



## FREEDOM OF THE PRESS

Can a free press operate while a Presidential administration aggressively pursues journalists' communications in secret?

On June 9, 2021, CNN revealed they had battled against the Trump administration for half a year over access to the email records of CNN Pentagon correspondent Barbara Starr.

The battle began in July 2020 under then-Attorney General William Barr and it took place in secrecy, with CNN general counsel David Vigilante operating under a gag order precluding him from revealing the existence of the investigation to CNN or Starr.

The Justice Department requested more than 30,000 of Starr's email records from 2017 as part of a leak investigation.

According to CNN, "a Justice Department official previously confirmed that Starr was never the target of any investigation. There was never an indication that Starr violated any laws."

The Justice Department refused to narrow their request and never disclosed the target of the probe nor what reporting by Starr was under investigation.

CNN reported that the legal battle continued even after a federal judge told the Justice Department that "its argument for access to Starr's internal emails was 'speculative' and 'unanchored in any facts.'"

The court proceedings were unorthodox as they took place behind closed doors and prosecutors shared an affidavit confidentially with federal Magistrate Judge Theresa Buchanan. CNN's legal representation was precluded from viewing the affidavit. Buchanan permitted the order to move forwards, but CNN appealed the decision.

On December 16, US District Judge Anthony Trenga sided with

CNN, finding that "The requested information by its nature is too attenuated and not sufficiently connected to any evidence relevant, material, or useful to the government's ascribed investigation, particularly when considered in light of the First Amendment activities that it relates to."

The Justice Department asked Trenga to reconsider on January 15, five days before the Biden administration took over. The same day, Zachary Terwilliger, the US attorney overseeing the investigation, left his post.

The Justice Department seized Starr's phone records as well as records from her personal email account. As these were not under CNN's purview, Vigilante could not intercede on Starr's behalf.

In a separate investigation, three reporters for *The Washington Post* were notified in letters dated May 3, 2021, that the Trump Justice Department had obtained records for their work, home, and cell phones for the period April 15, 2017, through July 31, 2017.

In addition to secretly obtaining the journalists' phone records, the Justice Department also attempted to obtain their email records pertaining to reporting they did during the early months of the Trump administration regarding Russia's role in the 2016 election.

The Justice Department indicated that the journalists were not the targets of the investigation, but rather it targeted "those with access to the national defense information who provided it to the media."

The phone records included the numbers of all calls made to and from their work, home, and cell phones and the length of each call. The metadata sought for the reporters' work email accounts included timestamps and details about senders and recipients of messages.

While the purpose of the phone records seizure was not specified, toward the end of the time period the records request covers, the reporters in question wrote a story about classified US intelligence intercepts indicating that in 2016, Senator Jeff Sessions had discussed the Trump campaign with Russian ambassador Sergey Kislyak.

Sessions would become Trump's first Attorney General. He was at the Justice Department when the article was published.

Days after the time period covered by the records' request, Sessions held a news conference announcing that "this culture of leaking must stop" and noting that the number of leak investigations had tripled since the end of the Obama administration.

Also during the time period covered by the records request, the same three journalists wrote a story about the Obama administration's efforts to counter Russian interference in the 2016 election.

Cameron Barr, acting executive editor for *The Washington Post*, said: "We are deeply troubled by this use of government power to seek access to communications of journalists. The Department of Justice should immediately make clear its reasons for this intrusion into the activities of reporters doing their jobs, an activity protected under the First Amendment."

The last such high-profile seizure of reporters' communications records also pertained to the investigation into Russian election interference. In that instance, the Justice Department sought the source for a reporter working for *BuzzFeed*, *Politico*, and the *New York Times*.

**Reported in: CNN, June 9, 2021; *Washington Post*, May 7, 2021.**



## PRIVACY

Can anything short of legislation rein in federal agencies' rampant use of facial recognition technology?

A report released by the Government Accountability Office (GAO) on June 29 revealed that of 42 surveyed federal agencies, 20 of them use facial recognition technology (FRT). It found that those agencies have few safeguards in place and most do not even know which FRT systems are being accessed by their employees or for what purpose.

Agencies the GAO found to be using FRT included NASA, the US Postal Inspection Service, US Fish and Wildlife Service, and the IRS. The systems used are a hodgepodge of government-owned and privately-contracted systems.

The GAO report said that “13 of 14 agencies that reported using non-federal systems do not have complete, up-to-date information on what non-federal systems are used” and had “not fully assessed the potential risks . . . to privacy and accuracy.”

One agency reported that its employees did not use non-federal FRT, but a poll revealed that its employees had used a non-federal system to conduct more than 1,000 facial recognition searches.

According to the report, “Six agencies reported using the technology on images of the unrest, riots, and protests following the death of George Floyd in May 2020.”

A related report released by the GAO on August 24 focused solely on 24 federal agencies, 18 of which report using FRT in 2020. Twenty-seven different federal FRT systems were identified in that report.

Ten of the agencies indicated plans to expand their use of FRT by 2023, despite concerns over accuracy and

privacy. Agencies are planning to develop or purchase 13 additional FRT systems.

“Even with all the privacy issues and accuracy problems, the government is pretty much saying, ‘Damn the torpedoes, full speed ahead,’” said Jack Laperruque, senior counsel at the Project on Government Oversight.

Numerous agencies reported requesting officials in state and local government to run queries on their software and report the results. Just three departments utilized FRT systems “owned by 29 states and seven localities.”

Several agencies, including the Justice Department, US Customs and Border Protection (CBP), and Immigration and Customs Enforcement, reported using FRT from Clearview AI. CBP alone has scanned more than 88 million travelers since 2018. Two additional agencies intend to contract with Clearview AI by 2023.

Clearview is facing a litany of legal battles for copying billions of facial images from social media without approval and for violating the Illinois Biometric Information Privacy Act. They are one of eight commercial FRT systems identified in the GAO's August report.

**Reported in: Reason, July 16, 2021; Washington Post, August 25, 2021; EFF, September 15, 2021.**

Is it legal for a company to work with police departments to sell and distribute home surveillance systems and then partner with them to provide warrantless access to the footage?

For years, including during Amazon's ownership, Ring gave Los Angeles Police Department (LAPD) officers free devices and discount codes worth tens of thousands of dollars as a means of promoting their home security surveillance cameras.

Their relationship with the LAPD was not unique. Ring supplied law enforcement agencies devices and discounts nationwide until their officer/influencer program was discontinued in 2019.

Police officers served as brand ambassadors for Ring's “crime reducing” doorbells through press releases, giveaways, and by providing Ring cameras as rewards for information leading to the arrest of suspects.

Ring also provided law enforcement officers with scripts for promoting their devices on social media and orchestrated the timing of press releases. As an example, Ring delayed the Boca Raton Police Department's announcement about partnering with Ring for portal access so as not to jeopardize a subsidy program through which the city of Boca Raton incentivized private purchases of Ring doorbells.

Police departments also supported Ring through the release of joint press releases containing dubious claims regarding their doorbells' effectiveness at reducing crime.

In a joint press release with the LAPD, Ring claimed that a pilot project where 40 cameras were installed in the Wilshire Park neighborhood reduced burglaries by 55% six months later. Their data was not peer-reviewed and they refused to release their data, methodology, or analysis.

MIT Technology Review examined the raw crime data made public by the LAPD for the areas the Wilshire Park Association identified as having Ring cameras installed. They found year-on-year increases in burglaries starting with the time period Ring reported for their pilot program. Burglaries continued to climb afterwards, reaching a seven-year high in 2017.

Apart from the problems with accuracy, Maria Cuellar, statistician



and assistant professor of criminology at the University of Pennsylvania, pointed out another problem with the pilot program data referenced in the joint LAPD press release: the sample size was too small “to say whether the effect is something you see in the data, or just some random variation.”

“Ring and its relationship with police departments, including the LAPD, is but one example of a burgeoning problem in which there is a lack of clarity as to where the public sector ends and private surveillance capitalism begins,” said Mohammad Tajsar, senior staff attorney for the ACLU of Southern California.

The ethical quandaries around creating a massive surveillance network for profit and without oversight are legion.

According to *The Guardian*, “Since Amazon bought Ring in 2018, it has brokered more than 1,800 partnerships with local law enforcement agencies, who can request recorded video content from Ring users without a warrant.”

Through these partnerships, law enforcement gain access to an online portal that can be used to acquire footage captured by Ring’s surveillance cameras.

Currently, roughly one in ten police departments across the US have access to hundreds of millions of privately owned home security cameras.

Ring provides law enforcement two broad means of requesting video footage without a warrant. By providing a case number to Ring, they can request video footage from every user in an area Ring has defined as a “neighborhood.” In addition to this, law enforcement can contact users directly through Neighbors, Ring’s affiliated crime reporting app.

Neighbors allows uploads from both Ring and non-Ring devices and has millions of users. Law

enforcement can not only access videos uploaded to Neighbors without a warrant, they can also request additional footage directly from users. While the app allows users to opt out of receiving law enforcement requests, the default setting is to allow them.

Reporter Lauren Bridges compiled data from Ring’s quarterly reports and found over 22,000 law enforcement requests were made to individuals through the Neighbors app for content recorded on Ring cameras from April, 2020, through March 2021.

In addition to providing warrantless access to private surveillance footage, Amazon also provides law enforcement with coaching and scripts to help them around the Fourth Amendment’s prohibitions.

In 2019, *Vice* obtained documents from the Topeka, Kansas, Police Department including a spreadsheet of 46 suggested ways to request footage through the Neighbors app. The spreadsheet was provided by Ring.

Since Ring cameras are civilian-owned, law enforcement are being given a back door to private video recordings of people in both residential and public space that would otherwise be protected under the Fourth Amendment.

According to Rahim Kurwa, criminology professor at the University of Illinois, this expansive always-on surveillance of residential space also serves to exacerbate inequities, as neighborhood surveillance platforms perpetuate the long history of policing race in residential space.

While Ring doesn’t currently utilize facial recognition technology (FRT), Amazon has sold FRT to police departments. On June 10, 2020, Amazon placed a one-year moratorium on this practice following pressure from civil rights groups. They announced the indefinite

extension of this moratorium on May 18, 2021.

**Reported in:** *Guardian*, May 18, 2021; *ArsTechnica* June 18, 2021; *MIT Technology Review*, October 19, 2018; *California Law Review*, June 2020; *Vice*, August 6, 2019; *Gizmodo*, July 30, 2019.

## CIVIL RIGHTS

Is it legal to segregate broadband access based on race?

Currently 120.4 million people—more than a third of the US population—lack broadband Internet access. Studies show that the 20 cities with the least access to broadband all had poverty rates of at least 10% and all but two had high percentages of people of color.

Greenlining Institute mapped out Internet accessibility throughout California and discovered that areas which had been redlined by banks are being digitally redlined by internet service providers (ISPs) today.

Redlining originated in the 1930s when banks and insurers drew maps restricting loans to “undesirable inhabitant types” (almost always poor people of color) in certain neighborhoods.

The redlined maps resulted in segregated low-income neighborhoods in which people were denied health care and where investments in infrastructure and the building of supermarkets and other essentials was eschewed.

The original form of redlining was outlawed in 1968 but the results remain entrenched, and a new form of redlining has emerged in the digital era.

Studies done of Baltimore, Cleveland, Dallas, Detroit, Los Angeles, Oakland, and other parts of California found that the same areas banks redlined almost a century ago are the ones struggling to get high-speed internet service today.



Poorer communities often have no internet. Those that do are predominantly stuck paying exorbitant rates for digital subscriber lines (DSL) incapable of meeting today's demands. Studies revealed comparable rates being charged for DSL service in low-income communities as for fiber connections in affluent ones. Fiber connections are roughly 400 times faster than DSL.

The Electronic Frontier Foundation (EFF) examined Frontier Communications' bankruptcy filing in 2020 and found that it hadn't upgraded its DSL network to fiber because it was making money from customers who had no choice but to pay for those slow speeds.

Digital redlining is not illegal. There are no regulations governing where broadband providers can build their networks. The companies doing it claim they are not intentionally restricting access based on race.

However, by focusing network development in affluent neighborhoods and ignoring lower income ones, ISP's decisions recreate the overtly racially-motivated redlined maps defining economic inequality and inequitable infrastructure investment. As a result, high-speed internet is primarily available in predominantly White neighborhoods.

According to the EFF, deploying fiber has significant upfront costs. It might be years before it exceeds the profitability of DSL, especially in areas where there is little to no competition.

Lack of high-speed home internet access disproportionately affects Black, Indigenous, and People of Color (BIPOC). 34% of American Indian/Alaska Native families and 31% of Black and Latino families lack access to high-speed home internet, versus 21% of White families.

There is no disparity in the need for access, and digital redlining has many of the same social and economic impacts of traditional redlining. Kids who cannot take classes from home may never catch up to their more affluent peers, get into good colleges, or find high-paying work.

Adults without broadband cannot pay bills online, utilize telehealth services, search and apply for jobs, or telecommute.

**Reported in: CNET, June 28, 2021.**

### COPYRIGHT

Is it legal for police officers to exploit copyright provisions to prevent sharing of videos of their malfeasance?

While the right to record police officers performing their duty is protected under the First Amendment, officers have begun employing a novel approach to preventing the sharing of those videos: playing copyrighted music.

"You can record all you want. I just know it can't be posted to YouTube," said an Alameda County sheriff's deputy to an activist. "I am playing my music so that you can't post on YouTube." The tactic did not work in this case and the video remains accessible on YouTube.

According to the Electronic Frontier Foundation (EFF), "it's still a shocking attempt to thwart activists' First Amendment right to record the police—and a practical demonstration that cops understand what too many policymakers do not: copyright can offer an easy way to shut down lawful expression."

The Digital Millennium Copyright Act (DMCA) is ostensibly a tool minimizing copyright infringement online. In practice, it is also frequently used as a means of removing lawful speech from the internet.

Copyright filters, such as YouTube's Content ID, are designed to detect if sound in an uploaded video matches a copyrighted recording.

Some companies who own the rights have set YouTube's filter to automatically remove matching content. Others opt to have videos with infringing material demonetized.

Challenging a DMCA takedown requires the uploader to share their name and contact information, which many activists filming the police are reluctant to do. Many others find the challenge of navigating YouTube's labyrinthine appeal system too daunting and simply give up.

**Reported in: EFF, July 16, 2021.**

### FREE SPEECH Nationwide

Is it legal for a presidential administration to exert influence over social media companies' moderation methods?

On July 16, President Biden articulated his dismay over the proliferation of disinformation related to the COVID-19 pandemic through social media platforms. He said that the platforms' failure to curb the distribution of disinformation was "killing people."

At the time President Biden made this comment, fewer than 50% of Americans were fully vaccinated and public health officials were already warning about the Delta variant's spread.

The day before Biden's remarks, Surgeon General Dr. Vivek Murthy declared that disinformation spreading through social media posed "an urgent threat to public health."

"Modern technology companies have enabled misinformation to poison our information environment with little accountability to their users," Murthy said.



The Center for Countering Digital Hate found that 65% of COVID-19 disinformation shared online originates from 12 people, who were subsequently dubbed the “disinformation dozen.”

The most popular post on Facebook from January through March of 2021 contained disinformation that vaccination against COVID-19 leads to death.

On July 15, White House Press Secretary Jen Psaki said the Biden administration was flagging “problematic posts for Facebook that spread disinformation.”

Psaki said the administration recommended that social media platforms form an enforcement strategy against those promoting false statements about the pandemic, adding that the “disinformation dozen” remained active on Facebook.

While the public health concerns are legitimate and the costs of a pandemic protracted by the unvaccinated are profound, the White House’s efforts to curb the spread of false information raised First Amendment concerns.

Henry Olsen wrote that, “The overwhelming weight of scientific evidence supports that [vaccinations] are safe, that side effects are extremely rare, and that they are highly effective against preventing death and serious illness.” However, “there is no exception to [the First Amendment] for speech that the government believes is untrue.”

The First Amendment protects the rights of Facebook, Twitter, and other social media platforms to moderate speech and remove both speech and speakers from their platforms in accordance with their policies.

Government efforts to coerce technology companies to moderate speech and speakers are another matter entirely, however. Even the threat of

government monitoring or restriction of speech can have a chilling effect on what users may post and share.

David Greene, senior staff attorney and civil liberties director at the Electronic Frontier Foundation, said that when users know there’s a risk of censorship, they “change behavior or abstain from communicating freely.”

**Reported in: *New York Times*, July 15, 2021, and July 19, 2021; *Business Insider*, July 18, 2021; *Washington Post*, July 21, 2021; *ABC News*, July 18, 2021.**

### New Jersey

Should faculty at Rutgers Law School bar racial epithets from being spoken during class, even when directly quoting court decisions?

A group of Black students is circulating a petition demanding such a policy be put in place.

The debate and activism were prompted when a White student quoted a racial slur from a 1993 New Jersey Supreme Court case during a Zoom meeting with Professor Vera Bergelson and two other students.

David Lopez, co-dean of Rutgers, issued a statement saying “I share the views of several of our faculty members who understand and express to their students that such language is hateful and can be triggering, even in the context of a case, and ask that it not be used.”

Contrary to Lopez’s stance, numerous prominent professors signed a statement in support of Bergelson, including former deans and a former New Jersey attorney general.

Law professor and statement signee Gary L. Francione said, “Although we all deplore the use of racial epithets, the idea that a faculty member or law student cannot quote a published court decision that itself quotes a racial or other otherwise objectionable word as part of the record of the case

is problematic and implicates matters of academic freedom and free speech.”

Samantha Harris, the lawyer representing the student that quoted the epithet, said, “When you’re an attorney, you hear all kinds of horrible things. You represent people who have said horrible things, who have done horrible things. You can’t guarantee a world free from offensive language.”

Adam Scales, a Black professor who signed the statement in support of Bergelson, commented that “There is something extremely antiseptic about the term ‘N-word’” that serves to obscure the slur’s repugnant history and “softens the impact.”

Professor Dennis M. Patterson said, “I don’t think the law school should have rules that are stricter than the Constitution of the United States.”

Lopez and co-dean Kimberly Mutcherson said in a statement that faculty discussions in response to this event were about “how best to create classroom environments in which all of our students feel seen, heard, valued, and respected” and that they had no intention of “stifling academic freedom, ignoring the First Amendment, or banning words.”

Bergelson’s grandmother was a journalist executed by the Stalin regime for associating with the Jewish Anti-Fascist committee. Another of her relatives was executed two years later. She stated, “I am very sensitive to how a word can trigger painful episodes.”

Bergelson said that while she avoids using slurs rooted in racism, bigotry, or misogyny, other professors and students should be free to make their own choices.

**Reported in: *New York Times*, May 3, 2021; *Washington Post*, May 13, 2021.**





## LIBRARIES Lafayette, Louisiana

Is it legal for the vice president of a library board to privately encourage a prospective library director to censor Pride displays?

On June 21, Lafayette Parish Library System (LPLS) Board of Control's vice president Hilda Edmond requested the board enter an unannounced executive session to discuss an undisclosed topic with interim library director Danny Gillane.

Edmond said she was concerned about how Gillane would handle "controversial political issues."

LPLS's prior director, Teresa Elberson, did not see eye-to-eye with Edmond on such issues and retired abruptly in January when the board rejected a grant, awarded by the Louisiana Endowment for the Humanities (LEH), to fund a facilitated book discussion on voter suppression.

The board rejected the grant based on their belief that it would only present "one side" of voter suppression, leaving out the views of those seeking to intimidate and disenfranchise voters (see: *Journal of Intellectual Freedom & Privacy* 6, no. 2: "Is it Legal?: Libraries").

Attorney Mike Hebert persuaded the board not to go into a closed session, as it would have violated the state's open meetings law.

As her comments had to be made during open session Edmond addressed their interim director in an indirect fashion.

"I would like to make mention of recent displays in the libraries that I feel are controversial things that I would like to be able to discuss with them and you in the future. Those things that need to be given serious consideration. It's stuff that has been interfering with our progress with more serious matters," said Edmond.

Despite not speaking its name, the focus of Edmond's scorn was clear, as the only recent display controversy related to the observance of Pride month.

Earlier this year, President of the board, Mayor Josh Guillory, refused a lesbian, gay, bisexual, transgender, queer/ questioning, intersex, and asexual (LGBTQIA+) group's request to proclaim June Pride Month. Previously, Stephanie Armbruster and Robert Judge, two other members of the library board, protested the library's 2018 Drag Queen Story Time event.

Gillane said Edmond had raised concerns about library Pride Month displays with him. He said they had discussed the group that requested the Pride Month proclamation. Gillane said he told Edmond "this is not a political issue," and that he did not remove or relocate any of the displays.

Board member Landon Boudreaux, who voted with Edmond and Armbruster to reject the LEH grant, said he shares Edmond's concerns.

Cara Chance, who manages the North Regional Library, one of LPLS's nine locations, informed the board that, "There is no professional librarian who would bow to censorship. None. It is in the librarian's code of ethics not to bow to censorship, not to allow one person or group to dictate all of the information and to impose their view on the entire community."

Chance said that if Gillane had told her to remove her branch's Pride Month book display, she would have refused. If the display were removed anyway, she said "I would have erected a 'censored' display. It would have had lights. It would have had sound. It would have smelled like smoke. It would not have gone unnoticed."

Gillane was unanimously approved by the board to be the library's new director.

**Reported in: *The Advocate*, June 21, 2021.**

## Anoka County, Minnesota

Can a county stop librarians from using the words "Pride" and "Black Lives Matter"?

In a memo sent to all Anoka County Library employees on May 26, communications manager Erin Straszewski informed them of "general county administration guidance" forbidding "public messaging around Pride and Black Lives Matter month."

The memo instead recommended messaging and displays around June being Great Outdoors Month, National Camping Month, and Audiobook Appreciation Month.

Josiah Cox, a county library employee, shared the memo on Facebook on June 14 with the statement, "The choice to exclude these groups amounts to targeted disenfranchisement."

Cox is a member of the lesbian, gay, bisexual, transgender, queer/ questioning, intersex, and asexual (LGBTQIA+) community and he said their representation clearly is not valued by the county he serves.

Cox decried the county's efforts to use the library as a communications platform for their interests and beliefs. He said the library is "about sharing ideas with the community and having them available, no matter what the topic is."

"Our display spaces have been used to highlight topics that are of interest to our patrons and the communities," said library associate Liza Shafto. "When I am told that I can't make these displays it's as if I am not allowed to do an important part of my job."



After the memo was released, the county issued another statement saying they want to promote diversity in a more general, wide-ranging sense rather than promoting Black and LGBTQIA+ communities specifically.

Cox said removing messaging and displays about two specific groups is neither neutral nor welcoming. He also said the Anoka County Library System has a history of censoring messages supporting marginalized groups.

Another example he provided was when library staff were told to replace the phrase “stop Asian hate” with “diversity is beautiful.”

Library employee Mai Houa Thao provided another example. After the murder of George Floyd in Minneapolis, the library had a display of books by Black authors with the message “Black stories matter.”

Even though her branch manager had approved the display, she was ordered to remove the wording “Black stories matter” from the display the very same day she put it up.

Thao said representation of marginalized groups matters because libraries should welcome and inform. Such displays are “a good way to educate those who aren’t familiar with these groups, just to shine light on these groups and give others the opportunity to learn a little bit more about their neighbors, their communities, and this world we live in that is so diverse.”

Another employee who preferred to remain anonymous said the library made a social media post about *Land of 10,000 Loves: A History of Queer Minnesota* by Stewart Van Cleve and the post was deleted shortly after publication. She was told the post was removed because it upset a library board member.

Another library board member resigned in protest after a county

library employee gave a TV interview at the Metropolitan Library Service Agency booth during a 2019 Pride festival.

In response to pushback following the release of the May 26 memo, the library system received approval from the county to have displays focusing on LGBTQIA+ topics and the Black community. The words “Pride” and “Black Lives Matter” are still prohibited from use in displays and messages, however.

**Reported in: *ABC Newspapers*, June 18, 2021; *Minneapolis Star Tribune*, June 25, 2021; *KARE 11*, June 28, 2021.**

## UNIVERSITIES Florida

Can public university funding be withheld based on student perceptions of professors’ political viewpoints?

Florida Governor Ron DeSantis signed a bill requiring students and faculty of the state’s public universities to be surveyed regarding “viewpoint diversity” and “intellectual freedom.”

The law defines these terms as the exposure to and exploration of “a variety of ideological and political perspectives.” It also allows college students to record lectures without their professor’s consent.

In announcing the bill, DeSantis threatened to defund universities found to be “indoctrinating” students with “state ideology.” The bill, and DeSantis’s portrayal of it, raised concerns that the GOP seeks to control discourse on college campuses.

Faculty groups described the bill as unnecessary and chilling.

The American Association of University Professors (AAUP) released a statement opposing the bill. They questioned whether the provision explicitly safeguarding unwelcome and offensive speech would bar professors “from enforcing respectful

and appropriate classroom conduct by students.”

State Representative Omari Hardy said that the law’s language robs administrators and faculty members of their discretion to control the academic environment.

The definition of what is and is not acceptable discourse on campuses now falls to the state’s Board of Education. Board chair Tom Grady has previously argued that evolution should not be taught as factual.

Clay Calvert, director of the University of Florida’s Marion B. Brechner First Amendment Project, said that he thinks the surveys will give the “conservative state legislative body a tool to withhold funding from a university that, based upon the survey results, seems to discriminate against conservative viewpoints.”

A federation of unions serving teachers in Florida said universities are prohibited from discriminating against viewpoints by the First Amendment, so the purported justification of the bill was moot on its face. They characterized the bill as potentially dangerous.

“Such a survey creates opportunities for political manipulation and could have a chilling effect on intellectual and academic freedom,” said the Florida Education Association.

Anita Levy, a senior program officer for the AAUP, said that if faculty members think the legislature is looking over their shoulder, they will have to think “twice and thrice” about what they teach and how they teach it.

Calvert noted that while the law requires distribution of the survey, there is no obligation for students to take it. Such situations precipitate participation bias in which those who feel their viewpoints are being discriminated against are more likely to take part.



He said professors will likely start second-guessing what they say in class and not address controversial viewpoints out of fear they'll be accused of holding them.

The legality of the “intellectual diversity” law remains questionable.

Howard Wasserman, a law professor at Florida International University said the law likely runs afoul of the First Amendment and could open the door for schools to dictate who is granted admission based on their political beliefs.

On the same day that DeSantis signed the “intellectual diversity” law, he also signed a law requiring that schools teach students communism is “evil.”

DeSantis also recently banned public schools from “culturally responsive teaching” and any teaching of “critical race theory” or *The 1619 Project*.

**Reported in:** *Rolling Stone*, June 29, 2021; *The Washington Post*, June 24, 2021; *Slate*, June 24, 2021; *Savannah Now*, July 2, 2021; *The Chronicle of Higher Education*, June 23, 2021.

## SCHOOLS Voorhees, New Jersey

Can a principal stop a valedictorian from affirming his queer identity?

When valedictorian Bryce Dershem began delivering his commencement speech on June 17, Principal Robert M. Tull cut his microphone and snatched his prepared remarks from the podium.

Dershem wore a pride flag over his robe. He had meticulously bedazzled his mortarboard in lesbian, gay, bisexual, transgender, queer/ questioning, intersex, and asexual (LGBTQIA+) pride colors. A school administrator asked him to remove the flag before he spoke. He refused.

Principal Tull’s attempt to silence him happened immediately after

Dershem told the audience he came out as queer during his freshman year.

Dershem, however, had committed his speech to memory. He would not be silenced. Once he was given a new mic, he shared struggles from his own life in order to emphasize the validity of every student’s identity.

“Beginning September of senior year, I spent six months in treatment for anorexia,” Dershem said. “For so long, I tried to bend and break and shrink to society’s expectations.”

Dershem said that as a “formerly suicidal, formerly anorexic queer” he wanted his fellow students to know that one person could save another’s life.

Dershem said that upon learning he was valedictorian, “I knew I really wanted to talk about my story and ending the silence on mental health struggles. And really giving queer people a voice, too, and letting people know no matter who you are, you’re not alone.”

Tull fought against Dershem’s speech for weeks, requesting revisions. After submitting three drafts, Tull gave Dershem an ultimatum days before the ceremony: revise the speech again or lose the opportunity to speak. Dershem did as he was asked, yet Tull remained disapproving.

“I felt like I was faced with this choice where I could either honor all the belief systems and virtues that I cultivated or I could just follow the administration,” said Dershem.

When his speech was over, the audience gave him a standing ovation.

Afterwards, a woman told Dershem that “her son hadn’t survived the pandemic due to mental health struggles and she started to cry,” he said. “I thought, this was the one person I made feel less alone. And I knew I did the right thing.”

Michael Dershem, Bryce’s father, said he could not be more proud of his

son for regaining his composure and continuing his speech after the principal’s flagrant attempt at censorship. He said he’d lost count of the number of times he’d watched his son’s speech on YouTube. “I’m a pretty tough guy, but, you know, I break down every time I watch it.”

New Jersey Governor Phil Murphy tweeted that he was proud of Dershem for “speaking truth to power, and for your resilience and courage.”

Dershem is moving to Massachusetts to attend Tufts University where he plans to promote the rights of women and LGBTQIA+ people.

“I’m so happy to know that people are watching this speech,” said Dershem. “I hope they believe in themselves more and feel less alone in their fight.”

**Reported in:** *The New York Times*, June 27, 2021; *CBS News*, June 28, 2021.

## Columbus County, North Carolina

Are Facebook comments by school board members vested with the authority to ban books and videos from the classroom?

In a partnership with the Columbus County Schools, students from the University of North Carolina Wilmington’s (UNCW) school of communications created storytime videos of notable children’s books.

Some parents complained when UNCW’s video for *One of a Kind, Like Me/ Único Como Yo* by Laurin Mayeno was shown in an elementary school classroom.

*One of a Kind, Like Me* is a bilingual picture book which tells the tale of a boy who wants to dress as a princess for the school parade. The main character, Danny, is based on Mayeno’s son. It also includes children who dress up as pineapples, butterflies, and octopi.





Robert Liu-Trujillo, who illustrated *One of a Kind Like Me*, said “When a child sees a reflection of themselves, they can feel seen in what sometimes feels like a world of invisibility. And for a child who has never met someone like the main character in *One of a Kind, Like Me*, it’s a safe way for them to get to know them and understand that there are kids like Danny, and not only is that ok, it is awesome.”

On Facebook, County Board of Education member Ronnie Strickland shared his belief that “this college student went rogue on this and had absolutely no concept of what is appropriate to ‘share’ with 1-5 graders. Gender Identity politics is in no way appropriate for students at this age level . . . We are appalled, and please accept our apology.”

According to the publisher, *One of a Kind, Like Me* is “a unique book that lifts up children who don’t fit gender stereotypes, and reflects the power of a loving and supportive community.” It is intended for grades K-2.

The National Coalition Against Censorship (NCAC) wrote, “the book is a reaffirmation of the importance and dignity of each individual.” On the last page, the costumed characters each proclaim themselves to be “one of a kind.”

County Board of Education Member Randy Coleman said he was shocked. “As a conservative and a Christian, I cannot believe this was allowed in our schools.”

Superintendent Deanna Meadows said, “It’s our policy to review supplemental materials for age appropriateness.” She added, “Trying to promote transgender [ideas...] was obviously nowhere near our intent.”

NCAC noted this misrepresents the board’s actual policy, which states “Principals shall establish rules concerning what materials may be brought in by teachers without review.” LitHub referred to this misrepresentation as “a smokescreen for anti-trans political views, which raises First Amendment concerns.”

Mayeno said, “Growing up, there were no books to help me understand mixed-race identity. When I became a mother, my child Danny had no books to affirm who they were. Danny dealt with loneliness, isolation, and mistreatment from both children and adults. . . . My ‘agenda’ is to make the world better for children like mine and their families.”

Coleman said “Pushing things like this on little children cannot be allowed,” he said. “I am going to work diligently to get this type of material removed from our schools.”

He added that the story will be discussed at the next school board meeting.

Strickland said “I feel this content was very inappropriate for first through fifth graders and it will not occur again.”

NCAC observed that “the public comments by district officials appear to ban the use of *One of a Kind, Like Me* in district classrooms.” They called on the district to follow their own procedures regarding parental challenges to classroom materials if such a challenge arises, in order to prevent viewpoint discrimination.

“Transgender, nonbinary, queer, and gender-nonconforming kids exist. They have always been part of our schools, communities, and families,” said Mayeno. “They’re here to stay and trying to make them invisible or legislate away their existence won’t change that fact. Now, more than ever, they need and deserve schools that affirm and celebrate them.”

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