, was outside so as not to interfere with the permitted Red Cross blood drive, but those who attend the daily event were unsure of how the police will react when they return to singing inside the rotunda. What they do know is they are determined to exercise their right to free speech, and their right to peaceably assemble, and they will be there every day just like they have for the past year and a half. Reported in: prwatch.org, September 7.

## privacy and surveillance

**Washington, D.C.**

The Justice Department's use of electronic devices to intercept phone numbers, e-mail addresses and online information has climbed by 64% since 2009, according to a study of records released under the Freedom of Information Act.

Government data shows that from 2009 to 2011, the combined number of court orders for so-called pen registers and trap-and-trace devices on phones rose from 23,535 in 2009 to 37,616 in 2011, according to the American Civil Liberties Union.

Though used far less frequently, the combined number of court orders targeting individuals' e-mail and network communications data rose from 360 in 2009 to 1,661 through the end of 2011. When combined, the total intercepts represent a 64% increase.

The civil liberties group made the FOIA request, analyzed the released documents and issued a report on them September 27. The ACLU said the government released the documents "only after months of litigation."

A pen register records all numbers dialed from a particular telephone line. A trap-and-trace device records the telephone numbers of inbound callers to a suspected criminal telephone. The Justice Department says civil liberties are safeguarded by obtaining court approval to use such surveillance. The devices are not used to capture phone conversations or the content of e-mails.

"In every instance cited here, a federal judge authorized the law enforcement activity," said Justice Department spokesman Dean Boyd. "As criminals increasingly use new and more sophisticated technologies, the use of orders issued by a judge and explicitly authorized by Congress to obtain non-content information is essential for federal law enforcement officials to carry out their duty to protect the public and investigate violations of federal laws."

The standard for obtaining a court order for such surveillance requires that the information sought be relevant to an investigation. That standard is far less than the law requires to obtain a warrant to conduct a physical search: probable cause to believe a crime has been committed.

An ACLU staff attorney, Catherine Crump, said the approval process for these types of surveillance is a "rubber stamp" devoid of any kind of meaningful court review. Reported in: firstamendmentcenter.org, September 29.

**Washington, D.C.**

The Electronic Frontier Foundation has filed a lawsuit seeking details about U.S. National Security Agency surveillance of email and telephone calls, with the lawsuit raising concerns that the agency has illegally targeted U.S. citizens.

The EFF Freedom of Information Act lawsuit, filed August 30 in U.S. District Court for the District of Columbia, alleges that the NSA has circumvented the legal protections for U.S. citizens in the FISA Amendments Act, a 2008 law that allowed the NSA to expand its surveillance efforts targeting foreign terrorism suspects. The law prohibits the NSA from intentionally targeting U.S. citizens, but the EFF pointed to a July letter in which a U.S. intelligence official told a senator the NSA has sometimes overstepped its limits.

On "at least one occasion," the U.S. Foreign Intelligence Surveillance Court (FISC), which oversees the program, found the NSA's collection of information was "unreasonable" under the Fourth Amendment to the U.S. Constitution, Kathleen Turner, director of legislation affairs for the Office of the Director of National Intelligence, wrote in the letter. The Fourth Amendment protects U.S. citizens against unreasonable searches and seizures.

In addition, the government's implementation of the surveillance law "has sometimes circumvented the spirit of the law," Turner wrote, in response to an information request from Senator Ron Wyden, an Oregon Democrat.

In the lawsuit, the EFF asks for details of the spying operation. The digital rights group wants information on any written opinions or orders from FISC discussing illegal government surveillance, and any briefings to Congress about those violations.

The EFF believes the opinions of the FISC are law, "and the government can't classify and withhold the law from the American public," Mark Rumold, the EFF's open government legal fellow, said.

The information is needed before Congress acts to reauthorize the surveillance law, Rumold said. Parts of the law are due to expire on December 31, but current bills in Congress would extend the surveillance program.

"When the government acts unconstitutionally, the government shouldn't be able to shield disclosure of that information behind the veil of classification," Rumold said. "If the [law] is going to be re-authorized, there has to be an

informed, public debate about the way the surveillance is being conducted under the statute and the privacy sacrifices Americans are being forced to make."

The U.S. public and many members of Congress "have very little information" about the surveillance program, he added. "Hopefully our suit will bring more information to light and help contribute to a meaningful debate on the reauthorization of the statute," Rumold said. Reported in: *PC World*, August 30.

**Washington, D.C.**

When the Food and Drug Administration started spying on a group of agency scientists, it installed monitoring software on their laptop computers to capture their communications. The software, sold by SpectorSoft of Vero Beach, Florida, could do more than vacuum up the scientists' e-mails as they complained to lawmakers and others about medical devices they thought were dangerous. It could be programmed to intercept a tweet or Facebook post. It could snap screen shots of their computers. It could even track an employee's keystrokes, retrieve files from hard drives or search for keywords.

"Every activity, in complete detail," SpectorSoft's Web site says about its best-selling product, Spector 360. The company says it does not disclose information about its clients. Federal contracting data, however, show that SpectorSoft has multiple government contracts for its monitoring software.

Government workers have long known their bosses can look over their shoulder to monitor their computer activity. But now, prompted by the WikiLeaks scandal and concerns over unauthorized disclosures, the government is secretly capturing a far richer, more granular picture of their communications, in real time. Federal workers' personal computers are also increasingly seen as fair game, experts said.

Agencies outside the field of intelligence spent $5.6 billion in fiscal 2011 to safeguard their classified information with hardware, software, personnel and other methods, up from $4.7 billion in fiscal 2010, according to the Information Security Oversight Office. Although only a portion of the money—the amount is not specified—was spent on monitoring for insider threats, industry experts say virtually every arm of the government conducts some form of sophisticated electronic monitoring.

"It used to be, to get all of an agency's records out you needed a truck," said Jason Radgowsky, director of information security and privacy for District-based Tantus Technologies, which evaluates monitoring systems for the Federal Aviation Administration, the Export-Import Bank and the National Institutes of Health. "Now you can put everything on a little USB thumb drive."

The stepped-up monitoring is raising red flags for privacy advocates, who have cited the potential for abuse. Among other concerns, they say they are alarmed that the government has monitored federal workers—including the FDA scientists, starting in 2010—when they use Gmail, Yahoo or other personal e-mail accounts on government computers.

Although the FDA has said it acted out of concern that the scientists were improperly sharing trade secrets, the scientists have argued in a lawsuit that they were targeted because they were blowing the whistle on what they thought had been an unethical review process.

At least two other agencies, the Transportation Security Administration and the Federal Maritime Commission, are under congressional scrutiny for seeking and using employee monitoring software that critics say is intrusive.

Federal agencies generally decline to elaborate on their monitoring practices or what activity might trigger them to closely watch an employee's communications. But officials defend the push for more aggressive surveillance, noting that the federal workforce is more mobile and wired than ever—and more vulnerable to leaking sensitive information by accident or design.

"Nobody's reading anybody's e-mail here," said Rob Carey, the Defense Department's principal deputy chief information officer. "The FDA case would not happen here. We have rules in place. There has to be probable cause. It appears that there was monitoring going on that shouldn't have been."

Federal workers see a banner whenever they log into their computers telling them that they have "no reasonable expectation" of privacy. Their personal e-mail accounts can be monitored when they are accessed through a government computer. So can their government smartphones, iPads or other devices when they rely on federal networks.

Experts say that even personal devices are monitored when they are used to access government communications, although there is debate over whether personal e-mails can legally be caught in the net. "The general policy right now is if a personal device accesses any agency information, it adopts the profile of a government-issued device," said Tom Clare, senior director of product marketing for San Diego-based Websense, which sells web-filtering software to dozens of federal agencies, including the Department of Health and Human Services. "They're going to monitor everything."

Agencies are not required to inform employees when their communications are being closely watched. "We have customers that don't want to let their employees know because they want to see their true habits," said Nick Catalini, SpectorSoft's senior marketing manager. He declined to disclose the company's government customers. "Think of it as someone stood behind you and put a video camera behind you while you're working," Catalini said. "It comes back down to: What does the agency want to record?"

Under federal rules, it is up to each agency to set policies on what can be monitored. But that flexibility has a downside, industry officials and privacy advocates say. Monitoring software can overcollect, and officials have

discretion as to what they review and why.

"There's always the ability for a human being to come in after the fact and look through communications," said Seth David Schoen of the Electronic Frontier Foundation, a digital advocacy group. "And there will be a trove of communications there for them to look through retrospectively."

Officials said they are simply employing automated techniques to detect suspicious activity and are not trying to snoop. "We are looking for what we call indicators of compromise," said Joy Miller, deputy assistant secretary for security at the Department of Health and Human Services, the FDA's parent agency. "We're monitoring a system, not everybody in that environment."

Miller declined to comment on the FDA surveillance because it is the subject of a lawsuit. But Stephen M. Kohn, an attorney for the scientists, said that even innocuous intentions can compromise the privacy of employees who are whistleblowers.

"How do you distinguish between a constitutionally protected contact with the press and an illegal leak?" Kohn asked. "You can't. What you have right now is the ability to find every single Deep Throat in the government."

Privacy advocates and lawmakers are taking a closer look at how federal agencies use monitoring software and why. In June, after the TSA issued a solicitation for an "insider-threat software package," two House Democrats appealed to Administrator John Pistole to scrap the idea, saying whistleblowers would be targeted. The solicitation specified that employees "must not have the ability to detect this technology" and "must not have the ability to kill the process or service."

"It is difficult to see how this serious infringement of constitutionally protected rights would provide a concomitant increase in the nation's security," wrote Reps. Sheila Jackson Lee (D-TX) and Bennie Thompson (D-MS), members of a panel that oversees the aviation security agency.

A TSA official said the software would not be used to target whistleblowers. "It's about protecting the sensitive nature of the transportation security mission," spokesman David Castelveter said.

The Maritime Commission, an independent agency that regulates international ocean transportation for U.S. exporters and importers, is under investigation by a House committee over alleged spying on the personal e-mail communication of several employees with grievances against managers.

According to Rep. Darrell Issa (R-CA), chair of the House Committee on Oversight and Government Reform, the commission used SpectorSoft software. Reported in: *Washington Post*, August 16.

**Washington, D.C.**

In the wake of the Supreme Court's decision earlier this year striking down the use of a GPS tracker on a suspect's car without a warrant, the FBI issued two memos to agents with new guidelines for the use of the surveillance technology. But the agency is withholding those memos from the public and has failed to respond to a records request submitted by the American Civil Liberties Union in July to obtain the documents.

On August 15, the ACLU filed a lawsuit against the FBI seeking the immediate release of the documents on the grounds that the public has a strong interest in knowing how the FBI is complying with the ruling.

"How the FBI implements the Supreme Court's decision in Jones will shape not only the conduct of its own agents but also the policies, practices and procedures of other law enforcement agencies – and, consequently, the privacy rights of Americans," the ACLU wrote in its complaint.

"Contrary to the FBI's claims, it's not entitled to keep these memos secret," ACLU attorney Catherine Crump said. "The FBI's own general counsel explained that these memos set out guidance regarding one of the most important Supreme Court decisions in a decade. For the FBI now to say it's entitled to hide this guidance behind claims of attorney-client privilege is wrong, and it's a claim we are prepared to challenge in court."

The existence of the memos was disclosed last February, when FBI General Counsel Andrew Weissmann, speaking at the University of San Francisco Law School asserted that the FBI was in the process of issuing two documents to provide agents with guidance on the use of GPS tracking, in light of the Supreme Court decision.

One of the memos, Weissmann said, covered questions such as whether the Supreme Court decision also applies to other forms of transportation like airplanes and boats, and whether it applies at international borders. The other memo, he said, discussed how the Supreme Court decision applies to other types of surveillance techniques "beyond GPS."

Last January, the Supreme Court held that attaching a GPS device to an individual's vehicle and tracking his movements equated to a search under the Fourth Amendment. Left unresolved by the justices, however, was whether law enforcement agents should always be required to obtain a warrant based on probable cause to conduct such tracking. The decision also did not address other types of GPS tracking, such as tracking done through the GPS location data gathered from mobile phones.

Weissmann told the audience that at the time of the Supreme Court decision, the FBI alone had about 3,000 GPS devices being used in the field. The week the decision came down, the department issued a memo to agents telling them to immediately "turn off all your GPS [devices]," and also provided guidance about how to retrieve their GPS devices from the field if they had not obtained a warrant in the first place to use them.

"[I]t wasn't obvious that you could turn it back on to locate it because now you need probable cause or

reasonable suspicion to do that, so we had to come up with guidance on how you could locate them without violating the law," he said. Reported in: wired.com, August 15.

**Washington, D.C.**

The ACLU has sued the District of Columbia and two police officers for allegedly seizing the cellphone of a man who photographed a police officer allegedly mistreating a citizen, and for then stealing his memory card.

The suit, filed in federal court in Washington, D.C., alleges that the police officer violated Earl Staley, Jr.'s First Amendment and Fourth Amendment rights by improperly searching and seizing his property while he was exercising his right to photograph the police performing their duty.

The incident occurred July 20 when Staley, on his way to a bus stop with a friend, pulled out his phone to record police after he saw an officer hit a man on a motorbike. Two police officers then allegedly punched the man on the ground as he bled. Staley pulled out his phone to take photos when police also allegedly began "chest bumping" bystanders who would not leave the scene.

Officer James O'Bannon seized Staley's smartphone from his hand when he saw Staley take a photo of another officer and told Staley that he had broken the law in photographing the officer, according to the complaint. O'Bannon told Staley he was seizing the phone as evidence and threatened to arrest Staley if he didn't leave the scene.

When Staley was later given back his phone by police, his memory card was missing. The police have still not returned the card, which Staley says contained several years' worth of personal data, including family photos, passwords, financial account data and music files.

"That memory card had a lot of my life on it," Staley said in a statement. "I can never replace those photos of my daughter's first years. The police had no right to steal it. They're supposed to enforce the law, not break it."

The incident occurred a day after the D.C.'s Metropolitan Police Department issued a General Order informing officers that the public has a First Amendment right to photograph or record police officers performing their duties in public. That's also the legal opinion of the U.S. Justice Department.

Per the D.C. order, police cannot "[i]n any way threaten, intimidate or otherwise discourage an individual from recording members' enforcement activities," and prohibits officers from seizing cameras unless an "official with supervisory authority" is present at the scene.

"Officers must learn that people have a right to photograph them in public places, and that trying to cover up police misconduct is worse than the initial misconduct," said Arthur B. Spitzer, Legal Director of the ACLU's D.C. chapter, said in a statement. "The officer's actions here will have consequences." Reported in: wired.com, September 7.

**Mountain View, California**

Google and a group of consumers are gearing up for a courtroom showdown about recent changes to the company's privacy policy. The latest policy, which went into effect in March, allows Google to aggregate data about signed-in users across a variety of platforms, including Android, Gmail and YouTube.

Google says that doing so allows it to target ads and search results more precisely by drawing on a broader pool of information about users than in the past. The company isn't collecting any additional data or sharing information with outsiders.

But the move to aggregate data triggered inquiries by Congress and attorneys general, as well as complaints by advocacy groups. The move also resulted in potential class-action litigation by consumers, who allege that Google's new policy breaks promises that the company made in its previous policies. In the past, Google said that it would keep data collected for one purpose, like email, siloed from data collected for other purposes.

The consumers say that Google's new policy constitutes a breach of contract and violates the federal computer fraud law and wiretap law, among other statutes.

In August, Google filed court papers asking U.S. Magistrate Judge Paul Singh Grewal in the Northern District of California to dismiss the claims. Google argues that the consumers lack "standing" to proceed in court because they haven't sufficiently alleged any economic harm. "There are no allegations anywhere in the complaint that any plaintiff has suffered any injury at all. None claims to have lost money. None claims to have changed services," Google argues.

The Web giant also denied that its new policy breaks prior promises to users, noting that it always retained the ability to change its privacy terms. "In plaintiffs' view, Google has apparently promised them that Google will continue to provide to them, for free and forever, the full panoply of Google products, while also promising not to change or improve those services or the ways in which Google generates the income to pay for them," the company says. "Not surprisingly, Google has made no such promises."

The consumers filed papers opposing Google's request. "Google's misuse of its customers' data and invasion of its customers' privacy interests and expectations runs afoul of numerous state and federal statutes and common law doctrines," they contend. Reported in: mediapost.com, September 21.

**Sacramento, California**

California Gov. Jerry Brown (D) vetoed a bill September 29 that would have restricted the ability of police to block access to landline and wireless phone networks. The legislation was spurred by an incident last year when a San Francisco transit agency shut off the transmitters that allow

for cellphone reception in four underground subway stations to disrupt a planned protest over a police shooting.

Civil-liberties groups condemned the blackout as an intrusion on free speech and compared it to crackdowns in authoritarian regimes. Agency officials said the blackout was necessary to prevent a potentially violent protest.

The legislation would have required police to obtain a court order before shutting down phone service. Under "extreme and exceptional" circumstances, police could obtain the court order within six hours of disrupting service.

In a statement, Brown said he concluded the bill's requirements could "divert attention away from resolving the conflict without further threat to public safety." He encouraged lawmakers to revise the legislation so that it strikes a better balance between free speech and public safety.

Following the blackout in the San Francisco subway stations, the Federal Communications Commission launched an inquiry into whether police should be allowed to block access to cellphone networks. "Our democracy, our society, and our safety all require communications networks that are available and open," FCC Chair Julius Genachowski said in a statement when his agency opened its review of the issue. "Any interruption of wireless services raises serious legal and policy issues, and must meet a very high bar. The FCC, as the agency with oversight of our communications networks, is committed to preserving their availability and openness, and to harnessing communications technologies to protect the public."

The FCC asked for comments on the circumstances that would justify a cellphone service blackout and whether the blackout would be effective in protecting public safety. The agency also asked for comments on the risks involved in blocking wireless access, such as preventing people from being able to call 911.

The agency also asked what legal basis provides the authority to shut down cellphone networks and what procedures agencies should follow to avoid abuse. Reported in: *The Hill*, October 1.

**Jefferson City, Missouri**

A new Missouri law making it easier for police to track people's cellphones in emergencies is being challenged in court on claims that it conflicts with a federal law that grants greater privacy protections to phone companies and their customers.

The Missouri law that took effect August 28 requires phone companies to help law enforcement agencies track the cellphone signal of 911 callers or ping a phone's location when there is danger of death or serious physical injury. It's similar to laws enacted in several other states since the 2007 abduction and murder of a Kansas teenager whose body was found in Missouri only after her cellphone provider eventually cooperated with police.

A lawsuit filed August 27 in U.S. District Court claims Missouri's mandate for phone companies to supply information to police clashes with a federal law. That law gives telecommunications providers discretion in determining whether a police request truly constitutes an emergency that would justify sharing information without a court order or subpoena.

The lawsuit was filed on behalf of Bolivar resident Mary Hopwood. It also notes that Missouri's law denies people the right to sue phone companies for providing police information under the state law, whereas the federal law allows grounds for such lawsuits.

The suit claims Missouri's law should be struck down under the supremacy clause of the U.S. Constitution, which says federal laws supersede those in states. It also seeks a restraining order or injunction prohibiting enforcement of Missouri's law, and seeks class action status to represent millions of cellphone subscribers in the state.

"The law is obviously well-intentioned, and we all know that it arises from tragic circumstances," said Bolivar attorney Craig Heidemann, who filed the lawsuit. But he said a patchwork of differing cellphone information laws in states could create uncertainty for phone customers.

"If I take my cellphone to California, I have more rights. If I use my cellphone in Missouri, I have less rights. So really it comes down to a privacy issue," Heidemann said.

Missouri Rep. Jeanie Lauer, who sponsored the law, said attorneys for the legislature and phone companies had not raised concerns when the measure was being considered by legislators. It passed the House 142-3 in March and the Senate 32-1 in May.

"When writing the language contained in the bill, we looked closely at what other states had done as well as at federal law," said Lauer (R-Blue Springs). "I'm confident the bill we passed will hold up under the scrutiny of the court."

Nanci Gonder, a spokeswoman for Attorney General Chris Koster, said state attorneys "intend to vigorously defend the constitutionality of this law."

Missouri's measure has been dubbed "Kelsey's law" by supporters in remembrance of 18-year-old Kelsey Smith, of Overland Park, Kansas. Cellphone signals helped lead police to her body in a wooded area of Missouri four days after she was abducted from a Target store parking lot in Kansas on June 2, 2007.

Smith's parents, Greg and Missey Smith, have pointed to a delay in getting their daughter's cellphone provider to cooperate with police. The couple has said they do not believe that a quicker release of the cellphone information would have saved their daughter's life, but they say it could help someone else. In 2009, Kansas became the first state to enact a law making it easier for police to track cellphone signals. Reported in: *San Francisco Chronicle*, August 28.

## social media

**Palo Alto, California**

Facebook is warning the Federal Trade Commission that its proposed update to children's online privacy rules would infringe constitutionally protected free speech rights. The company said that because the proposal would restrict the ability of children to "like," comment on or recommend websites, it would violate the First Amendment.

"The Supreme Court has recognized on numerous occasions that teens are entitled to First Amendment protection," Facebook wrote in a filing with the FTC. "A government regulation that restricts teens' ability to engage in protected speech—as the proposed COPPA Rule would do—raises issues under the First Amendment."

The FTC is looking to update the Children's Online Privacy Protection Act (COPPA), which restricts the ability of websites to collect information from children younger than 13. COPPA was passed by Congress in 1998, before the rise of smartphones and mobile apps. The FTC unveiled a proposal in August that would expand the law to cover not only websites, but also games, apps, ad networks and other online plug-ins.

The proposal would also ban ads on children's websites from installing tracking files, known as cookies, on users' computers. Advertisers install cookies to track users' browsing history and display targeted ads to them.

The update would allow sites that are aimed at children and adults to create a log-in page for users to reveal whether they are older than 13. Users younger than 13 would still be able to access the sites, but the sites would face restrictions on the use of the children's information. Currently, Facebook is only available to users who identify themselves as older than 13. But the company is testing ways to allow younger children to use the site without violating COPPA.

Some consumer advocacy groups have urged Facebook to not advertise to children at all if it expands access to its website. But in its filing, Facebook urged the FTC to clarify that websites will still be allowed to advertise directly to children.

The company argued that advertisements controlled directly by a website raise fewer privacy concerns than ad networks that use cookies to track users across the Web. "This clarification further supports the balance created between the significant demand for free, advertising-supported services, and the expected tailoring of those services," Facebook wrote.

Facebook said it supports COPPA, but urged the FTC not to expand the law to cover third-party content providers. The company also said the FTC should clarify that sites can still track adults even if they know that some of their users are children.

Google also filed comments with the FTC arguing that the law should not cover third-party content. Google argued that the "practical and technical challenges" created by the proposed revisions, especially the expanded definition of "personal information," will limit "operators' ability to sustain and develop legitimate children's offerings."

But Reps. Edward Markey (D-MA) and Joe Barton (R-TX), both hawks on online privacy protection, applauded the FTC's proposal. Markey said the update is "necessary to adequately protect children" and that it is consistent with the intent of Congress in enacting COPPA. Reported in: *The Hill*, September 29.

**Sacramento, California**

California, home to many of the world's social media companies, now has the nation's strictest privacy laws preventing an employer or college from surfing through personal information on sites like Facebook. It will be illegal for companies or universities to ask for access to personal social media or email accounts under two bills signed September 27 by Gov. Jerry Brown.

"The Golden State is pioneering the social media revolution, and these laws will protect all Californians from unwarranted invasions of their personal social media accounts," Brown said in a statement.

Recent accounts of employers asking for personal passwords or requiring applicants to open their Facebook pages during interviews sparked the new laws. Companies and universities are increasingly trying to keep tabs on workers and students—and vet prospective hires and admissions—by monitoring their personal pages to see if they've posted anything like drunk photos or insensitive comments. But many people block public access to these posts through privacy settings.

Then in March, details of Maryland correctional officials asking for access to job applicants' personal Facebook accounts led to similar stories around the nation. Some people said they were turned down for jobs after refusing to give employers their social media information, prompting lawmakers around the nation to propose bills banning the practice.

"No boss should be able to ask for this kind of personal information," said state Sen. Leland Yee, (D-San Francisco), who wrote the California bill banning schools from asking students for their passwords. "You don't go on a fishing expedition when (people) apply for a job or admission for college."

Proponents say the laws apply 21st century reality to existing standards that protect job hunters and school applicants from giving out personal information like age, marital status and sexual orientation—details often revealed on social media pages.

"There's enough information on the Internet where you can find out ample information about people—about what is relevant to hiring a person," said Jacqueline Moshref, a human resources manager for a small medical device company in Sunnyvale. Anything more "is an invasion of privacy."

Despite the laws, there is nothing to prevent employers and universities from looking through social media pages if they are made public. Experts recommend tweaking privacy settings so not everyone can see personal posts.

"You still need to be very careful with what you post online," said Bradley Shear, a Maryland-based social media attorney who advised lawmakers in California and other states on their new laws. "It still comes down to common sense."

California is the first state to enact laws protecting both students and workers after Maryland and Illinois earlier this year approved laws affecting just workers and Delaware did the same for just students. About a dozen other states and Congress are considering similar legislation.

The two laws—SB 1349 from Yee and AB 1844 from Assemblywoman Nora Campos, (D-San Jose)—overwhelmingly passed the Legislature in late August and had broad support from employee unions, technology companies and consumer groups.

But some securities firms that are charged with overseeing business communications opposed the bills, saying it would restrict them from monitoring whether an employee is using a personal account to communicate about the company.

"The securities industry has absolutely no interest in accessing employee accounts that are used exclusively for personal use," said Andrew DeSouza, spokesman for the Securities Industry and Financial Markets Association. "We believe that a personal social media account that is used for business purposes must be treated as a business account." Reported in: *San Jose Mercury-News*, September 27.

**New York, New York**

On September 14, Twitter turned over to a judge a printed stack of messages written by an Occupy Wall Street protester in October 2011, around the time he and hundreds of others were arrested after walking on the roadway of the Brooklyn Bridge.

Manhattan prosecutors subpoenaed the records in January, because the messages could show that the police did not lead protesters off the bridge's pedestrian path and then arrest them, an argument that the protester, Malcolm Harris, of Brooklyn, is expected to make at trial.

The judge, Matthew A. Sciarrino Jr., of Criminal Court in Manhattan, said he would keep the messages sealed in an envelope in his chambers until September 21, when a hearing is scheduled in a challenge to his earlier ruling requiring that the messages be turned over to prosecutors. If that challenge fails, Judge Sciarrino said he would review the messages and then turn over the relevant material to prosecutors.

Harris was one of about 700 protesters who were arrested on the bridge. He was charged with disorderly conduct, a violation.

The case has broader significance for the effect it may have on how much access law enforcement has to material published on social media Web sites. Judge Sciarrino said that once the material was broadcast, it was no longer a private record.

Twitter objected to the demand for messages that were no longer on its public site and has appealed Judge Sciarrino's ruling. The social media giant filed an appeal August 26 asking a New York appeals court to reconsider earlier rulings ordering the social network giant to give the government tweets and account information on two Twitter accounts believed to have been used by Harris. That ruling came even though the government did not obtain a warrant to get the data. Sciarrino had also denied Harris the right to challenge the government request for data on his own, which Twitter asked the appeals court to reconsider.

In its appeal Twitter wrote that Harris's tweets are protected by the Fourth Amendment "because the government admits that it cannot publicly access them, thus establishing that Defendant maintains a reasonable expectation of privacy in his communications." The Twitter accounts in question have been closed and are no longer publicly available.

But even if Harris's tweets were publicly available, Twitter points out that the U.S. Supreme Court has ruled that "public information which would allow law enforcement to draw mere inferences about a citizen's thoughts and associations are entitled to Constitutional protection, thus establishing that a citizen's substantive communications are certainly entitled to the same protection."

Harris was arrested for disorderly conduct last October while participating in an Occupy march at the Brooklyn Bridge. Last January, the district attorney in Manhattan asked Twitter to hand over all tweets posted to the account of @destructuremal between September 15 and December 31 last year, as well as any information Twitter had about the owner of the account, such as a user name, e-mail address or IP addresses used to access the account to post the tweets. In March, the government served Twitter with a second order for records related to a different Twitter account, @getsworse, also believed to belong to Harris.

Prosecutors used a 2703 order to request Harris's information, which allows them to obtain data without a warrant. More powerful than a subpoena, but not as strong as a search warrant, a 2703(d) order is supposed to be issued when prosecutors provide a judge with "specific and articulable facts" that show the information they seek is relevant and material to a criminal investigation. The people targeted in the records demand, however, don't have to themselves be suspected of criminal wrongdoing.

Authorities said they wanted Harris's tweets "to refute the defendant's anticipated defense, that the police either led or escorted the defendant into stepping onto the roadway of the Brooklyn Bridge."

Twitter had moved to quash the government's 2703 orders, but in July, Judge Sciarrino ordered Twitter to release the tweets and account information, ruling that Harris had no

expectation of privacy in tweets that were published.

"If you post a tweet, just like if you scream it out the window, there is no reasonable expectation of privacy," Sciarrino wrote in his decision. "There is no proprietary interest in your tweets, which you have now gifted to the world."

Authorities did not ask Twitter to hand over Harris's private direct messages. "Those private dialogues," Sciarrino noted, "would require a warrant based on probable cause in order to access the relevant information."

Twitter filed the original motion to quash after the judge ruled that Harris himself didn't have standing to quash the 2703 orders on his own. In its appeal filed this week, Twitter asked the court to reverse this decision as well, stating that Twitter users have a "proprietary interest" in their records, under the company's Terms of Service, the company wrote in its appeal.

"Twitter users own their tweets and should have the right to fight invalid government requests," Twitter argued. The company said that Twitter users also have standing under New York state and federal laws, as well as case law, to challenge a government subpoena that implicates their constitutional rights.

The American Civil Liberties Union filed an amicus brief backing Twitter. ACLU attorney Aden Fine said in a statement, "Under the First and Fourth Amendments, we have the right to speak freely on the Internet, safe in the knowledge that the government can't get information about our speech without a warrant and without satisfying First Amendment scrutiny. We're hopeful that Twitter's appeal will overturn the criminal court's dangerous decision, and reaffirm that we retain our constitutional rights to speech and privacy online, as well as offline."

Earlier this year, Twitter reported authorities had sought information on Twitter user accounts 679 times during the first half of this year. Twitter revealed that it complied with the requests 75 percent of the time by releasing all or some of the information being sought. Reported in: *New York Times*, September 14; wired.com, August 27.

**New York, New York**

The New York City Police Department (NYPD) has subpoenaed Twitter to force the social-media company to disclose the identity and IP address of a user who made threatening tweets promising "people are gonna die" at the Longacre Theatre in New York City.

Twitter had earlier refused to disclose information regarding the @obamasmistress account to law enforcement, which led police to subpoena the company, according to NYPD spokesman Paul Browne.

Browne said that Twitter subsequently turned over information to the NYPD and that the police were using it in their investigation, but did not elaborate.

"We appreciate the timeliness and sensitivity of this matter, and have reviewed the reported Twitter account. While we do invoke emergency disclosure procedures when it appears that a threat is present, specific and immediate, this does not appear to fall under those strict parameter as per our policies," Twitter told the NYPD in an email prior to the subpoena.

The Longacre is in the middle of a run featuring the Spike Lee-directed "Mike Tyson: Undisputed Truth," a one-man show that promises "a rare, personal look inside the life and mind of the one of the most feared men ever to wear the heavyweight crown." Reported in: *The Hill*, August 8.

**Hampton, Virginia**

Facebook weighed in this August on a case in Virginia examining whether "liking" something on the social network constitutes free speech.

In a friend of the court filing with the Eastern District of Virginia, Facebook said that expressing a preference for something by hitting the Like button should absolutely be protected under the First Amendment. It not only clearly expresses a preference for something, it is also often intended to spark conversation and discussion, the company argued.

In this particular case, the court is deliberating whether it was right for sherriff B.J. Roberts of Hampton to dismiss six people who supported his opponent in a 2009 election—including deputy sheriff Daniel Ray Carter, Jr., who "liked" the Facebook campaign of his boss' challenger. Roberts eventually won the election.

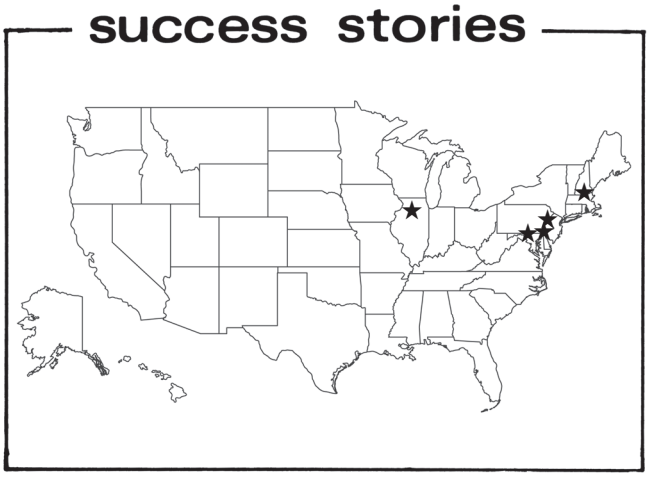
In May, U.S. District Court Judge Raymond A. Jackson ruled that Carter's statement was not protected under the constitution because it was not an actual statement of support, but rather "insufficient speech to merit constitutional protection." Put another way, it had no words.

But, Facebook argued in its filing this week, that's simply not how the Like button is used. "Liking a Facebook Page (or other Web site) is core speech," the company wrote in the brief. Deciding to like the other campaign, the network argues, is "the 21st-century equivalent of a front-yard campaign sign."

Facebook has at least one major ally when it comes to this position: the American Civil Liberties Union, which filed a similar brief with the court, comparing hitting the Like button to other representative forms of speech such as wearing a pin or placing a bumper sticker on a car.

In its brief, the organization wrote, "Whether someone presses a 'Like' button to express those thoughts or presses the buttons on a keyboard to write out those words, the end result is the same: one is telling the world about one's personal beliefs, interests, and opinions. That is exactly what the First Amendment protects, however that information is conveyed." Reported in: *Washington Post*, August 8. □

## success stories



## libraries

**Naperville, Illinois**

Naperville Public Library staff and patrons, especially local students, should find the district's computer labs to be more user-friendly thanks to a new approach regarding Internet usage. Beginning September 18 Internet filters were removed from all computers in adult areas of the library; filters will be maintained in the children's departments, and users will have a choice of which computers to use.

Each of the library's three branches has offered Internet service on hundreds of computers for 14 years. Executive Director John Spears said during that time, issues regarding the true ability of filters to block obscene material has conflicted with filters and the websites maintained by schools. The software needed to run the library's public access computers has resulted in an increasing number of problems for both users and library staff, often resulting in denial of access to valid websites.

"The filtering causes a lot of problems, so we did a survey and were surprised to learn we are the last library in the area filtering our adult computers. And it's just as well because the filters provide a false sense of security," Spears said. "Typically, filters will underblock by failing to block access to content that people think should be blocked and overblock completely legitimate material that we would not want to exclude from searches."

In some of the more unusual cases, Spears said, the filters were blocking the websites of local schools, prohibiting students from accessing homework and other materials their teachers had posted online.

"Everything from school websites to Yahoo Mail were getting blocked, and we had situations where the computers would freeze up because these sites had been accessed," Spears said. "Over time, that requires a tremendous amount of staff intervention to figure out why, for example, Neuqua Valley High School's website is blocked."

Spears said the library, however, does take the protection of children from obscene or harmful material very seriously and all policies regarding the viewing of obscene materials remain in place. Some of the labs, he said, have also been reconfigured to give staff a better view of what's being accessed.

"We will not, however, prohibit anyone from viewing constitutionally protected images," he said. Reported in: *Daily Herald*, September 14.

**Nashua, New Hampshire**

Patrons no longer have to be at least 18 to check out an R-rated or unrated movie at the Nashua Public Library.

The age requirement was never a formal policy adopted by the library board of trustees, said Library Director Jennifer Hinderer. Rather, it had been put in place in late winter 2008 by the former director in response to a parent's complaint, Hinderer said. There was already no age restriction in checking out other materials, such as books or magazines. When she became library director early in 2010, Hinderer had on her "to do" list bringing the policy for checking out DVDs or VCR tapes in line with other materials.

The change also makes the policy consistent with the "right to read" and "right to view" principles outlined in American Library Association policies.

"The borrowing restrictions violated basic library principles regarding intellectual freedom, and I am glad we were able to finally lift them," Hinderer wrote in her blog. She explained that families and individuals should make choices about what is acceptable to view, not library staff.

She also noted it isn't illegal for someone younger than 17 to view an R-rated movie. Rather, the ratings are guidelines adopted by the Motion Picture Association of America, which theaters have agreed to honor. A cinema may ban teens younger than 17 not accompanied by adults from watching an R movie, but it wouldn't break the law if it permitted them to do so, Hinderer said.

The change brings the library in line with policies at most other public libraries, said Janet Angus, director of the Merrimack Public Library. Anyone with a valid library card can check out anything in the circulation, she said. "We've never had any age restrictions," Angus said. It's the job of parents to monitor what their children are checking out, Angus said.

Likewise, neither the Rodgers Memorial Library in Hudson nor the Wadleigh Memorial Library in Milford place age restrictions on checking out DVDs or other materials in their collections.

In browsing the "feature film" section of the library's

collection, not many salacious titles jump out. For example, a teenager without a parent now could check out such R movies as the Alfred Hitchcock movie "Frenzy" or the Russell Crowe adventure movie "Gladiator."

Library patrons disagreed about whether the change was good. Joyce, a woman who browsed the movie section with a preschool-age child, said the change didn't bother her. "It's the parent's job to monitor what a child watches or brings into the home," said Joyce, who declined to give her last name but said she's a Nashua resident. That holds as true for a child's TV viewing habits as to rented or borrowed movies, she said. "Look at what comes on TV now," she said.

Shelly Simpson, also a parent, disagreed. She thinks carding teens who want to rent R movies is the right approach. "I used to sneak R-rated movies past my parents all the time," said Simpson, 28, the mother of a 3-year-old. Prohibiting teens younger than 18 from renting R movies would "make the job easier for parents," Simpson said. Video rental stores card people renting movies, she added.

"It depends on how their parents brought them up," said Barbara Lambert, parent of daughters ages 23 and 24. Some teens are mature enough to handle R movies with serious themes, such as "Schindler's List." But she worries many children have become desensitized to violence with so much of it on television.

Censorship is the job of parents, not the library staff, said Mary Maloney, a mother of four children ranging in age from 14 to 27. Reported in: *Nashua Telegraph*, September 15.

## schools

**Frederick, Maryland**

Despite complaints from some parents, the Frederick County Board of Education has upheld a decision by county Schools Superintendent Theresa Alban to continue using the controversial *Social Studies Alive!* third-grade textbook until 2014-15.

The school board announced its decision August 15, nine days after board members allowed a group of parents to appeal the superintendent's recommendation in a closed session.

Board members found that the superintendent had "valid, sound and reasonable" arguments for recommending that county schools not discard the controversial text immediately, according to the board's decision.

Alban argued that it makes no sense to discard the book now, when the school system has limited resources to buy a new textbook and the state is looking to implement a new Common Core curriculum that will impact elementary-level social studies. The superintendent was also concerned about replacing the textbook because there is the possibility that the school system can fill the void using online resources.

Alban said that she had no doubt that the textbook will need to be replaced, but she did not want to obligate the board to do so within a specific timetable, according to the decision.

"Her decision was not arbitrary and was not unreasonable," school board President Angie Fish said.

Fish, along with school board members Kathryn Groth and Jean Smith voted to uphold the superintendent's recommendation. Board members Brad Young and April Miller voted against it, while James "Jimmy" Reeder Jr. and Donna Crook were absent from the appeal.

Soon after the school board released the decision, Alban sent out a public statement through the school system's Find Out First email notification system.

"... Whether or not a particular decision is validated is less important than the process I use to make decisions," Alban said in her statement, which also appeared in a video. "That process works: It's clear, transparent and fair." Alban said she felt the board's decision justified her recommendation.

"I have fiduciary and ethical responsibilities to this community," she said in the statement. "It would be easier and sometimes less controversial to make decisions for the sake of expediency. But that's not what an effective leader does, and that's not how we work at FCPS."

However, Alban's response, which became public immediately after the board announced its decision, angered the appealing parents more than the board's actual decision.

"I am offended," said Cindy Rose, a parent from Knoxville who believes that the *Social Studies Alive!* textbook promotes liberal beliefs and has been fighting for a year to remove it from county schools. Rose said she anticipated the board's ruling especially because more conservative board members were not present at the appeal.

But Rose was upset with the Find Out First message because the school system had previously refused to send out a letter to parents informing them that there had been concerns about the content of the social studies textbook. "If we are partners, then why didn't you inform parents there had been concerns?" Rose asked.

Rose now plans to take her complaints to the state, where she will appeal the school board's decision before the Maryland State Board of Education. Her hope is to get rid of the book as soon as possible.

The *Social Studies Alive!: Our Community and Beyond* textbook has been a part of county schools' curriculum since 2004, and is one of 15 to 20 printed and online resources that teachers use for third-grade social studies. But parents like Rose have criticized the book for, in their view, not teaching facts objectively and promoting liberal ideologies on health care, public education and government.

A task force examined the book and recommended in March that the school system replace it with a different text as soon as possible. But Alban decided to delay the removal

until the 2014-15 school year. Reported in: gazette.net, August 15.

**Emmaus, Pennsylvania**

The East Penn School Board chose September 24 not to consider whether to remove two controversial books—*Prep* and *The Electric Kool-Aid Acid Test* from school district summer reading lists. Some parents had complained about the inclusion of those books because of the sexual content in them.

School Board President Chuck Ballard read a prepared statement outlining his reasoning for putting off a vote. Following is that statement:

"It is truly ironic that we are having this discussion with Banned Books Week starting next week. Before going further, I think we need to start with some facts.

"1. The district has a process for challenging all curriculum material. That process is contained in Policy 109, written in 1987 and last revised in 1991. The form for presenting a challenge is form 109ATT "Citizen's Request for Reconsideration of Library or Curriculum Materials". By policy, the way to remove challenged curriculum material is through this form. There is a process called 'weeding' mentioned in the policy, but that is only for librarians removing 'materials which have outlived their usefulness'. Material specified in the curriculum has not 'outlived its usefulness.'

"2. The process outlined in Policy 109 requires a complaint form to be submitted to the Superintendent's office, and requires that a written response to the complaint be made if the complaint is not resolved informally, and a specific formal recommendation by a review committee is to be made to the Board in that case.

"3. There are from 15-25 books from which students may choose from any summer reading list. There are no requirements to read any particular book on any list and neither of the books in question are required reading.

"4. All summer reading brochures contain the following language 'Some selections are focused toward mature readers. We encourage parents to read the book descriptions carefully with their children and assist them in selecting interesting, appropriate titles for their summer reading.'

"5. The title *Prep* is on the 9th grade GP/CP reading list for 2012. The title *The Electric Kool-Aid Acid Test* is on the 10th grade GP/CP reading list for 2012.

"6. There is not, as is erroneously reported on the EPCAT YouTube political website, any generic 'Middle School Reading List.' There is a list for 7-8 grade honors English. Neither title cited is on this list.

"7. The book description for *Prep* for the 9th grade reading list states 'immature high school students behave like college students, experimenting with alcohol and sex.'

"8. The book description for *The Electric Kool-Aid Acid Test* states 'In the 1960's Kesey led a group of psychedelic sympathizers around the country in a painted bus and presided over LSD-induced "acid tests" all along the way.'

"9. The book *Prep* was challenged in accordance with Policy 109 in 2011. The book was removed from the Eyer Middle School Library after the challenge. There were no copies in the LMMS library collection. The 2011 committee report supported retaining the novel in the EHS library.

"10. The book *The Electric Kool-Aid Acid Test* was challenged in 2007.

"Now, let us consider what is happening here today. A 'challenge' has been made to material, not by way of the procedure in Policy 109, but by a public complaint at a Board Meeting. A challenge is an attempt to remove or restrict materials, based upon the objections of a person or group. Challenges do not simply involve a person expressing a point of view; rather, they are an attempt to remove material from the curriculum or library, thereby restricting the access of others.

"To the best of my knowledge and belief, until this very evening at this meeting, no written challenge has been submitted in accordance with District policy, even though the District has made the form for the challenge available to the persons who made the public complaint.

"Consider this: If the true purpose was to protect students from unsuitable material, why make the complaint publicly, which advertises the very material that supposedly is to be kept from sensitive minds?

"In fact, it is my understanding, from some published reports, that the books complained about are flying off the shelves of both bookstores and libraries. As anyone who has had a teenager knows, telling them that there is something they should not do is akin to waving a red flag in front of a charging bull, and the sudden interest in the books could have been foreseen by a reasonably prudent person under the circumstances. This was hardly calculated to keep the material away from students.

"From this, I have concluded that this is not a simple matter of concern about curriculum material, but it includes some political component, as yet not brought to light. It will be up to the public and the press to determine what is really going on here. I can only deal with this situation in accordance with the policies of the District and the laws of the United States and the Commonwealth, not the politics.

"The matter before us is a request for censorship of published material. Nearly all people wanting to censor material appear to believe that they can recognize 'evil' and they can and must protect other people from it. Books have been known to challenge accepted social norms of their time. Books with explicit sex, whether throughout, or just in part, are often seen as cases of deviation from these norms. Because of the challenge to norms, censors often want to protect children from exposure to such books. The censor can also look at these books as attacks on religion or religious faith. Many censors believe that it is the role of

the school to support certain values or beliefs, particularly those the censor holds.

"A censorship challenge begins with a complaint about specific reading materials. The goal of the challenger is to inform that the materials in question are unacceptable. In some cases, the challenger may assume that everyone will immediately agree that the materials are not appropriate and should not be in the reading list.

"In the United States, under the First Amendment, no government agency can take on the role or has the right, to restrict or suppress legally protected expressions of ideas. In addition, as the Supreme Court stated in 1943 'The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted.

"'These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.'—Supreme Court Justice Robert Jackson, *West Virginia State Board of Education v. Barnette*.

"While today's courts appear to be allowing schools broad discretion with respect to curriculum materials, methods, and programs, there are limits to this discretion. It is not permissible to promote narrow political or ideological views. School boards must basically respect due process rights of both students and teachers. Thus, the Supreme Court has given guidance that the use of 'established, regular, and facially unbiased procedures for the review of controversial materials' provides a basis for resolving challenges both locally and, when need be, in the courts.

"According to NSBA deputy general counsel Gwendolyn Gregory, a school board might win a case legally, 'but lose it in the court of public opinion.' She urges officials to 'keep a distance' from their personal beliefs, and concentrate on what is 'educationally sound.' 'You can't avoid lawsuits,' Gregory says, 'but you can avoid losing them.'

"To avoid losing lawsuits, school boards need to have a procedure to get to the real facts in each situation: 'Listen to people's complaints, follow up, don't accept as truth the conclusions of others, understand where they are coming from, and investigate.'

"From one point of view, we have to act as gatekeepers when we select material for use in schools. From another, we are also required to guide students in how to make wise choices when they are already bombarded by information about many controversial subjects throughout our culture.

"Parents have the right to be involved in the reading material to be used by their children so long as they do not attempt to dictate what another parent's children may read.

"To sum this all up:

"It is hard to separate the concept of censorship from the necessary filtering function that must be used by those who select materials for school curricula. There is a viewpoint that says that students must be protected from material judged to be inappropriate. Another viewpoint says that schools should not be excluding the chance for parents and teachers to conduct guided discussion of certain topics, when students are exposed to multiple sources of controversial material in society today. The School Board must reconcile these conflicting positions in light of current community standards.

"Selection decisions do not necessarily mean endorsement in total of the content of all material. Selections need to be made by a process with professional teaching input, balance the concerns of all groups in the community and take into account rights of all groups, including students. I believe that is the type of process that is embodied in our policy.

"Rights are not absolute. Sometime they conflict with each other and some court or body like the School Board has to adjudicate the matter. The First Amendment of the Constitution gives students the right to obtain knowledge and teachers a measure of academic freedom, but there is also a well-established body of law that says parents have a right to control or protest, in some measure, material they consider detrimental to their children or that are unsuitable for students in general.

"Thomas Jefferson believed that censorship only served to draw attention to books that might otherwise be forgotten or ignored. George Bernard Shaw echoed that when he said that 'Censorship ends in logical completeness when nobody is allowed to read any books except the books that nobody reads.'

"Claire Booth Luce had a more pithy statement: 'Censorship, like charity, should begin at home; but unlike charity, it should end there.'

"Before taking any Board action, in accordance with our official policy of over twenty years, we should have an investigation, a finding of facts, and a committee report providing us with a rational basis for taking any action. To do otherwise, would subject the District to potential legal action for violating its own policies and/or the rights of others.

"Since policies are the rules of this assembly, as the Chair of this group under Roberts Rules of Order, I am dismissing Mr. Stolz's motion as improper until the requirements of Policy 109 have been met. Until the Board has received the committee report on challenged material, as required by Policy 109, the motion is improper and is null and void and will not be discussed.

"Any motion that runs counter to the rules of a group or organization is improper. It is also improper to make motions that conflict with the U.S. Constitution or state

constitutions, or with national, state, or local laws." Reported in: *Morning Call*, September 25.

**Philadelphia, Pennsylvania**

A 16-year-old high school sophomore who said she was ridiculed by her geometry teacher for wearing a Mitt Romney T-shirt returned to school October 9 following a rally by cheering supporters. The teacher has also written a letter of apology that was read aloud to students.

Samantha Pawlucy hadn't been back to Charles Carroll High School in the city's Port Richmond section since the previous week. That's when she and her family say she was mocked by her teacher for wearing the shirt supporting the Republican presidential candidate. She said the teacher questioned why she was wearing the shirt and called others in to the room to laugh at her.

Pawlucy, whose family had expressed concern for her safety, returned after a rally that featured supporters singing the national anthem and reading the First Amendment—as well as shouts of supporters calling "Go, Sam!" and "You're great, Sam!" The school's principal read students the letter of apology from geometry teacher Lynette Gaymon.

"I'm very sorry for all the chaos and negative attention that has surrounded the school in the past couple of weeks," Gaymon wrote. "What I meant as a light and humorous remark during class has developed into a huge conflict between students, faculty, parents and neighbors. My words were never meant to belittle Ms. Pawlucy, or cause any harm, and I truly regret that we have come to this point."

Pawlucy wore the pink "Romney/Ryan" shirt to dress-down day on September 28. She said that during class, Gaymon pointed out the shirt, questioned why she was wearing it and told her to leave the classroom. Gaymon, Pawlucy said, said it was a "Democratic" school and compared her Romney shirt to wearing a "KKK" shirt.

Her father, Richard Pawlucy, said the family met with Democratic Mayor Michael Nutter on October 7 to discuss a resolution. The teacher has apologized and the district's superintendent William Hite Jr. has called the ordeal a "teachable moment."

Hite has said he would work with Nutter and the teacher's union to move "towards a conversation that brings together diverse beliefs, inspires understanding, and heals." Reported in: firstamendmentcenter.org, October 9.

## foreign

**Yangon, Myanmar**

The government of Myanmar said August 20 that it would no longer censor private publications, a move that journalists described as a major step toward media freedom in a country where military governments have tried for decades to control the flow of information.

The announcement was made to editors and posted on a government Web site. "All publications in Myanmar are exempt from the scrutiny of Press Scrutiny and Registration Department," the government said in a terse statement. Private publications in Myanmar have been thriving since President Thein Sein began taking steps last year to open up the country's economy and move the country toward democracy.

"This is a very significant step—a big change," U Ko Ko, the owner of *The Yangon Times*, said by telephone. "It is in line with a democratic society. We have been working with censorship for almost five decades."

U Tint Swe, a top official in the Press Registration and Scrutiny Department, told journalists that government censorship had been in place for 48 years and 14 days, according to one participant in the meeting.

The news media have been one of the most assertive sectors of Myanmar society since democratic reforms began last year. Journalists have held protests against government interference in their work, and this month five senior journalists refused to participate in a government-sanctioned press council.

The Myanmar Journalists Association, which has 800 members, held its first congress on August 11 and made a point of telling government officials that they were not welcome. "We said, 'Sorry, you're not invited—don't come,' " U Thiha Saw, vice president of the association, said. "We wanted to prove that we are an independent body."

Thiha Saw, who is the editor of two private weekly publications and spent years battling with censors, sees media freedom as a "barometer for the reform process" in the country. He said he was optimistic that a series of changes, including a press law being drafted by the government, would allow Myanmar a level of press freedom unimaginable during the days of military rule.

"We won't be as free as the Philippine press or the Thai press," Thiha Saw said. "But we will be much more liberal than Cambodia, Vietnam or Singapore."

In preparing to draft the law, the government consulted with experts from UNESCO. The press law was to be introduced in Parliament in the coming weeks. But Thiha and other journalists say the battle is not yet won. Until now, private media companies were banned from publishing daily newspapers, which was the preserve of the state media.

U Maung Myint, president of the Burma Media Association, which advocates media freedom, said he believed that the government wanted to maintain a measure of control over the press.

"It is too early to say that this is a genuine reform because there are still quite a few media-unfriendly laws remaining in place that could send a journalist to prison," he said.

Among the most repressive laws in the country is the

Electronic Transactions Law, which carries a prison sentence of up to 15 years for distributing information in digital form that is deemed "detrimental to the interest of or that lowers the dignity of any organization or any person." The law has been used by the military government to jail dissidents and is still in force.

Ko Ko said the news media, while testing limits, remained cautious on several sensitive subjects. "There are still some areas we have to exercise self-censorship—military affairs, ethnic conflicts, corruption," he said. "We have to be very careful reporting on this."

Like the democratization process itself in Myanmar, the government has scaled back censorship gradually. In June 2011, articles dealing with entertainment, health, children and sports were taken off the list of subjects requiring prior censorship. In December, economics, crime and legal affairs were removed. Education topics were taken off the list in March. The only two topics remaining on the list—religion and politics—were freed from censorship in August. Reported in: *New York Times*, August 20. □

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*fewer books banned in Texas schools…from page 231)*

According to the report, "Over the past decade we have seen a steady decline in the number of books that have been challenged and banned, with 2003-04 and 2006-07 school years seeing a slight spike in challenges and bans. 2011-12 shows the lowest number of challenges and bans for the decade, with 50 challenged and 13 banned. This is an enormous step for Texas and a trend we hope will continue in the years to come."

For the 2011-12 school year, more than half of the districts surveyed (59 percent) reported that when a book is challenged, it's reviewed by a "review committee," a stark difference to last year when half of the districts surveyed reported that review was an "administration only" procedure. "Administration" and "administration and other" officials now monopolize the process at only 21 percent of schools surveyed for 2011-2012.

The report was based on responses from 91 percent of Texas school districts. To read the full report go to: http://www.aclutx.org/resources/banned-books. □

# intellectual freedom bibliography

Compiled by Angela Maycock, Assistant Director, Office for Intellectual Freedom


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