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

Drag Queen Story Hour, a national nonprofit organization, says its goal is to promote reading and acceptance of diversity. Its supporters say drag queens do not magically turn children queer.

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_ **With this issue of the *Journal of Intellectual Freedom and Privacy* (*JIFP*), we begin including a new section of News, focused on drag queen story hours. These are events, often coordinated through a national non-profit group, at which drag queens (and sometimes kings) read books and sing songs with children—just like any other story time at a library, except with an exciting guest leader.**

As the popularity of these events has spread, so has anger, concern, and hatred over them. The Office of Intellectual Freedom (OIF) and *JIFP* firmly support the right of public libraries to decide what programming is appropriate for their local communities, including the presentation of drag queen story times. These events introduce and reinforce concepts of tolerance, respect, compassion, and self-worth—which seem like messages that all can benefit from.

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COMMENTARY

Neutrality and Algorithms in Libraries

Author _ T. J. Lamanna (professionalirritant@riseup.net)

A recently published book, Safiya Noble's 2018's *Algorithms of Oppression*, has become an extremely popular read in our field as of late. While the book highlights some very important information about how our digital architecture de facto marginalizes people, it offers few remedies, other than expressing concerns about humans' control of how the algorithm is built, thus influencing how it works. The book details how we must admit that our algorithms are human-generated, but does little to explain how this situation can be remedied beyond "fixing the algorithms." Algorithms cannot be neutral, nor should they be; they are created by people and thus inherit the biases, conscious or unconscious, of their creators. No human has the capacity to be unbiased, so no algorithm can be. If they were, they could easily be gamed by malicious actors who would try to skew results. They need to be constantly worked and massaged to make sure they are behaving in a positive and progressive direction.

So, where do librarians fit into this? We don't see ourselves as algorithm-heavy, but they pop up beyond the usual places we'd look, and they impact us in ways we may not be aware of. I'd like to focus on the most obvious and damaging place, which is our online public access catalogs (OPACs). An OPAC search engine is usually designed to default to keywords unless the patron specifically chooses something else. This means that patrons may find what they are looking for, but they are not encouraged to wander through the stacks and stumble upon things they may not otherwise find.

We can counteract this challenge in a variety of ways. First, through the use of displays. We can highlight books that are important but may not circulate because people aren't aware of them. Using your website to promote lesser-known books is also another solution. Don't let the search engine algorithm dictate how you create displays. This is part of what we do as librarians, and since people rarely have an issue finding James Patterson, use the opportunity to highlight other authors, specifically marginalized ones your OPAC may not be finding. From speaking with colleagues, I've realized that most of our search engines don't do a fantastic job with discoverability and this has been my first-hand experience as well.

To improve the searchability of OPACs, I suggest working with whomever is running your OPAC and

talking to them about search parameters. Be aware how they work and, if at all possible, find an open-source OPAC so you can collaborate and make the edits you need to make. There are a lot of librarians with the technical skills and passion for working on these types of projects. With open source software, they are able to share and build a better system for all. We are, and should be, responsible for how our OPACs return results. Like many other conversations we have with vendors, we need to make sure we are pushing them forward to meet our needs, not the needs they believe we have. Too often we fail to push our vendors to create the dynamic services we need. A coalition of institutions should advocate for this change. Collaboration and solidarity should be the rallying call of the current library zeitgeist.

We also allow algorithms to dictate what we purchase, which limits our scope and may eat through precious resources; then it may cost staff time and funding to rectify problems with the acquisitions. As Noble points out, we can create algorithms that work for libraries, and though it is impossible to remove bias, libraries can work much harder on being aware and counteracting it. We pull information from our results and use that to choose how to purchase books, which usually puts us in a vicious, not virtuous, circle. We buy more of what circulates and less of what doesn't. This binds us in a Catch-22 because if an item isn't discoverable, then fewer of them will be found, fewer will circulate, and fewer will be purchased as a result.

This hurts marginalized authors: people don't read their books because libraries don't own them and we don't own them because 'people don't read them,' which is really a problem of discoverability rather than lack of interest. We shouldn't be taking circulation statistics at face value. While they are absolutely useful, they only tell part of the story. Learn from your community, highlight it, make it pop. Your community is invested in your library taking their requests seriously. A book requested by your community that only circulates a few times may be far more valuable than a best-seller that goes out a hundred times. Our algorithms fail to take that into account; it's a bias we as librarians can and should be aware of as we work to turn our collections into a more inclusive and diverse selection.

Algorithms are good, and can be powerful tools for libraries, but we need to understand them and handle them with care. We need to remember that we control them, not the other way around. Libraries have a mission to serve their patrons and communities, and the algorithms we use have an obligation to serve us so we can make the best decisions. We cannot take them for granted and must be vigilant about how they work and how we make use of them. If we've learned anything from Google's mishandling of their own algorithm (as Safiya Noble expertly shows), it's that carelessness and crassness can cause actual harm to our communities, and that harm is almost always focused on the most marginalized of communities.

COMMENTARY

My Intellectual Freedom Journey

Reclaiming a Moral Sanction for the Public Sector

Author _ James LaRue (jlarue@jlarue.com), CEO, LaRue and Associates, and former director, ALA Office for Intellectual Freedom

Intellectual freedom—the idea that all people have the right to express themselves freely and access the expressions of others—is a core value of librarianship. But every value, every institution, must go through a kind of rediscovery with each generation. This "re-valuing" is necessary and right. Do our institutions serve us, or are we forced to serve them? Do we practice what we say we believe? An example of this re-evaluative process concerns the promise, the vision, of the Declaration of Independence. Jefferson wrote, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." But that clear statement of "self-evident truths" was on the one hand immediately contradicted by the explicit endorsement of slavery (3/5ths of a human being), and by the denial of a vote to women. Nonetheless, the underlying idea was so powerful and compelling that subsequent generations returned to it again and again, edging closer to the original vision.

I believe that intellectual freedom is under such a review by librarians now. I believe, too, that the value remains an abiding and powerful call to service.

In this article I will present three snapshots from my own intellectual freedom journey. Each has a context in time that may lend depth of understanding to today's challenges. Perhaps, too, it will point the way to a new place for intellectual freedom in our work.

Lean to the left, lean to the right, stand up, sit down, fight fight fight!

In 1979-81, I attended library school at the University of Illinois-Urbana. At that time, a dozen years after the establishment of the Office for Intellectual Freedom (1967), and a decade after the establishment of the Freedom to Read Foundation (1969), intellectual freedom was taught as part of a fundamentals class. In one class period we debated whether or not a library really should try to carry "everything for everyone," limited of course by space and budget. In that moment, I decided that I truly did believe that goal, and that I would be prepared to *fight* against censorship. Fighting seemed necessary and was presented as the strategy of choice. Forces of darkness, exemplified in government by Joseph McCarthy in the late 40s and early 50s, and in religion by Jerry Falwell (who founded the Moral Majority the same year I started school), sought to silence those who argued for workers' rights, racial equality, and sexual liberation. Who were the censors? Fascists, racists, and prudes. Who was under attack? Writers of conscience, socialists, civil rights leaders, anti-war protesters, feminists, and student free speech activists. How should we oppose censorship? With policies, of course, but also with get-in-your-face, bristling condemnations and lawsuits. It was a combative and confrontational time.

In 1977, the Intellectual Freedom Committee sponsored "The Speaker," a film presented at the ALA Annual Conference about a speaker, promulgating racist beliefs, seeking to address a group at a public library. The film was and remains deeply controversial within the profession. Also in 1977, the American Civil Liberties Union (ACLU) defended the right of Nazis to march in Skokie, Illinois, at that time a heavily Jewish Chicago suburb. Because of that stance, ACLU lost many members. Others regarded the moment as a high water mark for the defense of free speech, a stand reflecting the proposition that anyone can defend the righteous or the innocuous, but it takes courage to stand up for the right to express offensive speech, especially when the fiercest condemnations come from your own friends. Free speech defenders said that if we are only free to have innocuous opinions, if we are only free to agree with one another, free speech is meaningless.

Clearly, racism and bigotry persist in America, as vividly today as forty years ago. They remain deeply divisive and continue to challenge a fundamentalist First Amendment stance.

As the 80s dawned, sex was another high profile target of censorship. Folks, mainly the aforementioned Moral Majority, sought to keep magazines like *Playboy* off convenience store shelves, or at least to conceal their covers. And although librarians began to accommodate more openly sexual content in their book collections (a reflection of loosening societal and publisher mores), few libraries stocked *Playboy*, and almost no library bought *Penthouse*. Then, as now, libraries reflected the culture around them. Then, as now, the terms "sexual imagery," "pornography," and "obscenity" were tossed around with very little precision.

In 1969, the US Supreme Court ruled that people had a right to view sexually explicit material in the privacy of their own homes. (Getting it was still problematic). President Lyndon Johnson commissioned a group to study the effects of pornography. Its 1970 findings recommended continuing research into the effects of pornography and restriction of children's access to pornography, recommended against any restrictions for adults, and in general concluded that obscenity and pornography were not important social problems. It will surprise no one to learn that the report was promptly reviled by politicians on both sides of the aisle.

In 1973, the United States Supreme Court handed down its first modern decision on "obscenity." The so-called *Miller* test had three components. To be obscene, content had to violate contemporary community standards, present patently offensive sex or excretory functions with the intent to arouse (or as some put it, had to intend simultaneously to turn you on and gross you out), and lack serious literary, artistic, political, or scientific value. In other words, just writing about people having sex, as in *Lady Chatterly's Lover*, wasn't obscene. It was literature. A sex education book was, or arguably could be, scientific. A study on pornography (like Masters and Johnson's study, the mailing of which had been found obscene earlier) could have political significance. Combined with the more recent availability of adult television programming, and ubiquitous sexual content on the internet, today's "community standards" don't leave much room for obscenity prosecutions.

One finding seemed clear, although I haven't been able to nail down the exact moment when it happened. I suspect it was even before the 1969 *Tinker* case, in which the Supreme Court held that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." But while school libraries were still held to be *in loco parentis*—because children were required to attend school, and the parents were not present—public libraries were decidedly *not* standing in for the parents.

Minors were considered now to have greater agency, and their own claim to First Amendment rights.

In sum, intellectual freedom at the beginning of my career was presented as a vital **liberal** value. More recently, many progressive librarians have begun to focus more on the power and importunities of privilege, in which some speech is seen as harmful by definition. Meanwhile, much of the free speech rhetoric of today can be found on the conservative and libertarian right. That's a big shift.

What was my takeaway from this first professional encounter with intellectual freedom? I claimed the value. Viscerally, I knew from my own childhood that the suppression of speech, the attempt to forbid not just the behavior but the beliefs of another human being was profoundly wrong. I believed in the potential and the dignity of individual inquiry. My professional aspirations converged with personal experience. Let the stories be told!

An emotional subtext

From 1990 to 2014, I was the director of the Douglas County (Colorado) Libraries, just south of liberal Denver, just north of conservative Colorado Springs, home of the evangelical media empire of the then-burgeoning Focus on the Family. In my time there, I directly responded to over 250 formal challenges to my library system. The targets ran the gamut: books, magazines, films, games, internet use, speakers, art exhibits, my newspaper articles, and even my private Facebook posts.

On the one hand, my personal belief in intellectual freedom continued. It was strengthened by raising two children, for whom I wanted the broadest possible scope for their curiosity and growth. I met other parents with similar ideas. On the other, the confrontational style I'd been taught to admire in library school presented problems for a library and would-be civic leader. While the challenges to my library were often fundamental ("there should not be any books on this topic or from this perspective in the library"), the people doing the challenging didn't really represent a majority. They were, though, visible and persistent. How could I uphold essential library values without alienating at least some part of general community support?

Moreover, over the course of my tenure, I was surprised to find that the challenges themselves began to change. They no longer originated from just the religious or political right. I was also getting them from what I had considered the liberal, secular left. For instance, such books as *The Stupids Die* by Harry Allard were challenged on the basis of self-esteem: "No children should be told that they are stupid."

After sitting one day and pondering my first 100 challenges, I had a key insight, based no doubt on my own parenting experience. The common theme of the challenges was not religion, or politics. The overwhelming majority of challenges came from parents whose children fell into one of two categories: they were between the ages of 4 and 6, or 14 and 16. I realized that the demographics of my community reflected a shift in Baby Boomer and Gen X-er parenting styles, from perhaps too loose to an ever-tightening supervision and protectiveness. And so we went from the latchkey children of a previous generation to the helicopter (and now, some would argue, to the Velcro) parent.

In short, censorship had *an emotional context*. The issue wasn't really about the culture wars or extreme political agendas. It was about the difficulty many of us have when our children cross the threshold from infancy to childhood (4-6), or childhood to adolescence and maturity (14-16). In an attempt to cope, parents went through paroxysms of anger, grief, self-righteousness, and a grasping for control. The library was an incidental target, part of the larger problem of a world where their kids were growing up faster than their parents were ready for.

This changed my orientation. Instead of branding challengers as rabid censors, I responded to them as fellow travelers. I thanked them for having brought their children to the library in the first place, for investing in their literacy, for noticing what they read, for thinking about their family's values, and taking the time to communicate them to a public institution. I told them that I understood their concerns, but that the deep purpose of the library in our society was not to preserve innocence, but rather to promote knowledge. I would say, "OK, your children are growing up faster than you'd like. But if your real interest is their safety and happiness, then reading is a great strategy. Where do you want your children to find out about sex, or drugs, or crime, or abuse, or any other issue in the complex adult world?—on the street? Or in the safety of the library? Maybe you weren't ready to talk about these things with them. Nonetheless, they may be ready to learn. Is the problem really that they're reading too much?"

I learned that there was a delicate moment in this dialog. It involved a balance between respect—listening to the concern and giving it authentic consideration—and institutional purpose. To those who would say, "You don't know what your job is," or "You are working to destroy everything good," I would say, "We do know our job.

And we seek to serve you well. But you are not the only one we serve."

Mary Jo Godwin, the final editor of the late and lamented *Wilson Library Bulletin*, once wrote that a really good library has something in it to offend everyone. It's true. But I emphasized the converse: a really good library has something in it to *support* everyone (assuming that the intent is not to commit a crime). You're a Christian homeschooler? Let us show you how we can provide an alternative to a $1,000 a year paid curriculum. You're a lesbian mom looking for books to show families like yours to your kids? Here's our small but growing collection. Can you recommend other titles?

In my formal responses to challenges, I did my best to find that balance. The subtext: Libraries demonstrate their value not through the suppression of resources, but through their provision. Our mission was to add useful information, not hide what some people found disagreeable or uncomfortable.

My takeaway from this second phase of my professional dealings with intellectual freedom was this: while I would not passively submit to my own, or my institution's demonization, neither would I demonize others. Human institutions serve human beings, and human beings deserve courtesy and compassion.

Institutional infrastructure

So during a 24-year tenure at Douglas County, I responded to over 250 challenges to library resources. That's roughly 10 a year. But when I became the director of the Office for Intellectual Freedom (OIF), we provided support for nearly 350 challenged libraries *every* year. While research (in Texas, Oregon, and Missouri) in 2011 showed that no more than 8-12 percent of library challenges were ever reported to us, our roughly one-a-day reports did demonstrate consistent themes.

But more important than recurring themes, I learned, is the value of institutional infrastructure. Ultimately, libraries draw their meaning and validity from the First Amendment and the United States Constitution. These documents, and the subsequent actions by federal and state law—sometimes challenged in state, federal, appellate, and Supreme courts—lay out a framework of carefully balanced rights and responsibilities. That framework requires the due diligence of governing bodies and administrators not only to fulfill legal responsibilities, but to avoid unnecessary liability and disruption.

An illustrative case is the controversy that erupted in 2018 over the Intellectual Freedom Committee's *Interpretation of the Library Bill of Rights* regarding the use of meeting rooms. The language presented to, adopted, then rejected by ALA Council, rested on a well-tested body of First Amendment law. In brief, while libraries don't have to open up their meeting rooms to the public, once they have, they have established a "limited public forum." As a public entity, the library faces strict scrutiny by the courts. The government, in this case a library, can't limit access according to the beliefs of the would-be users. It can only limit them by time, place, and manner.

Librarians had asked the committee: does that mean even religious groups can use the library? Can even white supremacists and other hate groups use public space? The answer is unequivocal. Yes. It does. And in practice, these principles ensure that even the *targets* of hate speech—LGBT youth, Black Lives Matter activists—have public space to meet and seek redress of grievances.

Some critics of the language viewed such an admission as an invitation to hate groups. That contradicts the fact that library policies almost always state that the library explicitly does *not* endorse the views of all the authors on its shelves nor all the speakers in its meeting rooms. Libraries do, of course, have the responsibility to assure the public's physical safety, and adopt patron behavior policies to call out what will and will not tolerated. Short of targeted harassment or shouting fire in a crowded theater, speech is not by itself unsafe, nor are there constitutional protections for people's feelings. The point is this: it is less disruptive to follow the same rules for all groups, than to make a stand for social justice that escalates conflict, results in lawsuits, and still requires the library to provide the space.

But local institutional infrastructure matters. Put simply, libraries that do not have policy statements or reconsideration protocols are far more likely to be subject to political or public pressure and to fold in the face of conflict. When these libraries called the Office for Intellectual Freedom for assistance, there was often little we could do beyond helping them strategize about finding allies and planning for the next challenge. Those libraries that do have a comprehensive policy framework will still face pressures, of course. But a policy and procedural infrastructure cushions that pressure and provides time for more thoughtful consideration. Such libraries are more likely to retain challenged resources and to educate their communities on the enduring value of library mission.

It is important that governing authorities regularly review and adopt key documents. At minimum, libraries should adopt and be governed by the following:

- **The Library Bill of Rights**. Originally adopted by ALA in 1939, this document asserts the fundamental

responsibility of the library to provide a broad range of perspectives and access to those perspectives, for all. It was the adoption of the Library Bill of Rights—during a time, like ours, of rising autocracy and in which many immigrant rights were challenged—that ushered in the core value of intellectual freedom to the profession.

- **Interpretations**. Rather than change the Library Bill of Rights to address each emerging social issue (in recent years, challenges to LGBT content in libraries have predominated), the Intellectual Freedom Committee adopts *interpretations* that explicate the document and underscore the notion that when we say "all people" it really does mean everyone. Library directors should regularly review and revisit these documents with their governing boards. This helps trustees stay on top of those emerging issues, and think through the library's responsibility in light of its mission and values. As the meeting room controversy showed, this is where the issues of the day are debated.
- **Code of Professional Ethics**. This document, also originally adopted in 1939, is a clear and succinct summation of the principles that should guide librarians.
- **Materials Selection policy**. Libraries should clearly state their commitment to intellectual freedom, and identify the general scope of the collection.
- **Meeting Room policy**. The rules libraries establish must be applied equally to all applicants. In general, such rules ensure that even the most marginalized groups have access to public resources.
- **Exhibits/Displays policy**. Whether for internal or external use, library displays should also be governed by a policy, indicating who has the authority to approve them, and what the general intent and scope of the service should be.
- **Program policy**. Again, whether sponsored by the library or the community, a policy should spell out the process through which programs are decided and what the general scope of the programs should be.
- Finally, but of great significance, is the adoption of a clear **reconsideration process**. In the past, this has been used just for challenges to library collections—books, magazines, movies, and audiobooks. But today, that protocol should embrace *any* library service. Now, libraries are being challenged for databases, speakers, artwork, and more. A thoughtful request for reconsideration process should include, at minimum:
  - the requirement that the challenge be submitted in writing, clearly identifying the service, the concern, and the complainant.
  - the requirement that the service will be examined in full, and in light of library mission and policies, by a committee of professionals.
  - that the committee will offer a recommendation for the disposition of the service (typically to retain, reclassify, or remove a title or resource) to the executive of the library.
  - that the executive should carefully consider this recommendation, and announce a decision.
  - that the decision may be appealed to a governing body, whose decision is final. For more information about both selection policies and request for reconsideration processes, see http://www.ala.org/tools/challengesupport/selectionpolicytoolkit/. See also the latest *Intellectual Freedom Manual*.

The simple presence of this process is an essential defense against pressure groups, who seek to use moments of outrage or crisis to effect sweeping changes in library procedures, and even the definition of a library' purpose. Reconsideration buys time to behave responsibly, in accordance with the mission of the library.

It's worth calling out two other aspects of recent intellectual freedom challenges.

Librarians make a difference. In Mesa County, Colorado, a high school principal pre-emptively pulled copies of the Jay Asher book, *13 Reasons Why*, which dealt with the topic of teen suicide. School librarians immediately and publicly pointed out that the action directly contradicted district policy. There had been no formal complaint. There had been no review. The administrator acted utterly beyond the scope of that position's authority. Within days, the copies were returned to shelves. Within weeks, a comprehensive school website was launched that provided multiple resources for teens facing depression and considering suicide. And so librarians shifted the district from censorship and suppression to outreach and information. Absent those librarians, and absent those policies, that simply wouldn't have happened.

A second point is that libraries that do have policies and don't follow them fare badly, both in the court of public opinion, and in the actual courts. The rules that govern public institutions have a context and meaning. Those administrators who abandon them in times of trouble find that they also betray the trust of the people they serve. That trust is difficult to regain.

Finally, then, my takeaway from this third phase of my intellectual freedom education is that librarians need to have a deeper appreciation for the larger legal and policy context of our work. Today, Americans have all but lost any appreciation for the meaning and value of public institutions. The framework of thoughtfully considered policy

and procedure is designed to help an organization survive the shortsightedness and fads of the moment and to avoid being swept into more destructive social moments. America needs trustworthy and effective institutions. Libraries may well be one of the pivotal institutions to reclaim what has now become a *moral* imperative: the idea that civic investment, and a robust marketplace of ideas, are both necessary and vital to our individual and collective well-being. This message is profoundly out of step with the times. That's what makes it so important.

Making meaning: the root of challenges

Today, there are at least six drivers of attempted censorship. All of them require an appropriate response.

The first, as discussed above, is the attempt by parents to preserve childhood innocence. This continues to be the typical individual cause for attempts to remove or restrict access to library resources. The appropriate library response is a combination of empathetic listening and adherence to policy.

The second driver seeks to leverage parental concerns into political power. The clearest modern example of this is the opposition to Drag Queen storytimes, carefully fanned by such groups as the Family Policy Alliance (formerly known as CitizenLink and Focus on the Family Action). Other groups include Concerned Women for America (which sought, in Illinois, to mandate placing the words "In God We Trust" over the entrance of every public building), and the National Center on Sexual Exploitation (formerly known as Morality in Media), which seeks to block access to mainstream library periodical databases. Here, the best strategy is once again having and upholding a policy infrastructure and holding to our own well-tested ideals rather than trying to justify ourselves to the opposition. But here, litigation is a powerful tool that will continue to depend upon the largesse and passion of the legal profession to defend both library and general First Amendment freedoms. (To participate in this ongoing effort, join the Freedom to Read Foundation at ftrf.org.)

The third cause for challenges is administrators' fear of controversy. Over the past several years, OIF saw a bump in reports of university provosts pulling LGBT displays, school superintendents yanking books after a single phone call, directors refusing to buy bestsellers critical of Trump, and board members directing the removal of art. This fear of controversy—and the frequent skirting of policy and procedure that accompanies it—is a public embarrassment. As I have written elsewhere, appeasement doesn't win critics to your side. It emboldens them. Virtually any perspective will be controversial to somebody. Rather than predicating administration on capitulation and apology, it is better to base it on the principles of ethical management. Administrators need to have backbones and live up to their policies. This will not guarantee conflict-free operations. It might, however, earn the respect of those the library is charged to serve. An additional approach to address these issues would be consistent statewide training on ethics and intellectual freedom. Also, upholding intellectual freedom should be in the job description of public officials, as it often is for library directors.

The fourth cause of censorship is the media and political temper of the time. These days our politics are most often predicated on outrage, fear, and willful ignorance. H. L. Mencken once defined Puritanism as "The haunting fear that someone, somewhere, may be happy." No doubt there is a neurological reason that we scramble to see conspiracies and snake pits in every encounter. But it has long been the case in mainstream journalism that, "if it bleeds, it leads," and anyone is ready to believe the worst of a public institution. The appropriate response is to build relationships with media and contribute more constructive content when possible.

The fifth reason is a larger version of the fourth. Since about 1965, there has been a very successful attempt to define not just libraries, but all tax-payer funded services as a kind of theft. This "framing" effort, as described by George Lakoff, is ubiquitous, with all sides agreeing that taxes should be lowered—even when they may well be the most cost-effective way to secure a necessary service. This concerted attack on the public sector is one of the most pressing issues of our time. I believe that a new kind of advocacy, based on a keen understanding of neuroscience, and aimed toward a long term reclamation of the public sector, is essential. See the joint initiative by the Office for Library Advocacy and OIF, the Advocacy Bootcamp.

The sixth root of censorship in our times is the growing awareness that our society is on the cusp of an historic demographic shift. As of 2014, a majority of Americans under the age of five are non-white. Those about to lose a brace of unconscious privilege, if we are to judge from the perpetually aroused and alarmed Fox News audience, are freaking out, and seek to claw it back.

We are also seeing, among many new librarians, the anger of long repressed minorities and anger appropriated by others on their behalf. Many of these librarians express a surprising willingness to abandon longstanding policies and procedures ensuring free expression to assure an undefined "safety" for previously marginalized populations. A support for social justice is commendable. However, **free speech is the beginning of social**

justice—it's how the disenfranchised start to lay out their concerns and find allies. The suppression of one will surely suppress the other.

The response to these issues of diversity, civic participation, and free speech has many dimensions. Together, they may suggest the defining professional issues of our time, affecting recruitment efforts, and changing service profiles based on emerging demographic groups. The faces of our libraries should resemble the communities they serve.

Based on various reports, anti-immigrant and racist sentiments often flourish precisely where few immigrants or people of color can be found—rural areas. Let's call it what it is: ignorance. Once we get to know others from different cultures or experiences, we tend to find them only . . . human. It should be a goal of our libraries to feature to the greatest extent possible the literature, music, film, art, speech, and dialog of everyone in our society, in an atmosphere that models respect and dignity and promotes understanding.

Conclusion

Intellectual freedom is more than fighting or demonizing the censors. Ultimately, it's about learning and growth. It is knowledge that frees us from the prisons of our prejudices. It is understanding that raises up individuals and stitches communities together. After nearly four decades of living and breathing the role of libraries in our society, I have concluded that literacy, knowledge, compassion, and curiosity matter deeply.

What is the meaning of intellectual freedom? It may be no more complicated than this: giving someone the space to speak. Listening. Thinking. Then talking about what it might mean, and what we might do, together, as uncoerced individuals who still care about each other and the world we want to live in.

Trigger Warnings: History, Theory, Context

Editor _ Emily J. M. Knox
Publisher _ Rowman & Littlefield, 2017. 276 p. Hardback. $84.00. ISBN 978-1-4422-7371-9.
Reviewer _ Martin Garnar, Dean, Kraemer Family Library, University of Colorado, Colorado Springs.

Since its emergence as a complicated and controversial topic in higher education, trigger warnings have spread beyond academia into popular culture. To be "triggered" has entered the vernacular, and usually with negative connotations about the sensibilities of the one being triggered. Emily Knox's timely book provides multiple viewpoints on trigger warnings within the context of how trauma and its aftereffects impact the educational process, while also exploring the potentially negative impact of trigger warnings on intellectual freedom. Through a combination of theoretical essays, historical examinations, and case studies, this collection of essays provides a variety of perspectives that, in combination, will challenge any reader's preconceptions about the topic.

The first section of the book starts with an essay by Sarah Colbert on the history of posttraumatic stress disorder (PTSD), including how the concept of trigger warnings (also known as content notes or content warnings) spread from its initial usage in medical circles to the internet in an attempt to identify content that might be problematic for users with a history of trauma. Though Colbert acknowledges that there are intellectual freedom concerns when trigger warnings are mandated, or that some faculty have shied away from content based on student complaints about what they deem to be offensive, she advocates for trigger warning as "necessary and helpful" for some people, as it prepares them to engage with the content, not avoid it. The next essay, by Holly Taylor, continues the argument for trigger warnings as a necessary and appropriate accommodation for those living with PTSD. While she situates her arguments in the context of protections guaranteed by the Canadian Human Rights Commission, readers in other countries would be wise to investigate whether they would be subject to a similar legal obligation under their own laws, such as the Americans with Disabilities Act. Stephanie Houston Grey's essay, "Contagious Speech," moves the debate away from PTSD and into eating disorders with her examination of how clinicians have forced the use of trigger warnings and even the wholesale removal of content based on the contagion concept of how eating disorders can spread. Though Grey incorrectly asserts that the voluntary removal of content by internet providers was a violation of the First Amendment (since the government wasn't involved, neither was the First Amendment), she does highlight the challenges faced by those promoting unpopular, though still legal, speech. Ultimately, she argues against trigger warnings in this context, as "any strategy that seeks to limit access or silence dialogue can only be counterproductive, as it ignores the fundamental nature of conditions that thrive in isolation."

The next two essays in the historical and theoretical section focus on the connection between gender and trigger warnings, though they come to different conclusions. Jordan Doll explores how the equal protection clause could be invoked by examining two different legal theories regarding trigger warnings as an accommodation, but ultimately states her concerns that arguing for special consideration of women in this instance would weaken arguments for equal treatment of women in other arenas, such as equal pay. Meanwhile, returning to the Canadian context, Jane Gavin-Herbert's essay concludes that a rejection of trigger warnings as a necessary accommodation will continue to prop up the misogynistic, colonial culture that devalues indigenous ways of knowing. In the penultimate essay in this section, Bonnie Washick expands on Colbert's earlier coverage of how trigger warnings took root on the internet before proposing a thought experiment of a trigger warning app that would allow users to pre-identify potentially problematic content before interacting with it. Washick then uses the example of the app to critically examine the use of trigger warnings from an equal access argument and follows that with a proposal to approach trigger warnings as a counter-public practice that would have the effect of "clarifying goals [of trigger warnings] and illuminating possible alliances." Barbara Jones closes the first section of the book with her account of how the American Association of University Professors (AAUP) and the American Library Association (ALA) developed policy statements on trigger warnings. Jones likens trigger warnings to book banning, suggesting that while the would-be censors of books are often altruistic

in their motivations, such as protecting children, any barrier to information is ultimately harmful. The AAUP statement included as an appendix to Jones's essay is the same one quoted by Gavin-Herbert as an example of the educational system's brokenness, thus illustrating the wide range of perspectives presented in the first section.

The book's second section is composed of nine case studies involving trigger warnings. All case studies come from the world of higher education, and each presents a unique point of view. There are lessons learned from the inclusion of a trigger warning in an all-campus reading program. A student details the problems she faced after suggesting that a content warning be provided for a specific reading in future iterations of the course (and, modeling her own beliefs about the efficacy of content warnings, included one for her chapter). Two incidents at Smith College involving invited speakers (one who came; one who withdrew) provide an opportunity to go beyond trigger warnings and explore how arguments about academic freedom often ignore the motives of student activists and, in some cases, willfully misinterpret the desire for more engagement with a topic as a demand to be sheltered from ideas that prick their comfort. An instructor details the tools she uses in addition to trigger warnings when addressing traumatic topics in the classroom. One professor reflects on her successful use of content warnings throughout her career while another makes the case that her avoidance of such warnings has resulted in better learning outcomes for her students. Experiences with military veterans in the classroom cause two English faculty to consider adopting trigger warnings in the future. Public speaking courses are held up as an appropriate venue for trigger warnings. Finally, an instructor grapples with his internal conflict over using trigger warnings in graduate courses in library and information science, as the discipline's enduring focus on intellectual freedom is not a natural complement to content warnings. Like the historical and theoretical essays in the first section, these case studies draw from such a breadth of experience and perspective that the reader is left with more questions than answers about trigger warnings.

Spoken like a true librarian, Knox closes her introduction by stating that "readers will have to come to their own conclusions regarding the debate." Indeed, on any topic, librarians aim to provide information and let the readers decide for themselves. In the case of trigger warnings, the question remains as to whether they interfere with a reader's ability to make a determination without prejudice or whether they provide a necessary tool for those readers whose lived experiences have impacted the way they need to interact with information. After reading this book, it's clear that the jury is still out. Knox should be commended for compiling such a compelling collection of essays and case studies that really forces the reader to think critically about trigger warnings.

Artificial Unintelligence: How Computers Misunderstand the World

Author _ Meredith Broussard
Publisher _ MIT Press, 2018. 248 p. Cloth. $24.95. ISBN: 978-0-262-03800-3.
Reviewer _ Clem Guthro, Independent Librarian.

Broussard, an assistant professor at New York University's Arthur L Carter Journalism Institute, has written an accessible book on Artificial Intelligence's (AI) grip on people's imagination. In twelve short chapters, she lays out a cautionary narrative on the limits of AI and technology in general. Her book joins several other recent volumes that attempt to show the limits of AI and the ethical implications of wholesale and blind adoption of AI to solve the world's problems. These include M. Tegmark. *Life 3.0: Being Human in the Age of Artificial Intelligence,* 2018; J. Aoun. *Robot-Proof: Higher Education in the Age of Artificial Intelligence,* 2017; M. Boden. *Artificial Intelligence: A Very Short Introduction*, 2018; and H. Collins. *Artifictional Intelligence: Against Humanity's Surrender to Computers*, 2018.

Computers grew up in the idealism of the 1960's counterculture, creating an idealism that an online world would be better, more just, and equitable. Broussard argues that the promises of technology are out of sync with what technology can achieve. Her caution is not Ludditism but a recognition that all computing is math-based and there are limits to what math can do. We have fallen for technochauvism, a belief that technology is always the best solution. Technochauvinism incorporates technolibertarian values including the idea that computers are more objective and unbiased because they reduce everything to a mathematical certainty. Using technology alone to solve social problems, we reproduce many of the discriminatory and inequitable outcomes we currently face.

Broussard covers the basics of computer programming to show that computers are not sentient. All data, including "computer generated" data, is socially constructed. People wrote the programs to collect data in very particular ways. She insists that computers are not like brains. If a piece of brain is removed, the brain reroutes the neural pathways to compensate while a computer does not work if a piece is removed. Computers operate on mathematical logic; they do well at calculating but not at complex tasks with social or ethical consequences.

Broussard notes that we long for the imaginary AI of Hollywood, which is computationally impossible. She distinguishes between the General AI of sentient robots and conscious machines and the Narrow AI which is a mathematical tool for prediction. Using AlphaGo as an example, she shows how the millions of hours of human labor created the training data and the algorithms that make the program capable of beating humans. The program does not think. It uses algorithms and training data to predict the best moves. She cautions the reader to keep the ideas of General AI and Narrow AI and the limitations in mind as they read.

We have become a data-rich society. The abundance of data sources can be used to tell stories, show relationships, and make predictions. Broussard notes that technochauvinism blinds designers and programmers from seeing their algorithms as biased. This blindness is linked to believing that a computer makes a better and fairer decision than a human. Using examples of the work she has done as a data scientist, Broussard shows how injustice and inequality are embedded into today's computational systems and urges her readers to challenge false claims of impartiality and fairness around technology.

In the second section, Broussard addresses issues that are raised when computers do not work or do not fully address the problems at hand. Using the public school system in Philadelphia as an example, she explores why a technological solution will not work for improving standardized test scores because it addresses the wrong question. Engineering solutions, which are mathematical solutions, work well with well-defined parameters, which schools are not. She pushes back on technochauvinistic solutions which overlook the limits of school budgets and rampant poverty in some parts of the system.

Broussard contends that Marvin Minsky, the father of AI, and a small group of elite men had an outsized influence on the development of digital technology. Conditioned by the communalism of the 1960's and the technolibertarianism of Steve Brand and Peter Thiel, where ultra-free speech and radical individuality are more important than government or social good, they imagined and misunderstood the connection between social issues and technology in ways that resulted in simplistic and dysfunctional thinking. Their disregard for women and the conventional rules of society in favor of creating new technologies shows how deeply white male bias is embedded in technology. Broussard wants readers to appreciate innovation but not to take insane ideas seriously. She cautions against adopting a computational system designed by people who don't understand or care for the cultural systems in which the technology operates.

Machine Learning (ML) implies the computer is sentient, but in reality, ML means the computer can improve on the routines it has been programmed to perform, not that the machine acquires knowledge to act independently at tasks for which it was not programmed. ML depends on training data—large datasets that are used to "train" the machine regarding a specific machine-learning model. Broussard notes the importance of remembering that the AI and ML algorithms are created by humans, and they ignore or take into account particular contexts or biases. She urges readers to remember that ML is mathematically based and unless social factors are included and coded in a way that the computer can calculate, they are ignored. A data-driven approach will ignore many things that matter to humans. Machines are not learning and "human judgment, reinforcement and interpretations is always necessary."

Using "self-driving" cars as an example of the complexity that is being approached in a naïve and simplistic way, she notes that this is due to misunderstanding what AI is capable of achieving. Algorithmic approaches of "good enough" do not work for actual, life-threatening situations like driving. Sensors and cameras cannot accommodate snow, bad weather, or weirdness that is often encountered by human drivers. Each state is setting standards for self-driving cars which would require additional programming. Broussard is most concerned with the ethical issues that surround completely self-driving cars (no steering wheel and no brakes). When a car malfunctions or skids, how does the car respond? Are the driver and passengers prioritized over people who may be standing on the street corner? Any response is built into the car by a programmer who made a decision. In Broussard's view, the self-driving car is overreaching because it does not serve people well. Technologists should focus on making "human assist" systems and not human replacement systems.

Broussard argues passionately against programming which equates popular with good. This false equation builds in bias that quickly distorts and disenfranchises

parts of the population. We must be critical of algorithms because they have the bias of the developer built into them and we must work towards systems design that can work towards equality. She believes that willful blindness by some creators leads to a need for a more inclusive technology. The result, she hopes, is for understanding the need to investigate what our technical choices mean.

In the third section, Broussard switches her focus to how technology and humans must work together. She uses the example of a hackathon to explore how technology develops and potentially disrupts society or industry. Her experience on the Startup Bus hackathon showed how technology may or may not develop and the significant work that it takes. Broussard proposes a way forward—namely a collaboration between humans and machines. Machines will be able to handle a lot of mundane work but not the unusual or out of range cases which require human intervention. This approach and these type of systems are called "human in the loop systems."

She notes several new organizations (AI Now Institute, and Data and Society) which are pressing for responsible and open computing. Within the AI community, there is nascent understanding that algorithms have been discriminatory and there is a movement to address this. Broussard is raising awareness that technologists and programmers have disciplinary priorities that guide their decisions which at times have obscured the humans that technology is supposed to serve. She concludes that humans are the main point of technology, and the needs of all people, not just a subset, should benefit from the technology that is being developed.

This book is appropriate for the general public, computer science students, librarians, information professionals, and policymakers concerned with the increased presence of Artificial Intelligence in everyday life. Anyone intrigued with ethical implications of Artificial Intelligence or Machine Learning will find this book informative and useful. It could also be used in library and information science programs for courses on Artificial Intelligence.

Monitoring the Movies: The Fight Over Film Censorship in Early Twentieth-Century Urban America

Author _ Jennifer Fronc
Publisher _ University of Texas Press, 2017. 216 p. Hardcover. $90.00. ISBN: 978-1-4773-1379-4.
Reviewer _ Clay Waters, Masters of Library & Information Studies, University of Alabama.

Censorship is a topic of perpetual relevance, especially in the library field. In *Monitoring the Movies: The Fight Over Film Censorship in Early Twentieth-Century Urban America,* Jennifer Fronc, an associate professor of history at the University of Massachusetts-Amherst, surveys the chaotic birth of the popular film industry over the period 1907-1924 and the war over film content during that span.

The chapters are arranged chronologically, retracing the national fight over film content, as various taboo subjects like abortion, white slavery, and racial intermarriage were addressed (or exploited) within the emerging medium. Similar ground was covered by Lee Grieveson in *Policing Cinema: Movies and Censorship in Early-Twentieth-Century America* (2004), the subject of a lengthy note in *Monitoring the Movies*. But Fronc's work is bolstered by voluminous correspondence from the National Board of Review of Motion Pictures, and the 40 pages of notes (in addition to an appendix, bibliography, and index) signal a comprehensive appraisal of this facet of the Progressive era. Along the way, there are a few light anecdotes, including one involving a melodramatic film about a railroad strike that featured a scene of a burning trestle, a special effect that meant the film's costs ran into "many hundreds of dollars" (40).

However, the overriding theme of *Monitoring the Movies* is the running battle between voluntary censorship (a position advocated, predictably, by the emerging movie studios) and official state and local censorship boards. Voluntary censorship's main advocate was W.D. McGuire Jr., executive director of the National Board of Review of Motion Pictures, formed in 1909. McGuire led a multi-year, multi-front battle for voluntary regulation of films, to hold off mandatory censorship by city and state bodies. "By 1916," Fronc writes, "with the creation of its affiliated National Committee on Better Films, the NB was functioning as the national chaperone for motion pictures" (5). McGuire understood "National Board's first principle" to be "protecting motion pictures from political censorship" (44).

Film, the "newest medium of expression" (3) was regarded as a possibly harmful entertainment outlet for the

general public, possibly contributing to the delinquency of the nation's women and children. It was an emerging art form that was not considered any kind of art at the time. That opinion was underlined by a 1915 Supreme Court decision, *Mutual Film Corporation v. Industrial Commission of Ohio,* that ruled First Amendment protections did not apply to motion pictures.

Fronc opens each chapter with a representative movie and the contemporary controversy it engendered, whether over scenes of violent content, racial intermarriage, or "white slavery," i.e., forced prostitution. The introduction, "The Origins of the Anticensorship Movement," begins with a plot summary of *Enlighten Thy Daughter*, a controversial 1917 film which faced calls for censorship for its themes of premarital sex and abortion.

Fronc reveals how reformers targeted not only film content, but the safety of the "nickelodeons" themselves as possibly unsuitable places for women and children to gather, amid concerns of overcrowding and fireproofing, and even worries that celluloid was flammable and thus a possible safety hazard. Yet some reformers approved of the nickelodeons, which in their minds challenged the dominance of the saloons.

Although there was religion-based disapproval of film content, opposition also was driven by Progressive social welfare concerns of the era. Fronc demonstrates that groups like the Women's Christian Temperance Union exercised genuine political power even in the years before women's suffrage, employing what she neatly describes as carrying a "maternalist mandate" (6). Censorship was not always a matter of banning movies; pressure groups like those against animal cruelty would object to specific film scenes, such as the explicit bullfighting portrayals in *Carmen*, which featured the famous actress Theda Bara in the title role (she is also on the front cover of *Monitoring the Movies*).

In 1916 the battle was joined, with the National Board, or "NB," obliged to rebut reports from the General Federation of Women's Clubs that films contributed to youth delinquency, while promoting its own local branches of the Better Films committees as a voluntary regulatory force. Fronc uses the NB files to flesh out the personality of Louise Connolly, who traveled the South promoting the committees. Connolly was viewed with suspicion as an NB representative: "Virginians remained highly attuned to the perils of regulation from 'carpetbaggers' into the twentieth century . . . [some observers regarded] the NB as nothing more than a tool of the industry" (21).

In the concluding chapter, "Censorship and the Age of Self-Regulation, 1924-1968," Fronc quickly sketches out how McGuire's sudden death in 1923 led to NB's retreat from activism, and how the infamous murder trial of film comedian Roscoe "Fatty" Arbuckle eventually led to the production guidelines popularly known as the Hays Code. Fronc then skips ahead to a 1965 Supreme Court decision that state censorship boards were a form of unconstitutional prior restraint. Films could no longer be banned by state boards, only rated. Responding in 1968, Jack Valenti of the Motion Picture Association of America devised a voluntary film rating system, a version of which is employed today.

For a book on film, *Monitoring the Movies* is light on images, with 14 small black-and-white photos inserted throughout the text that include only basic identifying captions. The book may have benefited from a more widescreen overview (to coin a phrase) rather than the tight focus on names and acronyms connected to various pressure groups from the period—especially when fused to a narrative that by necessity jumps around from state to state.

Those caveats aside, Fronc has made a well-researched contribution on a fascinating period of tug-of-war over early films. Film and free-speech historians will find *Monitoring the Movies* a comprehensive analysis of the censorship debate during the Progressive era and would welcome this impressively detailed book on the shelf.

Lust on Trial: Censorship and the Rise of American Obscenity in the Age of Anthony Comstock

Author _ Amy Beth Werbel
Publisher _ Columbia University Press, 2018. 408 p. Hardcover. $35.00. ISBN: 978-0-231-17522-7. Also in e-book. $34.99. 978-0-231-54703-1.
Reviewer _ Christine Schultz-Richert, University of Alabama.

In her work, *Lust on Trial: Censorship and the Rise of American Obscenity in the Age of Anthony Comstock*, author Amy Werbel explores the unintended consequences of the forty-year vice suppression campaign of America's first professional censor, Anthony Comstock. Equal parts a history of lust in art and a legal history of the cultural importance of the First Amendment, this work offers an inspiring tale of artist-, activist-, and attorney-led revolts against

censorship, and underlines how the pursuit of moral and sexual control through prosecution is futile in the face of interminable cultural and technological change. Werbel points to the proliferation of lust and freedom of expression as evidence of Comstock's ultimate failure to "purify" the nation of those materials that he deemed obscene. However, the most salient, underlying current of the story of Comstock is not perhaps the question of the efficacy of his mission, but instead the ways in which such efforts disproportionately silence the most vulnerable.

The first two sections outline both the Christian foundation of Comstock's ideology and the creation of the industry and infrastructure of vice suppression in post-Civil War America. Growing up in puritanical Connecticut, Comstock was indoctrinated in the Congregationalist Church, which held that salvation was earned through good deeds. For Comstock, then, the protection of moral purity for fate of the soul and community, Werbel argues, is a godly mission.

In the mid-1800s, Comstock left Connecticut for New York, a land which presented myriad examples of vice on which to wage war. In New York, Comstock joined forces with the YMCA, which was also interested in reducing temptation that might influence young men to turn their backs on Christian principles. Together, Comstock and the YMCA conducted the first organized, methodical campaigns against vice that paved the way to the founding of the New York Society for the Suppression of Vice (NYSSV) and the eventual passing of the Comstock Act in 1873, which greatly expanded the list of banned materials and narrowed the burden of proof concerning obscenity.

Parts three, four, and five of the book document the three volumes of Comstock's arrest ledger, spanning the period of vice suppression from 1872 to his death in 1915. Werbel presents a survey of the millions of objects destroyed; from cigar cases with hidden compartments and contraceptives—including their advertisers and providers—to the technological innovations of the early 1900s such as phonographs, kinetoscopes, and vitascopes, which featured sexually oriented pictures and audio recordings. The wide breadth of targeted materials illustrates Comstock's frantic attempts to keep up with the changing technology of his time. As the opposition to Comstock's work extends past radical free thinkers and lovers to newspapers, lawyers, and artists, the calibration of the freedom of speech defense further expanded to art, expression, and social causes. Through Comstock's vision of purifying America, the propagation of dissenting art and political movements ultimately strengthened freedom of speech in America's rapidly changing sociocultural landscape.

Throughout the book, Werbel provides a survey of cultural and technological change as well as witty, pointed commentary to further illustrate Comstock's comical inability to "keep up with the times." Whether it is the cheeky undermining of Comstock's moral high-ground by highlighting his absurd incomprehension of the purpose of the dildo, the inclusion of an endless stream of caricatures and cartoons eroding his credibility, the indifference of law enforcement officials involved in his cases, or the ironic financial gain he and the NYSSV accrued from the exhibition of the scandalous and titillating details of his arrests and trials, Werbel weaves a narrative positioning Comstock as the hopeless antagonist doomed to fail.

However, the virulent underpinning of Comstock's ill-fated journey is the ways in which his actions did in fact silence the voices of the most marginalized, vulnerable communities. Werbels' survey of the thousands of experiences eviscerated by Comstock's relentless pursuit of destruction turns this story from comical irony to a haunting, cautionary tale of the casualties of censorship and self-censorship. Those prosecuted for homosexual acts, for example, received egregiously higher sentences that spanned decades of imprisonment and hard labor. Immigrants, especially later in Comstock's career, were the targets of increased persecution amid isolationist and racist sentiments at the turn of the century. Women who sought to break traditional gender norms or seek personal, sexual freedom were especially condemned by Comstock, who sought to destroy contraceptives, abortifacients, outspoken female activists and writers, gender-bending theatrical performances, and any product that invoked female sexual pleasure. Through these stories, it becomes impossible to ignore the most pernicious impact of the Comstock era: the way Comstockery lives on today, in the otherization of those in the margins or the criminalization of vulnerable populations through statute and institutional power structures.

Werbel's intensely researched and thought-provoking work highlights the many trials and tribulations of both prosecutor and prosecuted, exemplifying the ineffectiveness of censorship and the strength of a nation supported by honesty and freedom of speech rather than any one definition of purity. Through each tantalizing detail of debauchery and obscenity, Werbel presents her very own Comstock-like exhibition of the people, places, and things all targeted by vice suppression, urging readers to look through the peephole at our current culture and its roots—or participation—in censorship.

NEWS CENSORSHIP DATELINE

LIBRARIES

Coeur D'Alene, Idaho

Books that a patron judged to be critical of President Donald Trump disappeared from the shelves of the Coeur d'Alene Public Library.

Librarian Bette Ammon fished this complaint from the suggestion box: "I noticed a large volume of books attacking our president. And I am going to continue hiding these books in the most obscure places I can find to keep this propaganda out of the hands of young minds. Your liberal angst gives me great pleasure."

The library posted the note on a bulletin board, along with a typed note from the library. The library invited the patron to provide titles that s/he would like to see, adding: "We are sorry you feel the need to hide books you don't agree with since that takes up valuable time to reorder and replace lost titles." Reported in: *Spokane Spokesman-Review*, September 27.

Orange City, Iowa

More than 200 books have been donated to the Orange City Public Library in northwest Iowa after a man checked out—and then burned—four LGBTQ children's books on October 19. Religious activist Paul Dorr threw four library books into a burning trash can while streaming live on Facebook. He burned the books in protest of the city's second annual gay pride event.

The library had faced criticism earlier this year, when members of the conservative, historically Dutch Reformed community spoke out against LGBTQ books held by the library. In response to the uproar, the library in March 2018 changed its classification system and opted to arrange books by subject and category instead of alphabetically by the author's name.

In his October video, Dorr reads a blog post titled "May God and the Homosexuals of OC Pride Please Forgive Us!" from his website, which he calls "Rescue The Perishing." The video ends with Dorr burning *Two Boys Kissing*, a young adult novel by David Levithan; *Morris Micklewhite and the Tangerine Dress*, a children's book about a boy who likes to wear a tangerine dress, by Christine Baldacchino; *This Day In June*, a picture book about a pride parade, by Gayle E. Pitman, and *Families, Families, Families!* by Suzanne and Max Lang, about nontraditional families.

Since then, several GoFundMe pages and Facebook fundraisers have raised thousands of dollars for the library—much more than the roughly $50 needed to replace the burned books.

Dorr calls Rescue The Perishing a "crisis center and pro-life, pro-family movement." He has declined to be interviewed and indicated that he will not pay any library fines or fees for the destroyed books.

Orange City is the county seat of Sioux County, known as the most conservative county in the state. Reported in: *Sioux City Journal*, October 28; *Des Moines Register*, October 31.

Berkley, Michigan

Someone has been hiding or removing the Berkley Public Library's trilogy of Fifty Shades movies that depict consensual sexual bondage, as well as two other films on DVD. The library says it is censorship.

"One of the tenets of being a library and being a librarian is access to all information. You can't pick and choose what you're going to carry. If patrons want that, we have to provide that information, even if it is a feature film," said Lauren Arnsman, a reference librarian at the library.

To fight back against the self-anointed censor, the library is displaying the recently found missing movies with a sign that reads: "The Berkley Public Library is against censorship. Someone didn't want you to check these items out. They deliberately hid all of these items so you wouldn't find them. This is not how libraries work."

Arnsman said the most recent Fifty Shades movie, *Fifty Shades Freed*, was noticed missing in mid-June. A year ago, she said, the second of three Fifty Shades movies, *Fifty Shades Darker*, also went mysteriously missing. The library bought a new copy of that movie and nothing else happened. "This time they went missing and because of it happening a year before, we kind of had a feeling it was deliberate," Arnsman said.

The library bought new copies of the movie on DVD and Blu-ray to replace the missing movie. Then, the new copies of the movie and older copies of the other movies in the trilogy went missing.

Additional investigation by the library showed the movie *Eyes Wide Shut* and the documentary *Jerusalem* also were missing.

Most of the movies were found hidden in the library, though Arnsman did not want to reveal specifically where the movies were hidden. Copies of the older Fifty Shades movies have not been found, but new copies have been purchased.

In all, Arnsman said the library has spent more than $100 to replace the movies, but now has all of them in DVD and Blu-ray formats for patrons to check out. No one has come forward to say they took or moved the movies. Arnsman doesn't expect the person to do so, either.

She said the trilogy of Fifty Shades books (on which the movies were based) has not gone missing.

Arnsman said about 14,000 people are in the library's service area of Berkley, Michigan, but the library also has patrons from Southfield, Huntington Woods, Oak Park and Ferndale.

She said she was surprised at the positive comments and community support voiced after the Facebook posts.

Supporters praised the library for its recent display of the formerly missing movies and its stance, with comments ranging from "thank you" to "love my library." Reported in: *Detroit Free Press*, July 3, July 5.

El Paso, Texas

An El Paso mom complained to a local TV station that her son received an "inappropriate" book from a local library. Tiffany Meehan's kids took part in a summer reading program at the Jenna Welch and Laura Bush Community Library. They received a goodie bag with a free book at the end of the program.

Her 11-year-old son, Harrison, got a book titled *Will Grayson, Will Grayson*, an LBGT-themed young adult novel by John Green and David Levithan. Harrison said he read three paragraphs before taking it to his mom.

"I read it and it had a bunch of cuss words," Harrison said.

Meehan said it only got more graphic from there. "As I flipped through, it just got worse and worse. (It was) very sexually explicit and it uses many curse words," she said.

She took the book to the library to find out why it was given to her 11-year-old. She was told it was a mix-up and that book was only supposed to be for students between 13 and 17 years old.

KFOX14 reached out to the library. An official said about four children in the 10-12-year-old age range received the book mistakenly. Each family was contacted and offered a replacement book.

Meehan said something like a rating system on books could have helped prevent this.

"It's not appropriate for kids," she said. "It would've been nice to be able to pick up the book and see an "M" for mature and explicit sexual content and language and I could've said, 'OK, that's not for us.'" Reported in: KFOX14 TV, July 6.

Plano, Texas

The Plano Library in September removed *Holy Terror*, a graphic novel by Frank Miller, from circulation, in response to concerns raised by the Dallas/Fort Worth chapter of the Council on American Islamic Relations.

CAIR-DFW Executive Director John Janney had asked the library to see if there were any standards, policies, or code of ethics that the publicly funded library followed when faced with publications that dehumanize or marginalize minorities—especially when those publications are targeted at children. After a short conversation with a library representative about the library's screening process, the library reviewed the graphic novel and agreed to withdraw it from circulation.

Miller conceived the novel as response to the 9/11 terrorist attacks, but in 2018 he expressed some regret for the book. Reported in: cair.com, September 19.

Washington County, Utah

Library staff at the Hurricane branch of Utah's Washington County Library System (WCLS) were told to change signage on LTBTQ-themed displays and stop wearing buttons pointing library visitors to LGBTQ resources. Director Joel Tucker stated that promoting LGBTQ materials was sending a message of advocacy on the part of the library, which he wanted to maintain as a neutral space. Library staff, however, saw the policy as discriminatory and directly in conflict with the American Library Association's Library Bill of Rights.

In June 2017, WCLS employee Natalie Daniel created an exhibit for Pride Month titled "Got Pride?" featuring a collection of LGBTQ-themed material. Some patrons reportedly complained, according to Tucker, as did an unnamed county official. Tucker, who is in charge of WCLS's eight branches, instructed workers to change the display mid-month to "June is Pride Month," and to remove from the display additional LGBTQ resources linked to outside organizations. Although the rest of the display remained in place throughout the month, Tucker issued a directive that future displays should not be LGBTQ-themed. Some patrons would interpret such signage as "advocating for that point of view" on the part of the library, he told the press.

This year, library staff was again instructed not to create a display specifically pointing to LGBTQ-themed material. Instead, the display addressed the broader theme of diversity, featuring material on race, religion, sexual orientation—including LGBTQ materials—and other topics, with signage reading "Libraries are for everyone."

To supplement the display, some employees had buttons made that said "Ask me about LGBTQ Reads." LGBTQ Reads is a website which features LGBTQ-themed material, author interviews, guest blogs, and more. Again, claimed Tucker, patrons complained, and he directed employees to take their buttons off—also citing the library's dress and appearance policy, which called for a "business casual" appearance. "Buttons of any

kind are not in line with that professional appearance," he told *Library Journal*.

Ammon Treasure, a clerk at the Hurricane branch, was one of the library workers who spoke out against Tucker's actions. Treasure first went to the WCLS human resources department, but was dissatisfied with the response, which he described as repeating Tucker's justification. So he reached out to a local paper, *The Spectrum*; the story was then picked up by a number of media outlets, including Good4Utah.com, *St George News*, *The Advocate*, and the Associated Press.

Treasure explained that highlighting LGBTQ resources in the library is not the same as promoting an agenda—and that forbidding such displays undermines the library's role as a safe space. "There are a lot of people who have yet to come out of the closet, or are unsure of the environment we're in, whether or not they're going to be ridiculed," Treasure told Good4Utah. "We wanted to be able to provide all of our community with information that they need."

The library had built displays around other holidays and topics, Treasure noted, such as Black History Month and St. Patrick's Day. "My hope is that by coming forward we can start an important conversation about inclusion and work toward eliminating the stigma that still surrounds this topic," he told *The Spectrum*.

Representatives from the advocacy group Equality Utah convened a public forum at the St. George branch library on August 9, where they met with library officials and staff. There, Tucker explained that LGBTQ displays have been banned at all of Washington County's libraries, noting, "If you put up a display that says LGBTQ, you're pushing away a segment of our society."

When Tucker acknowledged that he did not consider Black History Month displays controversial, Mark Chambers, a former town councilman, state senate candidate, and member of Equality Utah, stated, "When you say Black History Month is not controversial, but our month is, you are dismissing us."

"I would like to have found more common ground," Tucker told *St. George News* after the forum. "I strive to be accepting to all people and all perspectives, and the LGBTQ community is a part of that. I want them to feel included and a part of the library."

However, he told Good4Utah.com, if that common ground could not be reached he considered banning all displays throughout the WCLS system.

ALA weighed in as well. James LaRue, director of ALA's Office for Intellectual Freedom, told Good4Utah, "Libraries providing robust services and lots of information about the world is just business as usual—that's our whole purpose in public life. . . . We very much believe that the kinds of displays that go on in Pride Month . . . are just part of the human condition, and it makes perfect sense for them to be in libraries."

The National Coalition Against Censorship (NCAC), joined by members of Lambda Legal, the National Council of Teachers of English, the Utah Library Association, and ALA, sent Tucker an open letter on August 16. The letter read, in part, "Not only is suppressing LGBTQ displays likely to be a violation of the First Amendment, it further marginalizes a vulnerable minority group and would set a dangerous precedent of intolerance to purportedly controversial ideas. Such a culture of prejudice is toxic in any community forum, especially the library where everyone should be equally welcome and guaranteed freedom to read, think and explore new ideas." It also pointed to resources such as ALA's Exhibit Spaces and Bulletin Boards guidelines and NCAC's "Museum Best Practices for Managing Controversy."

"All of our policies conform with the Library Bill of Rights," Tucker told *LJ* on August 20, "and seek to further our mission of providing people with materials, information, and the space to promote ideas, inspire lifelong learning, and strengthen communities."

Tucker and WCLS are reportedly drafting a new policy. Treasure said on August 20, "I've been informed that our library system will be forming a committee to create new policies about displays—in which they will be working closely with state librarians experienced with the Library Bill of Rights and upholding intellectual freedom." Reported in: *Library Journal*, August 21.

Berkeley Springs, West Virginia

"There are fearless libraries, and then there are libraries without *Fear*." That was how the *Washington Post* started a story about whether the Morgan County Public Library would carry Bob Woodward's book *Fear*, about the Trump administration.

Originally, Donna Crocker, the director of the library, wanted to keep the book out of the library in the small town of Berkeley Springs in West Virginia. She confirmed that the library had no copies of *Fear*, but she declined to answer any questions about her decision. "I don't want to get in the middle of that," she said on September 14. "We have other Trump books."

Later that day, Connie Perry, the president of the trustees of the Morgan County Public Library, said the library board did not know that the

library director had refused to accept a donated copy of *Fear* until the issue was raised in media reports. "The board didn't know anything about this," Perry said. "We have corrected that. The book has been accepted—in fact, two of them."

Perry, who once chaired the committee to raise money to build the library, said, "Our policy always has been that we accept books. This just got blown out of proportion. It was an employee who . . . wasn't aware of what she should have done. She should have just said, 'Thank you.' The board has corrected that."

Perry noted that the library's initial decision not to carry *Fear* had become a major issue in Berkeley Springs. "More and more people want to read it now," she said.

The issue arose when Berkeley Springs resident Rob Campbell thought he could help out his library by donating a copy of *Fear*. He wrote a letter to the local newspaper, the *Morgan Messenger*, saying, "Recently I called to offer *Fear*, the new Woodward book, but the library declined my offer saying they wouldn't be putting books like that on the shelves anymore." He notes in his letter that he is happy to share his copy with anyone else who wants to read it. "I decided to be a library of one book," he wrote.

James LaRue, director of the Office of Intellectual Freedom for the American Library Association, said public libraries should make selection decisions based on the reputation of the publisher and the author, the quality of reviews, and the level of community demand.

"Community demand is an interesting question," LaRue said. "It may well be that there is a majoritarian view on this issue, but that does not mean that a library should sacrifice its obligation to present the other side. Our whole credibility as an institution rests on our willingness to provide access to the most current information in our culture. . . . but that's a local decision."

Berkeley Springs is the county seat of Morgan County, which voted 75 percent for Donald Trump in the 2016 election. Reported in: *Washington Post*, September 14, September 15.

SCHOOLS
Arab, Alabama

The fight over Confederate symbolism has landed in an Alabama town, where education leaders have banned the high school marching band from playing "Dixie" as the fight song.

Dozens of opponents of the decision packed a city school board meeting August 30 in support of the tune, which they depict as a traditional part of the soundtrack of life in their small, Southern town rather than an ode to the days of slavery in the Old South.

"We're from Alabama, we're not from New York," said Daniel Haynes, 36, who attended Arab ("AY-rab") High School and loves hearing the tune played after the Knights score a touchdown.

Board members didn't budge. The 750-student school has a new principal, band director, football coach, and stadium this year, said Superintendent John Mullins, and the change was needed in a system where the core values include mutual respect and unity.

"I really think it's the right decision for the right reason at the right time," Mullins said in an interview.

Supporters of the song say they'll now take their complaints to the City Council, which appoints the five-member school board, but it's unclear what might happen next. An old R&B song, "The Horse," has temporarily replaced "Dixie" in the band's repertoire until a new fight song is selected.

Passions are running high among some in Arab, where many are still upset by school leaders' decision a few years ago to comply with a Supreme Court decision and end student-led Christian prayers over the public address system before football games. Complaints about "Dixie" have renewed the debate over the role of religion in pregame ceremonies.

The "Dixie" debate isn't brewing just in Arab, an overwhelmingly white town of about 8,200 people. Fans of the tune also are complaining in Glade Spring, Virginia, after leaders there prohibited the band from playing "Dixie" during games this fall at Patrick Henry High School.

Written by Ohio native Daniel D. Emmett, "Dixie's Land" was first performed on stage in New York in 1859, two years before the Civil War, said historian and musician Bobby Horton, who performed some of the music for Ken Burns' epic miniseries "The Civil War."

"It was written as what they called a walk-around tune . . . for a minstrel show. It was like a tune between acts," said Horton.

Later known simply as "Dixie," the song became an unofficial anthem of the rebel states after it was played at the inauguration of Confederate President Jefferson Davis in 1861. President Abraham Lincoln loved the tune and asked for it to be played at the White House the night Confederate Gen. Robert E. Lee surrendered, said Horton.

University and high school bands across the South played "Dixie" for generations, but the practice waned as complaints rose about the song being a painful, racially insensitive reminder of the oppression of slavery.

The University of Mississippi's "Pride of the South" marching band

excluded the song from its playlist in 2016, and the Marching Rebels band of Robert E. Lee High School in Midland, Texas, quit playing "Dixie" last year.

Southern historian Wayne Flynt, who remembers the song being sung in segregated schools in Alabama in the 1940s when he was a boy, said some view it as an anthem of regional pride. But "Dixie" and other Confederate emblems became symbols of white defiance against desegregation.

This summer in Arab, Mullins released a statement saying the song was being dropped because it has "negative connotations that contradict our school district's core values of unity, integrity, and relationships."

The song hadn't previously been an issue in Arab, which Census statistics show is more than 96 percent white. But through the years, the band didn't play the song when visiting more diverse schools, officials said.

School board members have publicly supported Mullins' decision to give up "Dixie."

The board president, former Arab football coach Wayne Trimble, said his views were shaped by an incident from the late 1970s when an opposing head coach said he wasn't sure he could convince players on his team to make the trip to Arab because of "Dixie."

"That has stuck with me a long time," Trimble said in an interview. "Is that the way we want Arab to be perceived?" Reported in: Associated Press, August 31.

Conejo Valley, California

Parents will still see controversial asterisks on their child's syllabus to flag books with mature content in Conejo Valley high schools after the board voted to keep its policy as is, following an open-meetings act violation during a revote last spring.

The Conejo Valley Unified School District board voted 3-2, with trustees Pat Phelps and Betsy Connolly dissenting, to keep the policy intact with language that's since been removed from the California Department of Education website. There were nearly 30 speakers at a board meeting August 21, roughly evenly split in favor and against the policy.

The revival of the policy last spring came after the state's Department of Education removed language used by the district to flag titles with mature content on high school English syllabuses with an asterisk.

During the discussion preceding the earlier vote in May, the board violated the state's open meetings law, the Brown Act, by not producing copies of the revised policy that trustee Sandee Everett presented to the board, despite pleas from the public. A letter from the Ventura County District Attorney's Office didn't require the board to vote again on the matter, but board President John Andersen said trustees were doing so to avoid exposing the district to a potential lawsuit from members of the public.

The district's core literature policy, which passed 3-1 last fall, was met with criticism manifesting out of a debate dating back more than a year, when Sherman Alexie's *The Absolutely True Diary of a Part-Time Indian* was suggested as a title for ninth-grade English students.

Everett authored the revised board policy last fall after the board designated a committee of administrators and teachers to create one and include the California Department of Education annotations to notify parents of mature themes.

Books with asterisks are flagged with this note: "This book was published for an adult readership and thus contains mature content. Before handing the text to a child, educators and parents should read the book and know the child." This is the now-defunct language that was formerly on the Department of Education website. After the changes made in the spring, that annotation in Conejo Valley will include a timestamp of October 2017.

Throughout the process, community members on either side of the argument turned out to school board meetings in droves to voice their opinions. Board members often engaged in heated debate.

From the dais, Everett defended the literature policy on August 21 by reading several letters from parents who expressed a desire to have such a policy in place.

Everett's critics have often asserted there weren't many people to whom this policy applied and that in the past, parents were always permitted to opt their children out of a literature title if they chose. That practice wasn't codified by the board, however.

Board member Betsy Connolly, one of the dissenters, talked at the meeting about the division the policy has caused on the board and in the community. Yet Connolly hoped the board could move past the controversies of the past year and hoped trustees would reflect on the role they may have played "in coming to such a dark place."

During public comment, those against the policy pleaded with the board to reconsider or postpone voting August 21. But others thanked the board, particularly Everett, for their hard work in enacting this policy. Reported in: *Ventura County Star*, August 22.

Petaluma, California

Somebody at Petaluma High in Petaluma, California, apparently cut the microphone on its valedictorian, 17-year-old Lulabel Seitz, at the graduation ceremony on June 2. Seitz says

officials had warned her not to mention being the victim of an alleged sexual assault on campus and what she claims was the school's failure to take action when she reported it.

For the first few minutes, she obeyed that restriction, concentrating instead on standard-issue stuff: hopes, dreams, and overcoming adversity. But when she turned to the forbidden topic, her microphone mysteriously stopped working.

"Let her speak!" people cried out. But she was not allowed to finish.

That wasn't the end of the story, though. The next day, she took to YouTube, where she gave her speech in its entirety, including the banned sentence, a paean to perseverance that went as follows: "And even learning on a campus in which some people defend perpetrators of sexual assault and silence their victims, we didn't let that drag us down."

Ten days later, Lulabel Sietz's video had been viewed 335,379 times. And the story has been reported by CNN, NBC, NPR and the *Washington Post*, and other media outlets that never had planned to cover graduation ceremonies at Petaluma High before that mic was cut.

Syndicated columnist Leonard Pitts Jr. of the *Miami Herald* stated:

> It should be clear that the era of women suffering in silence and humiliation is over. But apparently, the memo has not yet reached Petaluma. A bright young girl alleges that she was sexually assaulted and that the people who should have helped her didn't—and administrators respond by telling her, in effect, to shut up? In so doing, they misread the morality of the moment and the limits of their own power.
>
> "Let her speak!" demanded the crowd. "Let her speak!" Which was noble of them. But the lesson of this moment is that things have changed.
>
> And women no longer need permission.

Reported in: *Miami Herald*, June 13.

Greenwood Village, Colorado, and Salt Lake City, Utah

EBSCO's online research databases, used in libraries across the United States, have been removed from some school libraries in Colorado. In Utah, the databases were removed for a month—but then restored—at many school and public libraries, because some parents objected to sexual content that was included in mainstream magazines and scholarly journals within the database.

In September, the Cherry Creek School District in Greenwood Village, Colorado, cancelled its EBSCO contract after a two-year campaign led by a couple who charged that their daughter's online account in middle school allowed her to see unfiltered pornography. Drew Paterson and his wife, Robin, followed up their victory with a lawsuit against EBSCO and the nonprofit Colorado Library Consortium (CLiC), which helps libraries acquire resources, including the EBSCO database *(see "From the Bench," page 44)*. The suit seeks to remove the EBSCO research service from schools across Colorado.

Pornography is Not Education, a parent group led by the Patersons, alleges that databases provided by EBSCO Industries Inc., and distributed by the CLiC consortium, contain erotic and BDSM (bondage, discipline, sadomasochism) stories that could be located through innocent searches by kids and their parents.

Paterson said it's unlikely EBSCO and the consortium embedded and distributed the pornography by mistake. "It's difficult to believe they didn't know," he said.

"Children don't have to be looking for porn," Robin Paterson said in a statement. "They can stumble into it in these EBSCO databases. Imagine how that might affect your grade schooler."

EBSCO, based in Birmingham, Alabama, provides databases that contain thousands of scholarly and popular magazine articles for research projects. By last count, the company services 55,000 schools nationwide. It also works in Canada, Europe, and South America, Drew Paterson said.

EBSCO spokeswoman Kathleen McEvoy denied the allegations, saying the company has worked to provide appropriate content to university libraries, public libraries, school libraries, and other organizations for more than 70 years. "To be clear, EBSCO does not include pornographic titles in its databases, embed pornographic content in its databases, or receive revenue for advertising for any organization," McEvoy said. "We are appalled by the tenor of the allegations related to our intent and the inaccuracies of statements clearly made in absence of factual information."

Jim Duncan, executive director of CLiC, declined to comment directly on the lawsuit against his organization, but said the consortium provides a variety of infrastructure services to hundreds of libraries across the state. Public libraries, schools, and academic libraries routinely ask the consortium to negotiate cost-saving discounts on their behalf, including subscriptions to web-based educational and research products from vendors and publishers.

Less than a month after the lawsuit was filed in Colorado, another attack on EBSCO surfaced in Utah. In late September, a parent who accessed the EBSCO database from her home

said she found inappropriate materials and raised concerns with the Utah Education and Telehealth Network, also called the Utah Education Network (UEN). UEN provides services, including access to databases, at many school and public libraries across Utah.

Even though the access was not gained within schools, which officials say have filtering software intended to prevent students accessing inappropriate content, UEN administrators quickly decided to block access, pending an investigation. Their decision was later supported by the UEN board on a 6-1 vote. On October 19, UEN voted to restore access to EBSCO at the libraries it serves. Before EBSCO was restored, 19 magazine titles (out of a total of about 22,000) were removed because their main audience is older than K-12 students, according to Utah State Librarian Colleen Eggett.

EBSCO provides different tiers of access to its products: one for K-12 students, another for higher education and public libraries. The databases can be customized for individual libraries or schools.

UEN was created by and funded by the Utah legislature, initially as an educational television entity but evolving into an educational network over time. The Utah State School Board has no oversight authority over the education network. The Utah State Board of Education has one position on the network's 13-member board. During the time EBSCO access was cut off, the State Board of Education voted on October 4 to support restoring public school students' and teachers' access.

Peter Bromberg, executive director of the Salt Lake City Library and advocacy chairman for the Utah Library Association, was one of the voices in support of restoring access to the database. "In blocking access to the 275 million articles to over 800,000 students across the state of Utah who rely on these extremely safe, curated and filtered research databases to do their homework every day, UEN has erred, has made a bad choice," Bromberg said. "The decision ignored the facts and was based on the report of someone searching for 45 minutes on her home computer in an unfiltered environment unlike the heavily filtered environment that this would happen in a school setting. UEN themselves said at their board meeting they were unable to replicate these results," he said. The decision to censor millions of articles "has a sweeping and negative impact on students and teachers across this state," he said.

Utah State Board of Education member Michelle Boulter noted that EBSCO is among the National Center on Sexual Exploitation's "Dirty Dozen" list.

Board member Spencer Stokes countered that the pro-censorship organization's "Dirty Dozen" list also includes Amazon, Backpage.com, Comcast, HBO, iBooks, Poster Boys, Roku, Snap, Steam, Twitter and YouTube. "I'm sorry, but if this is the 'dirty dozen,' I use the 'dirty dozen.' I use like 10 of these, like I used them last week," Stokes said.

The nationwide attack on EBSCO in libraries was covered in depth in a feature in *JIPF* nearly a year ago by James LaRue, director of the American Library Association's Office for Intellectual Freedom.

In a follow-up post on the OIF blog after the Colorado lawsuit was filed, LaRue pointed out that censoring EBSCO will expose children to more pornography, not less. Without the ability to do their school research on a curated database filled with mainstream publications, they will use less tightly controlled search engines such as Google, and will be more likely to rely on their own smartphones rather than school or public library computers. As LaRue put it, "Students will be left, literally, to their own devices." Reported in: ebsco.com, September 15, 2017; *Journal of Intellectual Freedom & Privacy*, Fall-Winter 2017-18; KUTV-2 News, September 21 and October 2; uen.org, October 1 and October 19; ksl.com, October 6; *Denver Post*, October 10; oif.ala.org, October 12; clicweb.org, October 23.

Fort Myers, Florida

Fort Myers High School removed *City of Thieves*, a novel by David Benioff, one of the creators of HBO's Game of Thrones, from the 10th grade curriculum. The 2008 historical coming-of-age novel was removed from the curriculum in October, following a parent's complaint that it contains explicit language and depictions of sexual violence.

The book was one of eight texts chosen for the high school's 10th grade curriculum, each of which were then randomly assigned to a select number of students. Parents were granted time to assess the appropriateness of their students' assigned books and invited to raise any concerns. No concerns were expressed about *City of Thieves* until after this period had ended.

The Florida Education Defenders, a group of education and free expression advocates led by the National Coalition Against Censorship, has written to Lee County school officials to voice opposition to their removal of the acclaimed novel. Reported in NCAC.org, October 19.

Emporia, Kansas

Right before the start of Banned Books Week, an English teacher at

Waverly High School in Emporia was suspended from his job for considering teaching Sherman Alexie's novel, *The Absolutely True Diary of a Part-Time Indian*. The Lebo-Waverly Unified School District 243 suspended Austin Schopper from teaching for nine days starting September 11. Parents also complained about his thinking about teaching *Me and Earl and the Dying Girl*, by Jesse Andrews.

Alexie's book, which first came into print in 2007 and won the National Book Award, has frequently drawn attention "for acknowledging issues such as poverty, alcoholism and sexuality," according to the American Library Association's website, and has been challenged in school curriculums because of profanity and situations that were deemed sexually explicit.

Schopper said he wanted to teach the book because he read it while earning his degree at Emporia State University, and thought it was a great book that helps young people see that other people have faced the same issues.

He had taught the book in the past, though not at Waverly.

Schopper said he came in expecting the situation to be similar—that he'd be able to teach the book. But that wasn't the case, he quickly learned.

"The school just kind of determined, what I'm told was in response to some parent concerns, that we weren't going to be teaching it," he said.

He said he was fine with this.

Schopper said none of his students have ever expressed an issue with the books by Alexie and Andrews.

He said *Me and Earl and the Dying Girl* "is consistently the only book that I've ever taught that we've had a 100 percent completion rate with our juniors," he said. "We had the most students ask to re-read it or re-check it out and that book, until this year, I'd never had a problem with."

Schopper added, "I don't want it to look like the school's the bad guy here. Some people were upset and the school was just kind of like, 'Well, OK, we'll try to make everybody happy.' I just want to make that very clear—I don't blame the school."

While Schopper was unwilling to talk about his feelings about the district's decision to suspend him, he did talk about banned books in general, specifically referencing an article written by Alexie. His summary of Alexie's point is that "if our goal is to educate students and to teach them the value of literature, then we need to speak to them where they're at," he said. "We can't pretend like the issues that our students already go through don't exist. I can't imagine that there's a class that doesn't have a family member that struggles with addiction or mental health or . . . poverty."

This is Schopper's second year as a teacher at Waverly.

USD 243 Superintendent Corey Reese said he was unable to discuss the suspension, for confidentiality reasons. Reported in: *Emporia Gazette*, October 3.

Scituate, Massachusetts

Monster by Walter Dean Myers, a young adult novel written in the form of a screenplay by a teenaged protagonist who has been charged with murder, contains language, violence, and sexual overtures that make it inappropriate for seventh and eighth grade students, Scituate school administrators decided on October 1.

The decision of school administration to remove *Monster* from the middle school curriculum caused an outcry. Opponents to this decision felt it was censorship. The majority of those who spoke at the October 1 meeting were adamantly against the removal of the book from that grade level.

Assistant Superintendent Jennifer Arnold explained that after listening to the concerns of the parents, she felt *Monster* was inappropriate for eighth graders. "It wasn't just because a parent or a couple of parents wanted this pulled, I wouldn't do that," she said, adding she had broached the issue to other members of school administration. "We made the decision as a team. I was under the impression it would be the best thing." Reported in: scituate.wickedlocal.com, October 5.

Warren, New Jersey

Some parents asked for the removal of *Fun Home: A Family Tragicomic*, a graphic memoir by Alison Bechdel, from the 12th grade curriculum at Watchung Hills Regional High School in Warren Township. After hearing from parents, alumni, and others, who voiced opposition and support for the book, the board of education on June 19 voted for a "compromise" in which *Fun Home* is retained in the curriculum, but as one of several options students may read.

Watchung Hills had added *Fun Home* after a two-year review, to be the last in a four-year series of graphic works that are being included in the curriculum.

Published in 2006, Alison Bechdel's book includes themes of sexual orientation, suicide, gender roles, emotional abuse, and dysfunctional family life. The protagonist uses literature to further delve into an understanding of self and family. Besides the content of the words, it was a few of the book's images which especially upset several parents, who deemed it "explicit" and "pornographic."

In support of the book, the National Coalition Against Censorship (which includes the Comic Book Legal Defense Fund, American

Booksellers for Free Expression, the American Library Association, the Comic Book Legal Defense Fund, and the National Council of Teachers of English) sent a letter to the school board prior to its June meeting, saying:

> We urge you to base your decisions on pedagogical motives, rather than yielding to ideologically motivated pressures from some groups or parents. Our legal system recognizes images, like words, as symbolic expression protected by the First Amendment. Removing *Fun Home* simply because some parents dislike a few illustrations in the book would be constitutionally suspect. . . .
>
> While the book does contain a few images that some may find sexually explicit, these images are an integral part of the larger narrative. *Booklist* has recommended *Fun Home* for young adult readers, noting that the "the very few incidental sex scenes" are "non-prurient" and that "the family story rings utterly and movingly true." . . . Some parents may still find their children are not yet mature enough to appreciate the literary and artistic value of *Fun Home*. We encourage you to offer them alternative assignments, rather than removing *Fun Home* from the curriculum and thereby denying all students the opportunity to read and learn from its pages.

Reported in: ncac.org, June 4; mycentraljersey.com, June 12; *Echoes-Sentinel*, June 21.

Rockingham County, North Carolina

Beartown by Fredrick Backman has been removed from the required reading list in a sophomore honors English class at McMichael High School after parents objected to "vulgarity" in the novel about a junior ice hockey team in a small town torn apart by accusations related to a violent act.

The school board told parents in October that a new English teacher at the high school picked the book without the standard approvals from the principal and a review committee.

The book, published in April 2017, was a *Publishers Weekly* bestseller. Reported in: *Herald-Sun*, October 9.

Howard, Ohio

A fifth grade teacher at East Knox Elementary School was disciplined for giving a student *Forever*, a young adult novel by Judy Blume, to read.

Superintendent Steve Larcomb placed Maria Eaton on paid leave for more than two weeks beginning on September 19. Larcomb said that he conducted an investigation after a parent of one of Eaton's students complained about language in the book. When he looked into the matter, he concluded that the book was not appropriate for fifth graders, and he notified Eaton that she would be placed on paid leave immediately.

Eaton was not allowed on school grounds during her leave, according to the notice sent to Eaton from Larcomb. She was also not permitted to discuss "the events that led to this leave" with school board members, parents or students during that time. Reported in *Knox Pages*, October 7.

Charleston County, South Carolina

Police have spoken out against *The Hate U Give*, by Angie Thomas, and *All American Boys*, by Jason Reynolds and Brendan Kiely, on a summer reading list for Wando High School's English I class in Charleston County, South Carolina, raising concerns about police involvement in school curricula.

Both award-winning, bestselling young adult books explore themes of racism and police brutality, issues that are relevant to the lives of many youth and young adults, especially in black communities. According to the president of the Fraternal Order of Police (FOP) Tri-County Lodge #3, *The Hate U Give* and *All American Boys* encourage "distrust of police," and the law enforcement union wants the two texts removed from the reading list.

"Whether it be through social media, whether it be through text message, whether it be phone calls, we've received an influx of tremendous outrage at the selections by this reading list," lodge president Jon Blackmon told local news channel News 2. "Freshmen, they're at the age where their interactions with law enforcement have been very minimal. They're not driving yet, they haven't been stopped for speeding, they don't have these type of interactions. This is putting in their minds, it's almost an indoctrination of distrust of police and we've got to put a stop to that."

He added, "There are other socio-economic topics that are available and they want to focus half of their effort on negativity towards the police? That seems odd to me."

Neither of the books are mandatory reading—the list includes eight books, and students only have to select two.

The response from the FOP, one of the largest police organizations in the country, raises concerns for school librarians about censorship and for members of the Charleston community. This is the same city where white police officer Michael Slager fired eight shots at Walter Scott while he ran away, striking him five times in total and three times in the back, in 2015. The officer was prosecuted and convicted, with a 20-year sentence, for an on-duty shooting. That same

year, white supremacist Dylann Roof walked into a Charleston church and massacred nine black parishioners, and after police apprehended Roof, they bought him a Burger King meal.

Poet Marjory Wentworth teaches a college course on banned books at the Art Institute of Charleston. She told *Salon* that "these are exactly the kinds of books we need to be reading and the conversations we need to be having." She added that Blackmon's depiction of the two books as anti-police is a miscategorization. "The idea that this is a one-dimensional, anti-police book, just, it's inaccurate," Wentworth said.

The Hate U Give was inspired by the Black Lives Matter movement and tells the story of a teenage girl who sees the police shoot her unarmed best friend. Beyond the nuanced exploration of police brutality and its wide-reaching effects on a community, the protagonist's uncle is a black police officer and a positive influence in her life. The acclaimed bestseller has been turned into a movie, which premiered this fall.

All American Boys follows a teenage boy trying to grapple with the aftermath following an incident with the police where he is falsely accused of shoplifting and then brutally beaten by a police officer.

School librarian and South Carolina Association of School Librarians president Heather Thore wrote: "I encourage everyone who is worried about these books to actually read them, and even talk to teens about their impressions of the books." She wondered why the police union's first reaction was to ban or to remove the books, rather than read and discuss them with the students.

Blackmon's stance that literature or art can sour young people on the police is also misguided, according to author Mychal Denzel Smith. "The idea that people are planting this idea of the police in children's heads as opposed to children observing the world and seeing police for who they are, what they actually do, is completely off-base," said Smith, author of the *New York Times* bestseller *Invisible Man, Got the Whole World Watching.* "[Black] children have had interactions with the police, whether the police want to admit to this or not. It starts way earlier than when they can drive," he continued. "They know family members who have been arrested. They've been in cars that have been stopped, if they weren't driving them themselves. All of this stuff is in the lives of black children."

Wando High School Principal Dr. Sherry Eppelsheimer wrote in a statement that "A 'Request for Reconsideration of Instruction Materials' form has been submitted and the school and District will follow the procedures outlined in Policy IJKAA-R in connection with the reconsideration request."

The policy instructs that a committee be formed to review the material and to hear from the parent who complained, the assigning teacher, and other experts. A recommendation is provided to the Superintendent, who can accept or reject it. A final decision is made by the Board of Trustees. Reported in: salon.com, July 11.

Austin, Texas

History curriculum in Texas remembers the Alamo but considered forgetting Hillary Clinton and Helen Keller. As part of an effort to "streamline" the social studies curriculum in public schools, the State Board of Education voted on September 14 to adjust what students in every grade are required to learn in the classroom. Among the changes, board members approved the removal of several historical figures, including Clinton and Keller, from the curriculum.

On November 16, the board voted to keep Clinton and Keller in the curriculum.

The board also voted in November to keep in the curriculum a reference to the "heroism" of the defenders of the Alamo, which had been recommended for elimination. Also retained were Moses' influence on the writing of the nation's founding documents, multiple references to "Judeo-Christian" values and a requirement that students explain how the Arab rejection of the State of Israel has contributed to ongoing conflict in the Middle East.

High schoolers have been required to learn about Clinton, who was the first woman to win a major political party's presidential nomination, in history class. Under a section about citizenship, students were assigned to "evaluate the contributions of significant political and social leaders in the United States" including her, plus Andrew Carnegie, Thurgood Marshall, and Sandra Day O'Connor.

Barry Goldwater was also removed from this teaching requirement. A work group tasked with the curriculum streamlining also recommended removing evangelist and Baptist pastor Billy Graham, but the state board kept him.

Third-grade social studies teachers have been required to educate kids about the life of Keller, who despite being deaf and blind graduated from college and lived a life of activism and authorship.

Removing figures like these from the curriculum doesn't forbid them from being taught, but just means they're no longer mandatory. Also, the streamlining of the curriculum won't affect textbooks or other instructional material, which the board is not updating at this time.

The *Dallas Morning News* spoke with two teachers from the group of board-nominated volunteers that made the recommendations. Both said the state required students to learn about so many historical figures that it resulted in rote memorization of dates and names instead of real learning.

The 15-member work group came up with a rubric for grading every historical figure to rank who is "essential" to learn and who isn't. The formula asked questions like, "Did the person trigger a watershed change?"; "Was the person from an underrepresented group?"; and "Will their impact stand the test of time?"

Out of 20 points, Keller scored a 7 and Clinton scored a 5. Eliminating Keller from the requirements could save teachers 40 minutes of instructional time, the work group estimated, and eliminating Clinton could save 30 minutes. (Students in that grade are still required to learn about former President Bill Clinton's impeachment.)

By contrast, local members of the Texas Legislature (whom fourth-graders learn about) got a perfect score, as did Barbara Jordan, Sam Houston, Stephen F. Austin, and Henry B. González. President Donald Trump isn't included in the list by name, but students are required to learn about the current president, governor, and mayor.

Each year, the board discusses and debates new classroom standards for Texas' 5.4 million schoolchildren. Its members, currently five Democrats and ten Republicans, are elected to four-year terms and represent specific geographic areas.

The board's process has always garnered attention—and often controversy. Five years ago, members clashed over whether science books should have to teach an alternative to evolution. In 2014, math standards were revised, drawing criticism from parents and teachers. And earlier this year, a new Mexican-American studies course was the subject of the latest culture war. Reported in: *Dallas News*, September 14, November 16.

Prosper, Texas

At Prosper High School, a principal who had been at the school for less than a year in February 2018 began reviewing content of the student newspaper, the *Eagle Nation Online*, prior to publication, and blocked some content that did not meet his standards. In May, Prosper High School Principal John Burdett terminated the contract of school newspaper adviser Lori Oglesbee-Petter, who has advised student papers for more than three decades.

First Amendment advocates have called on the school district to end the censorship and are hoping for new legislation that will give more independence to student journalists in Texas.

In several incidents when Burdett forced the *Eagle Nation Online* to remove content, the issue was how the articles might affect the school's public image. He vetted the newspaper for material that was controversial or ran counter to "community norms." He sought content that was "uplifting."

"If you're trying to defend a story that may be a little vulgar or have tones of sexual innuendo, that's one thing," said Oglesbee-Petter, the former adviser. "That's not what we're talking about here. This is about stories that set out to improve the schools."

Burdett did not respond to an email seeking an interview.

Oglesbee-Petter said a statewide speech protection bill would be "protection against someone who is not familiar with the role of the press or Constitutional rights."

The Student Press Law Center (SPLC) on May 31 sent a letter to Prosper Independent School District Superintendent Drew Watkins, asking that he take steps to ensure the district complies with Constitutional requirements regarding free speech. It was signed by 17 news groups, including the American Society of News Editors, the Society for Professional Journalists, and the Freedom of the Press Foundation.

"School administrators must remove themselves from reviewing student journalism that involves the image or reputation of the school, as the administration faces an ethical conflict in serving as both the subject of news coverage and its editor," the letter said.

The district declined to comment.

SPLC is hopeful the incident will encourage a state lawmaker to introduce a measure that has had mixed success around the United States. Frank LoMonte, a senior law fellow at the Student Press Law Center, said in an email, "the Prosper situation is so outrageous that it's the poster-child case that could fuel reform."

Fourteen states have laws protecting high school journalists. Reported in: *Texas Monitor*, June 4.

Jordan, Utah

The Things They Carried, a collection of short stories by Tim O'Brien about the Vietnam War, has been approved, but still faces a challenge at the Bingham High School in the Jordan School District.

The book was not required reading, but was on a list of approved books for a senior class. The teacher warned the class that the book contained realistic dialog common among soldiers, including 72 instances of the "f word."

Lori Martinsen, parent of a senior at the school, said she will be

contesting the book and asked, "Is it appropriate for those kinds of details, for that kind of language, for that level of sexuality in it to be taught to minors in a public school setting? My daughter could not legally walk into a movie with a glimpse of what is in this book."

In the Jordan School District, the review process for contested books begins in November. Reported in: abc4.com, September 19.

Burlington, Vermont

Burlington High School principal Noel Green may have violated state law when he ordered student journalists to take down a story posted to the school newspaper's website.

On September 10, a Monday night, the website of the *Register* (the student newspaper) broke the news that the state has been investigating school guidance director Mario Macias, who is accused of unprofessional conduct and could lose his educator's license for nearly a year.

By Tuesday morning, Green ordered the *Register*'s teacher adviser, Beth Fialko Casey, to pull the article. Fialko Casey conferred with the article's four authors—editors Julia Shannon-Grillo, Halle Newman, Nataleigh Noble, and Jenna Peterson—who reluctantly agreed to comply.

"It did cross our minds that they'd want to talk to us and we were ready to defend our actions but we were not expecting it to be censored," said Shannon-Grillo, a 16-year-old junior. "We understand [Green's] decision, but as editors, we don't agree with it."

By Tuesday afternoon, September 11, several local media outlets had confirmed and reported on the story the *Register* broke. The student newspaper's article, meanwhile, had been replaced with a blank page and the headline: "This article has been censored by Burlington High School administration."

"In my opinion, [the article] created a hostile work environment for one of my employees," Green said in an interview. "I would react the same way for any of my employees."

Green's order to pull the story appears to be in direct conflict with a law signed in May 2017 that was meant to protect student journalists from administrative meddling. For any decision to censor, Act 49 maintains that school administrators must provide "lawful justification without undue delay."

"Content shall not be suppressed solely because it involves political or controversial subject matter, or is critical of the school or its administration," the law reads. Certain information is not protected, including libelous and slanderous material, and stories deemed an "unwarranted invasion of privacy."

"I think the students have a very strong case that their rights are being violated," said state Sen. Phil Baruth, who helped shepherd the legislation through as chair of the Senate Education Committee. "I think the principal, with a little bit of time to reflect, would do well to put the article back up."

Shannon-Grillo said she and the other student journalists spent Tuesday morning calling local law firms and representatives from the Student Press Law Center to get clarification about their legal rights. When they couldn't get in touch with anyone, they agreed to temporarily pull the story. They worried Green would discipline Fialko Casey.

"We didn't see why it needed to be taken down," Shannon-Grillo said. "It was public information."

What they didn't know at the time was that Act 49 also protects newspaper advisers from discipline when they take "reasonable and appropriate action to protect a student journalist for engaging in conduct protected" by the law.

Fialko Casey is familiar with Act 49. Student journalists at Burlington High School, who had been subject to strict administrative editorial oversight, had helped get it enacted. Fialko Casey and then-student editors posed for photos with Governor Phil Scott in May 2017 as he signed the bill into law.

In this instance, Fialko Casey said, she left it up to the students to decide whether to comply with Green's order or not. While she knew about protections provided by the law, she didn't know what repercussions she or the students would face if they refused to listen to the principal. She said she promised to support the students in whatever decision they made.

"I'm just a mentor," Fialko Casey said. "They have control of the paper and can take or leave my advice. I'm not the editor. It's not my newspaper."

After taking the story down, Fialko Casey met with Green for 70 minutes. The two argued and debated the censorship and left the meeting still in disagreement. Fialko Casey said Green had a copy of Act 49 in front of him. She said he felt his decision to pull the article was in keeping with the law.

"Unfortunately, the censorship stood," Fialko Casey said. "He would not let us put it back up, so we did not win the battle but we live to fight another day." Reported in: *Seven Days*, September 12, September 13.

Albemarle County, Virginia

The Albemarle County School Board's meeting on August 30 had a free-speech issue on the agenda, while other free-speech issues emerged outside the meeting: the rights of residents to protest and assemble outside

of public meetings, and where those rights potentially end. The controversy inside the meeting was a proposal to change school dress codes to ban Confederate images.

About 50 people assembled outside the public meeting; after a few minutes, their chants and speeches could be heard inside the meeting chambers. A few minutes later, a deputy chief of police began asking protesters to quiet down. When they did not, he then asked them to disperse. When they refused, he began arresting people. After six arrests were made inside and outside Lane Auditorium and police cleared the anteroom, several members of the public and media were initially refused re-entry to the meeting.

"During the initial altercations, it became fairly hectic," Albemarle police Lieutenant Terry Walls said. "Once things were stabilized and secured, we were able to place some people at the entrances in an attempt to keep people that had been banned from coming back in, because we had witnessed several people who we believe had left that were part of the problem and then tried to re-enter the building."

A large group was asked to leave the antechamber by County Executive Jeff Richardson, Walls said, and some people tried to re-enter. The police didn't want people who had been disruptive to return, Walls said. However, he also said that police at the entrance didn't have a good way to know whom those people might be and could have inadvertently kept non-disruptive members of the public and media out.

All six of the people who were arrested were charged with trespassing; two of the six also were charged with obstruction of justice.

There is precedent for keeping disruptive individuals out of public meetings and for shutting down protests that are interrupting meetings, several First Amendment scholars say—but it's not clear if a whole group of people should be ordered out while the meeting continues. Similarly, public buildings are often the sites of protests, but common spaces in those buildings, like lobbies, are not always open to free-speech activities, according to the American Civil Liberties Union of Virginia.

The public generally has the right to observe public meetings—but not necessarily to participate, according to Clay Hansen, executive director of the Thomas Jefferson Center for the Protection of Free Expression, an Albemarle-based think tank that advocates for freedom of speech.

"And then if your participation becomes disruptive, you might lose your ability to participate in the meeting," Hansen said. "Once you cross that line into disruptive comment, you also don't get a second bite at the apple if you get removed."

Still, according to Megan Rhyne of the Virginia Coalition for Open Government, a public body probably shouldn't remove individuals for disruptive conduct, but then continue a meeting while keeping out a whole group of people. "While there is some precedent for removing disruptive individuals, I don't think it is proper to keep out certain segments of the population," Rhyne wrote in an email. "Otherwise, it's not a meeting open to 'the public' under [the Freedom of Information Act]."

In a statement after the meeting and in a letter to the editor published in the *Daily Progress*, School Board Chairwoman Kate Acuff indicated that she viewed the wearing of Confederate symbols as hurtful but protected speech, and that ongoing disruptions of public meetings would be met with requests to leave and, potentially, arrests.

The group that organized the protest, the Hate-Free Schools Coalition, released a statement the next day saying the protest was merely an effort to be heard after the group felt the board remained unresponsive to requests to amend the county schools' dress code to include a ban on Confederate images.

"Because the board shut down our scheduled 8/23 opportunity, we were determined to be heard on 8/30," the group wrote, referencing a previous meeting that ended after one public comment. "When the board tried to silence our voices yet again by removing public comment from the agenda, we called a community gathering for the same time as the board meeting. We refused to muzzle ourselves, and then the board ordered the police to either intimidate us into silence or arrest us. We did not back down."

The board has said it plans to continue working on its nondiscrimination policies and hopes to finalize a new policy by the end of the year. Reported in: *The Daily Progress*, August 31.

Smithfield, Virginia

A parent of a Smithfield High School freshman took her child to an open house at the beginning of the school year and found what she considers homosexual pornography that was viewed through the school's online research database. The school blocked the site pending an investigation.

Diana Elswick, an IT professional by trade, was looking up the school's technology policy on the Smithfield High School website and ended up on the student zone where she found the Gale Virtual Library—an online resource available to school districts in Virginia.

One of the topic areas offered by Gale is "Gender Studies Collection," which included articles from *The*

Advocate, a gay and lesbian publication. Photos with some articles included nude men.

"That first picture, I was shocked," said Elswick of one of the photos. Elswick went on to create a video of how she found the material and alerted school officials.

The *Smithfield Times* was also able to access the material via the Smithfield Middle School webpage. Reported in: WAVY, September 4, *Smithfield Times*, September 5.

Cedarburg, Wisconsin

Drama by Raina Telgemeier was restricted by the Cedarburg School District near the end of the 2017-18 school year, as inappropriate for younger children.

A letter to the editor in a local newspaper said the district "needs a more rigorous review process when a couple of parents and four committee members ban *Drama* by Raina Telgemeier." In her brief letter, Maureen O'Brien of Cedarburg wrote, "Banning a book is more dangerous than allowing a child to read a book that might challenge his or her thinking. . . . Being able to read any book is a safe way for a child to learn about the real world."

The minutes of the Cedarburg School Board meetings show that its Materials Review Committee met on June 11 and June 14 to consider moving the book from the Parkview Elementary School library to Webster Middle School, or to allow only 5th graders at the elementary school to check out the book. The minutes with the committee's decision were not posted.

An online search uncovered no further details about the challenge in Cedarburg. The graphic novel, about the on- and off-stage drama of students in a middle school theater production, has frequently been banned or challenged since its publication in 2012. Reported in: boarddocs.com/wi/cedar, June 14; *Ozaukee Press*, July 11.

Cody, Wyoming

Parent complaints against *A Bad Boy Can Be Good for a Girl* by Tanya Lee Stone and other proposed classroom reading materials and library books at the Cody School District will be reviewed later this school year. The Cody School Board on September 18 voted to keep the book on the shelf until the review is completed, and approved four new community members and three alternates to round out the nine-person KEC committee tasked with reviewing complaints on materials.

The committee is made up of five patrons or parents from the community, three teachers, and a district administrator.

Some trustees wanted books removed when they are challenged, but the majority overruled them.

"Things have changed in the last four months," trustee Stefanie Bell said. "We have a notification system for parents and we have a district librarian who said she will back parents 100 percent. I think the best solutions are going to come with the parent sitting down with the librarian, or librarian and administrator, and they see their parental role is respected."

District librarian Jennison Lucas has said previously she would sit down with any parent with a complaint and work to make sure their children are not able to access whatever books the parent does not want the child to check out.

The changes stem from the last time the KEC committee reviewed a complaint on a library book. The complaint went through KEC, which voted 7-2 not to remove the book, although it also said it didn't have the proper guidelines to judge a library book. The trustees later decided to weigh in, voting 5-1 in February to remove the book.

At that time, the school immediately implemented Alexandria library software to notify parents of books being checked out from district libraries by their children. It includes an opt-out for parents who do not wish to be notified.

Chair Kelly Simone has pointed to the notification system as a key way parents now have a greater say in what their children check out, thus limiting the need of a policy that's too restrictive.

Lucas said the policy at her school libraries will be backed up by a constant review process of books. Beyond complaints, books could be removed for being worn, obsolete, unneeded or a variety of other reasons. Reported in: *Cody Enterprise*, September 19.

COLLEGES AND UNIVERSITIES

Kansas City, Kansas

Free speech advocates are protesting the University of Kansas' decision to remove a controversial American flag marked with paint following complaints from Kansas Governor Jeff Colyer and other Republican politicians that the public art piece was disrespectful.

"It is unfortunate that the University of Kansas appears to have bowed to pure political pressure in its display of the art installation, 'Untitled (Flag 2),'" declared Micah Kubic, executive director of the American Civil Liberties Union of Kansas, in a statement. "You do not need to like the art, or agree with the political sentiments it expresses, or even believe that it expresses any political idea at all to recognize that the artwork is protected by the First Amendment."

An American flag marked with black paint had flown atop a flagpole outside KU's Spooner Hall since July 5 as part of a public arts project sponsored by the New York City-based arts nonprofit Creative Time.

The flag's creator, German artist Josephine Meckseper, had depicted a black-and-white sock and a split United States using a drip painting technique. She said her piece was intended as a call to unite a deeply polarized country.

But the flag was taken down July 11, hours after Colyer and Kansas Secretary of State Kris Kobach called for its removal. Colyer—who faced Kobach in August's GOP primary—had called the piece a "disrespectful display of a desecrated American flag," and other conservatives, including Kansas congressional candidate Steve Watkins, expressed disapproval.

KU Chancellor Doug Girod said in a statement that safety concerns prompted university officials to move the flag to an exhibit in KU's Spencer Museum of Art. He did not elaborate on what those safety concerns were.

The decision "smacks of censorship," the ACLU's Kubic said. "The elected officials in question, including Governor Colyer and Secretary Kobach, have been very clear that they want the art censored because of the political statement it makes, and the way in which it makes that statement," he said. "That is an affront to the spirit of the First Amendment, and the values for which the flag stands."

Other free speech advocates released statements as well.

Peter Bonilla, vice president of programs at the Foundation for Individual Rights in Education (FIRE), called for the university not to take down the flag, and stand "apart from the numerous institutions that have censored artistic expression." He said, "The First Amendment doesn't exist to protect politically popular speech. It exists to protect the speech likeliest to stir controversy, and it is a crucial check against the power of the state to silence dissenting voices."

Copies of Meckseper's work are simultaneously being displayed across the United States. It is the last in a series of flags created for "Pledges of Allegiances," in which Creative Time commissioned 16 artists to create flags highlighting various causes.

The Spencer Museum of Art and KU Commons inside Spooner hosted the privately funded project and displayed 15 other flags on the Spooner flagpole since November. Meckseper's flag was expected to fly until July 31.

Creative Time issued a statement after the flag had been taken down. "Art has a responsibility to drive hard conversations," the statement read. "'Pledges of Allegiance' was begun to generate dialogue and bring attention to the pressing issues of the day. The right to freedom of speech is one of our nation's most dearly held values. It is also under attack. We are proud to stand by artists who express themselves. Today's events illustrate the same divisions in our country that the series has confronted head-on."

National Coalition Against Censorship joined the FIRE and the American Civil Liberties Union (ACLU) of Kansas in a letter to the University of Kansas (KU) strongly urging it to take a stand against censorship by restoring a public artwork that the university removed. The joint letter reminds KU that as a public institution it is obligated to protect the First Amendment rights of its students and faculty.

The letter cites statements from both Colyer and Kobach that publicly-funded institutions should not "promote" this type of art, but argues that, in fact, it is precisely public institutions like KU that are bound by the US Constitution to not censor. Reported in: *Kansas City Star*, July 12; ncac.org, July 16.

St. George, Utah

After a complaint from a group that tracks what it sees as violations of the separation of church and state, the state-owned Southern Utah University removed all copies of the *Bible* and the *Book of Mormon* from guest rooms at Dixie State Inn, a hotel associated with the university.

The Freedom from Religion Foundation alerted Dixie State's president about the issue in June. The group reminded Dixie that the establishment clause of US Constitution's First Amendment forbids public schools from promoting, endorsing, or advancing any religion.

The university president then turned it over to the school's lawyers to consider. After an in-depth analysis by Alison Vicroy, the university's assistant general counsel, the school asked the inn to take the religious texts out of individual guest rooms.

That was "an appropriate course of action," Dixie State spokeswoman Jyl Hall said. "The university doesn't want either the appearance or the reality of advancing one religion over another."

Copies of the *Bible* and *Book of Mormon* (the Church of Jesus Christ of Latter-day Saints scripture) are still available at the front desk. Reported in: *Salt Lake Tribune*, October 1.

MILITARY BASES

Cheyenne, Wyoming; Okinawa, Hawaii

In one response to a campaign by the Military Religious Freedom Foundation (MRFF), the commander of Warren Air Force Base in Cheyenne, Wyoming, Colonel Stacy Jo Huser, removed the *Bible* from a POW-MIA display.

The MRFF has sought to remove religious articles from POW/MIA "Missing Man" tables at US military bases for years, with mixed results. MRFF lawyers argue that the First Amendment not only forbids the government from establishing an official religion but also prohibits government actions that favor one religion over another.

The official Navy or Defense Department stance on Bibles being included in POW/MIA "Missing Man" table displays remains unclear. However, a report on the Navy's website from 2014 describes the *Bible* as being an official part of the display.

In Wyoming, Col. Huser issued a statement that said she just didn't want to offend those of religions other than Christianity. "One of our focus areas," she said, "is increasing the sense of belonging for all our airmen; a large part of that effort is ensuring the religious and non-religious feel included and cared for. . . . [The 90th Missile Wing will] replace the *Bible* on the POW/MIA table with a 'book of faith' containing scriptural writings and prayers from the five DOD chaplain-appointed faith groups, and a sixth set of blank pages to represent those who find solace by other means."

MRFF was less successful with a complaint against the POW/MIA display at the US Naval Hospital in Okinawa, Hawaii. MRFF first filed a complaint about the Okinawa display with Rear Adm. Paul Pearigen, Navy Medicine West commander, on April 5. The Navy later said it investigated the matter but found that including the *Bible* was "consistent with Department of the Navy and Department of Defense guidance, as well as the US Constitution."

On June 26, the MRFF appealed that decision. The updated complaint asked the inspector general of the US Navy to remove the *Bible* of the book from the display, and also to eliminate language about the *Bible* and the phrase "one nation under God" from an accompanying explanatory placard. The complaint also called for an investigation into how the book came to be displayed, who authorized it, and "appropriate disciplinary measures administered to those responsible."

By mid-September, there were no reports of any action taken by the Navy inspector general on this complaint.

Earlier, MRFF forced the Denver Veterans Administration Medical Center to remove religious items from a display in November. Reported in: *Stars and Stripes*, June 27; *Washington Times*, August 4.

SOCIAL MEDIA
Mountain View, California

President Donald Trump on August 28 issued a stark warning to tech giants including Google, Facebook, and Twitter, accusing them of muzzling conservatives and saying they are "treading on very, very troubled territory."

"I think Google has really taken advantage of a lot of people. It's a very serious thing," Trump told reporters at a White House event. "If you look at what is going on at Twitter, if you look at what is going on in Facebook, they better be careful because you can't do that to people."

The president spent the day criticizing the tech companies for what he sees as the suppression of conservative voices. Earlier in the day, the president posted a series of tweets accusing Google of treating certain political ideologies unfairly. The presidents said the search giant is "rigged" to show users "bad" stories about him.

"Google search results for 'Trump News' shows only the viewing/reporting of Fake New Media. In other words, they have it RIGGED, for me & others, so that almost all stories & news is BAD. Fake CNN is prominent. Republican/Conservative & Fair Media is shut out," Trump wrote online.

The president appeared to be referencing an article from PJ Media, a conservative blog founded in the early 2000s. The article, published over the weekend two days before the president made the same complaints about Google, features a pie chart that says it breaks down "Google search results for 'Trump'" by party bias. Only a sliver of the pie chart, which encompasses the *Wall Street Journal*, is red. The rest of the chart, marked in blue, is made up of outlets PJ media accused of being "left-leaning," including the *New York Times*, CNN, the *Washington Post* and Politico.

Google is among the tech giants that have drawn the ire of the president and his conservative base. The previous week, Trump blasted Facebook and Twitter for "silencing millions of people." Google said in a statement that its search feature is "not used to set a political agenda."

"We don't bias our results toward any political ideology," a Google spokesperson said. "Every year, we issue hundreds of improvements to our algorithms to ensure they surface high-quality content in response to users' queries. We continually work to improve Google Search and we never rank search results to manipulate political sentiment."

Neither Trump nor the PJ media article offered any proof that Google was purposely promoting negative stories about the president at the expense of positive ones. Many news outlets specifically tailor their online content to match Google's search algorithms in an effort to appear at or near the top of search results.

On Twitter, the president wrote: "Illegal? 96% of results on 'Trump News' are from National Left-Wing Media, very dangerous. Google & others are suppressing voices of Conservatives and hiding information and news that is good. They are controlling what we can & cannot see. This is a very serious situation—will be addressed!"

Trump did not elaborate on what steps he might take against Google, although White House economic adviser Larry Kudlow told reporters the administration is "taking a look" at imposing regulations on Google.

Trump's attacks on August 28 marked a continuation of his long-running feud with media outlets and tech companies that he claims offer him unfairly negative coverage.

"We have tremendous—we have literally thousands and thousands of complaints coming in and you just can't do that, so I think that Google and Twitter and Facebook, they're really treading on very very troubled territory and they have to be careful. It's not fair to large portions of the population," Trump said later on the same day. Reported in: politico.com, August 28.

FREEDOM OF THE PRESS
Washington, DC

CNN's Kaitlan Collins was punished by the White House for doing her job as the television pool reporter at an Oval Office photo opportunity on July 25. The aggressive retaliation by government officials drew outrage from journalists, rival networks, and the White House Correspondents Association.

Collins called out questions to President Trump about his former lawyer's taping of conversations and Vladimir Putin's failure to accept an invitation to Washington. Calling out questions is common practice among White House reporters. Trump declined to answer the questions, which is his right. But then, Collins says, she was called before Press Secretary Sarah Sanders and newly appointed deputy chief of staff Bill Shine and told that she would not be allowed to attend an open press event in the Rose Garden later in the day.

Apparently, the White House officials have decided that singling out CNN won't hurt them. On President Trump's recent European trip, he attacked CNN unprompted at a press conference in the UK, refused to answer a question from the network's Jim Acosta, and pivoted to Fox News's John Roberts, saying, "Let's go to a real network." The White House later pulled national security advisor John Bolton from a scheduled appearance on CNN as retaliation for what it said was "bad behavior."

According to the *Columbia Journalism Review*,

> The outrage from journalists to Collins's banning was palpable, but in order to have an impact they must also make it clear to the public why this story matters beyond the understandable anger and frustration from CNN. . . . The real reason why this is significant is that Trump's constant attacks on the press—so regular that they barely register anymore—have now been backed by concrete action from his minions. As with any number of individual incidents involving this administration and the media, the specific action won't hasten the end of the free press as we know it, but the sum of Trump's deliberate attempts to undermine trust in journalism has long-lasting consequences.

Reported in: *Columbia Journalism Review*, July 26.

DRAG QUEEN STORYTIMES

EDITOR'S NOTE: "Drag Queen Storytimes" is a new department in JIFP News. *This is a rapidly growing area of controversy that is different from other censorship in* JIFP*'s established "Censorship Dateline" department, as the challenges generally target not specific titles nor specific speakers, but rather the method in which stories are presented to children. When such challenges result in court cases, they will be mentioned in this department, with further details in the "From the Bench" department.*

Libraries
MOBILE, ALABAMA

Hundreds of children crowded the auditorium at the Ben Ray Main Library in Mobile for the city's first Drag Queen Story Hour on September 8. Former Tuscaloosa resident Wade Brasfield, in his stage drag persona of "Ms. Khloe Kash," read two books for the young crowd, *The Rainbow Fish*, by Marcus Pfister, about a fish who looks different from the others, and *Stella Brings the Family*, by Miriam B. Schiffer, which is about a little girl who must decide which of her two dads to bring to a Mother's Day event.

Supporters of the readings outnumbered opponents, with barricades set up by local police to separate them. Demonstrators in favor of the reading event carried signs with slogans like "I'm going to tolerate the heck out of you," while critics carried placards with messages including "your lifestyle isn't for my children."

Opposition organizer Lou Campomenosi says his group isn't anti-gay. "The long and the short of it is this we just think this isn't an age appropriate reading for kids aged three to eight years old," said Campomenosi. "And, I think that is our biggest concern, and I think for the community

not to hear an opposing view isn't a good thing."

The local LGBTQ support group Rainbow Mobile arranged for the event through the local library board.

Drag Queen Story Time ended without incident or arrests.

Brasfield feels he would have benefited from a drag queen story time when he was young and said he had difficulty dealing with intolerance at school. In an interview with Alabama Public Radio and the University of Alabama's Center for Public Television prior to the event, Brasfield said he hoped his young audience will realize it's okay to be different.

Prior to the event, representatives from Baptist churches in Mobile and three other speakers spoke in opposition on August 27 at the Mobile County Commission meeting at Government Plaza and at a Mobile City Council meeting on August 28. Rev. Mack Morris, senior pastor at Woodridge Baptist Church, said "Their plan is not a one-time gig at the library but rather it is a carefully crafted political agenda with the idea of infiltrating the public-school system where their immoral teachings shall be used to indoctrinate young children."

Joining him at the County Commission meeting, Rev. Fred Wolfe, a longtime pastor in the Mobile area and founding pastor at Luke 4:18 Fellowship, said his church would still be opposed to reading a story about a family with two dads, inside a public library, even if the reader wasn't dressed as a drag queen.

On August 28, two of the three county commissioners who spoke at teh public meeting said there was little they could do to prevent the September 8 event. "The Mobile County Commission really has no authority legal or otherwise over the Mobile Public Library," said Commissioner Connie Hudson, who expressed her disapproval to library director Scott Kinney, and called the event "inappropriate."

A Mobile Public Library spokesperson said the library is not supporting the event, and taxpayers' money is not going toward it. She said Rainbow Mobile met all the requirements the library has in place to hold the event.

Mobile Mayor Sandy Stimpson's office also has said the city has little legal authority to interfere.

The library, though, receives a lion's share of its funding through local sources and at least one Mobile County commissioner said the library's budget should be examined. "If there is money wasted on such events, maybe we should figure out if there is too much money being spent," said Commissioner Jerry Carl, who was critical of the American Library Association's role in the event. ALA has supported public libraries' efforts to create programs promoting diversity and inclusive societies.

Amber Guy, spokeswoman with the Mobile Public Library, said the library adheres to ALA's guidelines for making meeting rooms available on equal terms to all groups of people, "regardless of beliefs and affiliations of their members." Reported in: al.com, August 23, August 27, August 28; Alabama Public Radio, September 8.

ANCHORAGE, ALASKA

The latest Drag Queen Story Time inside the Loussac Library on November 3 drew some controversy when it was announced in October. A previous Drag Queen Story Time in the same Anchorage library drew a disruptive protestor when it was held on June 9.

The ticketed event was promoted as a celebration of reading, creativity, and acceptance, but at the end of October, Jim Minnery, head of Christian group Alaska Family Action, sent an email to supporters in which he called such story times "alarming." The email condemned "using taxpayer funded public libraries to talk with impressionable young children about 'gender fluidity.'" He urged people to contact the library and ask that future events be canceled.

Shortly afterward, the library said it received 29 negative comments. Most express concern about normalizing what the senders see as deviant behavior.

But the library said another campaign, organized by Identity Inc., the non-profit that provides support to the LGBT community and which partners with the library for the drag queen story times, had generated 87 emails and comments that are positive about the program.

Library Director Mary Jo Torgeson said the program isn't costing taxpayers anything, because the library doesn't get public funds to pay for its programming. She said operational funds are raised by the nonprofit Friends of the Library group, adding that the drag queens are supplied for free by Identity Inc.

At an earlier Drag Queen Story Time at Loussac Library on June 9, a man who refers to himself as a pastor tried to spread a less tolerant message. Dave Grisham, a self-proclaimed pastor with Last Frontier Evangelism, has made a habit of interrupting events and gatherings which celebrate views he doesn't agree with, to shout his own beliefs. He's known for barging into the local "Santa House in North Pole" to spread a religious message to children in line to see Santa, telling them "Santa isn't real."

On November 3, Grisham video recorded himself crashing the story time, while someone holding a second camera inside the room captured the outburst from the opposite angle.

"Today we're at the Loussac Public Library where they're having story time with a drag queen," he said. "So we are going to go inside and tell the kids the truth, there's no such thing as transgenders."

As Grisham enters the room, two drag queens and a drag king are reading a book to a room of children and their parents.

"Hey kids, my name is Pastor David, and I want to tell you there's no such thing as transgenders," he interrupted.

Parents in the room quickly forced him to leave, as his message is drowned out with the children's nursery rhyme, "Wheels on the Bus."

People who attended the event say the intrusion caught them by surprise and they are thankful the situation didn't turn violent.

Torgeson said people who don't wish to have drag queens read to their children don't have to attend the events. Four more are scheduled for next year, starting in February. Reported in: KTVA, June 10, November 5.

LAFAYETTE, LOUISIANA

A Louisiana library's Drag Queen Story Time is early October has been postponed indefinitely, and one library official resigned to show his support for the event when it was questioned by Lafayette's Mayor-President.

The planned story time was supposed to feature male University of Louisiana at Lafayette (UL) students dressed as women, reading books to young children between the ages of three and six. The students are members of a provisional UL chapter of Delta Lambda Phi, which calls itself a fraternity for gay, bisexual, and progressive men.

In its original statement announcing the event, Lafayette Public Library officials noted that they host dozens of story times every year, and only one will feature drag queens. "The Drag Queen Story Time will share stories of individuality, openness and acceptance with families seeking an opportunity to show their children that every person is unique and should be treated with equal respect," according to the statement on the library website. Library staff would select the books to be read.

The event was originally scheduled to be held at Lafayette Public Library's Main Library building on Congress Street in Lafayette. Two days before the event, the library announced that the event would be moved to the nearby community college to accommodate larger crowds. The public library's auditorium that had been set to hold the event can accommodate 300 people. In addition, Public Library Director Teresa Elberson said, the move was practical due to the "expected disruption to regular Saturday activities at the Main Library."

One day before the event, the community college also announced that it could not host the story time, partly due to concerns about safety. South Louisiana Community College said in a statement that law enforcement told school officials that opponents of the event planned to demonstrate. The college also said it has a limited capacity to manage the large crowds anticipated, and at least one national organization intended to attend. The college said it cannot increase its limited security because of a state policy that says there can be no direct cost to the school system for such events. There is also a responsibility to students taking classes Saturday to provide a setting conducive to learning, which would be disrupted by the crowds, the college said.

Lafayette Public Library officials said in a statement that they are not permanently canceling the program despite the need to secure a new host venue, as their administration and board believe in serving a diverse community. They also say many families have expressed support for the event.

Controversy surrounded the story time ever since it was announced roughly two months earlier. Some strong opposition was expressed, but public comments at a Lafayette City-Parish Council meeting in August were overwhelmingly supportive.

Mayor-President Joel Robideaux had registered his opposition to the event with a statement calling for an inquiry into how it became part of the library's programming. That led to the resignation of Robideaux's appointee to the library board of directors, Joseph Gordon-Wiltz, who told *The Advocate* he would not "impugn the dignity of any citizen of the Parish of Lafayette." Gordon-Wiltz, president of the library board, said he didn't see eye-to-eye with Robideaux on the event.

The mayor-president's appointee, who must be a Lafayette Consolidated Government employee, is the only library board member who serves at the pleasure of a single individual. The other seven members are collectively appointed by the City-Parish Council.

City-Parish Council members William Theriot and Jared Bellard introduced a resolution calling for the council to formally oppose the event, even though the effect of such a resolution would likely be limited to symbolism. As the seven other council members noted in an August 31 press release, the council has no authority to dictate library operations beyond the appointment of board members.

That press release was careful to note that the council as a whole was

not taking a position for or against the event, though the resolution could force members on one side or another.

The library board listened to public comments, but took no action on the Drag Queen Story Time on September 17, at its last scheduled meeting before the October 6 date that had been set for the story hour.

Reported in: *New York Times*, August 28; *The Advocate*, September 17; KATC/ABC3, October 4; *Lafayette Daily Advertiser*, September 4; Associated Press, October 5.

OLEAN, NEW YORK

"A Drag Queen Kids' Party," the first such event at the Olean Public Library, was held June 20. Flo Leeta, a drag queen from Buffalo, read a selection of positive, age-appropriate children's books as part of Pride Month.

At first, some in the community were divided over the plan, with some threatening to protest, or even cut up their library cards. But those protestors were small in number.

Instead, hundreds packed the library to show their support for Flo Leeta and members of LGBTQ community.

Flo Leeta says her aim is to educate parents and kids about always being proud of who you are. She read *Jacob's New Dress*, by Sarah and Ian Hofman, and *Morris Micklewhite and the Tangerine Dress*, by Christine Baldacchino. Olean Library's Programs Director Jennifer Stickles said those books have been on the library's shelves for years.

When the event was announced at the beginning of the month, Stickles said, negative social media posts began trickling in, as well as phone calls to the library and roughly 10 visits by those who wanted to share their disapproval in person. Also, a Pennsylvania leader of the National Socialist (Nazi) Movement announced plans on social media to protest the event with others.

Stickles said she was inspired to host this reading after seeing news articles about Drag Queen Story Hour, an organization that began in San Francisco in 2015 but has since spread to cities across the country. And because the Olean library's other programs representing the lesbian, gay, bisexual, transgender, and queer community had been embraced over the last few years—including Rainbow Alliance for LGBTQ youth support group, which launched in February 2017—she wanted to see the response to a program for even younger kids.

"It's just like any other story time program in our library," she said. "The difference being the person reading the book happens to be dressed in age-appropriate drag and reading picture books that show kids of LGBT families that they're normal."

Stickles noted that it was a plus that the performer who brings Flo Leeta to life, Benjamin Berry, has for years hosted multiple events for children as a hula-hoop instructor, entertainer, and drag queen. He is also an Alfred State graduate and now part of the roster of Young Audiences of Western New York, a nonprofit that works to pair teaching artists with opportunities to instruct kids in creative programs.

Flo Leeta—who is not affiliated with Drag Queen Story Hour—said many of those speaking out against her appearance in Olean seem to misunderstand the point of it. She said the purpose is to humanize members of the LGBTQ community and make children comfortable with how they want to express themselves. Reported in: wkbw, June 20; *Olean Times-Herald*, June 20.

CLARKSVILLE-MONTGOMERY, TENNESSEE

At Clarksville-Montgomery County Public Library, a local community group—Equality Clarksville—is offering a story time for children that, at times, has featured drag performers. This sparked competing opinion pieces in local newspapers.

Martha Hendricks, director of the county library, wrote in the *Leaf Chronicle* that the public library is neither a sponsor of this story time program nor is collaborating with the group. The group is simply using one of the library's meeting rooms for its own purposes. "Having said this, however," she added, "it is the responsibility of your public library to protect the right of local community groups to be able to meet and to pursue their particular agendas."

She concluded, "Isn't that the best thing about living in America? We may not always agree with each other, but each of us still has the right to speak up for what we do believe without fear of imprisonment and to pursue in each of our lives, our own particular version of liberty and happiness."

Meanwhile, *Tennessee Star* political editor Steve Gill put in his newspaper and on his "The Gill Report" broadcast on WETR FM his concern that drag queens read to children as "part of their gender expansion. To try and get into the heads of these kids and teach them that there is no boy thing or no girl thing it's all just people things . . . trying to blend the genders. Which is part of the agenda of the perverse left."

He said it is "not age appropriate," and concluded, "they are doing it in a library in Clarksville Sunday, and they can be doing it in your child's school within the next few weeks if we don't pay attention." Reported in: *Tennessee Star*, August 11; *Leaf Chronicle*, August 13.

HOUSTON, TEXAS

Houston Public Library continues to host drag queen story time events, despite protests, lawsuits, and political campaigns in opposition.

Drag Queen Storytime debuted at the Heights branch of the Houston Public Library in July. Another event in which local drag queens were invited took place at the Fred-Montrose Neighborhood library on a Saturday afternoon, September 29.

Drag Queen Storytime is part of a national program which states that its aim is to promote love and acceptance. However, not everyone sees it that way.

Several people outside the September event protested it as a way to "groom children to be acquainted with these issues." Protester Cesar Franco said, "This is an abomination. Children should not be sexualized."

According to organizers, the program is aimed to provide children with positive and unabashedly queer role models. The event also featured a musical number, a photo booth, and various activities for families.

A lawsuit filed September 28 seeks to block drag queen story hours at Houston city libraries *(see "From the Bench," page 45)*, but the mayor called the suit "frivolous."

The anti-LGBTQ political action committee behind the lawsuits also used drag queen story hours in political ads to scare Houston-area voters into supporting Republican candidates. The Campaign for Houston PAC aired TV ads and mailed postcards with juxtaposed images of drag queens and crying children.

The Campaign for Houston PAC site has a petition saying that the goal of Drag Queen Story Hour is to "indoctrinate children," "break the stigma of drag and queer culture with kids" and "normalize this perverted behavior, so that these children can be more easily recruited into their lifestyle." Reported in: KTRK/Houston ABC-TV 13, September 29; KHOU-TV 11, October 23; *LGBTQ Nation*, November 3.

Schools

BROOKLYN, NEW YORK

Drag Queen Story Hour has been a monthly event at the Brooklyn Public Library, but now the concept is spreading beyond libraries and into a number of schools in New York. The New York City chapter of the non-profit Drag Queen Story Hour (DQSH-NYC) lists two public schools and seven private schools in New York City that have had such story hours.

A promotional PDF on the DQSH-NYC website says that when "drag queens trained by children's librarians read picture books, sing songs, and do craft activities with children," this not only promotes literacy but also "teaches children to celebrate gender diversity and curbs bullying of LGBTQ children."

When a live drag queen is unavailable, schools can show a video of a Drag Queen Story Hour at the Brooklyn Public Library.

This development has sparked alarm on conservative news sites. For example, *The Daily Caller* describes such a story hour at Maurice Sendak Community School, a public school in Brooklyn, and quotes videographer Sean Fitzgerald of the David Horowitz Freedom Center: "Think about how absurd this is. The taxpayer is funding adult-themed performers to come and read to our smallish children in order to indoctrinate them into a political ideology about gender while, at the same time, school districts across the country are removing any and all references to biological sex from science textbooks."

The Daily Caller then provides a link to a website called stopk12indoctrination.org, where Fitzgerald invites his viewers to "report indoctrination in K-12 schools."

Breitbart.com quotes the article from *The Daily Caller*, and adds: "Jane Robbins, senior fellow at the American Principles Project, based in Washington, DC, wrote in a statement sent to Breitbart News that "'social emotional learning,' in the hands of radical ideologues, can turn into child abuse." Reported in: *The Daily Caller*, August 3; breitbart.com, August 7; dragqueenstoryhour.org/nyc, n.d. [accessed December 6].

Bookstores

RIVERSIDE, CALIFORNIA

Story time at Cellar Door bookstore in Riverside turned into a confrontation between a parent and the store owner, and it was all caught on camera. Cellar Door bookstore was hosting a story time event in which Halloween books were read by three drag queens.

"A lot of indie bookstores are doing drag queen story time," said Linda Sherman-Nurick, an owner of the bookstore.

But it was clear that not everyone liked the idea. Sherman-Nurick said in the days leading up to the reading, she had been getting angry phone calls from people saying they shouldn't host that event.

"Our response was 'that's fine, don't come,'" she said.

During the event, Sherman-Nurick noticed a woman recording video and she explained to her that she couldn't record kids without the parents' permission.

But the woman, Los Angeles resident Genevieve Peters, refused to stop. On camera, she said the bookstore "has invited the public to watch this perversion with these

homosexuals. I'm sorry this is what's happening."

Some parents asked Peters to leave due to small children watching, but even after security guards stepped in, she refused. "That's what you get," she said. "This is our nation's children, you have no right to tell us about our children."

Peters said she wasn't recording the children, just the drag queens, and explained that she decided to attend the reading because she feels that the country is going down an immoral path.

"For the last 30 years, the homosexual agenda has been first and foremost wanting to desensitize our communities, our children, our families," she said.

Drag queen performer Jovani Morales said he's not surprised by the comments.

"I'm used to this negativity and hate," Morales said. "They're screaming hateful things and negative comments that kids shouldn't be hearing to begin with."

Eventually, a Riverside Police officer escorted Peters outside the bookstore, but she said if they bring the drag queens back, she will also be back.

Sherman-Nurick said the events will continue. She hopes that "the generation that comes up will not have these kinds of fears, hatred and ugliness." Reported in: nbcbayarea.com, November 1.

INTERNATIONAL

Peel, Ontario, Canada

The board of a suburban Toronto school district is discouraging teachers from using the classic US novel *To Kill a Mockingbird* by Harper Lee in their classrooms, judging the book to be harmful, violent, and oppressive to black students, with a trope of a "white savior" who makes its black characters seem "less than human."

A memo from the Peel District School Board states, "The use of racist texts as entry points into discussions about racism is hardly for the benefit of black students who already experience racism. This should give us pause—who does the use of these texts center? Who does it serve? Why do we continue to teach them?"

The board denies that the memo constitutes either a ban or an argument to not teach the book.

"That's not its intent at all," said Adrian Graham, Peel's superintendent of curriculum and instruction support services. "We're definitely not about banning books. We don't have any English texts that are banned."

One Peel District School Board English teacher of long standing, however, called the memo "intimidating," and a "de facto book ban" that tells teachers who dare to assign the book that they will not be supported by the school board if anyone complains. Reported in *London (Ontario) Free Press*, October 18.

Egypt

Egypt's President Abdel-Fattah el-Sissi has ratified an anti-cybercrime law that rights groups say paves the way for censoring online media.

The law, published August 18 in the country's official gazette, empowers authorities to order the blocking of websites that publish content considered a threat to national security. Viewers attempting to access blocked sites can also be sentenced to one year in prison or fined up to 100,000 Egyptian pounds ($5,593) under the law.

In July, Egypt's parliament approved a bill placing personal social media accounts and websites with over 5,000 followers under the supervision of the top media authority, which can block them if they are found to be disseminating false news.

Amnesty International criticized the governmental papers, in a July statement, saying they "give the state near-total control over print, online and broadcast media." Reported in: Associated Press, August 18.

FOR THE RECORD

EDITOR'S NOTE: Some actions that limit expression or access to information may be the result of editorial or business decisions, not covered by the First Amendment. News in this gray area that doesn't meet the strict definition of "censorship" is reported in this new section of the the "Censorship Dateline" department.

Philadelphia, Pennsylvania

Longtime *Pittsburgh Post-Gazette* cartoonist Rob Rogers announced on June 14 that he was fired by the newspaper, after a number of his recent political cartoons had been killed.

Rogers said he went on vacation in early June after Keith Burris, the newspaper's editorial director, killed six of his cartoons in a row. Since Burris took over in March, Rogers has seen a total of 19 cartoons and ideas spiked, most involving criticism of President Trump.

Burris, who stoked controversy in January by writing an editorial defending Trump's criticism of immigrants from "s–hole countries," began overseeing the *Post-Gazette*'s editorial pages after the paper's owner, Block Communications, combined them with the editorial pages of its other newspaper, *The Blade* of Toledo, Ohio. Burris was formerly the editorial page editor for *The Blade* and now splits his time between the two cities.

He acknowledged that he is "more conservative" than past editorial page editors and that even prior to Mr. Trump's election in 2016, the owners of the newspaper had been trying "to

right the ship" to reflect less liberal views.

Tracey DeAngelo, the *Post-Gazette*'s chief marketing officer, told CNN's Jake Tapper in a statement that the situation with Rogers' cartoons "has little to do with politics, ideology or Donald Trump. It has mostly to do with working together and the editing process." Reported in: *Pittsburgh Post-Gazette*, June 14; *Philadelphia Inquirer*, June 14.

Social Media

Gab, the controversial social network with a far-right following, has pulled its website offline after domain provider GoDaddy gave it 24 hours to move to another service. The move comes as other companies including PayPal, Medium, Stripe, and Joyent blocked Gab over the last weekend of October. It had emerged that Robert Bowers, who allegedly shot and killed eleven people at a Pittsburgh synagogue on October 27, had a history of posting anti-Semitic messages on Gab.

GoDaddy confirmed its decision in a statement to *The Verge*: "We have informed Gab.com that they have 24 hours to move the domain to another provider, as they have violated our terms of service. In response to complaints received over the weekend, GoDaddy investigated and discovered numerous instances of content on the site that both promotes and encourages violence against people."

When Gab became inaccessible, its website carried a message stating that the company is "under attack" and "working around the clock to get Gab.com back online" with a new provider. "We have been smeared by the mainstream media for defending free expression and individual liberty for all people and for working with law enforcement to ensure that justice is served for the horrible atrocity committed in Pittsburgh," according to the statement.

Gab's Twitter account said that the network would "likely be down for weeks" because of hosting provider Joyent's decision to pull support, though a later tweet said it will be "back soon."

GoDaddy similarly cut off support for neo-Nazi news site the *Daily Stormer* following an article that was published about Heather Heyer, who was killed during the protests in Charlottesville last year. Meanwhile, major companies like Apple, Google, and Microsoft have taken various steps to remove Gab from their platforms. Reported in: *The Verge*, October 28.

NEWS FROM THE BENCH

SUPREME COURT

The US Supreme Court's June 18 decision in *Lozman v. City of Riviera Beach, Florida* held that in at least some circumstances, it may be a violation of a person's First Amendment rights to arrest them, even if the authorities had probable cause for making the arrest.

Writing for the 8-1 majority, Justice Kennedy explained, "This case requires the Court to address the intersection of principles that define when arrests are lawful and principles that prohibit the government from retaliating against a person for having exercised the right to free speech." More specifically, he added, "The question this Court is asked to consider is whether the existence of probable cause bars that First Amendment retaliation claim."

The court declined to issue a general answer to that question for any similar cases in the future, but instead ruled narrowly that the facts in the Lozman case offer enough evidence of retaliation for Lozman's suit to proceed. However, the Supreme Court decision is important to advocates of First Amendment rights, according to David L. Hudson, Jr. In Freedom Forum Institute, he writes that the Court now recognizes:

> First . . . probable cause for an arrest doesn't give the government license to do whatever it wants.
>
> Second, the Court specifically acknowledged that police officers could "exploit the arrest power as a means of suppressing speech." The arrest power is an awesome power held by the State. An arrest is a seizure within the meaning of the Fourth Amendment. Arresting people because they criticize the government is the hallmark of a police state, not a free society.
>
> Third, the Court emphasized the importance of that forgotten freedom of the First Amendment—the right of petition. Year after year, the State of the First Amendment survey showed that precious few American recognized the last textually based freedom— "petition the government for a redress of grievances." The Court wrote that "it must be underscored that this Court has recognized the 'right to petition' as one of the most precious of the liberties safeguarded by the Bill of Rights." Lozman had sued the city previously. He had petitioned the courts for a redress of grievances. Thus, the Court was correct to write that "Lozman's speech is high in the hierarchy of First Amendment values."

Reported in: supremecourt.gov, June 18; Freedom Forum Institute, June 19.

On June 22, the US Supreme Court ruled 5–4 that law enforcement must generally get a warrant in order to obtain an individual's cell site location information—that is, records of every place your phone has been. The court's decision in *Carpenter v. United States* both expands the scope of the Fourth Amendment and updates it for modern times, providing new and robust constitutional safeguards to the right to privacy.

Carpenter revolves around cell site location information (CSLI), which wireless carriers collect and store for business purposes. In recent years, CSLI has become extremely precise, tracking every movement your phone makes. For this reason, law enforcement often examines the CSLI of criminal suspects to glean information about their alleged misdeeds. Under a federal statute called the Stored Communications Act, the police could access an individual's CSLI so long as they can provide "reasonable grounds" for believing the data is "relevant and material to an ongoing investigation." The SCA does not require police to get a warrant.

Timothy Carpenter, the criminal defendant whose appeal reached the Supreme Court, was convicted for robbery partly on the basis of his CSLI. (Law enforcement tracked his every movement for 127 days.) He argued that, by accessing his CSLI without a warrant, the government had violated his Fourth Amendment right to be free from unreasonable searches and seizures. Under the Supreme Court's longstanding "third-party doctrine," however, Carpenter didn't seem to have a case: This doctrine holds that an individual loses his right to privacy in information he voluntarily turns over to a third party. (For instance, you have no privacy rights in business records that you turn over to a bank.) Carpenter argued that the third-party doctrine shouldn't apply to CSLI, because it creates a comprehensive view of an individual's life that far exceeds anything possible in the pre-digital age.

In an opinion by Chief Justice John Roberts, joined only by the liberal justices, the Supreme Court agreed. CSLI, Roberts explained, constitutes "a detailed chronicle of a person's physical presence compiled every day, every moment, over several years." This chronicle "implicates privacy concerns far beyond" what the court considered in earlier cases, when the government could only see your business records or the phone numbers you dialed on a landline. "In light of the deeply revealing nature of CSLI," Roberts held, "its depth, breadth, and comprehensive reach, and the inescapable and automatic nature of its collection, the fact that such information is gathered by a third party does not make it any less deserving of Fourth Amendment protection."

Having found that individuals have a "reasonable expectation of privacy" in their CSLI, and that "government access to cell-site records contravenes that expectation," Roberts wrote that law enforcement must generally get a warrant—which requires probable cause to suspect criminal activity—in order to access this "sensitive information." From now on, the government may no longer show mere "reasonable grounds" for seeking CSLI; it must meet the much higher standards required for a warrant. Thus, cell phone users in America regained their right to privacy "in the whole of their physical movements."

Justices Kennedy, Thomas, Alito, and Gorsuch each wrote separate dissents, an unusual move that demonstrates their profound disagreement with the majority. Thomas and Gorsuch complained on originalist grounds, protesting that the court had moved beyond what the framers intended the Fourth Amendment to protect. Alito shared some of the majority's concerns but fretted that the court had overreacted to new technology. Kennedy wrote that the court had "unhinge[d]" the Fourth Amendment "from the property-based concepts that have long grounded" its "analytical framework." Reported in: Slate, June 22.

The US Supreme Court upheld President Donald Trump's order restricting entry into the United States for nationals of seven countries—Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen—five of which have majority Muslim populations. The June 26 ruling in *Trump v. Hawaii* rejected arguments that the travel was motivated by religious bias and thus violated the separation of church and state enshrined in the First Amendment. In the 5-4 decision, a slim majority of justices accepted the Administration's arguments that the president has the authority to regulate immigration in the name of national security.

In dissent, Justice Sonia Sotomayor wrote, "The United States of America is a Nation built upon the promise of religious liberty. Our Founders honored that core promise by embedding the principle of religious neutrality in the First Amendment. The Court's decision today fails to safeguard that fundamental principle."

Earlier versions of the travel ban had been struck down by lower courts, which saw them as an effort by Trump to fulfill his campaign promise to implement a "total and complete shutdown of Muslims entering the United States." Reported in: Freedom Forum Institute, June 27.

On June 26, the Supreme Court ruled 5-4 in *National Institute of Family Life Advocates v. Becerra* that a California law violated the First Amendment by requiring pro-life pregnancy centers to provide notices about the availability of abortion services. In this decision, the court rejected an emerging concept in the lower courts known as the "professional speech doctrine."

While some observers viewed this as primarily a First Amendment case, others (including the California lawmakers who passed the law) viewed it as primarily a battle between pro-life and pro-choice sides in the abortion debate. Some pro-life pregnancy counseling clinics that do not offer abortions may withhold information after attracting pregnant women away from clinics that either offer abortions or provide referrals to abortion clinics.

The 9th Circuit Court of Appeals had said the requirement that pregnancy clinics disclose information about the availability of abortions was justified, because the requirement impacted only "professional speech." The appeals court wrote that "professional speech is speech that occurs between professionals and their clients in the context of their professional relationship."

The Supreme Court majority ruled that compelling clinics to provide such notices violated the First Amendment, either because the notices were content-based compelled speech, or were unduly burdensome.

Justice Clarence Thomas wrote that the disclosures required in the California law "in no way relates to the services that licensed clinics provide." Justice Thomas raised doubts about the professional speech doctrine: "But this Court has not recognized 'professional speech' as a separate category of speech. Speech is not unprotected merely because it is uttered by professionals. This Court has been reluctant to mark off new categories of speech for diminished constitutional protection."

Reported in: Freedom Forum Institute, June 26.

When labor unions collect a "fair share, agency fee" to cover the costs of negotiating and enforcing labor contracts at public sector government workplaces, this has now been judged a violation of the free speech rights of workers who are covered by the contract but who do not wish to pay the fee. With this 5-4 decision in *Janus v. AFSCME* on June 27, the Supreme Court overturned precedent, ruling that that Illinois's fair-share, agency-fee requirement for non-members of public sector unions violated the First Amendment.

As part of the ruling, the Court overturned *Abood v. Detroit Bd. of Ed.*, a 1977 case that had upheld a similar fair-share requirement that faced a First Amendment challenge. In *Abood*, the Supreme Court held that the state's interests in avoiding free-riders

and maintaining labor peace justify the fee's "intrusion" (if any) into First Amendment rights of nonmembers. In 2018, a majority of justices said that "*Abood* was poorly reasoned," that it "has led to practical problems and abuse," and that it "is inconsistent with other First Amendment cases."

The ruling means that states can no longer allow public sector unions to require non-members in a public-sector union shop to pay "agency fees" or "fair share" fees that go to the union's collective bargaining activities. (Union political activities, such as campaign contributions, were already separate, funded not by union dues nor fees, but by voluntary contributions to union PACs.)

The *Janus* ruling could have a devastating effect on public sector unions, or it could energize them. Time will tell.

The 5-4 ruling wasn't entirely a surprise: The Court has sent several signals in recent years that fair-share was on the chopping block. The big question for the Court in this case was how new Justice Gorsuch would vote. He voted with the other conservatives against fair-share.

It's unclear at this point whether the ruling could be used to challenge fair-share in the private sector.

Justice Kagan wrote the principal dissent, joined by Justices Ginsburg, Breyer, and Sotomayor. In addition to signing Justice Kagan's dissent, Justice Sotomayor wrote a separate dissent of her own. Reported in: *Constitutional Law Prof Blog*, June 27.

The White House is asking the Supreme Court to vacate a deal that allows Google to settle a class-action privacy lawsuit by donating $5.3 million to nonprofits. The Supreme Court had agreed in April to take the new case, *Frank v. Gaos*, a challenge to the class action settlement in the original case, *Gaos v. Google*.

The challengers are led by Ted Frank, director of litigation for the Competitive Enterprise Institute (CEI), a Washington-based conservative think tank, who said the deal violated procedural rules in US law requiring settlements to be fair, reasonable and adequate.

A CEI news press release said the settlement "provided $0 to class members and $8.5 million to be divided between the plaintiffs' lawyers—who received $1,000/hour on this case—and third-party charities unrelated to the case."

The White House is siding with CEI. In a friend-of-the-court brief filed in July, the US Solicitor General argues that Google and other companies shouldn't be able to resolve class-actions by making donations to charity unless trial judges have conducted a "rigorous" scrutiny of the deal. The White House specifically says that judges should examine whether the fund recipients will use the money to remedy the alleged harms that prompted the lawsuit.

The White House also argues that companies shouldn't be able to make donations to settle class-actions if it's feasible to give money directly to consumers. The administration is asking the Supreme Court to send Google's settlement back to a trial judge for re-evaluation.

The Solicitor General's papers mark the latest development in a dispute dating to 2010, when Google was sued for allegedly violating users' privacy by including their search queries in "referer headers"—the information that's automatically transmitted to sites users click on when they leave Google. Some queries, like people's searches for their own names, can offer clues to users' identities. (Google no longer transmits search queries when people click on links in the results.)

Google and the plaintiffs resolved the case with a deal that calls for Google to donate $5.3 million to six nonprofits—Carnegie Mellon University, World Privacy Forum, Chicago-Kent College of Law, Stanford Law, Harvard's Berkman Center and the AARP Foundation. The deal also calls for Google to pay more than $2.1 million to the attorneys who brought the lawsuit.

Google, Facebook, and Netflix are among companies that have resolved privacy class-actions by agreeing to donate money to nonprofits. For instance, Google recently agreed to donate more than $3 million to six schools and nonprofits to settle a lawsuit alleging that it violated Safari users' privacy by circumventing their no-tracking settings. (Frank recently brought a separate challenge to that settlement.)

Reported in: mediapost.com, July 20, Reuters, April 30; cei.org, April 30.

Arguing that corrections officials should not receive "blind deference" in deciding what publications inmates can read, attorneys for *Prison Legal News* have taken a long-running First Amendment fight to the US Supreme Court. The monthly magazine has been blocked from distribution to Florida prison inmates since 2009. In *Prison Legal News v. Florida Department of Corrections*, the US Court of Appeals for the 11th Circuit in May sided with the corrections department, which argues that advertisements in *Prison Legal News* pose security risks.

The magazine filed a petition in September, asking the Supreme Court to recognize that this "censorship" by the department violates First Amendment rights to free speech and a free press.

"Publishers, reporters, and advertisers have a constitutionally protected interest in communicating with

prisoners, and prisoners have a right to receive those communications," the 45-page petition said. "These protections are all the more important when the publication at issue is uniquely designed to inform prisoners of their legal rights, and a prison's decision to silence that speech is all the more suspect when it is applied in a blanket manner to the entire incarcerated population based on bare assertions of security concerns without supporting evidence."

But the Department of Corrections has pointed to ads for such things as three-way calling services and pen-pal solicitation as security threats. For example, the department is concerned that three-way calling services could hamper its ability to determine the identities and locations of people that inmates are calling and could undermine approved lists of people that inmates can call, according to the May appeals-court ruling.

The appeals court also pointed to Supreme Court decisions that it said require granting "substantial deference to the decisions of prison officials."

"The Florida Department of Corrections has rules aimed at preventing fraud schemes and other criminal activity originating from behind bars, but inmates continually attempt to circumvent measures in place to enforce those rules," the Atlanta-based appeals court said in its ruling. "The department, for its part, continually strives to limit sources of temptation and the means that inmates can use to commit crimes. One way it does that is by preventing inmates from receiving publications with prominent or prevalent advertisements for prohibited services, such as three-way calling and pen pal solicitation, that threaten other inmates and the public. In the department's experience, those ads not only tempt inmates to violate the rules and commit crimes, but also enable them to do so."

In arguing that the Supreme Court should take up the First Amendment case, however, attorneys for *Prison Legal News* said other states could "follow Florida's lead" in blocking the magazine or other publications. *Prison Legal News* is allowed to be distributed to inmates in other states.

"Although the censorship [of *Prison Legal News*] has been limited to Florida, the threat to First Amendment rights if the decision is left standing certainly does not end there," the petition said. "The Eleventh Circuit's decision provides both an invitation and a roadmap to silence PLN and any other publication that seeks to inform prisoners of their rights or to expose unlawful conduct by prison officials. There is little doubt that the ruling below will prompt other prison systems to follow Florida's lead. Rather than let that trend blossom into further censorship, this [Supreme] Court should step in now to vindicate the First Amendment." Reported in: *Panama City News Herald*, September 20.

LIBRARIES
Centennial, Colorado

Seeking to block a research database used in many school libraries, a lawsuit alleges that educational software from EBSCO Industries allows school children to access pornography. In a local twist related to a national campaign against EBSCO, Colorado parents represented by a law firm that provides free counsel to mostly pro-life clients filed *Pornography is Not Education v. EBSCO and Colorado Library Consortium* in the **District Court of Arapahoe County, Colorado** on October 10.

The suit comes, in part, at the behest of a couple from Aurora, Colorado, Drew and Robin Paterson. In late 2016, they claimed that the EBSCO databases—which their child was using in school in the Cherry Creek School District in suburban Denver at the time—returned pornographic links for seemingly innocuous search terms. The couple protested and negotiated with the school board for nearly two years. Eventually, the school district dropped its contract with EBSCO in September *[see "Censorship Dateline," page 23]*—but the Paterson's organization, named Pornography is Not Education, broadened the attack by suing EBSCO and the statewide nonprofit library consortium that helps Colorado libraries obtain access to EBSCO's research tools. The parents are represented in court by the national Thomas More Society, which has offices in Chicago and Omaha.

The suit claims that searching terms such as "romance" through the EBSCO database can generate links to pornographic titles. The claim alleges the title "Bondage bites: 69 super-short stories of love, lust and BDSM," was readily available after only a few clicks.

EBSCO vehemently denies the allegations. Jessica Holmes, a spokeswoman for the company, said that the company, "does not license any pornographic titles, yet content from our databases is erroneously being labelled pornographic. The content being questioned is from mainstream magazines."

EBSCO is used by an estimated 55,000 schools across the country. Since June 2017, it has been the target of a national censorship campaign promoted by the National Coalition on Sexual Exploitation (formerly known as Morality in Media), according to James LaRue, then-director of the American Library Association's Office for Intellectual Freedom *[see* JIPF*, Fall-Winter 2018, pages 13–19]*.

The lawsuit asks the Colorado court to halt EBSCO from providing sexually explicit content to children; to stop "conspiring to violate federal and state laws;" to compensate the plaintiff's legal fees; and to provide $500 in damages per violation of the Colorado Consumer Protection Act, which serves to protect the state's residents from fraud.

Yet the lawsuit "fails to support any reasonable conclusion that the complained-of content meets the legal standard for obscenity for adults or minors," according to Deborah Caldwell-Stone, deputy director of the Office for Intellectual Freedom. She said the lawsuit makes general "conclusory" allegations with little or no evidence. Further, she questioned the legal significance of the "harms" that the parents say that EBSCO caused. "None of these claimed 'injuries' are recognized rights or legally protected interests that the law protects," she wrote on OIF's blog. Reported in: *Aurora Sentinel*, October 11; Thomas More Society, October 11; oif.ala.org, October 15.

Houston, Texas

The case against a "Drag Queen Story Hour" at a Houston public library was not strong enough for Tex Christopher and his religious right Campaign for Houston PAC to immediately halt the event.

The lawsuit against the city of Houston and Rhea Lawson, head of the city's library system, *Christopher et al. v. Lawson et al.*, will proceed in the US **District Court for the Southern District of Texas**, although Chief US District Judge Lee H. Rosenthal on October 24 denied the request for an emergency injunction.

The lawsuit argues that having drag queens and transgender storytellers in a public library violates the freedom of religion clause in the Constitution. Christopher claims that Drag Queen Story Hours may indoctrinate children to believe in another religion, which he identifies as Secular Humanism.

Drag Queen Story Hour, a national non-profit organization, says its goal is to promote reading and acceptance of diversity. Its supporters say drag queens do not magically turn children queer by reading them *Clifford the Big Red Dog* or *And Tango Makes Three*. Reported in: *Houston Chronicle*, October 25, *LGBTQ Nation*, October 26; vox.com, November 5.

San Antonio, Texas

The enforcement of "free speech zones" outside of a public library in San Antonio, Texas, is being challenged by the San Antonio Professional Fire Fighters Union in a lawsuit announced by the union on July 19. The case, *San Antonio Firefighters' Association Local 624 v. City of Antonio et al.*, was to be heard in US District Court for the **Western District of Texas, San Antonio Division**.

The union said its First Amendment rights were violated when it tried to gather signatures on petitions to amend the city charter.

A separate lawsuit was later filed against the union in August by Secure San Antonio's Future, a political action committee that was set up earlier this summer as a means to fight the union's proposed charter amendments. The PAC's case ignores the location of the petition drive, but attacks how the union paid to gather signatures. The Texas Supreme Court on September 5 rejected the PAC's request to invalidate the upcoming charter-amendment vote, in a case referred to as *Secure San Antonio's Future PAC vs. Association of Firefighters 624*.

The union said the free speech zone at the Semmes Branch Library on Judson Road, where the firefighters started their petition drive in March, is 288 feet away from the front door of the library and prevented union members from getting signatures for the union's petition.

The president of the San Antonio Professional Firefighters Association, Chris Steele, released a statement saying, "Politicians were allowed to be at one place to talk to voters and citizens, but when it came time for regular citizens to have access to voters, the city attorney instructed the San Antonio Police Department to arrest anyone refusing to move to the so-called free speech zones. How are you supposed to talk to citizens that are nearly a football field away, and if you try to talk to them, you will be arrested?"

At a news conference on July 19, the firefighters union showed a copy of its lawsuit, but it had not yet been filed with the court.

The city has responded to the lawsuit, saying the purpose of free speech zones is to give library guests and voters space from people engaging in political activity. "The city has followed the law as the courts have allowed it for many, many years," public affairs director Jeff Coyle said. "Free speech and First Amendment rights are equally important to us, but we do require they be in designated areas at our libraries. It's that simple."

One reason officials created the zones at libraries because they are commonly used as polling places during elections. Yet the union president said if candidates such as the mayor are allowed go to libraries on election days and be within 100 feet of the entrance, then signature-gatherers and other citizens exercising their free speech rights ought to be able to be closer as well.

The Firefighters Association has filed three petitions to make changes

to the city's charter. One is for a salary cap and term limits on the position of city manager. The second would allow the union to bypass contract negotiations and go straight to arbitration. The third would lessen the requirements for people to stop the City Council from taking action.

Ironically, the union succeeded in its petition gathering efforts, despite what it claims was the egregious efforts of the city to block its campaigning. The three measures made it onto the ballot.

The PAC's lawsuit had tried to keep it off the ballot with a charge that the fire union illegally gathered signatures by paying the company Texas Petition Strategies with union dues instead of political contributions.

The underlying issue is a labor dispute between the union and the city of San Antonio. The firefighters' collective bargaining agreement expired on September 30, 2014, and firefighters have worked under an extension of the old contract since then. Negotiations on a new contract have broken off.

Reported in: KSAT-TV News, July 19; WOAI Newsradio, July 20; firehouse.com, July 20; Texas Public Radio, August 10; *Express News*, September 5; *The Rivard Report*, September 7.

SCHOOLS

San Francisco, California

A federal appeals court on July 25 struck down a California school district's policy of inviting clergy members or others to lead prayers before its school board meetings. A unanimous three-judge panel of the **US Court of Appeals for the 9th Circuit**, in San Francisco, said the public school board was in violation of the First Amendment clause that mandates separation of church and state. In *Freedom from Religion Foundation v. Chino Valley Unified School District*, the judges found that "The prayers frequently advanced religion in general and Christianity in particular."

The ruling involving the 28,000-student Chino Valley school district adds to the disagreement among federal appeals court circuits about school board prayers, potentially making the case one that might interest the US Supreme Court.

Other courts have sometimes found that a simple invocation at the start of a meeting can be acceptable, but the appellate judges in Chino upheld an earlier US District Court ruling in this case that the Chino Valley officials crossed the line.

Officially, the school board has been opening its meetings with invocations since 2013. But prayer at meetings goes back to at least 2010, according to the 9th Circuit Court's opinion. Over time, it expanded to include mid-meeting prayers, Bible readings, and proselytizing.

One of the plaintiffs, the Wisconsin-based Freedom From Religion Foundation, alleged that "meetings resemble a church service more than a school board meeting."

Evidence in the trial record convinced the 9th Circuit judges. At one meeting, the board president urged "everyone who does not know Jesus Christ to go and find Him." Another board member regularly closed meetings with a Bible reading, in addition to the prayers used to open meetings, according to the original suit. At a July 2015 school board meeting, that board member discussed his religious beliefs for 12 minutes during board members' comments at the end of the meeting.

What was the real reason for inviting clergy to school board meetings? "The prayer policy's purpose is predominantly religious, in violation of the Establishment Clause" of the First Amendment, which prohibits a governmental establishment of religion, the judges determined.

"This is not the sort of solemnizing and unifying prayer, directed at lawmakers themselves and conducted before an audience of mature adults free from coercive pressures to participate," the court opinion reads in part. "These prayers typically take place before groups of schoolchildren whose attendance is not truly voluntary and whose relationship to school district officials, including the board, is not one of full parity." Reported in: *Daily Bulletin*, July 25; *Education Week*, July 25.

Denver, Colorado

A federal appeals court has reinstated a lawsuit filed by an Oklahoma educator who says he was dismissed after writing a letter on district letterhead supporting a reduced sentence for his nephew in a child pornography case. A three-judge panel of the **US Court of Appeals for the Tenth Circuit**, in Denver, ruled unanimously in *Bailey v. Independent School District No. 69*, that the letter by Chester Bailey Jr., the athletic director of the Mustang, Oklahoma, district, addressed a matter of public concern—a criminal's sentencing.

The court rejected the school district's arguments that it fired Bailey over the improper use of its letterhead, since it frequently allowed teachers and others to write letters of recommendation using the district's logo and their titles.

The appeals court thus revived Bailey's lawsuit alleging wrongful termination in retaliation for the exercise of his First Amendment rights.

Bailey had worked as athletic director at the district since 2009. In 2014, Dustin Graham, Bailey's nephew, pleaded guilty in state court to various charges relating to video

recordings he had made of women in the bathroom of his apartment without their consent. Among those charges was one count of manufacturing child pornography based on a video he recorded of a minor.

During sentencing proceedings, Bailey wrote a letter to the court on his nephew's behalf. Because the district does not have a single form of letterhead, Bailey created his own, using the district's logo and address and signing the letter with his name and title. Court papers say it was common for educators in the district to create such letterhead.

It isn't clear if the letter had an effect on Graham's initial sentence, but in 2015 Bailey sent another letter, again on the impromptu district letterhead, supporting a sentence reduction for his nephew.

Graham did secure an early release.

In 2016, Sean McDaniel, the superintendent of the district, received a package from a relative of Bailey's who was evidently upset about Graham's early release and other family disputes, court papers say. The package alerted the superintendent to the details of Graham's case and about one of the letters that Bailey had sent.

McDaniel confronted Bailey, expressing concern that the athletic director had used district letterhead to advocate for the early release of someone convicted of a child pornography offense. The superintendent recommended Bailey's termination, which the school board approved.

Bailey sued the district and McDaniel on the First Amendment retaliation claim, but a federal district judge held that the content of Bailey's letters did not comment on a matter of public concern, and it granted summary judgment to the defendants.

The Tenth Circuit panel, however, declared, "The proper sentencing of convicted criminals is clearly a matter of public concern," the appeals court said, adding that such proceedings "implicate public safety, an issue of vital importance to most communities, as well as questions regarding rehabilitation, deterrence, and reintegration of people who have committed criminal acts."

The court said that just because Bailey had a personal interest in his nephew's sentencing did not preclude his speech from addressing a public matter.

The court rejected the district's arguments that the use of the district letterhead suggested Bailey was speaking in an official capacity, which would allow greater regulation of his speech. It also said that the letter's commenting on a criminal sentence for someone convicted on a child pornography charge had not caused any disruption.

The court suggested that a district might have a legitimate interest in the control of its letterhead, but it assumed based on the record that Bailey was terminated based on the content of his letters and not merely the use of the letterhead.

Bailey's suit against the district itself may now proceed. Reported in: *Education Week*, July 24.

Chicago, Illinois

To settle a lawsuit, Chicago Public Schools cancelled the scheduled appearance of sex columnist and dancer Nicolette Pawlowski for its sexual education programming for 7th through 12th graders at Whitney M. Young Magnet High School. In the voluntary dismissal of a restraining order in *Wagenmaker et al. v. Kenner et al.*, in **Circuit Court of Cook County, Chancery Division**, on April 18, the school board also agreed to provide each administrator within the district with a copy of the *CPS Policy Manual for Sexual Health Education* and *Sexual Health Education Toolkit*, which include details on parental notice, opt-out, and instructor approval requirements.

Parents Sally and Daniel Wagenmaker, represented by lawyers from the non-profit, pro-life Thomas More Society, had charged Principal Joyce Kenner and other administrators with violating state law by not providing parents with enough advance notice and an opportunity to have their child opt out of the program.

The Thomas More Society also charged that the planned program "violated Illinois law requiring emphasis on abstinence and avoidance of risky sexual behaviors by booking the sex columnist, whose extensive online articles advocated casual hook-up sex, pornography use and other risky sex behaviors."

According to a copy of a portion of the email from administrators included in the complaint, Pawlowski, in a session entitled "Straight Talk on Bodies, Relationships & Consent," had been scheduled to address 7th and 8th grade students. She was also scheduled to present a session entitled "Not the Birds and the Bees: Real Talk on Relationships, Sexuality and Consent" for juniors and freshmen, and "University Life: Sexuality and Dating" for seniors.

The Wagenmakers said that in researching on their own, they discovered Pawlowski has authored a column called "Hump Day," in which she published articles headlined, "Porn hardcore enough for Republicans and 11 year olds," "Playing it safe: Why hooking up safely with others is normal" and "Like a virgin: How to 'ease' in to first time." They cited articles published by Pawlowski purportedly extolling the virtues of pornography and seeming to encourage one-night stands.

CPS officials declined to comment on the case when asked by the *Cook County Record*. Reported in *Cook County Record*, April 19; Thomas More Society, June 15.

Detroit, Michigan

The US District Court for the Eastern District of Michigan on June 29 dismissed a legal challenge asserting that Michigan policymakers deprived Detroit students of a "constitutional right to literacy." The case, *Gary B. v. Snyder*, based its claims in the US Constitution rather than in state laws—the basis of most education-equity lawsuits—arguing that students in the Detroit schools were so ill-served by Michigan policymakers that their failure to learn how to read ran afoul of their due process and equal protection rights under the 14th Amendment.

While sympathizing with the students who brought the lawsuit, Judge Stephen J. Murphy III wrote that despite the well-documented problems of vermin-filled classrooms, outdated textbooks, and dysfunctional leadership in Detroit, the US Constitution doesn't guarantee literacy.

"The conditions and outcomes of Plaintiffs' schools, as alleged, are nothing short of devastating. When a child who could be taught to read goes untaught, the child suffers a lasting injury—and so does society," Murphy wrote. "But the Court is faced with a discrete question: does the due process clause demand that a state affirmatively provide each child with a defined, minimum level of education by which the child can attain literacy? Based on the foregoing analysis, the answer to the question is no."

Writing in *Education Week*, Stephen Sawchuk said,

> This case matters is because it characterized equity in terms of a specific educational outcome: literacy. That is a shift from prior lawsuits, which have tended to focus on school access or on school financing. The case was always going to be a bit of an uphill battle, given the historic reluctance of courts to read educational rights into the US Constitution, which doesn't mention education at all.

But Murphy's decision ruled that while literacy is crucial and a necessity for public life, it is not a positive right. (Similarly, the judge noted, federal courts have not found a fundamental right to sanitary housing or water and sewer service, though those are also arguably prerequisites for a productive life.) Nor could the plaintiffs prove that the students were treated differently because of their race, he added.

The plaintiffs have vowed to appeal the decision. "Historically, denial of access to literacy has been a tool of unlawful discrimination used in an attempt to stigmatize, disenfranchise, and otherwise hold back certain communities. The most telling fact in Michigan is that this remains the case today," said Mark Rosenbaum, an attorney for Public Counsel, one of the groups representing the plaintiffs, in a statement. "That is why we will continue to fight for the children of Detroit to have their day in court." Reported in: *Education Week*, July 2.

Hillsboro, Oregon

Liberty High School in Hillsboro, Oregon, has agreed that it had violated a student's First Amendment liberty to wear a shirt with an unpopular message backing Trump's immigration and Homeland Security policies. On July 24, lawyers for Addison Barnes, an 18-year-old senior, announced they reached a settlement with the school district in *Barnes v. Liberty High School et al.*, the case they had filed in **US District Court, Oregon District**.

Barnes had been told to go home or cover up his "Donald J. Trump Border Wall Construction Co." shirt in January. He was suspended for not complying. He then sued the high school, the principal, and the Hillsboro School District, arguing they violated his First Amendment rights.

In late May, a federal judge issued a temporary restraining order, essentially barring the school for the remainder of the school year from enforcing its earlier decision prohibiting Barnes from wearing the shirt. In the settlement, Principal Greg Timmons will issue a letter of apology and the district will pay $25,000 for Barnes' attorney fees.

"I brought this case to stand up for myself and other students who might be afraid to express their right-of-center views," Barnes said in a statement.

School district officials said in a statement that courts have ruled differently in similar cases, leaving students' First Amendment rights in school a "gray area." They said they decided to settle the T-shirt case "given the cost and disruption of litigation."

The principal's letter was brief, apologized for Barnes' initial suspension and wished him well in the future, they said.

School officials had defended their actions in court, saying the shirt would contribute to a "hostile learning environment" and would make students feel insecure in school, noting that about 33 percent of the high school's students are of Hispanic descent. The district described increased racial tensions arising from racially charged language around immigration, school officials said.

But US District Judge Michael W. Mosman found the school district

couldn't justify its censorship. The judge said he balanced constitutionally protected speech with the orderly running of a school. The school district is entitled to be concerned about the response of other students to the T-shirt, the judge said. But the "thin" court record offered little support for the district's argument that the shirt could "substantially disrupt" the school, he said. Reported in: *Oregonian*, July 24; KGW News, May 22.

Houston, Texas

Texas Attorney General Ken Paxton is defending a state law that requires schoolchildren to say the Pledge of Allegiance. Paxton is joining a lawsuit, *Landry v. Cypress Fairbanks ISD*, that could determine the legality of similar mandates nationwide. On September 25, Paxton intervened in the lawsuit that Kizzy Landry filed last October in **Texas Southern District Court** against the school district and several officials after a principal kicked her daughter, India, out of school for sitting during the pledge.

Landry supported her child's decision to sit. And while Texas allows parents to sign a waiver letting their child opt out of saying the pledge, Landry contends that the law requiring kids to say it in the first place violates their free speech rights.

Paxton disagreed, arguing: "School children cannot unilaterally refuse to participate in the pledge." In a prepared statement, he declared, "Requiring the pledge to be recited at the start of every school day has the laudable result of fostering respect for our flag and a patriotic love of our country."

The case is set for trial April 15, 2019. Experts said its outcome could have ripple effects nationwide.

"We've only ever seen one case litigated involving the mandate to say the pledge in modern history," Frank LoMonte, one of the nation's foremost experts on free speech and student rights, said in an interview. "If this one were to go up [to the US Supreme Court], it would be quite influential, not just in Texas but across the country as the first of its kind."

In July, a federal judge refused to throw out the case, saying that India could proceed with First Amendment free speech and 14th Amendment due process and equal protection claims against the district and its leaders.

The attorney general has the right to intervene in cases when the constitutionality of a state law is questioned.

The district, in responding to a request for comment, reiterated that state law requires students to stand for the pledge unless their parents sign a waiver.

LoMonte, the free speech and student rights expert, said punishing a child for refusing to stand flies in the face of earlier Supreme Court decisions. He cited a 1943 Supreme Court ruling that forcing schoolchildren to salute the flag violated their First Amendment right to free speech. Then, in 1969, the court ruled that school officials can suppress students' free speech rights only if they can prove the conduct would "materially and substantially interfere" with the school's operation.

States have tried to skirt these rulings by allowing parents to let their kids opt in or out of saying the pledge. A Florida law similar to Texas' was upheld after its legality was challenged. But the Supreme Court didn't take up the case, meaning the precedent applies only in Alabama, Florida, and Georgia.

LoMonte said the case could imperil compulsory pledge laws across the country if it ends up in the Supreme Court, a process that could take years. With students such as the survivors of the shooting in Parkland, Florida, becoming more politically active, LoMonte said the rights of students are ripe for discussion. Reported in: *Dallas News*, September 25.

COLLEGES AND UNIVERSITIES

Ann Arbor, Michigan

US Attorney General Jeff Sessions promised that his Department of Justice would be more involved in cases of alleged censorship on college campuses. The department on June 11 issued a "statement of interest" in a free-speech lawsuit, *Speech First, Inc., v. Schlissel*, filed against the University of Michigan at Ann Arbor in the **US District Court for the Eastern District of Michigan**.

The department has filed similar statements in three other campus free-speech cases. Two involve colleges' use of free-speech zones and permitting. The other concerns a group of conservative students at the University of California at Berkeley who say the university selectively enforced its speaker policy in an attempt to censor their right to free speech.

Speech First describes itself as "a nonprofit membership association working to combat restrictions on free speech and other civil rights at colleges and universities across the United States." The Michigan lawsuit is the first the group has filed, and it is now soliciting new members.

In support of Speech First, the Justice Department's Statement of Interest argues that "the University of Michigan's Statement of Student Rights and Responsibilities, which prohibits 'harassment,' 'bullying,' and 'bias,' is unconstitutional because it offers no clear, objective definitions of the violations," the department said. "Instead, the Statement refers students to a wide array of 'examples of various interpretations that exist for the terms,' many of which depend

on a listener's subjective reaction to speech."

The department also said it was concerned that Michigan's bias-response team could be exerting a chilling effect on speech by disciplining students. The teams, which are meant to serve as a venue for students to report cases in which they feel maligned by someone else's bias, have also drawn criticism from free-speech advocates.

The University of Michigan's spokesman, Rick Fitzgerald, challenged the agency's statement. "The Department of Justice, like the plaintiff (Speech First), has seriously misstated University of Michigan policy and painted a false portrait of speech on our campus," he wrote in an email. "U-M prohibits 'harassing' and 'bullying,' but the definitions of those terms have just been streamlined and are based on provisions of Michigan law that have been upheld by the courts."

He added that the bias-response team doesn't have the authority to discipline students, and that, instead, it provides support to students on a voluntary basis.

Speech First's lawsuit against the university includes a long list of complaints about its policies and practices, as well as the assertion that the campus's climate chills the speech of conservative students enrolled there. But it's not clear from the complaint how those policies have actually affected any of the three students whom Free Speech says it is representing, beyond the alleged chilling effect.

Nicole Neily, president of Speech First, when questioned about how the university's policies affect students, said, "The harm being alleged is that it's a constitutionally impermissible prior restraint on speech."

The Justice Department's new statement of interest is just its latest effort to shape the discussions of free speech on college campuses.

In September, Sessions declared in a much-publicized speech at Georgetown University that colleges were becoming "an echo chamber of political correctness and homogeneous thought, a shelter for fragile egos."

In January, Jesse Panuccio, a top official at the Justice Department, delivered a similar message, calling on colleges to punish students who disrupt speeches by controversial speakers. Reported in: *Chronicle of Higher Education*, June 11; Department of Justice Office of Public Affairs, June 11.

Austin, Texas

In defending its policy allowing the concealed carry of handguns in classrooms, the University of Texas (UT) took a surprising position in a federal appeals court—that individual professors do not have academic freedom. "The right to academic freedom, if it exists, belongs to the institution, not the individual professor," says a brief filed by the state's lawyers on behalf of UT President Gregory L. Fenves, several current and former UT System regents, and Texas Attorney General Ken Paxton. But, in a further twist, Fenves and the UT System say they don't really buy that argument.

"Academic freedom" was one of the arguments cited in a lawsuit challenging Senate Bill 11, the state's campus carry law. The law, which went into effect in August 2016, allows licensed handgun owners to carry concealed weapons into public university facilities. Three UT professors sued UT and the state of Texas to stop the law from affecting their classrooms.

Three UT faculty members—Jennifer Lynn Glass, Lisa Moore, and Mia Carter—contended in *Jennifer Glass et al. v. Ken Paxton et al.* that the potential presence of concealed handguns in their classrooms has a chilling effect on discussion of controversial topics. "We want the option to say we do not want you to bring guns into our classroom and you may not bring guns into our classroom," their lawyer, Renea Hicks, told a three-judge panel of the **5th US Circuit Court of Appeals** during oral arguments.

UT President Fenves and the regents didn't challenge the notion of academic freedom when they initially responded to the professors' lawsuit. Indeed, in the original case in US District Court in Austin (Texas) two years ago, Attorney General Paxton's office seemed to acknowledge that professors have academic freedom. Arguments filed on behalf of the UT defendants included this reference to the campus carry policy: "It therefore does not implicate Plaintiffs' First Amendment right to academic freedom."

US District Judge Lee Yeakel said he found no precedent for the professors' argument that they have a right of academic freedom under the First Amendment so broad that it overrides decisions of the legislature and the university that employs them. In July 2017, he dismissed the case, ruling that the plaintiffs lack standing to assert their constitutional claims. Judge Yeakel concluded that the "plaintiffs present no concrete evidence to substantiate their fears [that concealed guns would chill their academic freedom], but instead rest on 'mere conjecture about possible actions.'"

The professors appealed to the 5th Circuit.

At that point, the attorney general added the argument that the professors didn't really have academic freedom: "Plaintiffs have no individual right to academic freedom, because the right to academic freedom is held

by their institution." Under state law, the attorney general is entitled to decide what legal arguments to make on behalf of state agencies and universities. This became UT's argument, too, because the legal arguments filed on behalf of Paxton, Fenves, and the regents were consolidated into a single brief.

The governor supported the Texas attorney general. "There's a difference between privileges a university uses its discretion to give and legal rights a person can sue over," said Marc Rylander, a spokesman for Governor Greg Abbott. "Academic freedom is a privilege the University of Texas System, like so many universities, has given to its faculty. But the courts have not recognized academic freedom as a legal right an individual can sue over—and certainly not a right like here, where a handful of professors want to weaponize academic freedom to conform a campus to their own image."

A panel of the 5th Circuit Court of Appeals on August 16 upheld the lower court's dismissal of the lawsuit. It found that Professor Glass failed to prove that any chilling of her academic freedom was directly caused by the Texas concealed carry law. According to the appellate court's decision, "The problem with Glass's argument is that none of the cited evidence alleges a certainty that a license-holder will illegally brandish a firearm in a classroom."

Thus the decision seems to assume that professors do have academic freedom. The judges ignored the state's arguments about whether academic freedom is granted by the university, or whether it is an individual right of each professor.

Outside of court, the UT president expressed support for professors' academic freedom.

After a local newspaper, the *American-Statesman*, began asking questions about UT's legal stance in the case (before the appellate decision was announced), Fenves sent a letter to faculty leaders seeking to reassure them.

"Because of the importance of faculty members' rights, I want to be clear that the academic freedom of our faculty to express, learn, teach, and discover is at the very foundation of the University of Texas at Austin's mission," Fenves wrote. He added that he is "unable to address any specific legal questions."

Fenves has said that handguns have no place on a college campus, declaring them "contrary to our mission of education and research, which is based on inquiry, free speech, and debate." But he also has said he is duty-bound to comply with the state's campus carry law, and in drafting rules for the Austin flagship he concluded that banning guns from classrooms would have the effect of generally prohibiting them on campus, in violation of that law.

Karen Adler, a spokeswoman for the UT System, also sought to distance the University of Texas from its own legal arguments against academic freedom. She referred the *Statesman* to a Board of Regents rule that says faculty members at the system's 14 campuses are free to conduct and publish research and to discuss their subjects in the classroom. "The UT System stands by this policy," Adler said.

The rule notes that professors "are expected not to introduce into their teaching controversial matter that has no relation" to their subjects. It adds that a faculty member who speaks as a citizen "should be free from institutional censorship or discipline, but should make it plain that the faculty member is not an institutional spokesperson."

The *American-Statesman* stated,

> The argument that faculty members lack academic freedom seems to fly in the face of a core principle of higher education in the US, which holds that the unfettered search for truth, and its free expression, are fundamental to teaching and research. As the US Supreme Court put it in a 1967 case: "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."

Despite the public assurances, UT's arguments in court questioning academic freedom raised concerns among professors at UT and other universities.

Alan Friedman, a professor of English and secretary of UT's Faculty Council, said he was surprised and dismayed by the university's legal posture, noting that it contradicts a statement of principles dating back to 1940 adopted by the American Association of University Professors and the Association of American Colleges & Universities. "As far as I know, all institutions of higher education worthy of the name adhere to that statement because it is the gold standard on the issue of academic freedom," he said.

Risa Lieberwitz, general counsel for the American Association of University Professors and a professor of labor and employment law at Cornell University, said courts have recognized academic freedom. But faculty members at private colleges and universities do not have the constitutional right to academic freedom that their counterparts at state schools enjoy, she said. That's because a First

Amendment right to academic freedom must be asserted against the government; as a public university, UT is an arm of the state. Private schools typically assure faculty members of academic freedom through contracts and school rules.

The right to academic freedom is not unlimited, said Lynn Pasquerella, president of the Association of American Colleges & Universities. For example, a professor can't use a classroom as a platform to espouse political or religious views wholly unrelated to the subject she or he is teaching. "We strongly believe that academic freedom is a right of individual faculty members and that there is a responsibility that accrues to that right," Pasquerella said. Reported in: *Austin American-Statesman*, July 18; *Daily Texan*, August 16; uscourts.gov, August 16.

Fairfax, Virginia

Activists have pushed back against the Charles Koch Foundation's campaign to promote conservative ideas through donations to public and private colleges and universities, such as Chapman University, Montana State University, and George Mason University. A group of those activists suffered a setback on July 5, when judge John M. Tran of **Virginia's Fairfax County Circuit Court** rejected their attempt to lift the curtain of secrecy shielding gifts to a foundation that raises money for George Mason.

A George Mason student group, Transparent GMU, had sued to gain access to donor agreements between the Koch Foundation and the George Mason University Foundation. The students argued that George Mason's foundation, an entity that accepts and manages private gifts, works for the public university and should be subject to the same open-records laws.

But the ruling in *Transparent GMU v. George Mason University* found that the foundation is not a public body under current Virginia law. The judge said state legislators could change that law if they saw fit.

This does little to clarify a cloudy legal picture. As the *Chronicle of Higher Education* has reported, little consensus exists on the reporting obligations of university foundations. States such as California have put laws in place that subject those foundations to open-records requests. Other states, such as Connecticut, have laws exempting foundations. The question has divided state courts.

Judge Tran's decision was issued as the Koch Foundation continues to pour money into academic programs. The foundation donated $49 million to more than 250 colleges in 2016, according to the Associated Press, a 47-percent spike over the previous year.

At George Mason, students and professors had long pressed to find out more about the university's Koch ties. In April their pressure led George Mason to release some older agreements, dating as far back as 2003, between outside funders and the university. Those documents revealed that donors had leeway to influence faculty hiring and assessment. George Mason's president, Ángel Cabrera, said the deals fell short of academic standards and announced a review of gift-acceptance policies.

The students pledged to appeal Thursday's decision to the Virginia Supreme Court. Despite the setback, "we've successfully galvanized a national conversation about transparency and about the relationship private donors have with universities," said Samantha Parsons, a George Mason alumna who co-founded both Transparent GMU and UnKoch My Campus, a national advocacy group for which she now works.

Jay O'Brien, chairman of the George Mason University Foundation, released a statement welcoming the July 5th court decision.

"We believe this ruling affirms that our foundation, and others like it at colleges and universities across the commonwealth, are private entities and that our donors have certain rights, including privacy, associated with their gifts," O'Brien said. "This does not however mean that this foundation or George Mason University, who we so proudly support, should ever relinquish its academic integrity." The foundation, he said, is cooperating with Cabrera's gift-policy review.

The judge's ruling did offer some hope for transparency advocates. The judge noted that, when it comes to donations with strings attached, those gifts could become public records once they are accepted and used by the university. That's because George Mason has a gift-acceptance committee composed largely of senior university officials. The committee's work, he wrote, is not exempt from the state's Freedom of Information Act. Reported in: *Chronicle of Higher Education*, July 6.

Madison, Wisconsin

The **Wisconsin Supreme Court** has come down on the side of political science professor John McAdams in his dispute against Marquette University, ending his nearly four-year absence from the Jesuit campus and an acrimonious battle over academic freedom and tenure rights. The justices ruled 4-2 in *McAdams v. Marquette* that Marquette violated McAdams' academic freedom by suspending him indefinitely, without pay, over a blog he wrote about a graduate student-teacher's alleged suppression

of a student's opinion against "gay marriage" in a classroom discussion. The court overturned an appellate court ruling and ordered McAdams reinstated immediately and awarded damages, including back pay.

"The undisputed facts show that the university breached its contract with Dr. McAdams when it suspended him for engaging in activity protected by the contract's guarantee of academic freedom," concluded the decision written by Justice Daniel Kelly.

The ruling stated that Marquette violated McAdams' academic freedom by suspending him for the November 9, 2014, blog post he wrote about then-graduate student-teacher Cheryl Abbate. The court stated the blog was an "extramural comment" protected under the tenure contract.

McAdams had alleged on his personal blog, "Marquette Warrior," that Abbate stifled a student's attempt October 28, 2014, to present a view opposing "gay marriage" in her philosophy class—a characterization of events Abbate later disputed.

The student secretly recorded his confrontation of Abbate after class and then gave the recording to McAdams, his academic adviser. When McAdams wrote about the account, he linked to Abbate's blog, where her contact information was two page clicks away. The post went viral and reached a new audience, and Abbate found her inbox flooded with a torrent of largely male readers sending her violent and obscene messages.

By December 2014, Abbate had left Marquette, and McAdams was suspended from campus.

A seven-member faculty hearing committee selected by the academic senate investigated and ultimately recommended in January 2016 that McAdams be suspended with benefits minus pay for one to two semesters. It stopped short of recommending McAdams' dismissal, citing the "complex" nature of the case. Marquette President Michael Lovell adopted the recommendation, but then added the requirement that McAdams admit fault and apologize to Abbate by April 4, 2016.

McAdams refused and sued. McAdams, who is an evangelical Protestant, has described himself as a professor whose conservative views run afoul of political correctness on Marquette's campus. He has used his personal blog particularly in calling the university to uphold its Catholic identity. In a prior interview with the *National Catholic Register*, he described the demand to write the letter as akin to "the Stalinist purge trials of the 1930s."

The university had unsuccessfully argued the high court should defer to the university's disciplinary judgment and affirm a circuit court ruling that held that "Dr. McAdams' actions are in direct conflict with Marquette's foundational values as a Jesuit university of *cura personalis*—care for the whole person." The high court refused to defer to Marquette's disciplinary process, stating it was "structurally flawed" as a legal arbitration process and found that McAdams had a right to sue in Wisconsin courts.

Justice Ann Walsh Bradley, writing for the dissent, objected that the majority had violated Marquette's academic freedom by siding with McAdams, whom she noted actively pushed the story about Abbate beyond his blog to other local and national news outlets. "In determining who may teach at its university, Marquette has academic freedom to uphold its values and principles," she said. "It has academic freedom to provide an educational environment that is consistent with its mission as a university." She added the decision erodes the shared governance principles of universities and the rights of tenured faculty to judge their peers.

Ralph Weber, Marquette's legal counsel in this case, said the case had nothing to do with McAdams' conservative politics, but was about McAdams' violating the responsibility tenured professors have toward students, including graduate student-teachers.

McAdams, for his part, said he would continue blogging about the goings-on at Marquette. However, McAdams said he will take into consideration whether a person mentioned in his blog might suffer harassment as a consequence.

Rick Esenberg, the president of the Wisconsin Institute for Law and Liberty who represented McAdams, said the high court was making Marquette abide by its contractual guarantee of academic freedom. In this case, he added, the court made Marquette follow a lesson he learned from the nuns in Catholic school: "When you make a promise, you have to keep it."

The case before the Wisconsin Supreme Court had generated national attention, with approximately a dozen supporting briefs from outside parties on both sides and the interest of tenured faculty around the United States. Reported in: *National Catholic Register*, July 11; *Chronicle of Higher Education*, July 12.

Milwaukee, Wisconsin

A university's ban on "offensive" speech on campus is being challenged in *Olsen v. Northeast Wisconsin Technical College* in the **US District Court for the Eastern District of Wisconsin**. The lawsuit was filed by the Wisconsin Institute for Law & Liberty.

The university's policy—applied in this case to someone passing out religious valentines—also bans "signs . . . with offensive content," and more generally limits even non-offensive

signs and leafleting to a narrow "free speech zone."

According to Eugene Volokh, in his blog "the Volokh Conspiracy" on reason.com, "The ban on 'offensive' speech is clearly unconstitutionally vague and likely viewpoint-based; and, even setting that aside, the rule limiting leafletting to a narrow zone would be unconstitutional even if it were content-neutral. A university does have power to limit speech that is loud enough to cause a disruption, or to limit large demonstrations that can block pedestrian traffic; that is particularly so within university buildings. But the policy here is much broader than that."

Reported in: reason.com, September 6.

INTERNET
Washington, DC

The Electronic Frontier Foundation (EFF) has asked a court to invalidate a new anti-prostitution law, saying that it amounts to unconstitutional censorship of the internet.

The Fight Online Sex Trafficking Act (FOSTA) was approved by Congress and signed by President Trump in April. Websites responded to the new law by shutting down sex-work forums, potentially endangering sex workers who used the sites to screen clients and avoid dangerous situations.

The EFF filed the lawsuit, *Woodhull Freedom Foundation et al. v. USA*, on June 28 in **US District Court for the District of Columbia** on behalf of several plaintiffs.

"In our lawsuit, two human rights organizations, an individual advocate for sex workers, a certified non-sexual massage therapist, and the Internet Archive, are challenging the law as an unconstitutional violation of the First and Fifth Amendments," EFF Civil Liberties Director David Greene wrote. "Although the law was passed by Congress for the worthy purpose of fighting sex trafficking, its broad language makes criminals of those who advocate for and provide resources to adult, consensual sex workers and actually hinders efforts to prosecute sex traffickers and aid victims."

Despite Congress's stated purpose of stopping sex trafficking, FOSTA barely distinguishes between trafficking and consensual sex work.

While Section 230 of the 1996 Communications Decency Act provides website operators with broad immunity for hosting third-party content, FOSTA eliminates that immunity for content that promotes or facilitates prostitution. Operators of websites that let sex workers interact with clients could thus face 25 years in prison under the new law.

FOSTA "is the most comprehensive censorship of internet speech in America in the last 20 years," Greene said.

The complaint asks the court to declare that FOSTA is unconstitutional and to permanently enjoin the US from enforcing it. The lawsuit argues: "The law erroneously conflates all sex work with trafficking. By employing expansive and undefined terms to regulate online speech, backed by the threat of heavy criminal penalties and civil liability, FOSTA casts a pall over any online communication with even remote connections to sexual relations. It has impeded efforts to prevent trafficking and rescue victims, and has only made all forms of sex work more dangerous. FOSTA has undermined protections for online freedom of expression, contrary to the near unanimity of judicial decisions over the past two decades."

The speech of sex worker advocates is being inhibited "even though they do not advocate for, and indeed are firmly opposed to, sex trafficking," the lawsuit said. FOSTA "prohibits a substantial amount of protected expression" by making it a crime to operate an "interactive computer service" with the intent to "promote" or "facilitate" prostitution, the lawsuit said.

FOSTA places no real limits on "what might constitute promotion or facilitation of prostitution or trafficking," violating a precedent that the government must regulate speech "only with narrow specificity," the lawsuit said. If the government can achieve its interests in a way that doesn't restrict speech "or that restricts less speech," it is required to do so, the lawsuit said.

One plaintiff, the Woodhull Freedom Foundation, "works to support the health, safety, and protection of sex workers, among other things," the EFF wrote. "Woodhull wanted to publish information on its website to help sex workers understand what FOSTA meant to them. But instead, worried about liability under FOSTA, Woodhull was forced to censor its own speech and the speech of others who wanted to contribute to their blog. Woodhull is also concerned about the impact of FOSTA on its upcoming annual summit, scheduled for next month."

FOSTA already "led to the shutdown of Craigslist's 'Therapeutic Services' section, which has imperiled the business of a licensed massage therapist who is another plaintiff in this case," the EFF wrote. The Internet Archive joined the lawsuit "because the law might hinder its work of cataloging and storing 330 billion web pages from 1996 to the present."

"FOSTA calls into serious question the legality of online speech that advocates for the decriminalization of sex work, or provides health and safety information to sex workers," the EFF wrote.

Human Rights Watch, which "advocates globally for ways to protect sex workers from violence, health risks, and other human rights abuses," is worried "that its efforts to expose abuses against sex workers and decriminalize voluntary sex work could be seen as 'facilitating' 'prostitution,' or in some way assisting sex trafficking," the EFF wrote. Reported in: arstechnica.com, June 29.

Hudson County, New Jersey

"The right to be forgotten" (i.e., to have material about oneself removed from databases and search engine results) may be legally recognized in Europe, but hasn't been considered legal doctrine in the United States—until Presiding Judge Jeffrey Jablonski of the **Superior Court of New Jersey, Chancery Division**, in Hudson County issued a remarkable and unusual temporary restraining order. In *Malandrucco v. Google*, he has commanded Google to "de-index [an] 'explicit' post-assault image from searches of 'Greg' and 'Gregory Malandrucco' and/or 'Malandrucco,'" and has forbidden Google from "continuing to permit the display of the subject image."

The court papers make clear that the order is targeted largely at a *Chicago Tribune* blog post by columnist Eric Zorn about a police assault on Malandrucco and his friend Matthew Clark; the column contains photos of the two men with injuries to their faces. (The order was issued July 6, but Eugene Volokh, who reported it on his "Volokh Conspiracy" blog on reacon.com, said he found the column, with the help of the "invaluable" Lumen Database, a few weeks later.) Google has apparently not complied, and Malandrucco has asked Judge Jablonski to hold Google in contempt of court; the hearing on that was scheduled for August 17, but on August 6, Google and the *Tribune* had the case moved to federal court. By August 14, Malandrucco dropped his lawsuit.

The order against Google also seems to cover, besides the image at the *Chicago Tribune*, a similar image posted on an entirely different blog, which was criticizing Malandrucco and Clark and their lawsuit. Volokh commented,

> The order against Google is legally unjustified. (Almost all I say here is also true of the apparently intended order against the *Tribune* as well.) To start with the substantive law, there was no evidence that the material is defamatory– the picture is apparently accurate. It is not actionable under the "disclosure of private facts" tort, since that tort does not apply to newsworthy material, and the picture of a victim of police brutality that illustrates a post about the brutality is newsworthy.

At the hearing, Malandrucco suggested that the use of the photo, which was apparently taken by himself, infringes his copyright. But, first, such a news use of the photo would likely be a fair use; and, more importantly, copyright claims cannot be brought in a state court lawsuit. Malandrucco also claimed that there was "potential violation of both statewide and federal crime victims' rights laws," but such laws control what government officials do, not what the media or others do.

Google wouldn't comment on the lawsuits, but the *Tribune* passed along this statement: "We are aware of the recent complaints against *Chicago Tribune* and Google. We will be responding in court in due course and believe the allegations are wholly without merit. This suit grew out of news coverage of a lawsuit alleging that off-duty Chicago police officers beat two men. It was unquestionably newsworthy at the time, and that coverage remains an important part of the public record and should not be erased from the internet."

Volokh also wrote, "The order against Google is procedurally defective as well: A court can't just order Google to stop displaying certain material—even temporarily—based simply on the plaintiff's say-so, at least absent some extraordinary urgency. . . . I think that any injunction entered before a full hearing on the merits at which speech is found to be constitutionally unprotected is an unconstitutional prior restraint."

Volokh did some research into the backstory, and found that prior to this lawsuit, Malandrucco worked to have information about himself removed from more than 130 publications. This led Volokh to conclude:

> This history suggests that the lawsuits against Google and the *Chicago Tribune* are aimed not just at removing a particular photo of an otherwise anonymous citizen. Instead, they seem to be part of a broader campaign to hide a considerable amount of commentary and political activism from the publicly available record. And I think this helps reinforce the wisdom of existing American law, which generally does not let people use coercive government power to order search engines and publishers to hide such information.
>
> Except, apparently, in a courtroom in New Jersey.

Reported in: reason.com, August 3.

Houston, Texas

It appears the state of Texas is offering a limited "right to be forgotten" in county courts. In *Barone v. Harris*

County Sheriff's Office, the **District Court of Harris County, Texas**, not only ordered the expungement of official arrest records, but also sent an official copy of the expungement order to KTRK-TV News, the ABC-affiliate in Houston. A story subsequently disappeared from the TV station's website, which had reported that Damone Barone had lost his job as a public school teacher, even though charges were dropped against him in a domestic violence arrest that occurred away from school.

Tim Cushing, in his "Free Speech" blog on Techdirt, wrote:

> While his case may have been expunged, expungement only covers the official record. This would remove info from government databases. Texas law also provides for the removal of info from certain sites reliant on public records (mugshot sites, background check services), but the law does not go so far as to demand news sites and search engines purge themselves of articles related to now-expunged criminal acts.
>
> A lower court decided to drag Google into this, demanding it de-index anything covering the expunged crime. Google did not comply and the state appeals court reversed the lower court's order, finding it not so much a violation of the First Amendment (which it is), but that it skirted due process by not allowing Google and the sites being de-indexed to argue against the removal order in court.

Cushing also wrote, "A few years back, the state appeals court had to get involved and remind the county no such right [to have nongovernmental records expunged] exists" in Texas. He added, "KTRK was under no legal obligation to remove the story. State law does not require the deletion of news stories following an expungement order." Reported in: techdirt.com, July 24; reason.com, July 16.

PRISONS
Springfield, Illinois

Historian Heather Thompson's Pulitzer Prize-winning book *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy* was censored by Illinois prison officials. Attorneys from Uptown People's Law Center (UPLC) in Chicago filed a lawsuit against the Illinois Department of Corrections on her behalf on September 13. The case, *Thompson v. Baldwin* in the **US District Court for Central Illinois**, seeks damages and an injunction to end the censorship, and it is the second lawsuit from UPLC to challenge censorship. Another lawsuit filed in February alleged corrections officials were censoring issues of *Prison Legal News*.

The lawsuit alleges that the censorship of *Blood in the Water* is "arbitrarily applied," as the book was sent to three different prisons and censored only at Pontiac and Logan Correctional Centers. It argues this censorship is a violation of the author's First Amendment right to communicate with incarcerated people, as such communication should only be restricted when there is a legitimate penological interest. The lawsuit also claims that her Fourteenth Amendment right to due process was violated because she did not receive notice of this restriction, and as such was not provided an opportunity to challenge it.

The book provides a thorough history and analysis of the Attica prison uprising, detailing events beforehand, the week-long uprising, ensuing legal battles, and the event's role in perpetuating mass incarceration in the United States. *Blood in the Water* has won high praise and numerous awards, including the Pulitzer Prize in History, the Bancroft Prize in American History and Diplomacy, and the Public Information Award from the New York Bar Association. The book was also included on more than a dozen "Best of 2016" lists, including the *New York Times*' Most Notable Books list, as well as similar lists published by *Kirkus*, *Publishers Weekly*, *Newsweek*, *Christian Science Monitor*, the *Boston Globe*, and others.

"It is unconscionable that prisons forbid human beings on the inside to read any book, and I am determined to speak out on behalf of the First Amendment wherever it is being violated," said author Heather Thompson. "My book underscores the sanctity of both correctional officer and prisoner lives, and covers an important event in American history that I have the right to share with any American who wants to learn about our country's past."

Alan Mills, executive director of UPLC, said, "We've been negotiating with the department to see if whether they would agree to voluntarily reverse their position. A week or so ago, they said they would not."

Officials are "over-censoring things that aren't any sensitive security issue at all but are things the department just doesn't want any prisoners to read about," Mills added. There also is "no sort of central review here. . . . Each individual publication officer at each individual prison is sort of making these decisions on the fly, as evidenced by this case."

The author "has a Constitutional right to share her book with prisoners," Mills said. "This right must not be infringed upon at the whims of the Illinois Department of Corrections. What's more, prisoners should be able to read this fantastic, important book. IDOC may not like the book's content, but that is not a sufficient legal reason to censor it." Reported in:

suburbanchicagoland.com, September 13; shadowproof.com, September 13.

FREEDOM OF THE PRESS
Los Angeles, California

A federal judge on July 17 lifted a controversial order requiring the *Los Angeles Times* to remove information in an article about a former Glendale police detective accused of working with the Mexican Mafia.

Judge John F. Walter of the **US District Court for the Central District of California** had issued the order in the case of *USA v. Balian* on Saturday, July 14, after the *Los Angeles Times* published information on its website about a plea agreement between prosecutors and the former detective. The agreement had been sealed by the court but was placed in a court database of documents accessible to the public.

After the *Times* challenged the order, Walter held a hearing three days later, on Tuesday, July 17, in which he said he was initially unsure whether the newspaper had legally obtained access to the agreement but after conducting an investigation concluded the document was publicly posted as the result of a clerical error. The sealed agreement had been publicly available for more than 31 hours from the afternoon of Thursday, July 12 to the night of Friday, July 13, the judge said.

The document contained new details about crimes committed by the former detective while he was serving on the force, including how he overheard some of his Glendale police colleagues discussing plans to raid a local gang tied to the Mexican Mafia and then called someone in the criminal organization to warn them. The detective, John Saro Balian, pleaded guilty to one count each of soliciting a bribe, obstruction of justice, and making false statements to federal investigators and agreed to cooperate with federal authorities.

The *Times* had been closely following the case as a matter of public interest because it involved a police officer who had allegedly tipped off gang leaders about impending raids and lied to cover up his crimes.

Judge Walter said he had issued his extraordinary order over the weekend out of concern for the safety of the former detective and his family; an attorney for Balian said their safety would be jeopardized by the paper's disclosure. The three days since his initial order, the judge said, should have given both the prosecutor and defense attorney enough time to take steps to protect Balian and his family from any potential harm.

"I'm concerned about somebody's life. And if I err, I'm going to err on the side of protecting this defendant," Walter said. He added: "I've always been a strong proponent of the First Amendment and believe in public access to this courtroom."

Walter said the paper was free to publish the information subject to his earlier order, but said he hoped the *Times* "will use some restraint . . . in light of potential consequences."

Balian's attorney, Craig Missakian, told the judge that he knew the law gives weight to the freedom of speech but said the risks to his client were grave enough to justify putting a restriction on the press.

Kelli Sager, an attorney for the *Times*, said no matter how the information was obtained by the reporter, the law was abundantly clear that the press cannot be prevented from publishing it or ordered to delete information it had already made public. She pointed to the US Supreme Court decision allowing the press to publish the Pentagon Papers, which was leaked to reporters and contained highly classified and sensitive information. Sager said the case showed the incredibly high bar for "prior restraint," preventing the press from publication.

Courts have said such censorship should be permitted only in extraordinary cases, such as troop movements in wartime or information that would "set in motion a nuclear holocaust."

The *Times* initially complied with Walter's Saturday order, deleting paragraphs relating to the sealed information to avoid being held in contempt by the judge, but challenged it. After Walter lifted his order Tuesday, July 17, the original version of the article was restored on the paper's website.

Besides raising its challenge in Judge Walker's courtroom, the newspaper had also sought review Sunday night in the US 9th Circuit Court of Appeals. On behalf of 59 media organizations, the Reporters Committee for Freedom of the Press filed a petition before the 9th Circuit late Monday proposing to file a friend-of-the-court brief in favor of the *Times*. Those supporting the *L.A. Times* included the *New York Times*, the *Washington Post*, the Associated Press, the major network news broadcasters and other prominent media throughout the nation.

Walter asked attorneys to immediately notify the higher court of his vacated order, stopping the appellate case.

Constitutional scholars who have followed the case said it was rare for a judge to issue the kind of order that Walter handed down. They also said the news media cannot lawfully be ordered to excise information they have lawfully obtained and published except in exceptional circumstances.

The scholars pointed to a 1989 US Supreme Court ruling finding that it was unconstitutional for a Florida weekly to be punished for publishing the name of a rape victim, which is

barred under Florida law. The woman had sued the paper and won damages, but the high court reversed the jury verdict and award because the newspaper truthfully published information released by the government.

Norman Pearlstine, executive editor of the *L.A. Times*, welcomed Walter's decision to lift his order, but reiterated the paper's position that the initial order was an unconstitutional violation of the paper's First Amendment rights. Reported in: *Los Angeles Times*, July 17.

Washington, DC

President Trump's Justice Department made its first move to go after a journalist's data, in a grand jury indictment unsealed on June 7. The action comes as part of a case against former Senate Intelligence Committee senior staffer James A. Wolfe, who has been charged with lying to the FBI about his contacts with reporters, in *USA v. James A. Wolfe* in **US District Court for the District of Columbia**.

Minutes before the indictment against Wolfe was unsealed, the *New York Times* reported that prosecutors had secretly seized years' worth of the phone and email records of one of its reporters, Ali Watkins. "Mr. Wolfe's case led to the first known instance of the Justice Department going after a reporter's data under President Trump," wrote the paper's Adam Goldman, Nicholas Fandos, and Katie Benner.

Watkins, who had a previous romantic relationship with Wolfe, was notified in February that her records, covering a period during which she worked for BuzzFeed and Politico, had been seized. The communications between a journalist and a source aren't protected by a federal shield law, but rules require authorities to take "all reasonable steps" to obtain information through alternative sources before targeting reporters' information. It's not clear whether those guidelines were followed in this case.

"Freedom of the press is a cornerstone of democracy, and communications between journalists and their sources demand protection," Eileen Murphy, a *Times* spokeswoman, said in a statement.

Trump and his then-Attorney General, Jeff Sessions, have made leak prosecutions a priority since shortly after taking office. In November, Sessions told the House Oversight Committee that his department was pursuing more than two dozen investigations into the leaking of classified information, adding that "it cannot be allowed to continue and we will do our best effort to make sure that it does not continue." Wolfe, it should be noted, is charged only with making false statements, not with leaking classified information.

The press freedom issues raised by the case aren't new, and they aren't limited to the current administration. The *Times* notes that the seizure of Watkins' data "suggested that prosecutors under the Trump administration will continue the aggressive tactics employed under President Barack Obama." The previous administration faced criticism for a lack of transparency and for ensnaring journalists in its leak prosecutions. Obama's Justice Department prosecuted more leak cases than all previous administrations combined. Reported in: *Columbia Journalism Review*, June 8.

New York City, New York

The United States government can monitor journalists under the Foreign Intelligence Surveillance Act (FISA), according to documents newly released as a result of *Freedom of the Press Foundation et al., v. US Justice Department et al.*, filed November 29, 2017, in **US District Court for the Southern District of New York**, by the Freedom of the Press Foundation and the Knight First Amendment Institute at Columbia University.

FISA allows invasive spying and operates outside the traditional court system, but targeting members of the press requires approval from the Justice Department's highest-ranking officials.

In two 2015 memos for the FBI, the attorney general spells out "procedures for processing Foreign Intelligence Surveillance Act applications targeting known media entities or known members of the media." The guidelines say the attorney general, the deputy attorney general, or their delegate must sign off before the bureau can bring an application to the secretive panel of judges who approves monitoring under the 1978 act, which governs intelligence-related wiretapping and other surveillance carried out domestically and against US persons abroad.

The high level of supervision points to the controversy around targeting members of the media at all. Prior to the release of these documents, little was known about the use of FISA court orders against journalists. Previous attention had been focused on the use of National Security Letters against members of the press; the letters are administrative orders with which the FBI can obtain certain phone and financial records without a judge's oversight. FISA court orders can authorize much more invasive searches and collection, including the content of communications, and do so through hearings conducted in secret and outside the sort of adversarial judicial process that allows journalists and other targets of regular criminal warrants to eventually challenge their validity.

"This is a huge surprise," said Victoria Baranetsky, general counsel with the Center for Investigative Reporting, previously of Reporters Committee for the Freedom of the Press. "It makes me wonder, what other rules are out there, and how have these rules been applied? The next step is figuring out how this has been used."

The documents were turned over by the Justice Department's Office of Information Policy to the Freedom of the Press Foundation and the Knight First Amendment Institute as part of an ongoing lawsuit seeking the Trump administration's rules for when and how the government can spy on journalists, including during leak investigations. Freedom of the Press and Knight shared the documents with *The Intercept*. (First Look Media, *The Intercept*'s parent company, provides funding for both organizations, and multiple *Intercept* staffers serve on the board of Freedom of the Press Foundation.)

The memos discussing FISA are dated in early 2015, and both are directed at the FBI's National Security Division. The documents are on the same subject and outline some of the same steps for FISA approvals, but one is unclassified and mostly unredacted, while the other is marked secret and largely redacted. The rules apply to media entities or journalists who are thought to be agents of a foreign government, or, in some cases, are of interest under the broader standard that they possess foreign intelligence information.

Jim Dempsey, a professor at Berkeley Law and a former member of the Privacy and Civil Liberties Oversight Board, an independent federal watchdog, said that the rules were "a recognition that monitoring journalists poses special concerns and requires higher approval. I look on it as a positive, and something that the media should welcome."

"They apply to known media, not just US media," he added. "Certainly back in the Cold War era, certain Soviet media entities were in essence arms of the Soviet government, and there may have been reasons to target them in traditional spy-versus-spy context. And it's possible today that there are circumstances in which a person who works for a media entity is also an agent of a foreign power. Not every country lives by the rules of journalistic integrity that you might want."

But Ramya Krishnan, a staff attorney with the Knight Institute, said that concerns remained. "There's a lack of clarity on the circumstances when the government might consider a journalist an agent of a foreign power," said Krishnan. "Think about WikiLeaks; the government has said they are an intelligence operation." Hannah Bloch-Wehba, a professor at Drexel University, said that "a probable example would be surveillance of reporters who are working for somewhere like RT"—the state-funded Russian television network—"and as a consequence, anyone who is talking to reporters for RT. The reporters are probably conscious they are subject to surveillance, but their sources might not be."

The guidelines, at least in the unredacted portions, do not say how to handle the information that is gathered or how to mitigate the risk of exposing journalists' sources and sensitive information unrelated to an investigation (although they would be subject to minimization procedures if they pertained to a US person, Dempsey noted). There is no requirement that the journalist be notified that their records were sought. The unredacted guidelines also do not discuss the scenario in which a journalist themselves might not be the target, but where surveillance is likely to reveal journalists' communications with a target.

"Journalists merely by being contacted by a FISA target might be subject to monitoring—these guidelines, as far as we can tell, don't contemplate that situation or add any additional protections," said Krishnan.

Targeting journalists for surveillance, especially when trying to determine their sources, has historically been limited by First Amendment concerns. In 2015, after it emerged that the Obama administration had secretly seized phone records from the Associated Press and named a Fox News reporter as a co-conspirator in a leak case, former Attorney General Eric Holder instituted new guidelines that made the targeting of journalists in criminal cases a "last resort," and said that the Justice Department ordinarily needed to notify journalists when their records were seized.

The guidelines still worried advocates, however, because they left room for the use of National Security Letters. In 2016, *The Intercept* obtained 2013 guidelines that showed that National Security Letters involving the media required only two extra layers of sign-off. The Justice Department has since said that the FBI does not currently use the letters against journalists for leak investigations, but it's not clear how often they've been used in the past, or in other contexts.

Through an earlier Freedom of Information Act request, the Freedom of the Press Foundation obtained emails referencing a "FISA portion" of FBI guidelines for handling the press, but that glancing mention was the only clue that FISA could be used against journalists.

Many journalists already worried that their calls and emails were likely to be swept up in dragnet acquisition

of overseas communications authorized under a controversial provision of FISA, added in 2008, that allows intelligence agencies to acquire large quantities of electronic communications without obtaining individualized warrants for each target. Journalists could become entangled in such collection since many of them likely communicate with people who meet the broad definition of possessing "foreign intelligence" information—which could include information on "foreign affairs."

That concern applied to journalists based in the United States, or US citizens, who might have their end of a conversation picked up "incidentally" under the FISA provision; such incidental collection can then be tapped by domestic law enforcement for use against Americans in so-called backdoor searches. But the issue resonated even more with foreign journalists based overseas who could be spied on without triggering constitutional restraints.

The 2015 memos, however, contemplate a scenario in which a journalist or media entity is specifically targeted for surveillance under various provisions of the act, either in the US or as a US person abroad. There are no publicly reported instances of FISA being used in this way. Reported in: knightcolumbia.org, November 29; *The Intercept*, September 17.

RELIGIOUS FREEDOM
Washington, DC

A panel of judges in the **US Court of Appeals for the District of Columbia Circuit** has sided with the Washington Area Metropolitan Transit Authority (Metro) over the Catholic Archdiocese in a lawsuit that centered on the transit agency's advertising guidelines, *Archdiocese of Washington v. WMATA*.

Last fall, Metro said its ad policies forced it to reject a Christmas advertisement submitted by the Archdiocese for the outside of buses that had the silhouettes of three shepherds on a hill with the words "Find the Perfect Gift," indicating it could be found in the Catholic church. On July 31 the appeals court upheld those policies, rejecting the church's argument that the guideline violated the First Amendment and the Religious Freedom Restoration Act.

The rule in question is the twelfth of fourteen guidelines Metro implemented in November 2015 in order to close "WMATA's commercial advertising space to any and all issue-oriented advertisements, including, but not limited to, political, religious, and advocacy advertising." Guideline 12 specifically bars ads that "promote or oppose any religion, religious practice, or belief."

The policies were implemented after Islamophobic activist Pamela Geller submitted an ad that showed an image of the prophet Muhammad. Geller is suing Metro over their rejection of that ad in a case that has yet to be decided by the US Court of Appeals for the DC Circuit. Geller had previously been awarded $35,000 in legal fees from WMATA, when a federal judge ordered that they could not refuse posting advertisements that equated Muslims with savages, many of which were vandalized.

Judge Judith Rogers wrote in the July 31 decision that "WMATA's advertising space is a non-public forum," and therefore the First Amendment argument does not apply. Unlike "parks and sidewalks that have historically been used for congregation and discussion [and] have a utilitarian purpose that governments are entitled to maintain. . . . City buses, by contrast, enjoy no historical tradition like parks and sidewalks."

The Washington Archdiocese's campaign includes extensive advertising in public spaces as well as on social media. Church officials said that buying advertisements on the Washington Metropolitan Area Transit Authority's buses and Metro subway cars is one of the most effective ways for the Archdiocese to spread its message of giving and hope to the DC metro area.

The appellate court's opinion confirms a lower court's decision on the case.

It isn't the only lawsuit against these guidelines. In August 2017, the American Civil Liberties Union of DC sued Metro, with plaintiffs ranging from a women's clinic to an alt-right provocateur, all of whom (including the ACLU itself) have had ads rejected by the transit agency. That suit has been on hold pending the outcome of the case involving the Archdiocese.

Metro maintains that the guidelines are "viewpoint neutral." That means that as long as Metro rejects ads from or against all religions (and groups espousing secularism), it's not a violation of the First Amendment. The court agreed.

The transit agency has also faced backlash from the application of some of its other guidelines, like the ninth one, which prohibits "advertisements intended to influence members of the public regarding an issue on which there are varying opinions." While it outright rejected ads for a clinic offering the abortion pill, ads for a faith-based adoption service made it onto buses before WMATA acknowledged it had erred and removed them.

Similarly, Metro took down ads of controversial media personality Milo Yiannopoulos's book after receiving a barrage of complaints. The agency cited guidelines 9 and 14, which says "advertisements that are

intended to influence public policy are prohibited."

Yiannopoulos and Carafem, the health clinic, are among the plaintiffs in the ACLU of DC's suit against Metro over their ad guidelines. Arthur Spitzer, the legal director of the ACLU of DC and the lead counsel on the case, said that the ACLU's case centers on one aspect that neither the Archdiocese's nor Geller's cases do: "A big part of our argument is that the definition and application of those definitions with respect to opinions on which people disagree is pretty vague and we've given lots of examples where we think Metro has exercised its veto in inconsistent and unreasonable ways."

Metro makes about $20 million each year through ad revenue. Reported in: becketlaw.org., July 31; dcist.com, July 31.

PRIVACY

San Francisco, California

Google is facing new scrutiny in the wake of revelations that it stores users' location data even when "Location History" is turned off. Google users' lack of privacy was exposed in a civil case, *Patascil v. Google*, in **US District Court for the Northern District of California**, in San Francisco.

Until mid-August, Google's privacy policy simply stated: "You can turn off Location History at any time. With Location History off, the places you go are no longer stored." This turns out to not be true, as the Associated Press exposed in a story on August 13.

On August 17, Google quietly edited its description of the practice on its own website—while continuing said practice—to clarify that "some location data may be saved as part of your activity on other services, like Search and Maps."

Attorneys representing a man named Napoleon Patacsil of San Diego argued that Google is violating the California Invasion of Privacy Act and the state's constitutional right to privacy. The lawsuit, filed on August 17, seeks class-action status, and it would include both an "Android Class" and "iPhone Class" for the potential millions of people in the United States with such phones who turned off their Location History and nonetheless had it recorded by Google. It will likely take months or longer for the judge to determine whether there is a sufficient class.

Simultaneously, activists in Washington, DC are urging the Federal Trade Commission to examine whether the company is in breach of its 2011 consent decree with the agency. On August 17, attorneys from the Electronic Privacy Information Center wrote in a sternly worded three-page letter to the FTC that Google's practices are in clear violation of the 2011 settlement with the agency.

In that settlement, Google agreed that it would not misrepresent anything related to "(1) the purposes for which it collects and uses covered information, and (2) the extent to which consumers may exercise control over the collection, use, or disclosure of covered information."

Google did not respond to Ars' request for comment. Reported in: arstechnica.com, August 20.

San Francisco, California

The US government is trying to force Facebook Inc. to break the encryption in its popular Messenger app so law enforcement may listen to a suspect's voice conversations in a criminal probe, three people briefed on the case said, resurrecting the issue of whether companies can be compelled to alter their products to enable surveillance.

The previously unreported case in **a federal court in California** is proceeding under seal, so no filings are publicly available, but the three people told Reuters that Facebook is contesting the US Department of Justice's demand.

The judge in the Messenger case heard arguments on August 14 on a government motion to hold Facebook in contempt of court for refusing to carry out the surveillance request, according to the sources, who spoke on condition of anonymity.

Facebook and the Department of Justice declined to comment.

The Messenger issue arose in Fresno, California, as part of an investigation of the MS-13 gang, one of the people said.

US President Donald Trump frequently uses the gang, which is active in the United States and Central America, as a symbol of lax US immigration policy and a reason to attack so-called "sanctuary" laws preventing police from detaining people solely to enforce immigration law.

Trump called members of the gang "animals" this year when the Sheriff of Fresno County complained that California laws limited her cooperation with federal immigration enforcement targeting gang members.

The potential impact of the judge's coming ruling is unclear. If the government prevails in the Facebook Messenger case, it could make similar arguments to force companies to rewrite other popular encrypted services such as Signal and Facebook's billion-user WhatsApp, which include both voice and text functions, some legal experts said.

Law enforcement agencies forcing technology providers to rewrite software to capture and hand over data that is no longer encrypted

would have major implications for the companies which see themselves as defenders of individual privacy while under pressure from police and lawmakers.

Similar issues came into play during a legal fight in 2016 between the Federal Bureau of Investigation and Apple Inc. over access to an iPhone owned by a slain sympathizer of Islamic State in San Bernardino, California, who had murdered county employees.

In the Apple case, the company argued that the government could not compel it to create software to breach the phone without violating the company's First Amendment speech and expression rights. The government dropped the litigation after investigators got into the phone with a contractor's help.

Unlike the San Bernardino case, where the FBI wanted to crack one iPhone in its possession, prosecutors are seeking a wiretap of ongoing voice conversations by one person on Facebook Messenger.

Facebook is arguing in court that Messenger voice calls are encrypted end-to-end, meaning that only the two parties have access to the conversation, two of the people briefed on the case said.

Ordinary Facebook text messages, Alphabet Inc.'s Gmail, and other services are decrypted by the service providers during transit for targeted advertising or other reasons, making them available for court-ordered interception.

End-to-end encrypted communications, by contrast, go directly from one user to another user without revealing anything intelligible to providers.

Facebook says it can only comply with the government's request if it rewrites the code relied upon by all its users to remove encryption or else hacks the government's current target, according to the sources.

Legal experts differed about whether the government would likely be able to force Facebook to comply.

Stephen Larson, a former judge and federal prosecutor who represented San Bernardino victims, said the government must meet a high legal standard when seeking to obtain phone conversations, including showing there was no other way to obtain the evidence. Still, the US Constitution allows for reasonable searches, Larson said, and if those standards are met, then companies should not be able to stand in the way.

A federal appeals court in Washington, DC ruled in 2006 that the law forcing telephone companies to enable police eavesdropping also applies to some large providers of Voice over Internet Protocol, including cable and other broadband carriers servicing homes. VoIP enables voice calls online rather than by traditional circuit transmission.

However, in cases of chat, gaming, or other internet services that are not tightly integrated with existing phone infrastructure, such as Google Hangouts, Signal, and Facebook Messenger, federal regulators have not attempted to extend the eavesdropping law to cover them, said Al Gidari, a director of privacy at Stanford University Law School's Center for Internet and Society. "A messaging platform is excluded," maintains Gidari, who is not involved in the Fresno case.

Legal analysis in *The Verge* says "Facebook's biggest problem is the Wiretap Act. . . . If phone companies receive a wiretap order, then they're required to give police technical assistance in tapping the phone. . . . the government's argument is far more straightforward than what Apple faced."

The Verge added that both the Apple and Facebook cases "are part of a much larger fight, as law enforcement comes to terms with the limits of its reach in the digital age." Reported in: Reuters, August 17; *The Verge*, August 20.

Baltimore, Maryland

A lawsuit against the National Security Agency's "Upstream" surveillance, *Wikimedia Foundation v. NSA*, is continuing, following procedural hearings in the **US District Court for the District of Maryland** in Baltimore in August.

The surveillance is designed to ensnare all of Americans' international communications, including emails, web-browsing content, and search engine queries. The government claims it is authorized by the Section 702 of the FISA Amendments Act. In March 2015, the American Civil Liberties Union filed a lawsuit challenging its constitutionality. More than three years later, the case is still mired in procedural and bureaucratic limbo.

In a separate challenge to Upstream, the Electronic Frontier Foundation is suing the NSA in *Jewel v. NSA*.

The ACLU's lawsuit was brought on behalf of nearly a dozen educational, legal, human rights, and media organizations that collectively engage in trillions of sensitive internet communications and have been harmed by Upstream surveillance. The district court dismissed the case in October 2015, concluding that the plaintiffs lacked "standing" to sue because they had not sufficiently alleged that their communications had been intercepted—but the Fourth Circuit Court of Appeals in May 2017 unanimously reversed a part of the lower court's dismissal, ruling that Wikimedia has standing to pursue its challenge.

The original plaintiffs in the lawsuit included: Wikimedia Foundation, the National Association of Criminal Defense Lawyers, Human Rights Watch, Amnesty International USA, PEN American Center, Global Fund for Women, *The Nation* magazine, the Rutherford Institute, and the Washington Office on Latin America. These plaintiffs' sensitive communications have been copied, searched, and likely retained by the NSA. The lawsuit claims that Upstream surveillance hinders the plaintiffs' ability to ensure the basic confidentiality of their communications with crucial contacts abroad—among them journalists, colleagues, clients, victims of human rights abuses, and the tens of millions of people who read and edit Wikipedia pages.

With the help of companies like Verizon and AT&T, the NSA has installed surveillance devices on the internet "backbone"—the network of high-capacity cables, switches, and routers across which Internet traffic travels.

The NSA intercepts and copies private communications in bulk while they are in transit, and then searches their contents using tens of thousands of keywords associated with NSA targets. These targets, chosen by intelligence analysts, are never approved by any court, and the limitations that do exist are weak and riddled with exceptions. Under Section 702, the NSA may target any foreigner outside the United States believed likely to communicate "foreign intelligence information"—a pool of potential targets so broad that it encompasses journalists, academic researchers, corporations, aid workers, business persons, and others who are not suspected of any wrongdoing.

The ACLU says Upstream's general, indiscriminate searches and seizures of the plaintiffs' communications invades their Fourth Amendment right to privacy, infringes on their First Amendment rights to free expression and association, and exceeds the statutory limits of Section 702 itself. The ACLU adds that the law's permissive guidelines for targeting make it likely that the NSA is also retaining and reading their communications.

The ACLU litigated an earlier challenge to surveillance conducted under Section 702—*Clapper v. Amnesty*—which was filed less than an hour after President Bush signed Section 702 into law in 2008. In a 5-4 vote, the Supreme Court dismissed the case in February 2013 on the grounds that the plaintiffs could not prove they had been spied on. Edward Snowden has said that the ruling contributed to his decision to expose the full scope of NSA surveillance a few months later. Among his disclosures was Upstream surveillance, the existence of which was later confirmed by the government.

Following Wikimedia's victory in the Fourth Circuit in May 2017, the case returned to the district court. There, Wikimedia sought documents and deposition testimony from the NSA. The government refused to comply with many of Wikimedia's discovery requests, invoking the "state secrets privilege" to withhold basic facts from both Wikimedia and the court. Wikimedia challenged the government's unjustified use of secrecy to shield its surveillance from scrutiny, but in August 2018 the district court upheld it. Nevertheless, Wikimedia's lawsuit is moving forward based on the extensive public disclosures about Upstream surveillance.

"Our clients advocate for human and civil rights, unimpeded access to knowledge, and a free press," the ACLU wrote. "Their work is essential to a functioning democracy. When their sensitive and privileged communications are monitored by the US government, they cannot work freely and their effectiveness is curtailed—to the detriment of Americans and others around the world."

The Wikimedia Foundation, which the ACLU is representing along with co-counsel from the Knight First Amendment Institute and Cooley LLP, engages in more than a trillion communications per year with people around the world, and has hundreds of millions of visitors each month to Wikipedia. The organization is suing to stop Upstream surveillance, the process by which the NSA passively monitors and collects a huge amount of data and text-based communications by combing international internet traffic as it moves across service providers' backbone infrastructure.

The suit alleges that this tactic violates the First and Fourth Amendment, along with other laws. But it took two years for Wikimedia to simply prove its standing to bring the suit. Now, the government is using a concept known as the "state secrets privilege," which protects classified information from the discovery process in a lawsuit, to resist cooperating with Wikimedia's requests. As a result of these evasive tactics, the core constitutional issues of Upstream surveillance remain unexamined.

"No public court has ever addressed the lawfulness of this surveillance," says Ashley Gorski, a staff attorney for the ACLU's National Security Project. "It's very clear that Wikimedia's communications are in fact subject to this surveillance and what it has done is seek additional information from the government that would provide more direct evidence of that. So that's what's at issue in this hearing. The government is saying that it wants to exclude all of that information from the case altogether,

because it is classified and to disclose it would be to reveal state secrets."

The state secrets privilege comes up in other contexts at times, including in cases related to potential human rights violations and torture, so the outcome of the *Wikimedia v. NSA* hearings on the topic could have larger conceptual implications. In the particular case of surveillance, though, the ACLU points out that the Foreign Intelligence Surveillance Act includes a provision that specifically states that when entities like Wikimedia seek to discover classified information on surveillance operations, the court can act as an intermediary to review the relevant evidence, even if it's too sensitive for the public or the plaintiffs themselves to see directly.

"The government has put up a series of obstacles to having our public courts fairly and openly litigate the big legal questions at stake here," says Patrick Toomey, also a staff attorney in the ACLU's National Security Project. "We've known about this surveillance in detail since the Snowden revelations and it existed before that, but the government has really tried to avoid having public courts weigh in on whether this real-time computer scanning of our international communications is constitutional."

The intelligence community has argued that the NSA's international bulk collection doesn't impact US citizens, and focuses instead on investigating targets of interest to national security. But the ACLU points out that this list of targets has recently ballooned to include about 129,000 people, according to a recent transparency report—one indication that the scope of the surveillance dragnet is ever-expanding. And privacy advocates have long pointed out that bulk scanning can sweep up countless people's irrelevant personal data in the process of drilling down to the intended targets. Furthermore, even though the NSA focuses on international data, watchdogs note that there are a variety of reasons that domestic communications might be routed internationally and end up passing through surveillance scanners. An NSA spokesperson said that the agency "is unable to comment on ongoing litigation."

"Our lawsuit is one of very few ways the public can hold the NSA accountable for its indiscriminate interception of communications between Americans and those abroad," says Wikimedia legal counsel Jim Buatti. "It is critical that the federal courts have the information they need to effectively oversee these otherwise unchecked surveillance activities. The Wikimedia projects can only thrive when users are confident that their rights to privacy and free expression will be respected." Reported in: Electronic Frontier Foundation, December 28; *Wired*, June 29; Wikimedia.com, August 23; aclu.org, September 6.

Albuquerque, New Mexico

A group of tech companies are illegally tracking children online, New Mexico Attorney General Hector Balderas charged in a lawsuit on September 12. The suit, *New Mexico v. Tiny Lab Productions et al.*, filed in **US District Court for the District of New Mexico**, alleges that gaming apps designed by Tiny Lab Productions and marketed by Google in its Play Store are targeted at children and contain illegal tracking software.

According to the suit, the software allows the defendants to to track, profile, and target children, which federal law makes illegal for children under 13 without parental consent. Named in the suit are Google, Twitter, Tiny Lab Productions, MoPub, AerServ, InMobi PTE, AppLovin, and IronSource.

"These apps can track where children live, play, and go to school with incredible precision," Balderas said in a news release. The attorney general contends that once the data has been collected, it is accessible not only to advertisers, but because of the "ever-present" risk of data breaches, also potentially to criminals, according to the release. Reported in: nmag.gov, September 12; *Albuquerque Journal*, September 13.

Chelsea, Vermont

Jessamyn West, a librarian from a tiny town in Vermont, took Equifax to court following revelations last September that consumer credit bureau Equifax had suffered a data breach that exposed personal data of nearly 150 million people. The **Orange County Small Claims Court of the Vermont Superior Court, Civil Division**, gave her a small but symbolic victory in *Jessamyn West v. Equifax* on June 4, awarding her $600 in damages stemming from the 2017 breach.

Just days after Equifax disclosed the breach, West filed a claim with the local Orange County courthouse asking a judge to award her almost $5,000. She told the court that her mother had just died in July, and that it added to the work of sorting out her mom's finances while trying to respond to having the entire family's credit files potentially exposed to hackers and identity thieves.

The judge ultimately agreed, but awarded West just $690 ($90 to cover court fees and the rest intended to cover the cost of up to two years of payments to online identity theft protection services).

In an interview with KrebsOnSecurity, West said she's feeling victorious even though the amount

awarded is a drop in the bucket for Equifax, which reported more than $3.4 billion in revenue last year.

"The small claims case was a lot more about raising awareness," said West, a librarian at the Randolph Technical Career Center who specializes in technology training and frequently conducts talks on privacy and security. "I just wanted to change the conversation I was having with all my neighbors who were like, 'Ugh, computers are hard, what can you do?' to 'Hey, here are some things you can do'," she said. "This case was about having your own agency when companies don't behave how they're supposed to with our private information."

West said she's surprised more people aren't following her example. After all, if just a tiny fraction of the 147 million Americans who had their Social Security number, date of birth, address, and other personal data stolen in last year's breach filed a claim and prevailed as West did, it could easily cost Equifax tens of millions of dollars in damages and legal fees.

Equifax is currently the target of several class action lawsuits related to the 2017 breach disclosure, but there have been a few other minor victories in state small claims courts.

In January, data privacy enthusiast Christian Haigh wrote about winning an $8,000 judgment in small claims court against Equifax for its 2017 breach (the amount was reduced to $5,500 after Equifax appealed).

West said she plans to donate the money from her small claims win to the Vermont chapter of the American Civil Liberties Union, and that she hopes her case inspires others.

"Even if all this does is get people to use better passwords, or go to the library, or to tell a company, 'No, that's not good enough, you need to do better,' that would be a good thing," West said. Reported in: Krebs on Security, June 13.

Montpelier, Vermont

Tech companies don't violate customers' privacy rights when searching their stored communications pursuant to terms of service because the tech firms aren't acting as government agents—even if they report their findings to law enforcement, the **Vermont Supreme Court** ruled. The court on August 17 denied a motion to suppress law enforcement evidence obtained through an AOL search of a user, Stuart Lizotte, in the case of *State v. Lizotte*.

Lizotte was charged with multiple child pornography counts after emails dating from 2010 to 2013 were found on his account. AOL, which now operates as Oath Inc., alerted law enforcement to the communications after the tech company searched his account using an algorithm aimed at detecting suspicious content.

Under AOL's terms of service, the company could have accessed user communications if there was reason to believe a crime had been committed. The privacy policy stated that customers couldn't use AOL accounts to transmit or distribute illegal content.

But those are essentially moot points, the Vermont high court ruled, denying Lizotte's Fourth Amendment privacy challenge to criminal evidence presented against him in court. AOL wasn't acting as an agent of the government, the justices ruled.

Generally, internet service providers "do not act as agents of law enforcement by monitoring the content of transmissions for suspected child pornography" and other illegal activity, Judge Marilyn Skoglund wrote for the court in a unanimous decision.

Representatives for Oath and the defendant didn't immediately respond to *Bloomberg Law*'s email request for comment. Reported in: *Bloomberg Law*, August 21.

FREE SPEECH IN ENTERTAINMENT

Pittsburgh, Pennsylvania

When gangsta rappers use music to call for harm to specific police officers, they cross the line between protected free speech and terroristic threats and intimidation. That's the ruling of the **Pennsylvania Supreme Court** in a 24-page opinion in *Pennsylvania v. Knox* written by Chief Justice Thomas Saylor. All seven justices agreed on the result, although two justices had different reasoning than the majority.

The case involved rapper Jamal Knox, arrested when two Pittsburgh officers found fifteen stamp bags of heroin in his vehicle, large sums of cash, and a loaded stolen firearm.

Shortly after his arrest, he and his accomplice wrote a rap song called "F— the Police" and posted it online, calling out the police officers by name. The rap lyrics include:

> This first verse is for Officer [name deleted] and all you fed force [expletive].
>
> And Mr. [name deleted], you can [expletive] my [expletive].
>
> Let's kill these cops, cause they don't do us no good.

When the named officers saw the video, they felt threatened. Knox was convicted of terroristic threats and intimidation, but he appealed, saying it was just a rap song protected by the First Amendment. In a separate video at the time, Knox insisted he's just an entertainer.

"We're in the studio right now, getting it in. I'm an entertainer. This

is what we do. I'm only 18, Soulja 20. We're chasing our dream. That's all that it is. It's music to me. I'm a poet."

But in his rap tune he signaled knowledge of the cops' work shift and where they sleep, adding the following:

> I ain't really a rapper dog, but I spit wit the best.
>
> I ain't carry no 38, dog, I spit with a tec.
>
> That like 50 shots, [racial slur]. That's enough to hit one cop 50 on blocks."

The state Supreme Court said this was not some general anti-police song.

"The calling out by name of two officers involved in (Knox's) criminal cases who were scheduled to testify against him," wrote the Chief Justice for the Court, "and the clear expression repeated in various ways that these officers are being selectively targeted in response to prior interactions with (Knox), stand in conflict with the contention that the song was meant to be understood as fiction."

No decision yet on whether Knox will appeal to the US Supreme Court. Reported in: KDKA-TV, August 22.

CAMPAIGN FINANCE
San Francisco, California

A public interest law firm and a charitable group co-founded by the Koch brothers have to comply with the California attorney general's demand for information regarding top charitable donors, a federal appeals court has ruled. The **9th US Circuit Court of Appeals** in San Francisco ruled on September 11 that there was no showing of a significant First Amendment burden to the right of free association. The court ruled in a challenge by the Thomas More Law Center and the Americans for Prosperity Foundation. The combined cases are *Americans for Prosperity Foundation v. Becerra* and *Thomas More Law Center v. Becerra*.

California law requires the attorney general to maintain a registry of charities, and authorizes the attorney general to obtain information to maintain the registry. The attorney general requires charities on the registry to submit federal tax forms listing the names and addresses of their largest donors.

The charities had argued the requirement chills donor contributions, despite a ban on public release of the information. When individuals are deterred from making contributions, the charities' right of free association is violated, they had claimed.

Circuit Judge Raymond Fisher's opinion stated that the "mere possibility that some contributors may choose to withhold their support does not establish a substantial burden on First Amendment rights." The opinion said the law is substantially related to an important state interest in policing charitable fraud.

Donor information is "collected solely for nonpublic use, and the risk of inadvertent public disclosure is slight," Fisher wrote. "Nothing is perfectly secure on the internet in 2018, and the attorney general's data are no exception, but this factor alone does not establish a significant risk of public disclosure." Reported in: *ABA Journal*, September 12.

3-D PRINTING
Seattle, Washington; Austin, Texas

A federal judge has granted a preliminary injunction blocking a private defense firm in Texas from sharing files online that could be used to create 3-D printed guns.

US District Judge Robert Lasnik granted the motion on August 27 from a coalition of state attorneys general who are suing the Trump administration over those files. The lawsuit, *State of Washington et al. v. US Department of State et al.*, was filed in July in the **US District Court for the Western District of Washington** at Seattle, after a settlement between Defense Distributed, the private defense firm, and the US State Department allowed the firm to share the files online. Defense Distributed was planning to make the files available for download earlier this month, but was halted by a temporary restraining order granted at the end of July.

The settlement is unique to Defense Distributed, which sued the State Department over a rule that prohibited the files from being shared. The federal agency previously rejected the company's efforts to share the files because, they argued, it was not in the best interest of the country's security to have the plans publicly available.

The State Department then settled with Defense Distributed earlier this year rather than face further litigation over the issue. The agency said in April it would allow a temporary modification of the US Munition List (USML) to allow the firm to share files online. That earlier (now settled) case was *Defense Distributed and Second Amendment Foundation v. US Dept. of State et al.*, in the **US District Court for the Western District of Texas at Austin**.

The states claimed the administration did not go through the proper steps to change the rule, which they said would require notifying Congress at least 30 days before it took effect. That has not happened.

Lasnik said in his decision on August 27 that based on that alone, the states having standing to bring litigation through the Administrative Procedure Act (APA).

"Plaintiffs have shown a likelihood of success on the merits of their APA claim because the temporary modification of the USML to allow immediate publication of the previously regulated CAD files constitutes the removal of one or more items from the USML without the required congressional notice," Lasnik wrote.

The State Department has argued that their change to the USML as part of the settlement did not remove a specific item from the list and therefore did not require notice to Congress. The agency has also said their function is to regulate firearm exports, not change domestic gun laws. Lasnik acknowledged that argument in his decision but said allowing notice to Congress would have provided more opportunity for input at the state and federal levels.

"Forcing the federal defendants to give Congress 30 days' notice of the removal of the CAD files from the USML and to seek the concurrence of the Department of Defense would afford other executive branch entities (including the president) an opportunity to impact the decision-making process and would give both Congress and the states a chance to generate any statutes or regulations deemed necessary to address the regulatory void the delisting would create," Lasnik wrote.

President Donald Trump said in a tweet in July that he was "looking into 3-D Plastic Guns being sold to the public" and that the idea "doesn't seem to make much sense!"

The states have also criticized the State Department for providing no tangible evidence that modifying the rule was in the public's best interest.

The attorneys general have pointed to the possible dangers associated with guns that are 3-D printed. Some of the guns can be made completely of plastic without a serial number, making them impossible to detect or track in the event of a crime, for example. The State Department has countered that argument by citing a federal law that prohibits undetectable guns.

Lasnik said in his decision there was no proof the agency had considered the potential risks of changing the rule.

"There is no indication that the department evaluated the unique characteristics and qualities of plastic guns when it was considering the deletion of the small firearms category from the USML," Lasnik said.

New York Attorney General Barbara Underwood said in a statement after Lasnik's decision that the preliminary injunction will help ensure public safety until the litigation is resolved.

"In yet another victory for common sense and public safety, today a federal court granted our motion for a nationwide preliminary injunction—continuing to block the Trump administration from allowing the distribution of 3-D printed gun files," Underwood said. "As the court pointed out, we filed suit because of the legitimate fear that adding these undetectable and untraceable guns to the arsenal of available weaponry will only increase the threat of gun violence against our communities."

Defense Distributed, which is also named in the lawsuit, has argued that the files should be made available to consumers based on free speech rights. They said the public has a right to the information and that since some of it has been leaked, it's already in the public domain anyway. Lasnik said the issue at hand was not over the company's First Amendment claims, but rather over the State Department's actions.

"Whether or not the First Amendment precludes the federal government from regulating the publication of technical data under the authority granted by the [Arms Export Control Act] is not relevant to the merits of the APA claims plaintiffs assert in this litigation," Lasnik said.

The lawsuit is being led by Washington state Attorney General Bob Ferguson, who is also joined by Underwood and attorneys general from Connecticut, Maryland, New Jersey, Oregon, Massachusetts, Pennsylvania, California, Colorado, Delaware, Hawaii, Illinois, Iowa, Minnesota, North Carolina, Rhode Island, Vermont, Virginia, and Washington, DC.

The State Department has deferred comment to the US Department of Justice on the lawsuit. A spokeswoman for the DOJ declined to comment on the preliminary injunction.

While the states obtained a temporary injunction, there is no guarantee they will win the permanent injunction they are seeking.

It's not a clear-cut case, experts told the *Washington Post*. Judge Lasnik will have to weigh whether the states' public safety concerns are strong enough to trump Wilson's First Amendment protections. To do that, the judge would also have to decide whether Wilson's computer code really is "speech"—a largely unsettled legal question that may challenge the boundaries of the First Amendment as it is traditionally understood.

On August 21, Lasnik said he believed "a solution to the greater problem" in this case was better suited for Congress or the president to answer, rather than the court. Reported in: cnet.com, August 23; *Washington Post*, August 23; *National Law Journal*, August 27.

GENDER ISSUES
Winston-Salem, North Carolina

A lawsuit can proceed against North Carolina's newly revised "bathroom

bill," which prohibits local governments from enacting new antidiscrimination laws regarding multiple occupancy restrooms. Judge Thomas Schroeder of the **US District Court for the Middle District of North Carolina** ruled on September 30 in *Caraño et al. v. Cooper et al.*, that transgender individuals have at least one legal justification for suing the governor and other state and University of North Carolina (UNC) officials.

The case originally challenged the state's 2016 "bathroom bill," House Bill 2. HB 2 was repealed in 2017 after facing a number of legal challenges, and subsequently replaced by current restrictions under House Bill 142, which effectively requires all anti-discrimination laws pertaining to multiple occupancy restrooms to be passed through the state government. The lawsuit seeks to block the statewide bill, and thus allow local governments to protect transgender individuals' rights within their local jurisdiction to use the bathroom of their choice.

Governor Roy Cooper and members of his administration were willing to sign a consent decree that would declare that transgender persons are not prevented from using public facilities in accordance with their gender identity, but not everyone involved in the lawsuit agreed. Officials from UNC, along with the president pro tempore of the North Carolina Senate, and the speaker of the North Carolina House of Representatives, sought to have the lawsuit dismissed so the state law would remain in place.

Judge Schroeder determined that he needed to rule on whether the transgender plaintiffs had grounds to sue before he could consider the consent decree. Schroeder allowed the suit to continue on Equal Protection grounds, stating that "while HB142 does not prohibit Plaintiffs' efforts at advocacy, it plainly makes them meaningless by prohibiting even the prospect of relief at the local level."

However, he dismissed the parts of the lawsuit where the plaintiffs claimed Due Process, Title IX, and Title VII violations arising under the new law. The plaintiffs argue that transgender individuals have faced uncertainty as to which restrooms they are legally allowed to use in light of the law. Judge Schroeder said HB 142 does not threaten imminent prosecution for using an unlawful bathroom, so their "uncertainty" is not a sufficient harm for the courts to block the law. Reported in: lambdalegal .org, October 1; jurist.org, October 2.

INTERNATIONAL

Toronto, Ontario, Canada

An Ontario judge has ruled that Canada's constitutional protection of free expression does not extend to hate speech. In *Paramount Fine Foods v. Johnston*, **Ontario Superior Court of Justice**, Justice Shaun Nakatsuru, rejected the argument that anti-Muslim statements are immunized from civil liability because they are protected political commentary. The court relied on a 30-year-old Canadian Supreme Court judgment on anti-Semitic hate speech to rule that the public is best served in the suppression of communications of racial, ethnic, or religious hatred.

The case centers on a defamation suit brought by prominent restaurateur Mohamad Fakih against two notorious anti-Muslim advocates. Last summer, Ranendra "Ron" Banerjee and Kevin J. Johnston showed up at a Mississauga location of Paramount Fine Foods to purportedly "protest" during a fundraiser Paramount was hosting that day for the leader of the Liberal Party of Canada, Prime Minister Justin Trudeau.

Banerjee and Johnston filmed themselves harassing guests as they arrived and talking to the camera about the event, videos of which were later posted across dozens of websites and social media platforms. Banerjee is filmed saying that one would have to be a "jihadist" and "raped your wife a few times" to enter the restaurant. Johnston, who has already been charged with willfully promoting hatred against the Peel Muslim community, was there providing his own comments.

Banerjee tried to stop the lawsuit from proceeding by claiming that he was expressing his viewpoint on a matter of public interest and invoking Ontario's new anti-SLAPP (Strategic Litigation Against Public Participation) legislation passed in 2015. Banerjee claimed he was at the fundraiser to protest the government's $10.5 million settlement with Omar Khadr and shouldn't face civil liability for freely expressing his political views.

But the judge rejected the argument and provided analysis that not only allows the lawsuit to proceed (though Banerjee can still appeal), but also provides important clarity for others targeted by defamatory hate speech including racist stereotypes.

"This is a case about freedom of expression," wrote Nakatsuru. "But it is also about the limits to that constitutionally protected right. Expressions of hatred and bigotry towards racial, ethnic, religious, or other identifiable groups have no value in the public discourse of our nation."

The court decision may help public institutions deal with individuals or groups attempting to organize events which promote hatred or racist views. The Ottawa Public Library, for instance, is currently being sued for cancelling the showing of a film called *Killing Europe*. The film paints

a horrifying picture of immigration, particularly of Muslims.

A similar outcry erupted when the Toronto Public Library was unwilling to prevent a memorial for a lawyer, who had defended white supremacists and neo-Nazis, from taking place. The library board later went on to implement a policy that would allow it to prevent groups from renting space if they are "likely to promote, or would have the effect of promoting discrimination, contempt or hatred of any group, hatred for any person." Reported in: *Toronto Star*, July 4.

Luxembourg

Most people outside Europe don't know much about the digital "right to be forgotten," the idea that private citizens can ask search engines to scrub certain results about them. Google is fighting to limit that right, in the **European Court of Justice** in *Google v. CNIL*.

A landmark ruling in 2014 from the European Court of Justice set the initial parameters of how the right to be forgotten might apply. That ruling said search engines like Google could be forced to delete results. CNIL, France's data-protection agency, is arguing that the right to be forgotten should apply to search-engine results globally, not just within the European Union. *[European copyright legislation may also force Google and others to limit information beyond Europe's borders—see "Is It Legal?," page 82.]*

According to CNIL's complaint, Google does delete, or "delist," some results from private citizens when requested. But CNIL argues that Google isn't delisting the results everywhere. Some delisted information, CNIL said, was still visible on non-EU versions of Google.

On September 11, Google shot back at a hearing before 15 EU judges and said expanding the right to be forgotten globally would impinge on freedom of speech.

Bloomberg reported September 11 that Google's counsel Patrice Spinosi described CNIL's proposals as "very much out on a limb" and in "utter variance" with other judgments.

Google isn't alone in arguing that deleting search results may equate to censorship. Media organizations including BuzzFeed, Reuters, the *New York Times*, and various nonprofits have argued the same.

"This case could see the right to be forgotten threatening global free speech," Thomas Hughes, the executive director of the freedom-of-expression group Article 19, said. "European data regulators should not be allowed to decide what internet users around the world find when they use a search engine." He said the court "must limit the scope of the right to be forgotten in order to protect the right of internet users around the world to access information online."

The Google dispute before the EU's Court of Justice in Luxembourg is the highest-profile case yet to test where jurisdiction begins and ends when it comes to data.

"It will set governments' expectations about how they can use their leverage over internet platforms to effectively enforce their own laws globally," said Daphne Keller, who studies platforms' legal responsibilities at the Stanford Center for Internet and Society and previously was Google's associate general counsel.

At issue in these disputes, experts say, is a fundamental mismatch between how both laws and the borderless internet each operate. As regulations proliferate, tech firms risk ending up in a legal bind no matter which course of action they take, lawyers say.

"It's a clash between the way data is managed and moved around, which doesn't respect borders, and efforts by territorial governments to impose their norms and rules," said Jennifer Daskal, an American University law professor.

Google says it will argue that its application of the right to be forgotten is already effective in France for well over 99 percent of searches. More broadly, the company plans to assert that the EU has an obligation to minimize legal conflict with other jurisdictions. It also will argue that the right to be forgotten is far from settled law in many places, such as the United States, where freedom of speech usually prevails over privacy concerns.

Google will be joined by several press-freedom groups in its arguments on September 11. One group, Reporters Committee for Freedom of the Press, says a ruling against Google would have "grave worldwide consequences."

"There would be nothing to prevent other jurisdictions from claiming the same global scope of application for their own laws," the group wrote in a brief to the court. "The result would be a 'race to the bottom,' as speech prohibited by any one country could effectively be prohibited for all, on a world-wide basis." Reported in: *Wall Street Journal*, September 9; *Business Insider*, September 11.

SCHOOLS

Which is more valuable: student privacy, or possibly identifying students who may be thinking of harming themselves or others? New "internet safety policies" mean that for some of the 50 million-plus US students in kindergarten through grade 12 this school year, every word they type on a school computer will be tracked.

Under the Children's Internet Protection Act (CIPA), any US school that receives federal funding is required to have an internet-safety policy. For some, this simply means blocking inappropriate websites. Others, however, have turned to software companies like Gaggle, Securly, and GoGaurdian to surface potentially worrisome communications to school administrators.

These Safety Management Platforms (SMPs) use natural-language processing to scan through the millions of words typed on school computers. If a word or phrase might indicate bullying or self-harm behavior, it gets surfaced for a team of humans to review.

In an age of mass school shootings and increased student suicides, SMPs can play a vital role in preventing harm before it happens. Each of these companies has case studies where an intercepted message helped save lives. But the software also raises ethical concerns about the line between protecting students' safety and protecting their privacy.

"A good-faith effort to monitor students keeps raising the bar until you have a sort of surveillance state in the classroom," Girard Kelly, the director of privacy review at Common Sense Media, a non-profit that promotes internet-safety education for children, told *Quartz*. "Not only are there metal detectors and cameras in the schools, but now their learning objectives and emails are being tracked too."

The debate around SMPs sits at the intersection of two topics of national interest—protecting schools and protecting data. As more and more schools go "one-to-one" (the industry term for assigning every student a device of their own), the need to protect students' digital lives is only going to increase. Over 50 percent of teachers say their schools are one-to-one, according to a 2017 survey from Freckle Education, meaning there's a huge market for SMPs.

The most popular SMPs all work slightly differently. Gaggle, which charges roughly $5 per student annually, is a filter on top of popular tools like Google Docs and Gmail. When the Gaggle algorithm surfaces a word or phrase that may be of concern—such as a mention of drugs or signs of cyberbullying—the "incident" gets sent to human reviewers before being passed on to the school. Securly goes one step beyond classroom tools and gives schools the option to perform "sentiment analysis" on students' public social media posts. Using AI, the software is able to process thousands of student tweets, posts, and status updates to look for signs of harm.

Kelly thinks SMPs help normalize surveillance from a young age. In the wake of the Cambridge Analytics scandal at Facebook and other recent data breaches from companies like Equifax, we have the opportunity to teach kids the importance of protecting their online data, he said.

"There should be a whole gradation of how this [software] should work," Daphne Keller, the director of the Stanford Center for Internet and Society (and mother of two), told *Quartz*. "We should be able to choose something in between, that is a good balance [between safety and surveillance], rather than forcing kids to divulge all their data without any control."

To be sure, in an age of increased school violence, bullying, and depression, schools have an obligation to protect their students. But the protection of kids' personal information is also a matter of their safety. Securly CEO Vinay Mahadik agrees that privacy is an important concern, but believes companies like his can strike the right balance of freedom and supervision.

"Not everybody is happy because we are talking about monitoring kids," Mahadik told *Quartz*. "But as a whole, everyone agrees there has to be a solution for keeping them safe. That's the fine line we're walking."

Critics like Keller believe digital surveillance might have a chilling effect on students' freedom of expression. If students know they're being monitored, they might censor themselves from speaking their mind. This would, of course, only occur if the students knew they were being watched.

Though most school districts require parents to sign blanket consent agreements to use technology in the classroom, some districts believe they'll get a more representative picture of behavior if students aren't aware of the software, according to Patterson. In other words, some districts don't let the kids know they're being tracked.

"Parental consent can be a get-out-of-jail-free card for vendors," Bill Fitzgerald, a long-time school technology director, who now consults schools and non-profits on privacy issues, told *Quartz*. "When a parent consents to terms [to a variety of edtech tools] at the beginning of the school year, that's all the third-party really needs to operate."

SMPs market to parents' and school districts' biggest fears. "This might

be the only insight adults get to a student's suffering," Securly's website says, before quoting a director of IT in Michigan public schools: "Just one avoidance of a young person harming themselves or others would be worth a thousand times the subscription price."

Gaggle has gone even further. Not only do SMPs let schools monitor students, but the same software can be used to surveil teachers, it suggests. "Think about the recent teacher work stoppage in West Virginia," a recent blog post reads. "Could the story have been different if school leaders there requested search results for 'health insurance' or 'strike' months earlier? Occasional searches for 'salary' or 'layoffs' could stave off staff concerns that lead to adverse press for your school district."

(The company has since taken the post down. In an email, Patterson told *Quartz* that it was not in line with Gaggle's mission "to ensure the safety and well being of students and schools.")

Avoiding bad press and preventing teacher strikes have little to do with keeping students safe, but the implied message from the post is clear: Gaggle's clients are administrators, not the students or teachers.

The concern, however, is that students' protection is coming at the expense of their privacy. As kids spend more of their formative years online, they also need safe digital spaces to explore their own identities.

"Suppose you are a kid considering suicide and you want to write a diary about it or talk to your friend about the feelings that you're having, but you don't because you're afraid you'll be turned into your parent," Keller said. "I'm not sure that's a good outcome."

When we start monitoring kids' behavior from a young age, Keller believes, it can set a dangerous precedent. As adults reckon with issues of privacy and data protection, she believes kids must also learn what it means to give companies access to their personal information.

"I'm worried about how clearly my kid knows what he's agreed to when receiving that district provided device," Liz Kline, a California parent, told *Quartz*. "It's fine now when he's six, but what about when he's in high school and wants to organize a walk out?" Reported in: *Quartz*, August 19.

Blount County, Alabama

Does a new Alabama law that allows public facilities to display the "In God We Trust" motto violate the separation of church and state that is enshrined in the First Amendment's ban against government "establishment" of religion?

The Blount County school board started the 2018-19 school year as the first system planning to add "In God We Trust" displays under the Alabama law, according to Superintendent Rodney Green, who oversees a school system with more than 7,800 students spread out over 17 schools north of Jefferson County.

Government officials throughout Alabama could follow suit, and some were asking lawyers about the prospects of courtroom battles with organizations that advocate for the separation of church and state.

The *Washington Post* reports that seven states this year passed laws requiring or permitting schools and other public buildings to post "In God We Trust." Americans United for Separation of Church and State identifies six of the states in a September 13 blog post as Alabama, Arizona, Florida, Louisiana, North Carolina, and Tennessee. The *Washington Post* does not identify all the states in its seven-state total—only Florida.

In another move toward less separation of church and state, voters in Alabama overwhelmingly passed a ballot initiative in November that permits the Ten Commandments to be posted on government-funded property.

The Congressional Prayer Caucus Foundation is supporting laws that bring religion back to the schools with an initiative it calls Project Blitz, *Forbes* reported in September. The group has distributed a 116-page manual with bill templates, and the first is for laws authorizing the motto "In God We Trust" in public schools.

Backers hope such laws will be found constitutional by the new conservative majority on the US Supreme Court. Reported in: al.com, August 9; *Washington Post*, December 1; *ABA Journal*, December 5.

COLLEGES AND UNIVERSITIES

Davis and Los Angeles, California

Are university librarians protected by the same guarantees of academic freedom given to professors and other university faculty members?

Librarians from across the University of California system gathered at UCLA last month during contract talks. Their union is seeking explicit recognition of their academic freedom in a new contract. Administrators disagree.

The issue surfaced after Elaine Franco entitled her presentation at the American Library Association's midwinter meeting six years ago "Copy cataloging gets some respect from administrators."

An administrative colleague of Franco's at the University of California at Davis raised concerns about the title, an allusion to Rodney

Dangerfield's "I don't get no respect" catchphrase. When she saw the 2012 slide deck, which Franco had emailed her, the administrator wondered if the title inappropriately implied that copy catalogers had previously been disrespected by administrators, Franco recalled.

The disagreement caught the attention of a union negotiator. And now the episode has helped set off a crusade for academic freedom for employees of the 100-library University of California (UC) System, amid negotiations to replace a contract that was set to expire at the end of September.

Inspired in part by Franco's cautionary tale, the union sought to include a provision in the new contract clarifying that librarians have academic freedom. The union says negotiators for the system rejected the proposal, and librarians and academics nationwide have rallied to support the UC librarians.

The tussle is the latest example of a major research university's struggle to draw the bounds of academic freedom—who has it and under what circumstances. Lawyers representing the University of Texas at Austin argued this year that this core value of academe amounted to a workplace policy, not a First Amendment right. *[See "From the Bench," page 50.]*

And Carol L. Folt, the University of North Carolina at Chapel Hill's chancellor, affirmed her administration's commitment to academic freedom this summer, while disagreeing with a faculty group about the application of the principle.

Claire Doan, a spokeswoman, said UC policies on academic freedom "do not extend to nonfaculty academic personnel, including librarians," adding that the university's goal in the negotiations is to reach agreement on issues including competitive pay and health-care and retirement benefits for librarians. She said librarians play a "crucial" role at the university.

"The provision of academic freedom (or a derivative thereof) is a complex issue that has been rooted in faculty rights, professional standards, and obligations—and requires extensive examination and discussion," Doan wrote in a statement. "Historically, this is also the case at research universities where librarians are not faculty. We will continue negotiating with the University Council-American Federation of Teachers, endeavoring to better understand the union's stance on academic freedom and other pertinent issues."

Martin J. Brennan, a copyright librarian on the Los Angeles campus who is part of the University Council-AFT negotiating team, said he was surprised by what he characterized as the system negotiators' plain rejection of the union's request.

UC librarians never have had reason to doubt that they possessed academic freedom, and adding the statement, Brennan said, should have been just a formality.

A university policy on academic freedom includes guidance specifically for faculty members and students. But it says that the guidance "does nothing to diminish the rights and responsibilities enjoyed by other academic appointees," which Brennan said librarians had interpreted to mean that other university employees hold the right.

Union representatives proposed in late April a guarantee of academic freedom to all librarians so that they could fulfill responsibilities for teaching, scholarship, and research. The union represents about 350 people, more than 90 percent of whom are members of the union, Brennan said.

UC negotiators said in July that academic freedom was "not a good fit" for the librarians' unit, according to the union. They argued, the union said, that academic freedom is for instructors of record and students when they are in the classroom or conducting related research.

Administrators told the union that they would consider a different intellectual-freedom policy for librarians with a name other than "academic freedom," according to the union.

The librarians' crusade has drawn support in the form of a petition signed by about 650 people, including librarians and faculty members from Skidmore College, in New York, to the University of Oregon to the University of West Georgia. For a negotiating session, the union is handing out buttons that say, "Librarians will not be silent" and "Make some noise."

The chair of the American Association of University Professors' (AAUP) committee on academic freedom and tenure has also backed the UC librarians explicitly. Hank Reichman wrote for the AAUP's Academe blog that the UC negotiators "are wrong" to say their position aligns with the AAUP's.

The AAUP has previously said librarians and faculty members have the same professional concerns, calling academic freedom "indispensable" to librarians because they ensure the availability of information to teachers and students. Reported in: *Chronicle of Higher Education*, August 27.

Chapel Hill, North Carolina

Is a university faculty's academic freedom violated when administrators remove a controversial class from the course schedule?

At the University of North Carolina's Chapel Hill campus, faculty leaders have asked Chancellor Carol Folt and Provost Bob Blouin to affirm their commitment to academic freedom after they overturned a faculty grievance committee's decision in

favor of a professor whose sports history class faced administrative interference. In a letter to Blouin, Faculty Chair Leslie Parise said the Faculty Executive Committee had met twice in July to discuss the case of Jay Smith, a history professor whose "Big-Time College Sports and the Rights of Athletes" class explored, in part, the UNC athletic and academic scandal involving no-show classes. Smith's course was kept off the schedule for a time in 2017-18.

In a rare challenge to the administration, Parise asked Blouin and Folt to "publicly reaffirm their commitments to department autonomy, academic freedom, and the process of faculty governance." Parise said the rejection of last year's faculty grievance committee's finding created the concern that academic freedom had been compromised.

"We acknowledge administrators' responsibility to maintain oversight over curricula," Parise wrote. "But to be compatible with the university's commitment to academic freedom, this oversight must be fairly and consistently applied, leaving as many course scheduling decisions as possible to department-level leadership."

In a response posted July 19, Folt and Blouin wrote: "We are pleased to affirm our historic, steadfast commitment to academic freedom and faculty shared governance, and we value the robust and thorough process of faculty governance at this University. We know and appreciate the hard work of our faculty that has upheld and advanced this time-honored tradition."

But, they added that the Smith grievance outcome is a rare instance where the administration and the faculty disagree, adding, "academic freedom is not free from accountability, which we must enforce as leaders of this University."

In a break at a trustee meeting on July 19, Folt called faculty governance "the critical bedrock of a university" and said the administration supports faculty recommendations "nine times out of ten."

However, she added, the university also has rules and regulations from governing boards and accrediting committees and must abide by them. If the faculty is "asking us to provide complete autonomy to any department to do anything that it wants, we will not and cannot state that without violating those policies."

At issue in the grievance was whether the administration meddled in the scheduling of the course taught by Smith, a frequent critic of UNC's handling of the athletic scandal. UNC emails published by the *Raleigh News and Observer* last year showed that history department administrators worried about "blowback" and "a fight on our hands" if Smith's course was offered in 2017-18. It was kept off the schedule.

Forty-five history faculty members signed a statement last year calling scheduling interference "a serious infringement of freedom of inquiry." The professors said their chairman felt concerned about adverse consequences for the history department if the course were offered. Officials in the dean's office denied interfering in the schedule because of the course's content.

A faculty grievance committee reviewed the case and determined that Smith's class was not scheduled because of pressure from administrators; the panel also recommended that UNC officials not interfere in individual courses or threaten a department with financial consequences.

The course was first taught in 2016. University officials had argued that Smith's grievance was moot because his course was eventually offered again in the spring of 2018. Reported in: *Raleigh News & Observer*, July 19.

FREEDOM OF THE PRESS
Trenton, New Jersey

If local news outlets are struggling, is it the government's job to support them? In New Jersey, the answer is "yes."

New Jersey Governor Phil Murphy, a Democrat, approved a line in the state budget that dedicates $5 million to strengthen local media outlets in New Jersey. The state legislature passed the "Civic Info Bill" in late June, according to news website NJ.com.

The bill created the Civic Information Consortium—a unique nonprofit developed with five universities—to promote the spread of news and information throughout the state. The bill was conceived by the Free Press Action Fund, an advocacy group on media issues.

The consortium will share the $5 million with local news organizations, emphasizing "underserved communities, low-income communities and communities of color," the Free Press Action Fund said. The effort is led by the College of New Jersey, Montclair State University, the New Jersey Institute of Technology, Rowan University, and Rutgers University.

The money was included in the fiscal 2019 budget. Murphy signed the budget into law on July 1. Reported in: NJ.com, June 29; *The Hill*, July 2.

PRIVACY
Cupertino, California

Should smart phones users rely on technology to keep their data private—or should law enforcement be able to unlock the phones without the user's password?

In June, Apple said it is closing a technological loophole that had let authorities hack into iPhones,

angering police and other officials, and reigniting a debate over whether the government has a right to get into the personal devices that are at the center of modern life. *[For a related article involving law enforcement's access into Facebook accounts, see "From the Bench," page 61.]*

Apple, selling its iPhone as a secure device that only its owner can open, battled with the FBI in 2016 after Apple refused to help open the locked iPhone of a mass killer. The FBI eventually paid a third party to get into the phone, circumventing the need for Apple's help. Since then, law enforcement agencies across the country have increasingly employed that strategy to get into locked iPhones they hope will hold the key to cracking cases.

Apple said it was planning an iPhone software update that would effectively disable the phone's charging and data port—the opening where users plug in headphones, power cables and adapters—an hour after the phone is locked. While a phone can still be charged, a person would first need to enter the phone's password to transfer data to or from the device using the port.

Such a change would hinder law enforcement officials, who have typically been opening locked iPhones by connecting another device running special software to the port, often days or even months after the smartphone was last unlocked. News of Apple's planned software update has begun spreading through security blogs and law enforcement circles—and many in investigative agencies are infuriated.

"If we go back to the situation where we again don't have access, now we know directly all the evidence we've lost and all the kids we can't put into a position of safety," said Chuck Cohen, who leads an Indiana State Police task force on internet crimes against children. The Indiana State Police said it unlocked 96 iPhones for various cases this year, each time with a warrant, using a $15,000 device it bought in March from a company called Grayshift.

But privacy advocates said Apple would be right to fix a security flaw that has become easier and cheaper to exploit. "This is a really big vulnerability in Apple's phones," said Matthew D. Green, a professor of cryptography at Johns Hopkins University. A Grayshift device sitting on a desk at a police station, he said, "could very easily leak out into the world."

In an email, an Apple spokesman, Fred Sainz, said the company is constantly strengthening security protections and fixes any vulnerability it finds in its phones, partly because criminals could also exploit the same flaws that law enforcement agencies use. "We have the greatest respect for law enforcement, and we don't design our security improvements to frustrate their efforts to do their jobs," he said.

Apple and Google, which make the software in nearly all of the world's smartphones, began encrypting their mobile software by default in 2014. Encryption scrambles data to make it unreadable until accessed with a special key, often a password. That frustrated police and prosecutors who could not pull data from smartphones, even with a warrant.

The friction came into public view after the FBI could not access the iPhone of a gunman who, along with his wife, killed 14 people in San Bernardino, Calif., in late 2015. A federal judge ordered Apple to figure out how to open the phone, prompting Timothy D. Cook, Apple's chief executive, to respond with a blistering 1,100-word letter that said the company refused to compromise its users' privacy. "The implications of the government's demands are chilling," he wrote.

The two sides fought in court for a month. Then the FBI abruptly announced that it had found an undisclosed group to get into the phone, paying at least $1.3 million because the hacking techniques were not common then. An inspector general's report this year suggested the FBI should have exhausted more options before it took Apple to court.

The encryption on smartphones applies only to data stored solely on the phone. Companies like Apple and Google regularly give law enforcement officials access to the data that consumers back up on their servers, such as via Apple's iCloud service. Apple said that since 2013, it has responded to more than 55,000 requests from the United States government seeking information about more than 208,000 devices, accounts, or financial identifiers.

The tussle over encrypted iPhones and opening them to help law enforcement is unlikely to simmer down. Federal officials have renewed a push for legislation that would require tech companies like Apple to provide the police with a backdoor into phones, though they were recently found to be overstating the number of devices they could not access.

Apple probably won't make it any easier for the police if not forced by Congress, given that it has made the privacy and security of iPhones a central selling point. But the company has complied with local laws that conflict with its privacy push. In China, for instance, Apple recently began storing its Chinese customers' data on Chinese-run servers because of a new law there. Reported in: *New York Times*, June 13.

Northridge, California; Armonk, New York; New York City, New York

Are police departments using video cameras and facial recognition software for racial profiling and discriminatory enforcement?

Using video footage from New York City Police Department (NYPD) surveillance cameras, IBM has developed facial recognition software that could search for people based on skin tone and ethnicity. The NYPD says it is not using the new video analytics, but at least one police force—the campus police department at California State University, Northridge, has adopted it.

Civil liberties advocates say they are alarmed by the NYPD's secrecy in helping to develop a program with the potential capacity for mass racial profiling.

The identification technology IBM built could be easily misused after a major terrorist attack, argued Rachel Levinson-Waldman, senior counsel in the Brennan Center's Liberty and National Security Program. "Whether or not the perpetrator is Muslim, the presumption is often that he or she is," she said. "It's easy to imagine law enforcement jumping to a conclusion about the ethnic and religious identity of a suspect, hastily going to the database of stored videos and combing through it for anyone who meets that physical description, and then calling people in for questioning on that basis."

IBM, headquartered in Armonk, New York, did not comment on questions about the potential use of its software for racial profiling. However, the company did send a comment to *The Intercept* pointing out that it was "one of the first companies anywhere to adopt a set of principles for trust and transparency for new technologies, including artificial intelligence (AI) systems." The statement continued on to explain that IBM is "making publicly available to other companies a dataset of annotations for more than a million images to help solve one of the biggest issues in facial analysis—the lack of diverse data to train AI systems."

Few laws clearly govern object recognition or the other forms of artificial intelligence incorporated into video surveillance, according to Clare Garvie, a law fellow at Georgetown Law's Center on Privacy and Technology. "Any form of real-time location tracking may raise a Fourth Amendment inquiry," Garvie said, citing a 2012 Supreme Court case, *United States v. Jones*, that involved police monitoring a car's path without a warrant and resulted in five justices suggesting that individuals could have a reasonable expectation of privacy in their public movements. In addition, she said, any form of "identity-based surveillance" may compromise people's right to anonymous public speech and association.

Garvie noted that while facial recognition technology has been heavily criticized for the risk of false matches, that risk is even higher for an analytics system "tracking a person by other characteristics, like the color of their clothing and their height," that are not unique characteristics.

The story began after the 9/11 attacks in 2001, when the New York City Police Department created a plan to cover Manhattan's downtown streets with thousands of cameras. The department hoped that video analytics would improve analysts' ability to identify suspicious objects and persons in real time in sensitive areas, according to Conor McCourt, a retired NYPD counterterrorism sergeant who said he used IBM's program in its initial stages.

The video analytics software captured stills of individuals caught on closed-circuit TV footage and automatically labeled the images with physical tags, such as clothing color, allowing police to quickly search through hours of video for images of individuals matching a description of interest. The software could also generate alerts for unattended packages, cars speeding up a street in the wrong direction, or people entering restricted areas.

IBM began developing this object identification technology using secret access to NYPD camera footage. *The Intercept* and the Investigative Fund have learned from confidential IBM corporate documents and interviews with many of the technologists involved in developing the software, that NYPD officials gave IBM access to images of thousands of unknowing New Yorkers as early as 2012, as IBM was creating new search features that allow other police departments to search camera footage for images of people by hair color, facial hair, and skin tone.

IBM declined to comment on its use of NYPD footage to develop the software. However, in an email response to questions, the NYPD did tell *The Intercept* that "Video, from time to time, was provided to IBM to ensure that the product they were developing would work in the crowded urban NYC environment and help us protect the City. There is nothing in the NYPD's agreement with IBM that prohibits sharing data with IBM for system development purposes. Further, all vendors who enter into contractual agreements with the NYPD have the absolute requirement to keep all data furnished by the NYPD confidential during the term of the agreement, after the completion of the agreement, and

in the event that the agreement is terminated."

In an email to *The Intercept*, the NYPD confirmed that select counterterrorism officials had access to a pre-released version of IBM's program, which included skin tone search capabilities, as early as the summer of 2012. NYPD spokesperson Peter Donald said the search characteristics were only used for evaluation purposes and that officers were instructed not to include the skin tone search feature in their assessment. The department eventually decided not to integrate the analytics program into its larger surveillance architecture and phased out the IBM program in 2016.

After testing out these bodily search features with the NYPD, IBM released some of these capabilities in a 2013 product release. Later versions of IBM's software retained and expanded these bodily search capabilities. IBM did not respond to a question about the current availability of its video analytics programs.

According to the NYPD, counterterrorism personnel accessed IBM's bodily search feature capabilities only for evaluation purposes, and they were accessible only to a handful of counterterrorism personnel. "While tools that featured either racial or skin tone search capabilities were offered to the NYPD, they were explicitly declined by the NYPD," Donald, the NYPD spokesperson, said. "Where such tools came with a test version of the product, the testers were instructed only to test other features (clothing, eyeglasses, etc.), but not to test or use the skin tone feature. That is not because there would have been anything illegal or even improper about testing or using these tools to search in the area of a crime for an image of a suspect that matched a description given by a victim or a witness. It was specifically to avoid even the suggestion or appearance of any kind of technological racial profiling." The NYPD ended its use of IBM's video analytics program in 2016, Donald said.

Kjeldsen, the former IBM researcher who helped develop the company's skin tone analytics with NYPD camera access, said the department's claim that the NYPD simply tested and rejected the bodily search features was misleading. "We would have not explored it had the NYPD told us, 'We don't want to do that,'" he said. "No company is going to spend money where there's not customer interest."

Kjeldsen also added that the NYPD's decision to allow IBM access to their cameras was crucial for the development of the skin tone search features, noting that during that period, New York City served as the company's "primary testing area," providing the company with considerable environmental diversity for software refinement.

"The more different situations you can use to develop your software, the better it's going be," Kjeldsen said. "That obviously pertains to people, skin tones, whatever it is you might be able to classify individuals as, and it also goes for clothing."

The NYPD's cooperation with IBM has since served as a selling point for the product at California State University, Northridge. There, campus police chief Anne Glavin said the technology firm IXP helped sell her on IBM's object identification product by citing the NYPD's work with the company. "They talked about what it's done for New York City. IBM was very much behind that, so this was obviously of great interest to us," Glavin said.

Campus police at California State University, Northridge, who adopted IBM's software, said the bodily search features have been helpful in criminal investigations. Asked about whether officers have deployed the software's ability to filter through footage for suspects' clothing color, hair color, and skin tone, Captain Scott VanScoy at California State University, Northridge, responded affirmatively, relaying a story about how university detectives were able to use such features to quickly filter through their cameras and find two suspects in a sexual assault case.

"We were able to pick up where they were at different locations from earlier that evening and put a story together, so it saves us a ton of time," Vanscoy said. "By the time we did the interviews, we already knew the story and they didn't know we had known."

Glavin, the chief of the campus police, added that surveillance cameras using IBM's software had been placed strategically across the campus to capture potential security threats, such as car robberies or student protests. "So we mapped out some CCTV in that area and a path of travel to our main administration building, which is sometimes where people will walk to make their concerns known and they like to stand outside that building," Glavin said. "Not that we're a big protest campus, we're certainly not a Berkeley, but it made sense to start to build the exterior camera system there." Reported in: *The Intercept*, September 6.

Sacramento, California

Will technology companies that use people's personal data be able to defang a California law that was designed to protect Californians' privacy?

In June, privacy advocates celebrated the passage of a bill in California that gave residents of that state unprecedented control over how companies use their data. Lobbying groups

and trade associations, including several representing the tech industry, immediately started pushing for a litany of deep changes that they say would make the law easier to implement before it goes into effect in January 2020. Privacy advocates worry that pressure from powerful businesses could end up gutting the law completely.

"This is their job: to try to make this thing absolutely meaningless. Our job is to say no," said Alastair MacTaggart, chair of the group Californians for Consumer Privacy, which sponsored a ballot initiative that would have circumvented the legislature and put the California Consumer Privacy Act to a vote in November. Big Tech and other industries lobbied fiercely against the initiative. In June, MacTaggart withdrew it once the bill, known as AB 375, passed.

At the most basic level, the law allows California residents to see what data companies collect on them, request that it be deleted, know what companies their data has been sold to, and direct businesses to stop selling that information to third parties. But the task of shaping the specifics is now in the hands of lawmakers—and the special interests they cater to.

"The new sheriffs showed up and drew a gun. Then they put it down and walked away," Kevin Baker, legislative director of the American Civil Liberties Union in California, says, referring to MacTaggart's initiative. "Now that they've done that, and the initiative threat has gone away, we're back to politics as usual."

In early August, a coalition of nearly 40 organizations, ranging from the banking industry to the film industry to the tech industry's leading lobbying groups, sent a 20-page letter to lawmakers, effectively a wish list of changes—a clear sign of the battle in store for 2019.

Among the most significant proposed changes was a reframing of who the law considers a "consumer." The bill as written applies to all California residents, a provision that industry groups wrote would be "unworkable and have numerous unintended consequences." Instead, trade groups want the law only to apply to people whose data was collected because they made a purchase from a business or used that business's service. They also propose making it so that only businesses had the right to identify people as consumers, and not the other way around.

Such a change might seem small, but it would substantially narrow the law's scope, says Mary Stone Ross, who helped draft the ballot initiative as the former president of Californians for Consumer Privacy. "This is significant because it [would] not apply to information that a business does not obtain directly from the consumer," Ross says, like data sold by data brokers or other third parties.

Another major change sought to tweak disclosure requirements. Whereas the original bill requires companies to share specific pieces of data, the industry groups prefer to draw the line at "categories of personal information."

There are other, subtler suggested changes, too, that Ross says would have sweeping implications. The law includes language that would prevent a business from discriminating against people by, say, charging them inordinate fees if they opt out of data collection. But prohibiting blanket discrimination is too broad for the business groups, who want to add a caveat specifying that they may not "unreasonably" discriminate. In another section, which discusses offering consumers incentives for the sale of their data, the industry groups also proposed striking the words "unjust" and "unreasonable" from a line that reads, "A business shall not use financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature."

On August 28, during an Assembly hearing on the bill, the final sticking point, particularly for the tech giants, was the law's handling of data collected for the purposes of advertising. While the law prohibits users from opting out of advertising altogether, it does allow them to opt out of the sale of their personal information to a third party. But the industry wanted to create an exception for information that's sold for the purposes of targeted advertising, where the users' identities aren't disclosed to that third party. Privacy groups including the ACLU and Electronic Freedom Frontier vehemently opposed the proposal, as did MacTaggart. They argued that such a carve-out would create too big of a loophole for businesses and undermine consumers' right to truly know everything businesses had collected on them.

As of August 28, the industry groups failed to get that amendment into the bill. But MacTaggart and others expect to fight this battle all over again next year.

It's not that the privacy bill is perfect. The ACLU, for one, criticized the bill's exclusion of a provision in the ballot initiative that would have given people the right to sue companies for violating their data privacy rights. It instead leaves enforcement up to the attorney general, except in the case of a data breach.

As the bill was being finalized, all sides did agree to some tweaks, like clarifying language that would protect data collected through clinical trials and other health-related information. Another change ensures that information collected by journalists remains safeguarded.

"One of the reasons why AB 375 passed unanimously is everyone knew there'd be a cleanup bill, and they had plenty of time to lobby to get their changes through," said Ross, who opposed pulling the ballot initiative in June.

Some engaged citizen, of course, could always mount another bid for a ballot initiative, but with the 2018 deadline already passed, that couldn't happen until at least 2020, and it would take millions more dollars to put up another fight. That has left activists like Ross and MacTaggart relatively powerless in the very battle they began. Reported in: wired.com, August 29.

Washington, DC

How much personal information does the US Department of Homeland Security (DHS) really collect? DHS is quietly building what will likely become the largest database of biometric and biographic data on citizens and foreigners in the United States.

The agency's new Homeland Advanced Recognition Technology (HART) database will include multiple forms of biometrics—from facial recognition to DNA, and could sweep in data from questionable sources and highly personal data on innocent people. It will be shared with federal agencies outside of DHS as well as state and local law enforcement and foreign governments. Yet, the public still knows very little about it.

Privacy advocates warn that the records DHS plans to include in HART can chill and deter people from exercising their First Amendment protected rights to speak, assemble, and associate. Face recognition makes it possible to identify and track people in real time, including at lawful political protests and other gatherings. Other data DHS is planning to collect—including information about people's "relationship patterns" and from officer "encounters" with the public—can be used to identify political affiliations, religious activities, and familial and friendly relationships. Such data points can be colored by conjecture and bias.

In late May, Electronic Frontier Foundation (EFF) filed comments criticizing DHS's plans to collect, store, and share biometric and biographic records it receives from external agencies and to exempt this information from the federal Privacy Act. These newly-designated "External Biometric Records" (EBRs) will be integral to DHS's bigger plans to build out HART. EFF told the agency in its comments that DHS must do more to minimize the threats to privacy and civil liberties posed by this vast new trove of highly sensitive personal data.

DHS currently collects a lot of data. Its legacy IDENT fingerprint database contains information on 220 million unique individuals and processes 350,000 fingerprint transactions every day. This is an exponential increase from 20 years ago when IDENT only contained information on 1.8 million people. Between IDENT and other DHS-managed databases, the agency manages over 10 billion biographic records and adds 10-15 million more each week.

DHS's new HART database will allow the agency to vastly expand the types of records it can collect and store. HART will support at least seven types of biometric identifiers, including face and voice data, DNA, scars and tattoos, and a blanket category for "other modalities." It will also include biographic information, such as name, date of birth, physical descriptors, country of origin, and government ID numbers. And it will include data we know to be highly subjective, including information collected from officer "encounters" with the public and information about people's "relationship patterns."

EFF warns that DHS's face recognition roll-out is especially likely to chill speech and deter people from associating with others. The agency uses mobile biometric devices that can identify faces and capture face data in the field, allowing its ICE (immigration) and CBP (customs) officers to scan everyone with whom they come into contact, whether or not those people are suspected of any criminal activity or an immigration violation. DHS is also partnering with airlines and other third parties to collect face images from travelers entering and leaving the United States. When combined with data from other government agencies, EFF said, these "troubling" collection practices will allow DHS to build a database large enough to identify and track all people in public places, without their knowledge—not just in places the agency oversees, like airports, but anywhere there are cameras.

Police abuse of facial recognition technology is not a theoretical issue: it's happening today. Law enforcement has already used face recognition on public streets and at political protests. During the protests surrounding the death of Freddie Gray in 2015, Baltimore Police ran social media photos against a face recognition database to identify protesters and arrest them. Recent Amazon promotional videos encourage police agencies to acquire that company's face "Rekognition" capabilities and use them with body cameras and smart cameras to track people throughout cities. At least two US localities (Orlando, Florida, and Washington County in Oregon) are already using Rekognition, according to records obtained by the American Civil Liberties Union of Northern California.

EFF charges that DHS is not taking necessary steps with its new HART database to determine whether its own data and the data collected from its external partners are sufficiently accurate to prevent innocent people from being identified as criminal suspects, immigration law violators, or terrorists. Face recognition, in particular, frequently is an inaccurate and unreliable biometric identifier. DHS's tests of its own systems found significantly high levels of inaccuracy—the systems falsely rejected as many as 1 in 25 travelers.

People of color and immigrants will shoulder much more of the burden of these misidentifications. For example, people of color are disproportionately represented in criminal and immigration databases, due to the unfair legacy of discrimination in our criminal justice and immigration systems. Moreover, FBI and MIT research has shown that current face recognition systems misidentify people of color and women at higher rates than whites and men, and the number of mistaken IDs increases for people with darker skin tones. False positives represent real people who may erroneously become suspects in a law enforcement or immigration investigation.

DHS believes it's legally authorized to collect and retain face data from millions of US citizens traveling internationally. However, as Georgetown's Center on Privacy and Technology notes, Congress has never authorized face scans of American citizens. Reported in: aclunc.org, May 22; eff.org. June 7.

Washington, DC

For travelers, is the convenience boarding a plane quickly—with no boarding pass, paper ticket, or airline phone app—worth the loss of privacy that comes with facial recognition technology on international flights?

With the new Traveler Verification Service, passengers get their photo taken, and their face becomes their boarding pass.

"I would find it super convenient if I could use my face at the gate," said Jonathan Frankle, an artificial intelligence researcher at Massachusetts Institute of Technology studying facial recognition technology. But "the concern is, what else could that data be used for?"

The problem confronting Frankle, as well as thousands of travelers, is that few companies participating in the program give explicit guarantees that passengers' facial recognition data will be protected.

And even though the program is run by the Department of Homeland Security, federal officials say they have placed no limits on how participating companies—mostly airlines but also cruise lines—can use that data or store it, opening up travelers' most personal information to potential misuse and abuse such as being sold or used to track passengers' whereabouts.

The data the airlines collect is used to verify the identity of passengers leaving the country, an attempt by the department to better track foreigners who overstay their visas. After passengers' faces are scanned at the gate, the scan is sent to Customs and Border Protection (CBP) and linked with other personally identifying data, such as date of birth and passport and flight information.

For its part, Customs and Border Protection has said it will retain facial scans of American citizens for no longer than 14 days. But the agency has said it cannot control how the companies use the data because they "are not collecting photographs on CBP's behalf."

John Wagner, the deputy executive assistant commissioner for the agency's Office of Field Operations, said he believed that commercial carriers had "no interest in keeping or retaining" the biometric data they collect, and the airlines have said they are not doing so. But if they did, he said, "that would really be up to them."

But, Wagner added, "there are still some discussions to be had," and federal officials are considering whether they should write in protections.

Privacy advocates have criticized the agency for allowing airlines to act as unregulated arbiters of the data.

"CBP is a federal agency. It has a responsibility to protect Americans' data, and by encouraging airlines to collect this data, instead they are essentially abdicating their own responsibility," said Jennifer Lynch, a senior staff attorney with the Electronic Frontier Foundation, a digital rights nonprofit. Reported in: *New York Times*, August 6.

Chicago, Illinois

Should the 2020 US Census—required by the US Constitution to count all residents of the United States—ask whether residents are US citizens? Is the question an intrusion on residents' privacy?

The American Library Association (ALA) has joined 144 groups in opposing the addition of a citizenship question to the 2020 Census form. ALA is a signee of a letter submitted August 1 by the Leadership Conference on Civil and Human Rights to the Department of Commerce, which oversees the US Census Bureau.

The comments submitted by the coalition elaborate on the harm that would result from adding such a question to the 2020 Census, including diminished data accuracy, an increased burden of information collection, and an added cost to taxpayers. The submission also points to the US Census Bureau's own January 19 technical review, in which Associate

Director for Research and Methodology John Abowd concluded that adding a citizenship question would have an "adverse impact on self-response and, as a result, on the accuracy and quality of the 2020 Census."

The technical review also stated that using existing administrative records instead of asking a citizenship question would provide more accurate citizenship data at lower cost to the federal government.

"Adding a citizenship question to the 2020 Census would suppress Census response, distorting the statistics and making them less informative," said ALA President Loida Garcia-Febo.

ALA has participated in previous coalition efforts to prevent the Trump administration's addition of a citizenship question to the 2020 Census, including a January 10 letter opposing the proposal. The Association is engaging with the US Census Bureau and other stakeholders to keep libraries informed of and represented in the 2020 Census policy discussions and planning process, with the goal that libraries may be better able to support their communities.

The US Census is a count of all US residents, required once every ten years by the Constitution, to determine Congressional representation; district boundaries for federal, state, and local offices; and allocation of billions of dollars in federal funding to states and localities, such as grants under the Library Services and Technology Act. Libraries across the US provide access to the wealth of statistical data published by the US Census Bureau and help businesses, government agencies, community organizations, and researchers find and use the information. Reported in: *American Libraries*, August 9.

Fort Meade, Maryland

Will technical difficulties keep the US federal government from storing the records of millions of calls made since 2015?

The National Security Agency (NSA) has announced a startling failure in the implementation of the USA Freedom Act of 2015. According to a public statement released by NSA on June 28, the call detail records (CDR) that NSA has been receiving from telephone companies under the Act are infected with errors, NSA cannot isolate and correct those errors, and so it has decided to purge from its data repositories all of the CDRs ever received under the Act. As the public statement explains, "on May 23, 2018, NSA began deleting all call detail records (CDRs) acquired since 2015 under Title V of the Foreign Intelligence Surveillance Act (FISA) . . . because several months ago NSA analysts noted technical irregularities in some data received from telecommunications service providers. These irregularities also resulted in the production to NSA of some CDRs that NSA was not authorized to receive. Because it was infeasible to identify and isolate properly produced data, NSA concluded that it should not use any of the CDRs."

Writing in the Lawfare blog, David Kris, a lawyer specializing in national security issues, explained that the problem arose after the USA Freedom Act changed the rules for the NSA's surveillance of phone calls: "The USA Freedom Act ended the bulk collection of telephony metadata and replaced it with a new procedure under which NSA sent queries to the telephone companies and received from them the responsive information. . . . This was the key privacy-enhancing feature of the USA Freedom Act—it radically reduced the raw amount of metadata held by the government."

After giving details about the NSA's new process, Kris concluded, "Somewhere in there, we now know, something went wrong. All of the data obtained by NSA under the Act are useless and will be destroyed. There is some problem that apparently infects at least some of the data—presumably in the form of inaccurate connections between telephone numbers—as well as some overproduction of data, and NSA cannot distinguish the good data from the bad."

Kris then asks, "What are the lessons here?" His answer:

> The obvious one is probably that Murphy's Law remains in force. And that law is particularly powerful as applied to large, complex systems. Sometimes, these systems generate mistakes that threaten privacy. Sometimes they generate mistakes that threaten security. The more complex the system—legally or technologically—the more likely that it will yield errors of both types.
>
> The USA Freedom Act created a more complex legal system requiring a more complex technological system governing collection of telephony metadata. This system failed. The failure has been discovered and apparently remediated. But I am left wondering whether another error could arise, whether the system is too complex to be sustainable, and therefore whether the juice is worth the squeeze. . . . We should know the answer to that question soon: under Section 705 of the USA Freedom Act, the CDR process is scheduled to sunset, unless renewed, at the end of 2019, and it will be very interesting to see whether the executive branch even seeks renewal.

Reported in: Lawfare, July 2.

Columbus, Ohio

Do parents have a right to know when their children question their sexual identity, or should children be able to keep such concerns private?

Ohio House Bill 658 would require government entities, including schools, courts, and hospitals, to "immediately" notify parents if a child displays signs of gender dysphoria or "demonstrates a desire to be treated in a manner opposite of the child's biological sex," according to the proposal.

Introduced by Republican Representatives Tom Brinkman and Paul Zeltwanger, the bill also gives parents the right to "withhold consent for gender dysphoria treatment or activities that are designed and intended to form a child's conception of sex and gender."

Opponents say that if it becomes law, the initiative could endanger children's lives.

"In targeting transgender children, the bill authors create ridiculous and unenforceable requirements––requirements that out transgender students and create a significant threat of bullying and reduced access to social support systems," LGBTQ advocacy group Equality Ohio said in a statement. "This unnecessary and discriminatory bill does nothing to support youth and families. In fact, it puts the livelihoods of some of our most vulnerable youth—transgender youth—further at risk with bullying and discrimination by potentially forcing teachers to out them."

If House Bill 658 were to become law, Ohio would have to "deputize its state employees to be gender cops," the organization said, calling the provision "dangerous for Ohio families."

Other transgender advocacy groups have also pushed back against the bill, including some who said it could be harmful to transgender children who don't feel safe at home. Nearly 37 percent of transgender people attempt suicide before the age of 24 and those who feel rejected at home or school are even more likely, according to data from the National Center for Transgender Equality.

House Bill 658 received its first hearing from the House's Community and Family Advancement committee on June 20, pushing it one step closer to a possible vote in the state's general assembly. Reported in: ABC News, June 28.

3-D PRINTING

Seattle, Washington

Now that three-dimensional printers can produce working guns, should publication of the 3-D printing instructions for guns be banned as a threat to public safety? Or is such publication protected as form of free speech?

Amazon has removed a book that reproduced code for 3-D printed guns from its bookstore, saying the content violated its guidelines. A legal battle continues over whether the programming code for printed guns will be permitted or banned. *[See "From the Bench," page 66.]*

Amazon reprinted the code for Defense Distributed's plastic gun, called the Liberator, in a 584-page book, called *The Liberator Code Book: An Exercise in Freedom of Speech*. Defense Distributed is an Austin, Texas-based non-profit that researches and designs 3-D-printable weapons.

"This is a printed copy of step files for the Liberator, and not much else," wrote someone named "CJ Awelow," who claimed to be the author, in a brief description on Amazon before the book was removed. "Code is speech," Awelow wrote, echoing the legal argument made by Defense Distributed. "Proceeds will be used to fight for free speech and the right to bear arms."

In an email, Amazon confirmed it had removed the book for "violating our content guidelines." Amazon declined to comment on how many copies of the book had been sold.

Blueprints for 3-D-printed guns have stirred controversy this summer after the government settled with Defense Distributed, allowing the non-profit to distribute its plans online for free. The distribution was halted, however, after 19 state attorneys general filed a lawsuit that prompted a Seattle judge to issue a temporary restraining order in July.

Defense Distributed used Amazon's removal of the book to champion its cause, tweeting: "Sadly the book has been taken off of Amazons webstore. This is one [*sic*] again a huge blow to our first amendment. If you want change, act now.—Defense Distributed (@DefDist) 7:40 pm, August 22."

Someone claiming to be Awelow posted to Reddit's r/Firearms channel and said the book had been a bestseller in Amazon's Computer and Technology Education section since its publication.

The post also included the address of a website that hosts the 3-D-printed gun plans. CNET downloaded files from the site which appeared to be authentic.

In court, more than a dozen states argue the publication of code to produce downloadable, 3-D-printable weapons is a public safety risk. The states argue the plastic guns, which are without serial numbers and therefore untraceable, would skirt various gun regulations. But Defense Distributed and its supporters argue that blocking the computer code for the weapons amounts to a First Amendment violation—whether that code

is published on the internet or, for example, in a book on Amazon.

The states are seeking a permanent injunction. Reported in: cnet.com, August 23; *Washington Post*, August 23.

INTERNATIONAL

Strasbourg, France

Will the flow of information on the internet be stifled by new copyright legislation in Europe?

The European Parliament on September 12 approved a package of dramatic changes to copyright law, with big implications for the future of the internet. *[In a related article, European "Right to be Forgotten" legislation can also affect the international flow of information on the internet, and is under review by the European Court of Justice—see "From the Bench," page 69.]*

The European Union's new copyright directive is an update to a 2001 directive on copyright, and is aimed at modernizing rules for the digital age. It is part of the EU's "digital single market," a strategy aimed at setting a common standard for online services and businesses.

If it goes into effect, the legislation would make online platforms such as Google and Facebook directly liable for content uploaded by their users, and would mandate greater "cooperation" with copyright holders to police the uploading of infringing works. It would also give news publishers a new, special right to restrict how their stories are featured by news aggregators such as Google News. And it would create a new right for sports teams that could limit the ability of fans to share images and videos online.

The vote is not the end of Europe's copyright fight. Under the European Union's convoluted process for approving legislation, the proposal will now become the subject of a three-way negotiation involving the European Parliament, the Council of the Europe Union (representing national governments), and the European Commission (the EU's executive branch). If those three bodies agree to a final directive, then it will be sent to each of the 28 EU member countries (or likely 27 after Brexit) for implementation in national laws.

"We're enormously disappointed that MEPs [Members of European Parliament] failed to listen to the concerns of their constituents and the wider internet," said Danny O'Brien, an analyst at the Electronic Frontier Foundation.

One concern is that online providers will become so worried about liability for infringement that they will start taking down a lot of legitimate content—for example, content that parodies a copyrighted work or otherwise exercises the European equivalents of fair use rights. To deal with this danger, the directive mandates that online platforms provide "effective and expeditious complaints and redress mechanisms."

The challenge is that there is an inherent tension between the interests of copyright holders and users. From the perspective of big content owners, an "effective and expeditious" takedown regime is one that takes down content first and asks questions later. Content owners argue that giving users too much due process allows them to abuse the system, repeatedly uploading copies of infringing files. But critics say that YouTube's efforts to appease rights holders has created a system where it is too burdensome for users to pursue legitimate appeals.

Balancing fairness to content creators against fairness to users is inherently tricky. Rather than trying to address the issue directly, the European Parliament is simply pushing the issue down to the national level, letting governments in Germany, France, Poland, and other European governments figure out the messy details.

The other big concern is that these new regulations will be overly burdensome for smaller online services. YouTube spent $60 million developing the Content ID system; obviously, a startup trying to compete with YouTube is unlikely to have $60 million available to spend on a competing system. So there is a danger that shifting responsibility onto online platforms will have the practical effect of cementing the dominance of today's major platforms.

The legislation approved by the European Parliament attempts to deal with this by including a carve-out for small businesses. The new rules only apply to "online content sharing services," and the definition of that category excludes "microenterprises and small sized enterprises," which are defined as having fewer than 50 employees. Of course, that means that a would-be YouTube competitor could suddenly be hit with a bunch of new legal obligations on the day it hires its 51st employee.

The legislation requires a new copyright for news publishers to restrict how people summarize and link to their articles. The goal is to get Google, Facebook, and other technology giants to pay news publishers licensing fees for permission to link to their articles.

Critics have derided this as a "link tax." The legislation remains vague about how this will work in practice. It doesn't make clear what kinds of links or summaries will be allowed and which will require a license.

Wikimedia—which hosts the popular online encyclopedia—is one of a number of opponents of the law, slamming it as a "threat to our

fundamental right to freely share information."

Mozilla, the firm behind the internet browser Firefox, is also opposed, and argues the law could "make filtering and blocking online content far more routine."

Tim Berners-Lee, an inventor of the World Wide Web, and Jimmy Wales, the founder of Wikipedia, were among a number of high-profile industry figures to co-sign an open letter last month lambasting the proposed law as an "imminent threat" to the future of the internet.

Activists are concerned that the law could stop people from posting everything from an internet meme to a news article. Memes, a central part of internet culture, often rely on the use of copyrighted images, usually for a comedic effect.

In addition to approving new rights for news publishers, the legislation also narrowly approved a new copyright for the organizers of sports teams. Copyright law already gives teams the ability to sell television rights for their games, but fans have traditionally been free to take pictures or personal videos and share them online. The new legislation could give sports teams ownership of all images and video from their games, regardless of who took them and how they are shared. Reported in: cnbc, July 5; ars technica.com, September 12.

LIBRARIES

Orange City, Iowa

A conservative group requested the removal of *A Day in the Life of Marlon Bundo* by Jill Twiss from the Orange City Public Library in October. The library board voted to retain the book.

The picture book's storyline tells of two male bunnies falling in love, and a group named Sioux City Conservatives argued that it pushed a same-sex agenda. The book was challenged shortly after a separate Christian group burned copies of other LGBTQ that were in the Orange County Library.

Reported in: *Siouxland Proud*, October 23.

Rumford, Maine

A display of banned books, the source of much Facebook debate in early September, will remain at the Rumford Public Library, according the library's board of trustees.

Seventy people gathered September 11 in the Children's Room at the library to debate the display, which three members of the local clergy said in a letter to trustees was not appropriate for a public library serving the families and people of the River Valley.

The message from the audience was one of acceptance and diversity.

The two-page letter was received September 6 by Rumford Library Director Tamara Butler, signed by Dan Pearson, pastor of the Rumford Baptist Church; Justin Thacker, pastor of Praise Assembly of God, and the Rev. Nathan March of Parish of the Holy Savior.

Pearson, who was present with Thacker, opened the discussion. "I do want to apologize for some of the wording in the letter," he said. "I did not want to alienate the gay community."

He said they thought their letter would be presented to the board of trustees. "I think it was unfortunate it was posted publicly, before we had a chance to have a discussion with this small group or to revise some things in it that created some of the hoopla," Pearson said.

"None of us that signed that are interested in banning or destroying any books. I don't know how that rumor got started. There was concern because a few of the books on the banned book display, front and center, were displaying sexual themes that we thought were not appropriate for children, especially displayed prominently up front, when they're coming in there."

The display coincides with national Banned Books Week, September 23-29, celebrating the freedom to read and highlighting books that often draw challenges in schools and libraries.

Half the books on this year's list of the Top Ten Banned Books (composed by the American Library Association) tell stories with LGBTGQ characters.

Debbie Carver, a Mountain Valley High School teacher, said she agreed with the part of the clergy's letter that indicated that the library should not be "promoting values that contribute to the community, and should not be promoting a certain religious view, set of morals or political views over and against another."

"That is why we're all here, for that. Then when the letter gets into things like homosexuality, that's where I think a lot of us have an issue. I'm not going to tell you what to believe. I don't want to tell you how to raise your kids. Just like I don't want you to tell me how to raise my kids," she said.

Thacker said he felt the display was in an area that was not age appropriate for children.

"All this was to make a suggestion. You can take it or leave it. It was not meant to be a firestorm," he noted.

Pastor Cindy Christie said she was asked by her congregation at the Rumford Point Congregational Church to be at this meeting to say, "We support the library."

Each month, the Rumford Public Library has a themed book display.

Librarian Mary Ann Fournier said, "I've been coming to this library just about every day since I was 5 years old, and I now work here."

June was Pride Month, and as a member of the LGBTQ community, she did a pride display.

"I had *Two Boys Kissing* and *My Lesbian Experience with Loneliness* on that display (books also on the banned books display)," she said. "My question is why didn't anyone come to me and complain in June?

"And you want me to hide the LGBTQ books that are like bibles to some of these children. Some of these books are stolen by some of these LGBTQ teens because they don't want their parents to know they're checking them out," she said.

Mitzi Sequoia said the gay pride display was the first time since she moved to Rumford in 1996 that "anyone ever even acknowledged the gay community or alternate lifestyles."

After trustee Chairwoman Carolyn Kennard closed the 105-minute discussion, people slowly began to exit the room. Those who stayed for the next 15 minutes heard trustees Kennard, Jane Shuck, Linda Macgregor, Maureen Cook, and Jerrold Cohen vote unanimously to leave the banned books display intact.

Prior to the meeting, library director Tamara Butler said she had not acted to take down the display herself

because "if anyone reads the American Library Association's Freedom to Read, we are not to avoid controversial subjects. Those books are perfectly appropriate for a banned book display. We did it before, and other libraries do it. The display is to remind people of the freedom to read, lack of censorship . . . that's the reason for it," she said. Reported in: *Lewiston Sun Journal*, September 17.

Wausau, Wisconsin

The Marathon County Public Library will not move a book on transgender issues out of the children's section, as requested by a patron. A committee voted to keep *Who Are You? The Kids' Guide to Gender Identity* by Brook Pessin-Whedbee where it currently sits instead of moving it to the adult guidance area.

"The book itself is for children who might be working with their parents through their own gender identity issues," said Marathon County Public Library Director Ralph Illick.

The issue was brought forward by a concerned citizen and taken up by a panel put together by Illick. He says the library has a formal process it follows in these situations, which includes background research and analyzing professional reviews on the book. They also investigated similar challenges of the book at other libraries and read the book themselves.

After the process was completed, Illick says they came to the conclusion that the book was properly placed. He added that the book is considered an excellent resource on the topic of gender identity for both young adults who may be experiencing questions about their own identity and their parents.

He does feel that the book is a good fit for a public library because it can serve as a resource for someone who may be questioning their own gender identity.

"We want to make sure we have materials here that are appropriate for everyone," meaning he doesn't want to see the library carrying materials that only agree with one viewpoint or another. "Public libraries are secular; the intention is never to be provocative, but to be informative."

Illick said the person issuing the complaint did not want to ban the book altogether or have it removed from the system, they just felt the book wasn't appropriate for the children's section.

He added that libraries are always prepared for challenges such as this, but it's not a plan he has often seen put into action. "I've been in libraries for 35 years, and I've probably dealt with five of these [cases] in that time." Reported in: WSAU Radio, September 18.

SCHOOLS

Shorewood, Wisconsin

A student show based on Harper Lee's novel *To Kill a Mockingbird* was cancelled but quickly rescheduled at Shorewood High School near Milwaukee in October.

The school district also scheduled a series of events where "supporters of the cancellation and supporters of the performance" could engage in "difficult conversations about race and racial inequities as a way to improve our schools and our village." In an email to parents, the district added that it "should have done more outreach to dialogue about the sensitivity of this performance with the Shorewood and greater Milwaukee community." Moving forward, the district promised to "continue to encourage staff and students to engage in meaningful performances surrounding contemporary issues with the appropriate amount of outreach and dialogue."

Reported in: onmilwaukee.com, October 14.

PRISONS

Maryland

Maryland prison officials have reversed a statewide policy that limited access to books for thousands of inmates as part of an effort to reduce drug smuggling. Prisoners can immediately begin receiving book shipments directly from relatives and online retailers, according to Public Safety and Correctional Services Secretary Stephen T. Moyer. The corrections department on Monday also lifted its constraints on how often inmates can order through prison-approved vendors.

Prison officials had put new book-ordering restrictions in place in April, the *Washington Post* reported, as a response to the high volume of drugs being trafficked into state facilities, including in the pages of books.

The decision to rescind the policy came after criticism from lawmakers, inmates, and their families. The American Civil Liberties Union characterized the restrictions as an unconstitutional, "virtual book ban" in a letter last month to corrections department leaders.

State officials initially defended the policy that restricted inmates to ten book purchases every three months from two vendors that distributed paper catalogs. Inmate advocates who contacted the *Washington Post* expressed concern about the limited selection of titles and the cost.

Federal prison officials scrapped similar book-ordering restrictions in May after inquiries from the *Post*. Those limits were in place at federal facilities in Virginia and California and were set to start in Florida. The federal procedures limited book orders to three vendors and included a 30 percent markup.

In responding to the ACLU on June 11, Maryland officials provided new details about the ways in which books have been used to smuggle drugs into state facilities. Prison investigators have struggled to stop the flow of thin, clear strips of Suboxone, an FDA-approved medication that helps opiate addicts manage withdrawal symptoms. Since 2015, investigators have uncovered 660 strips in books in 44 individual cases and discovered book vendors working with inmates to smuggle drugs, according to the letter. Reported in: *Washington Post*, June 11.

Pennsylvania

The Pennsylvania Department of Corrections (DOC)—which in September announced it would put a halt to book donation programs and mail-order books and publications—has revised its policy, allowing book orders to resume through a new centralized processing center.

"It was really public pressure, we believe, that led to the DOC updating their policy to allow us to again send books directly to inmates," said Jodi Lincoln, an organizer with Book 'Em, a book donation program based in Pittsburgh.

The prohibition was part of a wide-ranging security crackdown meant to eliminate drug smuggling into the prisons, in particular paper soaked in synthetic cannabinoids, also known as K2. Under that policy, the DOC limited book orders to a catalog of 8,500 e-books that was plagued by high prices and vast gaps in its coverage, and to requests placed on kiosks within the prison system that turned out to be inadequate to the task.

According to the DOC, 2,500 orders were placed on the kiosks, but half were for non-book-related matters and many others were for magazines, which could not be processed on the system. In many requests, inmates did not provide sufficiently detailed information for staff to identify which books they were seeking.

In a statement, Corrections Secretary John Wetzel said the new procedure was a response to criticisms by book-donation groups.

"This policy update allows inmates to have direct contact with book donation organizations through a security processing center and ensures that publications will not be used as a path by which drugs are introduced into our facilities," he said.

The new policy also allows family and friends to order books to be shipped directly from publishers or bookstores to a secure processing center in Bellefonte, Pennsylvania, where staff will screen books five days per week. It also enables inmates to place orders directly from a hard-copy catalog.

Lincoln said the book-donation groups still have concerns about how the new process will play out, including how the DOC will ensure the packages reach the inmates who requested them, intact with all supplemental materials.

"There are also concerns over the non-bound materials we send in—zines, resource guides, pamphlets—we want to make sure those publications can also get through," Lincoln said.

The DOC noted that inmates will continue to have access to libraries that average about 15,000 titles each, though some inmates say that they find it difficult to make it to the library and prefer not to check out books for fear of being disciplined over late returns.

Sean Damon of Amistad Law Project, which led protests over the book prohibition, expressed relief. "From our perspective, it looks like the DOC did the right thing," Damon said.

But, he added, he's not satisfied, as other new security measures—including the scanning and surveillance of incoming mail and the photocopying of inmate legal mail—remain in place. "It begs the question as to why mail has to be sent to Florida, scanned into a searchable database, and the copy sent on," he said. "Books are many, many pieces of paper. Why do they have to photocopy a letter when they can let 300 pages in?" Reported in: www2philly.com, November 2.

INTERNATIONAL

Geneva, Switzerland

A medical or psychological argument sometimes used to justify censorship has again been debunked. "Pornography addiction" is actually not recognized by any national or international diagnostic manual.

With the publication of the latest *International Classification of Diseases* (version 11) in June, the World Health Organization once again decided not to recognize sex-film viewing as a disorder.

"Pornography viewing" was considered for inclusion in the "problematic internet use" category, but WHO decided against its inclusion because of the lack of available evidence for this disorder. ("Based on the limited current data, it would therefore seem premature to include it in the ICD-11," the organization wrote.) The common American standard, the Diagnostic and Statistical Manual, made the same decision in their latest version as well; there is no listing for porn addiction in DSM-5.

Journalists covering this area have struggled to find good, evidence-based information on the reality of porn addiction. Anti-pornography groups have been well-funded, including by state governments. Scientists and clinicians who

present evidence that challenges these harm-focused narratives face serious social and political opposition to their research. It can be tough for this information to make it to the public.

In his series *How Not to F*ck Up Your Kids Too Bad*, Stephen Marche described his experience as a journalist commissioned by two different outlets to write about the risks of pornography: When he could not find good evidence to demonize porn, "the editors killed it. What they wanted was to be scary."

Amazingly, the first nationally representative peer-reviewed study on sex-film viewing was not published until in 2017 in Australia. This study found that 84 percent of men and 54 percent of women had ever viewed sexual material. Overall, 3.69 percent of men (144 of 3,923) and 0.65 percent of women (28 of 4,218) in the study believed that they were "addicted" to pornography, and only half of this group reported that using pornography had any negative impact on their lives. This was without any clinical interview to assess why they thought they were addicted to porn, which could have ruled out scenarios in which a spouse or church told them that they were addicted when they did not personally hold this view.

In the latest version of the ICD, the World Health Organization has shown surprising restraint in excluding porn addiction and sex addiction—particularly given its history of pathologizing sexuality by including "homosexual behavior" and "nymphomania" in the past. Reported in: slate.com, July 30

TARGETS OF THE CENSOR

FALL 2018

BOOKS

PERIODICALS

SEARCH ENGINES

STUDENT PUBLICATIONS/PERFORMANCES

MOVIES

BROADCAST

SONGS

ARTWORK

DATABASES

ADVERTISEMENTS (PUBLIC TRANSIT)

SPEAKERS

CLOTHING/ACCESSORIES

3-D PRINTING