

INTELLECTUAL FREEDOM & PRIVACY

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



An individual who is incarcerated reads from a book in his free time.

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“WE CARRY A LOT OF BOOKS WE FIND ABHORRENT, AS WELL AS THOSE THAT WE TREASURE. WE BELIEVE IT IS THE WORK OF BOOKSELLING TO DO SO.”

From a statement from Powell Books in Portland, Oregon _ see page 3

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SPRING 2021 _ ABOUT THE COVER

 _ This issue of the *Journal of Intellectual Freedom and Privacy* includes two news stories about book restrictions and bans in jails. In Pennsylvania, a county jail initiated a policy banning individuals who are incarcerated from purchasing books from retailers that were previously allowed. Inmates only had access to a limited list of titles through the jail's tablet program, which charged per minute and had time restrictions. (More information can be found on page 3.) In Arkansas, a local sheriff's office removed all reading material other than the Bible and other printed religious material from the county jail, indicating that the removal was because of inmates damaging and destroying books. Requested public records showed no documentation of this destruction. (More information can be found on page 13.)



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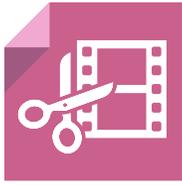
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PRISONS Pittsburgh, Pennsylvania

On November 16, 2020, Allegheny County Jail initiated a policy banning inmates from purchasing books from the two retailers that were previously allowed: Barnes and Noble and Christian Book Store. Instead of utilizing these sources, inmates were informed they could read a selection of 49 religious books and 214 other books through the jail's tablet program.

While a full list of titles available was not provided, the ones known, such as the works of Shakespeare and Dickens, are all in the public domain. Complicating this further, inmates are charged three-to-five cents per minute to use the tablets, and their usage of them is restricted to 90 minutes per day. Through the jail's contracted arrangement with Global Tel*Link for this tablet service, Allegheny County receives more than \$4 million in kickbacks, an amount that scales with inmates' usage of the tablets.

Amie Downs, a spokesperson for Allegheny County, issued a statement that inmates could read books on the tablets for free if they logged off and on again at least once an hour to avoid getting charged. Inmates contacted by the *Pittsburgh Current* indicated this was never explained to them. Christopher West said, "What makes this situation worse is that because of Coronavirus, we spend 23 hours a day in our cell. Books at least made that somewhat bearable and they've taken that away."

As a result of the pandemic, in-person visits to the jail were also eliminated. Inmates are now charged \$7.50 for each video visit they have with their families using their tablets. Inmates also expressed frustration with getting a signal on the tablets, indicating they have to stand at their cell doors to use them.

On December 1, 2020, the ACLU of Pennsylvania, Abolitionist Law Center, and PA Institutional Law Project sent a joint letter to jail officials asking that the policy be rescinded and asserting that the restrictions they had imposed violated the First Amendment.

The letter read, in part, "The new policy barring people incarcerated at the Jail from purchasing books effectively denies more than 1,500 people in the Jail from access to the overwhelming majority of books in existence. . . . As explained by the U.S. Court of Appeals for the Seventh Circuit: Freedom of speech is not merely the freedom to speak; it is also the freedom to read. Forbid a person to read and you shut him out of the marketplace of ideas and opinions that it is the purpose of the free-speech clause to protect."

On December 2, 2020, Allegheny County Jail announced they were lifting the purchasing ban. They also announced a new partnership with Carnegie Library of Pittsburgh, making more than 160,000 e-books, magazines, audiobooks, and videos available on their tablets through OverDrive. It was not clear if the per-minute tablet usage rate would apply when inmates read OverDrive titles.

Reported in: *Pittsburgh Current*, November 18, 2020; WESA, December 2, 2020; ACLU Pennsylvania, December 2, 2020; *Jurist*, December 6, 2020.

BOOKSTORES Portland, Oregon

Protesters demonstrated outside Powell's Books flagship store in Portland, Oregon, in opposition to their carrying Andy Ngo's book *Unmasked: Inside Antifa's Radical Plan to Destroy Democracy*. Ngo is a Portland native, a controversial conservative commentator,

and the editor-at-large of *The Post Millennial* news site.

According to one protester, "Andy Ngo goes out of his way to dox the Black Lives Matter community which he considers 'antifa'" and has endangered the lives of protesters through his online activity. Ngo has been criticized for selectively editing videos and sharing misleading and inaccurate information about antifa activists.

Ngo's book was characterized by a review in *Los Angeles Times* as "supremely dishonest"; the review asserted Ngo was "churning out the very kind [of] propaganda that keeps authoritarians in power." While much of Powell's inventory is selected by staff, other titles, including Ngo's book, come to them through automatic feeds, in this case from the Hachette Book Group.

Powell's issued a statement that the book would not be promoted or placed on their shelves, though it will remain available for purchase online. "We carry a lot of books we find abhorrent, as well as those that we treasure. We believe it is the work of bookselling to do so."

Reported in: *The Oregonian*, January 11, 2021; *Los Angeles Times*, February 8, 2021.

COLLEGES AND UNIVERSITIES Nationwide

As classes moved online due to the global pandemic, American universities faced a novel challenge: how to preserve academic freedom for international students attending online classes from countries with draconian censorship, surveillance, and local security laws, such as China, Russia, Turkey, and Saudi Arabia.

Emory University reported an instance where all students from China dropped off a live online class on Chinese society as soon as politics



came up. Students attending from China simply could not risk remaining in the virtual classroom if their governments were monitoring the discussion. While the subject of modern Chinese history presents an obvious hurdle, other topics are also laden with risk, including gender, LGBTQ rights, international relations, and economic theory.

Sarah McLaughlin of the Foundation for Individual Rights in Education urged professors not to adjust curriculum or shy away from sensitive topics during class discussions: “The worst thing we could do is to make Chinese laws applicable around the world.” The *Chronicle of Higher Education* reported that in the 2018–19 academic year, 370,000 Chinese students were enrolled in American colleges, comprising one-third of international students. An estimated 10 percent of current international students returned home during the pandemic and attended classes from abroad.

While speech critical of the Chinese government has long been restricted, in June 2020 those restrictions became vastly more encompassing, when a new national security law was passed making speech deemed critical of the Hong Kong or Chinese governments unlawful, regardless of the citizenship or location of the speaker.

The chilling effects of such a broad and ambiguous law are profound. Videoconferencing platforms like Zoom subject Chinese students to even greater risk, as they are vulnerable to government surveillance.

Zoom notoriously failed to provide end-to-end encryption across its platform until late October 2020 and was discovered in April 2020 to be routing all traffic through servers in mainland China. While Zoom has subsequently stated that users outside of China will no longer have their data routed

through servers in China, Citizen Lab has warned the company remains highly susceptible to pressures from the government, as much of Zoom’s research and development takes place in China.

Allowing the recording of sessions in which students could be identified and requiring downloads of any materials that could be deemed critical of the Chinese government also put students at risk. Professors are exploring options to protect Chinese students, including offering small-group lessons and giving them the option to opt out of potentially risky discussions without penalty.

Meg Rithmire, associate professor at Harvard Business School, said “the responsibility of the instructor is to communicate risk and to, as much as possible, provide a safe environment. It’s not to *not* teach certain things.”

Reported in: *Chronicle of Higher Education*, September 30, 2020.

San Francisco, California

As classes moved online and universities grew reliant on private technology platforms to facilitate instruction during the pandemic, a novel vector for curtailing academic freedom emerged: terms of service violations.

On September 22 and 23, 2020, Zoom, Facebook, and YouTube shut down what would have been a live-streamed seminar on gender and resistance narratives from San Francisco State University (SFSU). The reason for the cancellation was the participation of Palestinian activist Leila Khaled, a Palestinian refugee and member of the Popular Front for the Liberation of Palestine, who became the first woman to hijack a plane in 1969.

Zoom argued that the seminar might have violated federal laws by providing “material support” for terrorism and canceled the event on

September 22, the day before it was scheduled. Following Zoom’s lead, Facebook removed the livestream link and a page advertising the event and threatened to shut down the pages of the event’s sponsors. YouTube shut down the livestream twenty-three minutes after it began.

Andrew Ross, a professor at New York University (NYU), said, “It’s very dangerous for a third-party private vendor to be in the position of deciding what is legitimate academic speech and what is not—it violates all of the customs and norms of the academic culture.”

Faiza Patel, co-director of the Brennan Center’s Liberty and National Security Program explained that Zoom’s understanding of what constitutes “material support” for terrorism was flawed. “The fact that Khaled is associated with a group that is on the FTO [Foreign Terrorist Organization] list does not mean that laws prohibiting material support for terrorism kick in.” Rather, according to the Supreme Court case *Holder v. Humanitarian Law Project*, it is solely material support “coordinated with or under the direction of” an FTO that is prohibited. The Popular Front for the Liberation of Palestine did not have anything to do with Khaled’s planned participation in the seminar.

In other words, Zoom failed to properly distinguish between an act of terrorism and an act of speech in the justification they provided for the cancellation of the event. Brian Hauss, an attorney for the American Civil Liberties Union, stated that “any attempt by the government to restrict academic freedom in this manner would undoubtedly violate the First Amendment.” However, as Zoom Video Communications is a publicly traded company and not a governmental entity, it has leeway to regulate speech on its platform.



On October 23, faculty and students at a dozen different universities planned to hold a series of events on Zoom in solidarity with SFSU. The events were to feature pre-recorded videos of Khaled speaking as well as discussions of academic freedom and censorship on Zoom.

Zoom shut down three of them: the events at NYU, the University of Hawai'i at Mānoa, and the University of Leeds. In protest of this fresh ban, students and faculty at the University of Hawai'i posted a YouTube video of themselves reading Khaled's words.

NYU President Andrew Hamilton wrote, "I am troubled whenever there is interference with academic programming organized by our faculty, and we have expressed our consternation to Zoom about their intervention in the event, which came without notice and explanation." Without a live link to utilize, they elected to hold their event privately and post a recording of it.

Faculty expressed disappointment at the absence of substantive pushback from the university: "Surely, this was an opportunity for NYU to review its contractual relationship with Zoom,

and to reassure faculty and students that their further speech censorship would not be tolerated."

Reported in: *New York Post*, November 5, 2020; *The Intercept*, November 14, 2020.

INTERNATIONAL Tamil Nadu, India

The Manonmaniam Sundaranar University in Tamil Nadu's Tirunelveli city withdrew *Walking with the Comrades* by Arundhati Roy from its syllabus following a complaint from the Akhil Bharatiya Vidyarthi Parishad (ABVP), a student organization.

"A committee comprising academic deans and board of studies members had considered the complaint and decided to withdraw the book as it may be inappropriate to teach a controversial book for students," Vice Chancellor K. Pitchumani told the *Indian Express*.

Walking with the Comrades is based on Roy's visit to Maoist camps, and it had been a part of the university's syllabus since 2017. The ABVP accused the book of "openly supporting the killing fields and riots by the anti-national Maoists." "It is highly

regrettable that this book has been in the syllabus for the past three years. All these years Maoists thoughts and ideologies have been taught to the young students," the ABVP wrote in the complaint letter, according to Organiser.org. The organization's Dakshin Tamil Nadu Joint Secretary C. Vignesh threatened to launch protests and bring the matter to the central government's notice if there was a delay in the decision.

Roy said she was "not in least bit shocked or surprised by the decision."

"It is not my duty to fight for its place on a university curriculum," Roy said in a statement. "That is for others to do or not do. Either way it has been widely read and as we know bans and purges do not prevent writers from being read. This narrow, shallow, insecure attitude towards literature displayed by our current regime is not just detrimental to its critics. It is detrimental to millions of its own supporters."

The book was replaced by *My Native Land: Essays on Nature* by M. Krishnan.

Reported in: *Scroll.in*, November 12, 2020.



SCHOOLS Kingsburg, California

Kingsburg Elementary Charter School District's board removed Jewell Parker Rhodes's *Ghost Boys* from its curriculum after a parent complaint regarding political views expressed in the book.

Ghost Boys tells the tale of Jerome, a twelve-year-old Black boy killed by a police officer who mistook his toy gun for a real one. As a ghost, Jerome observes the devastation felt by his family and community in the wake of his killing. He also meets other ghosts who suffered similarly unjust deaths, including Emmett Till. *Ghost Boys* was a *New York Times* bestseller, the 2018 New Atlantic Independent Booksellers' Association (NAIBA) Book of the Year, and won the 2019 Walter Dean Myers Award for Outstanding Children's Literature award, among other distinctions.

The Kingsburg Elementary Charter School District's book challenge policy allows for a book's immediate removal in response to a single parent's objection. According to the National Coalition Against Censorship, such policies can lead to spontaneous curriculum changes. Fear of navigating such complex and cumbersome tasks leads teachers to self-censor and select less relevant content as well as lower quality books.

This outcome illustrates how policies allowing a single parent to dictate curriculum changes for an entire school district can undermine trust in the choices made by educators and the school board.

Reported in: *National Coalition Against Censorship*, October 13, 2020.

Burbank, California

Middle and high school English teachers of the Burbank Unified School District were surprised to learn *To Kill a Mockingbird* by Harper Lee;

The Cay by Theodore Taylor; *Roll of Thunder, Hear My Cry* by Mildred D. Taylor; *The Adventures of Huckleberry Finn* by Mark Twain; and *Of Mice and Men* by John Steinbeck could no longer be taught until further notice. Superintendent Matt Hill made the announcement on September 9, 2020; prior to the announcement, all of the books were required reading aside from *The Adventures of Huckleberry Finn*. (See [Journal of Intellectual Freedom & Privacy 5, no. 3/4, p. 33](#), for initial report.)

The books were removed from the curriculum for review after four parents challenged them for alleged potential harm to the roughly four hundred Black students in the school district. The parents expressed concern over racial slurs contained in the novels, their portrayals of Black history, and the lessons they may impart.

Carmenita Helligar, mother of a fifteen-year-old student who was traumatized by other students repeating taunts and slurs they read in class, said, "For over thirty years these books have been on this list. The true ban is that there aren't other books of other voices that could ever be on there."

Nadra Ostrom, another Black parent who filed a complaint said, "The portrayal of Black people is mostly from the White perspective. There's no counter-narrative to this Black person dealing with racism and a White person saving them." She added that, "The education that students are basically getting is that racism is something in the past. And that's not the conversation that we should be having in 2020."

Sungjoo Yoon, a sophomore at Burbank High School, acknowledged that the books contained valuable lessons about racism, but noted, "I've been in classrooms where teachers, White teachers specifically,

unconditionally say the N-word without anybody's concern or single out a single African American student to become the spokesperson for the entire class. I think that's where the harm is coming from."

The National Coalition Against Censorship and PEN America sent letters urging Superintendent Hill to allow the books to be taught while they were undergoing review. The American Library Association's Office for Intellectual Freedom also sent a letter strongly encouraging the novels to be retained as part of the curriculum.

Numerous parents, teachers, and students spoke out against the books' banning, signed a petition to continue teaching the novels, and wrote opinion letters to the *Los Angeles Times*, including recommendations to continue teaching the books while providing professional development to make anti-racist practices part of school culture.

A fifteen-member committee tasked with reviewing the community concerns and books, and making recommendations regarding the curriculum, was ultimately unable to reach consensus. Superintendent Hill had to decide how to move forward. On November 27, he sent a letter to families and employees detailing the process, the committee's recommendations and inability to come to consensus, and his determinations regarding the books and curriculum.

All five books were removed from the core novel reading list, though remain available to students for independent reading and small group discussion. Passages from the books can no longer be read aloud to a whole class. Teachers wishing to teach the books to small groups are required to take special training on facilitating conversations about race, racism, implicit bias, and how to affirm



students' racial identities before doing so.

In a letter to parents, Hill indicated, "This is not about censorship or banning books outright, this is about determining which books are mandatory and which books are optional." Additionally, the superintendent followed the committee's recommendation to "ban the use of, and reading of, the N-word in all classes, regardless of context."

These decisions came after the Burbank Unified School District's Board of Education adopted a statement of commitment to anti-racism in the wake of racial unrest earlier in the year. The district has a Diversity, Equity, and Inclusion Committee composed of teachers, administrators, parents, students, and community members.

The committee is working to add more books written by authors who are Black, Indigenous, and People of Color (BIPOC) and which "show a balanced and fuller representation of the Black experience" to the approved core and supplemental reading lists for the district.

Going forward, the reading lists will continue to be reviewed and updated at least every eight years in an effort to prevent the curriculum from once again growing outdated and out of touch.

Reported in: *Los Angeles Times*, November 12, 2020, and November 19, 2020; ABC 7, November 14, 2020; *My Burbank*, November 28, 2020.

West St. Paul, Minnesota

Henry Sibley High School administrators stopped lessons on John Steinbeck's *Of Mice and Men* and Larry Watson's *Montana 1948* after receiving complaints about the books. Both parents and staff communicated "concerns about racist stereotypes and

slurs" in *Of Mice and Men*, part of the ninth-grade curriculum.

Steinbeck's novel has been banned from schools and public libraries numerous times and is number four on ALA's list of the *Most Challenged Books of the 21st Century*. It contains racial epithets and has previously been banned for "condoning racial slurs," containing "vulgar language," "anti-business" themes, and "promoting euthanasia."

Teaching of *Montana 1948* as part of the tenth-grade curriculum ceased in response to "concerns about the content . . . from our American Indian community." The plot of Watson's novel revolves around the protagonist's uncle sexually assaulting and murdering their Sioux housekeeper.

At the time of the book challenges, the West St. Paul, Mendota Heights, and Eagan school district, to which Sibley High School belongs, did not have a policy regarding reconsideration of instructional materials.

They have subsequently reached out to several other school districts for guidance. Until a policy is implemented, students have been reassigned short stories.

Reported in: *Pioneer Press*, December 23, 2020.

Quincy, Illinois

Identical twins Kyra and Phallon Pierce were shocked and saddened to discover that the original title of Agatha Christie's *And Then There Were None*, which was included on their eighth-grade summer reading list, contained a racial epithet that was interwoven throughout the story. They complained about it and ultimately were successful in removing it from St. Dominic Catholic School's summer reading list.

Realizing that diversity was lacking in their school-assigned books, these now thirteen-year-old students began

working with state legislators to craft Illinois House Bill 3254, also known as the Pierce Twins Bill.

If passed into law, the bill would amend the Instructional Materials Article of Illinois's School Code such that "a school district (including a charter school) shall require that books that are included as part of any course, material, instruction, reading assignment, or other school curricula related to literature during the school year or that appear on summer reading lists must include books that are written by diverse authors, including, but not limited to, authors who are African American, women, Native American, LatinX, and Asian."

The bill would also prohibit reading material perpetuating "bias against persons based on specified categories."

The board of any school district utilizing Title I funds would be required to approve the selection of each book to be included in a reading assignment, course material and instruction, or other school curricula related to literature, with the minimum requirement that a book may "not be approved by the school board if the book contains language or material that is derogatory or racist or incites hate against any persons."

IL HB 3254 was introduced on February 19, 2021, and given a "do pass" recommendation by the School Curriculum and Policies Committee on March 24, 2021.

Reported in: CBS Chicago, January 19, 2021.

Fort Walton Beach, Florida

Keisha Thomas, an English teacher at Chocawatchee High School, was forced to stop teaching Robin DiAngelo's *White Fragility: Why It's So Hard for White People to Talk About Racism* to her senior students when parents complained to the school board



that the book was part of the curriculum. The *New York Times* bestseller deals with issues of White supremacy, systemic racism, prejudice, bias, discrimination, and “the counterproductive reactions White people have when their assumptions about race are challenged.”

Thomas sought to create space and context for students to discuss racism, think critically about it, and form their own opinions. On learning the book was being taught, one parent informed the school board that “racism is not an issue in America.”

The administration announced the book’s removal with a short statement noting, “The Florida Department of Education has established standards for each course in the public-school setting that define what students should be taught. . . . It is not apparent that this material aligned with the standards for the course.”

During an October 13, 2020, school board meeting, Okaloosa County School Superintendent Marcus Chambers and Choctawatchee High School Principal Michelle Heck were asked to explain why the book was removed. They indicated that part of the process to approve a book for study was not followed in this case.

Several people spoke out against the book’s removal from the course. Gregory Seaton said, “The district is missing an opportunity to develop skills around college and career readiness. This book would allow students to be presented with ideas that they could think about and discuss in a critical format. Racism is not going away any time soon.”

Kimberly Davidson Woods recounted that when she was a student of the Okaloosa County School System, they did away with an African American History class, yet she was forced to read books where racially derogatory words were used

frequently. Woods said, “It seems the N-word really doesn’t bother anybody but the people that it is directed towards. That is part of the White fragility we’re talking about. In Okaloosa County, we’re not burning down buildings, looting or rioting, and I for one don’t want that, it’s not civilized. What is civilized is sitting down and using our critical thinking and allowing our students to think for themselves.”

Dewey Destin, a school board member, noted that Keisha Thomas was working with her principal to address the procedural issues so the book could be returned to the curriculum next semester.

Reported in: *Northwest Florida Daily News*, October 13, 2020; ABC WEAR-TV, November 13, 2020.

Huntersville, North Carolina

On October 21, 2020, it was reported that some parents were leading a push to remove *The Poet X* by Elizabeth Acevedo from Lake Norman Charter (LNC) School’s curriculum. They expressed concerns over sexual and vulgar references in the book and what one parent described as “anti-Christian” themes.

The school board denied an appeal to reconsider the book, explaining that the themes are presented in a respectful and age-appropriate way. The school does offer an alternative independent study option for students wishing to opt out of reading *The Poet X*.

Acevedo’s novel about a Dominican fifteen-year-old in Harlem working through family conflict by writing poetry won the Carnegie Medal for best children’s book published in the UK in 2018, multiple Youth Media Awards, and received starred reviews from *Horn Book*, *Kirkus*, and *School Library Journal*.

Once parents’ attempts to ban the book from the school became public, students started speaking out in support of the novel by contacting administrators, making petitions, and sharing their thoughts through collaborative Google Docs.

Student Maisie McCall described the story as “not anything crazy, it’s just what teenage girls go through. It’s a girl trying to find her voice.” Kit Kay said, “Whatever happens in the book might oppose our own views and beliefs, but that’s the whole point of reading the book, so we get a wider view of what’s going on in the world.”

After the school board refused to remove the book, Robin and John Coble filed a lawsuit to ban it. On November 6, 2020, a judge decided that the book could continue to be taught. The court found that public schools have a legitimate interest in having young people encounter challenging ideas, and in a country populated by people of diverse faith—and no faith at all—a public school must not be forced to base its curriculum on anyone’s religious beliefs.

Lake Norman Charter School Superintendent Shannon Stein sent a letter to all parents stating, “The school seeks and values diverse thought and a range of opinions and perspectives to increase students’ awareness, expand their thinking and ultimately help them grow and achieve their full human potential. . . . LNC will not fall to pressure to censor *The Poet X* or any of its literary selections. Instead, we choose to view this as an opportunity to share our school’s core values and model navigating differences of opinions and perspectives respectfully and civilly.”

On November 9, 2020, the Cobles filed an appeal to the Fourth Circuit Court to overturn the judge’s decision. The Fourth Circuit declined to grant an injunction for the Cobles’ son



to receive instruction from a different English language arts teacher while *Coble et al. v. Lake Norman Charter School, Inc. et al.* proceeds.

Reported in: WCNC Charlotte, October 21, 2020, and October 22, 2020; Charlotte Observer, October 29, 2020; U.S. News and World Report, November 10, 2020; WSOC-TV, November 6, 2020; Virginia Star, November 13, 2020; National Coalition Against Censorship, November 16, 2020.

Laporte, Pennsylvania

A school library display featuring terminology, resources, and lesbian, gay, bisexual, transgender, queer/questioning, intersex, and asexual (LGBTQIA+) celebrities and authors was challenged by a school board member during a live-streamed meeting of the Sullivan County School Board.

The display included quotes like, “Gay pride was not born of a need to celebrate being gay, but with our right to exist without persecution,” and affirmations from teachers such as, “You are allowed to be who you are . . . and encouraged.” It featured books including *Facing Homophobia*, *Coming Out and Seeking Support*, and *Confronting Stereotypes*, as well as works with LGBTQIA+ characters, themes, and authors.

Board Member Tim Nitzcnski said that the display should be taken down because it is “wrong” and he has a “real problem” with it. Nitzcnski continued: “Suppose that I feel we should have KKK Month or I feel we should have White Supremacist Month. . . . This is how I feel or somebody did with the rainbow organization or whatever you want to call it.”

Superintendent Patrica Cross defended the display and indicated it is based on a Pennsylvania Department of Education framework meant

to raise awareness and combat intolerance. She said, “Now we have a place that these kids can identify with and they feel safe.”

Parents who saw the live-stream condemned Nitzcnski’s comments and called them unacceptable. Jennifer Livezey said, “Educate yourself on what you’re saying before you say it, that’s all I’m asking, and don’t do it with so much hate.” Mary Elise Nolan went further, “To say promoting inclusivity for students who are LGBTQ is the same as having to allow White supremacists to have their say? That’s complete nonsense.” Nolan is calling for Nitzcnski’s resignation from the school board.

Reported in: WBRE/WYOU, November 11, 2020.

Fillmore, Michigan

In the spring of 2017, the Hamilton Community Schools in Fillmore Township started using book clubs for grades 5 and up as part of their reading and writing curriculum.

The curriculum included lessons and teaching points but not which books should be read, allowing students to select books they’d find engaging. “If you don’t have the books to make kids fall in love with reading, you can’t have readers read,” said Mat Rehkopf, director of teaching and learning.

The district purchased around 70,000 books to build classroom libraries from which the students can select. In September 2020, the district received complaints from parents that an option for middle school students, Ernest Cline’s *Ready Player One*, contained profane language.

Ready Player One is a young adult dystopian science-fiction novel about a teen boy’s quest to find an Easter egg hidden in a virtual reality (VR) video game’s labyrinth of pop culture trivia and claim the game creator’s

inheritance, possibly saving the world in the process. It received Young Adult Library Services Association’s (YALSA) Alex Award in 2012 and won the 2011 Prometheus Award, among other critical accolades.

The school district “paused” its entire book club program for review in response to the challenge regarding Cline’s book. They created a committee of teachers, administrators, and parents to review each book as well as all books added to the collection in the future.

During a school board meeting on October 12, 2020, it was shared that the committee had created a vetting system to match books to grade levels based on ratings from Common Sense Media, Scholastic, and other sources. To allow parents to decide which books are appropriate for their children, the spreadsheet containing the titles, ratings, and grade levels would be shared ahead of a book club starting.

In response to the presentation on the committee’s work, several parents again raised concerns over *Ready Player One*, asserting that they felt it lacked educational value and contained inappropriate material. They suggested it should be removed from the school instead of moved to a higher grade level.

Superintendent David Tebo stated he did not want to ban any books from the school.

Reported in: Holland Sentinel, October 17, 2020.

Rosemount, Minnesota

The Minnesota Police and Peace Officers Association (MPPOA) sent a complaint to Governor Tim Walz on October 30, 2020, about a book used in a fourth-grade assignment at the Rosemount-Apple Valley-Eagan school district. The MPPOA requested that the state stop



recommending and using *Something Happened in Our Town: A Child's Story About Racial Injustice* for instruction to elementary students.

The book by Marianne Celano, Marietta Collins, and Ann Hazzard follows a White family and a Black family as they discuss the police shooting of a Black man in their community. It aims to “answer children’s questions about such traumatic events, and to help children identify and counter racial injustice in their own lives.”

In response to the complaint, the Minnesota Departments of Education and Health issued a joint statement: “The book in question won multiple awards and was authored by psychologists seeking to help children process a difficult set of issues. It presents several complete conversations, as voiced by different characters, that many kids have likely heard in different parts of their lives. Some people will find characters’ perspectives resonate with them, while others may find some of the perspectives challenging, especially when taken out of the complete context of the full conversations depicted.”

The teacher who read and discussed the book with her class is Qorsho Hassan, Minnesota’s 2020 Teacher of the Year, the first Somali American to earn this distinction. Eighty protesters, including teachers, parents, students, and board members of the local teachers union showed up outside the school district office ahead of their November 16 school board meeting.

According to the *Sahan Journal*, Hassan “cultivates her classroom as a space where her fourth graders can affirm their identities,” and said, “The book does a really wonderful job of discussing racial injustice in kid terms.”

Her diverse students often don’t have space to discuss their experiences with racism, she said, which is especially important in the Twin Cities in the wake of George Floyd’s killing. She added, “Young kids are ready for these conversations. It’s oftentimes adults that are scared and unprepared.”

The local teachers union, Dakota County United Educators (DCUE), defended Hassan in an email sent by the executive board to their members: “As the leadership team at DCUE, we want to make clear that we unequivocally support the teacher and the teaching of racial inequities, and we condemn the actions of a few who would use this occasion to spread hate, violence and division.”

However, the school district itself has not yet indicated if they will support Hassan and continue to allow *Something Happened in Our Town* to be taught. Hassan said the district’s response has been “mum” and expressed disappointment in their “willingness to be silent, to keep peace instead of really owning the truth and really tackling this issue of racism and being firmly against it.”

Reported in: *Bring Me the News*, November 5, 2020; *Sahan Journal*, November 18, 2020.

Santa Clarita, California

In response to concerns raised by students and parents, *Of Mice and Men*, *The Adventures of Huckleberry Finn*, and *To Kill a Mockingbird* were temporarily removed from the mandatory reading list of the William S. Hart Union High School District. While the books remain in school libraries, teachers can no longer use them as part of their curricula.

The nature of the concerns regarding these books was not disclosed in this instance; however, they have frequently been challenged due to their treatments of race and racism and, in

the case of *To Kill a Mockingbird*, its White savior narrative.

Dave Caldwell, a spokesperson for the district, only indicated that concerns over these books had reached a critical mass. “We were like, ‘OK, we need to pull these off and let’s come up with a new process and a new lens because we’re in 2021 now,’” he said.

The district is utilizing input from teachers, students, and parents as they formulate a new process to approve books for the mandatory reading lists and establish selection criteria. There is no timeline in place for when a final decision will be made regarding whether these books would return to the mandatory reading list.

Reported in: *The Santa Clarita Valley Signal*, January 12, 2021.

Visalia, California

Days after the violent insurrection at the US Capitol led by far-right White supremacists, Jerry Jensen formally complained about a book taught at Redwood High School, part of the Visalia Unified School District (VUSD). The challenged book is *A Different Mirror for Young People: A History of Multicultural America*.

The textbook documents the lives of people of color, and its author, Ronald Takaki, was inducted into the Society of American Historians and received the Fred Cody Award for Lifetime Literary Achievement and the Association for Asian American Studies’ Award for Lifetime Achievement.

Jensen argued that the book establishes the “victimhood” of people of color and does not represent “my America.”

At a January 26 school board meeting, Colijia Feliz, a licensed clinical social worker and graduate from Redwood High School, said that Jensen spoke from a perspective of White supremacy and that “he grew up



living with all the benefits of privilege,” whereas “this book speaks to the atrocities of what people of color have endured in this country.” She added that, “Children need to be able to learn from the mistakes of this country. It’s clear from the insurrection we just had that a lot of people haven’t learned from it.”

District parent Raul Gonzalez said, “For most students, this is the first time they have been given the opportunity to share their experiences and have cross-cultural dialogue.” Takaki’s book is part of a pilot program the board approved last fall in which two ethnic studies courses are offered as electives.

Visalia resident Ceniza Machado said, “As the board, you agreed to roll out the course and this book. It has been approved by you—the board and the superintendent. Why is this objection even being entertained?”

At the school board meeting on February 9, students spoke out in support of the book. Senior Nolan Pritchett said that, as a White male, the ethnic studies course expanded his “knowledge of our multicultural world.” He went on to say, “I’ve never learned these things in required social studies courses. None of my fellow classmates or parents of classmates have any issues with our curriculum or the book we are reading.”

Former *Visalia Times-Delta* opinion editor Paul Hurley warned older White men of his generation about blind spots: “Anyone who believes they don’t have blind spots should talk with a member of a different ethnic or cultural group, or gender for that matter.”

Board member Walta Gamoian argued against teaching the book because Takaki committed suicide and she didn’t “know about that being a great role model for our kids.” However, she did not extend her

stance to include the works by Ernest Hemingway, Sylvia Plath, Virginia Woolf, David Foster Wallace, Vincent Van Gogh, or Jerzy Kosinski (who are suicide victims) that are in the high school curriculum.

Board president Juan Guerrero said he hoped the ethnic studies pilot would expand to other high schools. Guerrero and VUSD Superintendent Tamara Ravalín are bringing in facilitators from Fresno’s Civic Education Center to host a community discussion around the textbook and the pilot program. A committee including ethnic studies teachers, parents, students, administrators, and community members will be part of the discussion.

Reported in: *Visalia Times-Delta*, January 28 and February 11, 2021.

COLLEGES AND UNIVERSITIES Kent, Ohio

State Representatives Reggie Stoltzfus and Don Jones urged Kent State University to stop assigning the book *Anime from Akira to Howl’s Moving Castle: Experiencing Contemporary Japanese Animation* by Susan J. Napier, after a seventeen-year-old student’s parent complained about one chapter in the book.

Napier’s book was assigned in a freshman composition course, described by an official at Kent State as “College Writing I: Social Issues through Anime, which teaches college level writing through the prism of critical social issues prevalent in this internationally popular art form, such as mental health challenges, stereotypes, violence, and relations between men and women.”

The student was enrolled as part of the College Credit Plus program at Kent State, which allows those in grades 7–12 to take classes for college credit. Before any student enrolls in a

College Credit Plus course, they and their guardians must sign an acknowledgment that course materials may include mature adult themes.

Napier’s book was first published in 2005 and is a scholarly study of anime and its relation to Japanese culture. The book includes one chapter on pornographic content in Japanese animation.

When interviewed about the challenge to her book, Napier said, “I think that some pornographic anime is disturbing. But I think precisely because it’s disturbing it ought to be dealt with. We do have to engage the things that are ugly or distasteful in a rational, objective fashion. . . . I think this kind of issue of finding controversial things you don’t want to read and judging an entire book by it is also disturbing. . . . Most of the book is about the variety of Japanese animation. It was shocking to me they would want to have the book banned and use terms like ‘pornographic’ about the book. The idea of feeling that if you don’t like a subject you ignore or suppress anything controversial is not a very sensible way to approach a subject. It can come back and flower even more because it’s seen as forbidden.”

According to a statement given to Fox News by Kent State, “The assigned text is related to the subject matter and prepares the class for dialogue about themed issues. Faculty have academic freedom to communicate ideas for discussion and learning to fulfill the course objectives.”

Representative Stoltzfus threatened to try and remove \$150 million of annual funding for Kent State if they did not stop assigning the book.

Reported in: *Fox19 Now*, October 6, 2020; *Otaku USA Magazine*, December 18, 2020; *Crunchyroll*, December 22, 2020.



Muscatine, Iowa

A Muscatine Community College (MCC) virtual production of Bert V. Royal's play *Dog Sees God: Confessions of a Teenage Blockhead* was canceled by Dean Jeremy Pickard, who had previously raised concerns about the play's content.

Dog Sees God is a parody of Charles M. Schulz's *Peanuts* comic strip characters, portraying them as teenagers navigating sexual identity, drug use, child sexual abuse, suicide, eating disorders, and teen violence.

It won the New York International Fringe Festival's 2004 Excellence Award for Best Overall Production, Theatermania's Play Award of 2004, the GLAAD Media Award for Best Off-Off Broadway Production, Broadway.com's 2006 Audience Award for Favorite Off-Broadway Production, and the 2006 HX Award for Best Play. The play has been performed nationwide, including on numerous college campuses.

As the campus was largely closed to the public due to the COVID-19 pandemic, theater instructor Alyssa Oltmanns had proposed producing the play through Zoom, with actors performing remotely and MCC selling "tickets" to access the recorded performance.

Oltmanns stated Pickard had previously voiced concerns that "if you do this play, I'll get phone calls to my office because this isn't the *Peanuts* they are used to." Dean Pickard sent Oltmanns an email on September 4, 2020, stating, "The *Dog Sees God* play you are advertising has not been approved as a play at MCC. Please select another play and have it approved."

After Oltmanns questioned why Pickard wouldn't approve the play, MCC President Naomi DeWinter sent her an email stating, "We are unable to support a virtual performance at

this time, as we don't have the available technical staff to ensure it runs smoothly."

The Foundation for Individual Rights in Education (FIRE) urged the college to reinstate the play. Lindsey Rank, FIRE's program officer, asserted, "Citing public health in canceling a virtual theatre production after the dean of instruction raised concerns about the script's content is naked pretext to censorship, violating MCC and EICC's [Eastern Iowa Community College's] obligations under the First Amendment."

The American Civil Liberties Union (ACLU) of Iowa's Executive Director Mark Stringer said if MCC canceled *Dog Sees God* because of its artistic content, "that would be a problem" as "a public community college cannot censor artistic endeavors which are protected under the First Amendment."

Oltmanns decided to move forward with the play as a community theater performance broadcast over Zoom and benefiting Clock Inc, a LGBT+ community center.

Reported in: *The Dispatch-Argus*, September 29, 2020; *The FIRE*, September 30, 2020.

NATIONWIDE

On September 22, 2020, President Trump issued an executive order banning federal contractors and military institutions from holding training sessions on bias or stereotyping based on race or sex.

A senior administration official from the White House Office of Management and Budget said that the executive order "is not limited to federal agencies and applies to federal contractors and grant recipients." Institutions nationwide struggled to navigate the depth and scope of this executive order.

Peter F. Lake, a law professor at Stetson University, said that it constitutes "such a broad statement that people are going to spend a lot of time noodling over it and trying to second-guess what the government might do. That's where the chilling effect comes in."

While they were undertaking a review of the order's implications, the president and provost of the University of Michigan released a statement saying the executive order is "a direct violation of our right to free speech and has the potential to undermine serious efforts to acknowledge and address longstanding racist practices that fail to account for disparate treatment of our citizens throughout our society."

Brett A. Sokolow, chair of college risk management group TNG Consulting, said his group advised colleges to proceed with diversity training. "This kind of defiance is admirable and, if it catches on, may prove a real headache for the thought police in DC."

However, colleges and universities have also received contradictory guidance. A spokesperson for the University of Iowa informed *Inside Higher Ed* via email that the university is "both a federal contractor and a recipient of funds from federal agencies. General Counsel believes the provisions regarding training of employees may be read as applicable to all our employees and not just to those working on or funded through federal contracts."

The chilling effect resulting from the ambiguity of the order and its potential enforcement combined with the fear of substantial fiscal penalties was widespread.

The John A. Logan College in Carterville, Illinois, halted all planned diversity efforts and programs to review the implications of



the executive order. The freeze was so widespread as to include “Reflections on Hispanic and Latinx Identity in a Time of Upheaval,” a talk about Hispanic heritage by Roberto Barrios, an anthropology professor at Southern Illinois University. Barrios said, “My talk was canceled without anyone consulting me about the contents. They in no way violated the executive order.” Texas State University also postponed planned events.

In response to the executive order, one of four US Military Academies backed out of participation in an Arts in the Armed Forces screening of Spike Lee’s *Malcolm X* and a virtual question-and-answer with actor William Jackson Harper.

On Twitter, Harper stated, “This executive order is an attempt to censor certain difficult truths that still haunt our society. This executive order denies the very real experiences of so many minorities in this country. This executive order is rooted in the fictitious idea that the scourges of racism and sexism are essentially over, and that the poisonous fallout from centuries [of] discrimination isn’t real. But all of these things are real, and they remain to this day some of the most salient malignancies in our society. . . . The film is not propaganda meant to teach one to favor one race or sex over the other. It’s History. It’s an admittedly thorny history, but it’s history. I believe that the selective censorship of certain chapters of our country’s [history] because we find it disquieting, or because it disrupts our narrative and tarnishes our self-image is cowardly at best, dangerous at

worst, and dishonest either way.” (See “From the Bench: Free Speech.” for more news pertaining to this executive order.)

Reported in: *IndieWire*, October 6, 2020; *The Wrap*, October 6, 2020; *Newsweek*, October 6, 2020; *Inside Higher Ed*, October 7, 2020; *Chronicle of Higher Education*, October 7, 2020.

PRISONS Bentonville, Arkansas

On January 26, 2021, it was reported that the Benton County Sheriff’s Office, in August 2020, removed all reading material other than the Bible and other printed religious material from the county jail.

Lieutenant Shannon Jenkins indicated inmates’ damaging and destroying books as the rationale for the removal. She also stated, “As of this moment, there is no discussion about returning the book cart privilege.”

Inmates wrote to the *Northwest Arkansas Democrat-Gazette* complaining they no longer had access to magazines or books and that books donated for their use were being thrown in the garbage.

Public records obtained through Freedom of Information Act (FOIA) requests made by the *Northwest Arkansas Democrat-Gazette* showed no documentation of jail inmates destroying books nor any public record of a discussion to suspend the book cart privilege.

On January 27, the American Civil Liberties Union (ACLU) of Arkansas issued a press release demanding that the Benton County Sheriff restore

access to reading material, asserting the book ban violated the First Amendment rights of incarcerated people. “Incarcerated people have a right to access books and other information, which provide a lifeline to the outside world,” said Holly Dickson, ACLU of Arkansas executive director.

According to the press release, “courts have affirmed that the First Amendment protects incarcerated people’s access to information, including books and other reading material. In addition, by allowing incarcerated people to read the Bible and religious texts, but not other material, prison officials are engaging in content-based censorship, which is only lawful if it can be shown to have a legitimate security purpose.”

In February 2021, six months after they confiscated and disposed of the jail’s reading materials and three weeks after the ACLU’s press release, the sheriff’s office asked for donations to replace the books through their Facebook page.

Dickson said, “We’re glad the sheriff’s office is taking steps to restore access to reading material to people in its custody, and we urge them to avoid such arbitrary and counterproductive restrictions on incarcerated people’s access to information in the future.”

Reported in: *Westside Eagle Observer*, January 26, 2021; *ACLU Arkansas press release*, January 27, 2021; *Arkansas Democrat-Gazette*, January 27, 2021; *March 5, 2021*; *Northwest Arkansas Democrat-Gazette*, February 24, 2021.



SUPREME COURT

A ninth-grade Pennsylvania student's profane articulation of her disappointment in not making the varsity cheer-leading squad on Snapchat will be a decisive moment in determining the extent of students' First Amendment speech rights when *Mahanoy Area School District v. B.L.* is heard before the Supreme Court.

This is unlikely the result the then-fourteen-year-old anticipated when she wrote "Fuck school Fuck softball. Fuck cheer. Fuck Everything," back in 2017. One of her friends took a screenshot of this Snapchat message and shared it with her mother, who is a coach at the school.

The image was subsequently shared with school administrators, resulting in the student's suspension from cheerleading for a year.

The student sued the district in response and the case wound up before the US Court of Appeals for the Third Circuit. They ruled in her favor, finding that the First Amendment did not allow public schools to punish students for speech acts made off school grounds.

The school district appealed the case to the US Supreme Court, asserting that this question "has become even more urgent as COVID-19 has forced schools to operate online." A supporting brief from the Pennsylvania School Boards Association argued that the Third Circuit's ruling was too broad and protected all off-campus speech, limiting public schools' capacity to address cyberbullying and racist threats made on social media if the student is off-campus when posting them.

On January 8, 2021, the Supreme Court agreed to hear the case.

The American Civil Liberties Union (ACLU) is representing the student, now seventeen years old. In a statement, they asserted she

was protected by the First Amendment when she articulated a "colorful expression of frustration, made in an ephemeral Snapchat on her personal social media, on a weekend, off campus, containing no threat or harassment or mention of her school, and that did not cause or threaten any disruption of her school."

In 1969, the Supreme Court ruled public schools can regulate speech only when it materially and substantially disrupts the work and discipline of the school. This was in the case of *Tinker v. Des Moines Independent Community School District*, pertaining to the suspension of students wearing black armbands in protest of the Vietnam War.

In the only other pertinent Supreme Court ruling, students' First Amendment rights on campus were rolled back from *Tinker* with the narrowly split 2007 ruling in *Morse v. Frederick*. This case resulted from a student's ten-day suspension for unfurling a fourteen-foot banner proclaiming "Bong Hits 4 Jesus" across from school property.

There, Chief Justice Roberts wrote for the majority that, "It was reasonable for [the principal] to conclude that the banner promoted illegal drug use—and that failing to act would send a powerful message to the students in her charge."

In dissent, Justice John Paul Stevens said, "This case began with a silly nonsensical banner, ends with the court inventing out of whole cloth a special First Amendment rule permitting the censorship of any student speech that mentions drugs, so long as someone could perceive that speech to contain a latent pro-drug message."

The Second, Fourth, Fifth, Eighth, and Ninth Circuit courts as well as the Pennsylvania Supreme Court agreed that *Tinker* applies to "off-campus speech that has a close nexus to the school environment." The Third

Circuit was the first US Court of Appeals to deviate from this principle.

Reported in: *New York Times*, June 26, 2007; December 28, 2020; CNN, June 26, 2007; *Mahanoy Area School District v. B.L.*, No. 20-255, pending before the Supreme Court; *ABA Journal*, January 11, 2021.

The Supreme Court sided with prominent Black Lives Matter (BLM) activist DeRay McKesson in the case *DeRay McKesson v. John Doe*, overturning an appeals court decision which allowed him to be sued by a police officer injured by an unknown assailant during a protest McKesson organized.

The officer, identified as John Doe in the suit, was struck by a piece of rock allegedly thrown by a protester. The suit against McKesson was grounded in the claim that he "should have known . . . violence would result" from organizing a protest. The officer also sued BLM, but that suit was dismissed as one cannot sue a social movement.

The incident took place in Baton Rouge following the 2016 shooting death of Alton Sterling by a White police officer. The American Civil Liberties Union (ACLU) represented McKesson.

Their legal director, David Cole, said that allowing the appeals court decision to stand "would have [had] a tremendous chilling effect on the First Amendment right to protest."

The unsigned opinion from the Supreme Court said, "The Fifth Circuit should not have ventured into so uncertain an area of tort law—one laden with value judgments and fraught with implications for First Amendment rights—without first seeking guidance on potentially controlling Louisiana law from the Louisiana Supreme Court."



McKesson, who rose to prominence during protests in Ferguson, Missouri, after the shooting death of Michael Brown by a White police officer, said in a statement that the Supreme Court correctly “recognizes that holding me liable for organizing a protest because an unidentifiable person threw a rock raises First Amendment concerns.” Associate Justice Amy Coney Barrett did not participate in the case. Associate Justice Clarence Thomas was the sole dissenter.

Reported in: *USA Today*, November 2, 2020; *CNBC*, November 2, 2020.

FREE SPEECH Santa Cruz, California

Shortly after taking office on January 20, 2021, President Biden revoked Executive Order (EO) 13950, a late Trump-era EO prohibiting federal agencies, grant recipients, and contractors from endorsing “divisive race and gender concepts” through diversity and inclusion training. (See “Censorship Dateline: Colleges and Universities,” for more news on EO 13950.)

Prior to Biden’s action, a federal judge had imposed a preliminary injunction on December 22, 2020, barring the federal government from taking any action intended to effectuate or enforce the provisions of EO 13950 against contractors, grant recipients, sub-contractors, and sub-grantees.

The plaintiffs’ motion in *Santa Cruz Lesbian and Gay Community Center, et al., v Donald J. Trump, et al.* (US District Court for the Northern District of California), asserted that the EO “impermissibly chills the exercise of . . . constitutionally protected speech based on the content and viewpoint of their speech” and violates the Due Process

clause of the Fifth Amendment because it fails to provide adequate notice of the “the conduct it purports to prohibit.”

The Court agreed that “restrictions on the freedom of federal contractors to deliver diversity training and advocacy addressing racism and discrimination to their own employees and service providers using funds unrelated to the federal contract is a violation of First Amendment rights; and conditioning the continued receipt of federal grant funds on grantees’ agreement to not promote ‘divisive concepts’ as defined by the federal government even though the grant program is unrelated to such divisive concepts is a violation of grantees’ First Amendment rights.”

The Court also agreed “that the vagueness of the prohibited conduct inhibits the exercise of Plaintiffs’ freedom of expression” and that the federal government’s own interpretation of the scope of the prohibited conduct creates even more uncertainty.

In accordance with Biden’s revocation, all federal agencies are directed to suspend, revise, or revoke actions arising from EO 13950, including actions to terminate or restrict contracts or grants pursuant to EO 13950 by March 21, 2021.

Reported in: *Politico*, September 10, 2020; *USA Today*, September 27, 2020; *Government Executive*, September 28, 2020; *Triple Pundit*, September 30, 2020; *JDSupra*, January 22, 2021.

NET NEUTRALITY

On September 29, 2020, the the Federal Communications Commission (FCC) withdrew their appeal of *The New York Times Company, et al., v The Federal Communications Commission* (US District Court for the Southern District of New York), allowing a long-stalled Freedom of

Information Act (FOIA) response regarding their appeal of net neutrality rules to proceed.

Back in June of 2017, the FCC held a public-comment process (as required by law) about their proposed repeal of net neutrality rules classifying internet service providers (ISPs) as common carriers.

The 21.8 million comments received were used to inform then-FCC Chairman Ajit Pai’s December 2017 repeal of federal net neutrality rules.

However, based on research and analysis conducted by the New York Attorney General’s (NY AG) Office, an estimated 9.5 million of the comments were made using stolen identities, including some from deceased individuals. The NY AG’s Office also found that around 450,000 comments came from Russian email addresses.

A study done by Emprata revealed that more than 7.75 million comments were made using fake email addresses, 9.93 million responses consisted of duplicate comments listing the same physical and email addresses, and 1.72 million comments listed home addresses outside the United States. Emprata’s findings substantiated previous reports that the comment process was undermined by spambots.

Ryan Singel conducted a study of unique/personalized comments and found that 99.7 percent of those opposed the FCC’s repeal of net neutrality rules, suggesting that authentic domestic responses did not actually support the action taken by the FCC.

To further investigate the scope of fraud and foreign interference committed in the FCC’s public comment process, the *New York Times* submitted FOIA requests for metadata from the comments, including IP addresses, time stamps, and user-agent headers from their Application Programming Interface (API) proxy server log.



The FCC refused to disclose this information, leading to the September 2018 lawsuit that the *New York Times* won in May 2020. Judge Schofield rejected the FCC's arguments that providing the information would violate commenters' privacy, since "every commenter was provided with a privacy notice stating, 'All information submitted, including names and addresses, will be publicly available via the Web.'"

The judge also ruled that the API proxy server log was fair game, ruling that the log falls under the "any information . . . in any format" scope of FOIA and rejecting the FCC's claim that it is "a long unwieldy list of various data' that it should not have to search." Judge Schofield also noted that the request serves a vital public interest, as "the integrity of the notice-and-comment process is directly tied to the legitimacy of an agency's rulemaking." The FCC initially appealed this verdict, but dropped its appeal.

Reported in: *Ars Technica*, August 30, 2017; *October 17, 2018*; *May 4, 2020*; *Media Post*, September 29, 2020.

LIBRARIES Seymour, Indiana

On January 26, 2021, American Civil Liberties Union (ACLU) of Indiana announced it filed a lawsuit against the Jackson County Public Library for issuing a lifetime ban against a sixty-eight-year-old patron who placed a poem he had written—titled "The Red Mean"—on the library's circulation desk. The poem was critical of then-President Trump and his followers.

Prior to the ban, Richard England had visited the library two to three times per week for over a decade to check out books, movies, and music.

He has a limited income and cannot afford home internet.

He left the poem at the circulation desk, as the staff member he wanted to share it with wasn't there.

When he got home, there was a voicemail from the Seymour Police Department informing him that he was banned from the library for the rest of his life and would be arrested for criminal trespassing if he returned.

ACLU of Indiana senior attorney Gavin M. Rose said, "The library's action banning Mr. England from accessing materials impacts his right to receive information. In addition, the First Amendment protects people who, regardless of their views, attempt to hold the government accountable through expression."

In their news release, the ACLU of Indiana held that while the original poem was critical of then-President Trump and his followers, it was not vulgar, threatening, obscene, or otherwise inappropriate.

In addition to the constitutional concerns, banning a patron from the library for their political views directly contradicts Article V of the Library Bill of Rights, "A person's right to use a library should not be denied or abridged because of origin, age, background, or views." The library's collection development policy, approved by their board of trustees on February 17, 2009, and last revised on February 18, 2020, includes the Library Bill of Rights as well as The Freedom to Read and Freedom to View statements.

The case, *Robert England v. Jackson County Public Library*, will be heard in the US District Court for the Southern District of Indiana New Albany Division.

Reported in: *ACLU*, January 26, 2021; *The Tribune*, January 27, 2021; *Indiana Public Radio*, January 28, 2021.

Gainesville, Florida

On August 27, 2020, Alix Freck filed a lawsuit against the Alachua County Library District (ACLD), alleging her former employer violated her free speech rights by demoting her after she shared a Facebook video opposed to the Black Lives Matter (BLM) movement. Freck also commented on other posts related to BLM, including those of co-workers who supported the movement.

After these posts were brought to the attention of the library district's administrative directors, they met with Freck and requested her not to post to Facebook while they sought legal advice. Library Director Shaney Livingston indicated the situation would not be mentioned in Freck's file.

Freck deleted her Facebook account in response, though she has subsequently reactivated it.

A few weeks later, Freck received a memorandum demoting her from her new position as assistant branch manager. While she'd been employed by the library district since 2012, she was still in the six-month probationary period for this position. Freck asserts she did not create the post during work hours or at the workplace.

ACLD holds that their social media directive allows them to impose disciplinary measures on an employee for posting comments that violate generally accepted professional and ethical standards.

Freck's complaint asserts that this directive is overly broad and she was disciplined for constitutionally protected speech. The jury trial of *Freck v. Alachua County Library District et al.* is scheduled for August 18, 2021, in the US District Court for the Northern District of Florida.

Reported in: *WCJB 20*, October 21, 2020; *Gainesville Sun*, October 30, 2020.



COLLEGES AND UNIVERSITIES

Can publishers compel universities to install spyware on university library computers to harvest students' and researchers' biometric data without their consent?

This proposed approach to “defending against piracy” through indiscriminate surveillance was detailed by Corey Roach of the University of Utah during an October 22, 2020, webinar hosted by the Scholarly Networks Security Initiative (SNSI).

SNSI is a joint venture of academic publishers, currently consisting of Elsevier; Springer Nature; Wiley; Taylor & Francis; Cambridge University Press; Thieme; Macmillan Learning; American Chemical Society Publications; American Institute of Physics; American Medical Association; American Physical Society; American Society of Mechanical Engineers; Institute of Electrical and Electronics Engineers; Institute of Physics; International Association of Scientific, Technical, and Medical Publishers; International Water Association Publishing; the Optical Society; and Brill.

Roach said that if universities' libraries install their browser plug-in, they would de-anonymize usage by collecting biometric data points on each user, such as “how quick did they type,” and “how do they move their mouse.” Additional information that would be harvested by the spyware includes usernames, passwords, IP addresses, URLs of requested material, timestamps, extensive browser information, account information, two-factor device information, and geographic location.

Roach championed this technology's ability to strip away any privacy protections the universities' proxy servers provided.

He also indicated that this approach would help “protect copyrights” of the academic publishers, who, according to *.coda*, rely on a “profit model, which critics charge is damaging to science and parasitic on the academic system.” For the uninitiated, this model consists of publishers charging “exorbitant prices for subscriptions . . . while largely relying on publicly funded research for the content of their publications and the free labor of university-employed peer reviewers.”

SNSI's justification for these extreme and invasive proposals is the existence of Sci-Hub, an open-access “shadow library” of academic articles founded in 2011 by Alexandra Elbakyan.

Björn Brembs, professor of neurobiology at the University of Regensburg and part of a collective of academics lobbying the European Union to restrict the ability of publishers to surveil users of their own platforms, noted that collecting identifiable information creates security concerns and privacy risks.

He views this threat as particularly acute for researchers tackling “a hot button issue or if you work with vulnerable individuals, [such as] if you're doing medical or sociological research.” On Twitter, Sam Popovich characterized SNSI as working to convince everyone that “vendor profits should trump user privacy” and doing so under the false auspices that it would enhance “security.”

Clearly, the security in question is not that of library users, as this proposal would eliminate proxy protections, de-anonymize their research, and compile troves of additional personal information about them.

Reported in: *.coda*, November 13, 2020; *Motley Marginalia*, November 16, 2020.

DISCRIMINATION

Do Title VII protections encompass sexual orientation and gender identity?

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against someone based on their “race, color, religion, sex, or national origin.”

In *Bostock v. Clayton County, Georgia* (2020), the Supreme Court ruled 6–3 that it is impossible to discriminate against someone for being transgender or homosexual without that discrimination being based on their sex, therefore gender identity and sexuality are protected under Title VII. What's more, a case from the Sixth Circuit case that led to this landmark ruling has finally been settled.

In 2014, a Michigan funeral home fired Aimee Stephens, a funeral director, because she was transgender. RG & GR Harris Funeral Homes argued it had the right to fire Stephens because the president of the funeral home is a devout Christian and Stephens' existence was an affront to his religious beliefs. She sued.

Two years later, a federal judge dismissed the case holding that the funeral home was safeguarded from the lawsuit on religious grounds.

However, in 2018, the Sixth Circuit found that Stephens had been unlawfully terminated, that the funeral home failed to show how employing her would burden its president's religious practice, and furthermore that Title VII protected transgender workers against discrimination.

When the ruling regarding Title VII protections was contested, the Supreme Court consolidated the case with two lawsuits filed by gay workers who were terminated for their sexual orientation. Arguments were heard on October 8, 2019, and the Supreme



Court published its decision on June 15, 2020.

Tragically, Stephens passed away the month before the decision was made. In December 2020, Harris Funeral Homes agreed to pay \$250,000 to her estate.

Reported in: *FindLaw*, June 15, 2020; *Westlaw Today*, December 1, 2020.

FIRST AMENDMENT Albany, New York

Can sale of Nazi paraphernalia and Confederate flags be banned on government property?

On December 16, 2020, New York Governor Cuomo signed a bill into law banning the display or sale of Confederate flags, Nazi swastikas, and other symbols of hate on state property, including the fairgrounds.

The law includes exemptions for images in books, museum services, or materials used for educational or historical purposes.

While the law went into effect immediately, there are concerns the law may be challenged on First Amendment grounds. Attorney Floyd Abrams said, “A statute banning the sale of materials expressing those [hateful] views on state-owned land is highly likely to be held unconstitutional.”

Professor Jonathan Turley of George Washington University called the law “flagrantly unconstitutional” and delineated some of the First Amendment issues with the legislation. He noted the law does not permit the display or sale of symbols of hate if they serve “social, ideological, political, or literary purposes,” all of which are constitutionally protected.

Additionally, the law encompasses a “wide array of undefined ‘symbols of hate,’ [and] many people differ on what groups or symbols they deem ‘hateful,’” Turley said.

The Anti-Defamation League has compiled a database of hate symbols

for those wishing to learn more about the imagery this ban theoretically encompasses, though the law itself does not delineate which symbols it encompasses.

In *Matal v. Tam* (2017), Justice Anthony Kennedy wrote, “a law that can be directed against speech found offensive to some portion of the public can be turned against minority and dissenting views to the detriment of all.”

Put another way, the First Amendment doesn’t exist to protect speech that’s broadly agreed with and tolerated; rather, it’s needed to protect speech with which the majority may not agree.

Reported in: jonathanturley.org, December 17, 2020; [WLNY](http://WLNY.com) CBS, December 18, 2020.



LIBRARIES

Lincoln Parish, Louisiana

On December 9, 2020, following a lively debate, the board of the Lincoln Parish Public Library voted to return all previously removed lesbian, gay, bisexual, transgender, queer/questioning, intersex, and asexual (LGBTQIA+) children's and young adult (YA) books to the shelves.

In the preceding weeks, the library board had received challenges from fifteen to twenty people regarding two LGBTQIA+ children's titles. The challenge was part of an organized effort, as most of the complaints were copied word-for-word.

The library had a board-approved selection policy in place affirming that "the existence of a particular viewpoint in the collection is an expression of the Library's policy of intellectual freedom, not an endorsement of that particular point of view. No material will be excluded because of the race, nationality, religion, gender, sexual orientation, political or social views of the author."

Despite this, a minority of the board met with the group opposing the two titles and opted to relocate the books to a "reserved" section so they would only be available on request.

After this initial success, the group requested that the library remove additional LGBTQIA+ titles from the children's and YA sections. The same minority of the board asked the library staff to remove the entire list. These are the books that were challenged:

- *My Two Dads* by Claudia Harrington
- *My Two Moms* by Claudia Harrington
- *Real Sisters Pretend* by Megan David Lambert
- *The Great Big Book of Families* by Mary Hoffman
- *A Tale of Two Daddies* by Vanita Oelschlager
- *Jazz Jennings: Voice for LGBTQ Youth* by Ellen Rodger
- *Snapdragon* by Kat Leyh
- *The Wings of Fire* series by Tui T. Sutherland
- *George* by Alex Gino
- *Rick* by Alex Gino
- *Meg, Jo, Beth, and Amy* by Rey Terciero
- *Mommy, Mama, and Me* by Lesléa Newman and Carol Thompson

When it became known that the library board had restricted access to LGBTQIA+ books, community members were outraged. They inundated Library Director Vivian McCain with emails and letters indicating they would not support a library that endorses censorship.

McCain herself was outraged, as the board members didn't have the authority to ask that policy be changed without a full board vote. According to the *News Star*, "Removing the books goes against everything she stands for, and she's willing to put them back on the shelves even if it cost her job."

Everything came to a head at their December 9 board meeting. One attendee said, "We all have to learn about each other and accept each other. And all this community talks about being a Christian community, that's a joke. That is a living joke. Christian communities should love people and accept people."

Another community member stated, "As a gay man, as somebody who grew up with depression and anger having to deal with this, having LGBTQ books on the shelf will bring positivity to the children who are struggling."

McCain said, "We believe at the Lincoln Parish Library it is the parent's job to decide what a child reads, reviews, or looks at."

A parent in attendance agreed, "As a parent it is my job and my

responsibility to care for my children, to know what they are reading."

After the discussion, all board members came to agreement that the library would adhere to its policy and refrain from censoring any book due to race, gender, sexuality, religion, nationality, or political views. They also affirmed that every book inside the library was selected to be inclusive of all members of the diverse Lincoln Parish community.

Reported in: *News Star*, December 4, 2020; myarklamiss.com, December 9, 2020.

SCHOOLS

Colton, California

In February 2020, the Colton Joint Unified Board of Education removed Toni Morrison's *The Bluest Eye* from its core and extended reading list. According to a staff report, Morrison's novel was taught in eleventh- and twelfth-grade Advanced Placement (AP) English Literature classes because "it is an important contemporary novel with timeless universal themes and rich literary and artistic merit." (See [Journal of Intellectual Freedom & Privacy 5, no. 1/2, p. 46](#), for initial report.)

The book was challenged because of its depiction of incestuous sexual violence perpetrated against the character Pecola Breedlove. The title refers to Pecola's belief that she would be free from abuse and racism if she had blue eyes.

Morrison won the 1993 Nobel Prize for Literature, and *The Bluest Eye* was part of the reason she received this accolade. Morrison also won a Pulitzer in 1988 for her novel *Beloved*.

Four of the seven board members, including President Patt Haro, voted to remove the book; two opposed the motion, including Vice President Dan Flores; one abstained.



Flores said, “There are dozens of books on the list that deal with controversial issues, yet the only one being removed is by Toni Morrison, one of the most prominent Black female authors of recent time. Her literature speaks to the African American experience in America and I could not personally support removing one of her books from our reading list.”

This is in keeping both with current censorship trends focused on books dealing with race and racism and with past efforts to ban Morrison’s works.

PEN America’s Research Director James Tager said, “We’ve seen other examples around the country where Morrison’s books have been singled out for banning in ways that raised the obvious inference that it was selected,

in part, because it grapples with the uncomfortable realities of race and racism in America.”

On August 20, 2020, a regular meeting of the school board was consumed by debate over the book. One student at the meeting stated that books by and about people of color offer Black students representation, yet only thirteen out of three hundred books on Colton’s approved list for English classes are written by Black authors.

A representative of Colton’s African American Parent Advisory Committee argued, “We continue to tell our Black community that they matter, but our actions show otherwise. How can we support a marginalized community and build trusting relationships with them when

actions represented from the school board go against the words of support echoed for the African American community?”

Board members listened to nearly an hour of public comments before voting to reinstate the novel. Five members supported its return to the reading list, including two who had previously voted for its removal and the member who had previously abstained. Two board members remained opposed to the novel’s being taught in the school district.

Flores said, “Unless we’re lifting everybody up and providing an opportunity and voice and space [and] representation for everyone, then we’re not really doing a great service to our students.”

INTELLECTUAL FREEDOM ROUND TABLE

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Library Bill of Rights



While news media did not report on the book's return to the curriculum initially, PEN America discovered the book had been reinstated in response to a letter they sent to the school district on September 27, 2020. PEN's letter read in part that, "There is no educational or constitutional justification for allowing members of the community to dictate reading lists for students who are not their own children."

Upon learning that the book was returned to the core and extended reading list and could once again be taught, Tager said, "We're very pleased that the school board reversed their decision. It shows that it's never too late to reverse a book ban. . . . It's a demonstration that these concerns are taken seriously and that there is utility to raising your voice. I hope it sends a message to convince parents, teachers, librarians across the country that there's a point and a purpose to expressing opposition to book bans anywhere they happen."

Reported in: *San Bernardino Sun*, February 11, 2020; *Los*

***Angeles Times*, October 1, 2020; *Daily Bulletin*, October 6, 2020.**

Vail, Arizona

A parent of a Cienega High School student challenged the teaching of Kurt Vonnegut's *Slaughterhouse-Five* as part of the Advanced Placement English curriculum, complaining about the book's language and references to sex.

Vonnegut's novel has frequently been banned from literature classes, removed from school libraries, and struck from literary curricula, and was burned at a school in North Dakota. It is forty-sixth on the American Library Association's list of the "Top 100 Banned/Challenged Books: 2000–2009" and sixty-seventh on their list of the "100 Most Frequently Challenged Books: 1990–1999."

In an earlier case regarding *Slaughterhouse-Five*'s removal from public school libraries, the Supreme Court found that "local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and

seek by their removal to 'prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion'" (*Island Trees School District v. Pico*, 457 U.S. 853).

Vonnegut himself staunchly opposed censorship throughout his life.

When the National Coalition Against Censorship learned of this new challenge in Vail, they sent a letter offering guidance and support as well as their "Guidelines for Administrators" to the school district's board members.

The district followed its policy and convened a committee to review the book and make a recommendation to the superintendent and board. The committee determined that the book belonged on the approved student reading list and *Slaughterhouse-Five* was retained. The district offers alternate titles when parents are concerned about the content of an assigned book.

Reported in: *National Coalition Against Censorship*, December 18, 2020; *Intellectual Freedom Blog*, March 10, 2021.



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