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BOOK BANS: EXAMINING HOW CENSORSHIP LIMITS LIBERTY AND LITERATURE

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BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

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BOOK BANS: EXAMINING HOW CENSORSHIP LIMITS LIBERTY AND LITERATURE

TUESDAY, SEPTEMBER 12, 2023

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:08 a.m., in Room 216, Hart Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

Present: Senators Durbin [presiding], Whitehouse, Klobuchar, Blumenthal, Hirono, Booker, Ossoff, Graham, Grassley, Cornyn, Lee, Hawley, Cotton, Kennedy, Tillis, and Blackburn.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chair DURBIN. This meeting of the Senate Judiciary Committee will come to order. This hearing, entitled "Book Bans: Examining How Censorship Limits Liberty and Literature," will come to order.

In 1928, the City of Chicago banned a book, known as "The Wonderful Wizard of Oz," from all of its public libraries. Local leaders claimed that the book would have, quote, "an ungodly influence on its readers."

We now consider "The Wonderful World"—pardon me, "The Wonderful Wizard of Oz" to be, in the words of the Library of Congress, a timeless American classic. Unfortunately, there is a long history in our country of banning books we now consider classic works of literature.

This video, which I'm about to show, will indicate this is not the first time that the Senate Judiciary Committee has considered the negative influence of books. I ask them to start the video.

[Video is shown.]

Chair DURBIN. In the 1850s, "Uncle Tom's Cabin," the classic antislavery novel, was banned throughout the Southern United States. Two decades later, in 1873, Congress passed the Comstock Act, a law that mandated up to 5 years in prison for any person who sold or distributed a book that was, quote, "obscene, lewd, or lascivious." The law did not define the terms, and hundreds of Americans were convicted for distributing books about topics such as atheism and reproductive health.

As the video showed, this Committee itself held a series of hearings in 1954 to examine the threat that comic books, like "Superman," posed to children. The anti-comics' panic culminated in the industry's comics code that censored comic books for decades. That

may seem absurd today, but extremists continue to fight popular graphic novels like "Maus," and other books.

In 2022, there were over 1,000 requests to ban books at public schools and libraries, the most in almost 20 years.

Here are just a few of the books that have been banned or restricted in schools and libraries over the past few years: "I Know Why the Caged Bird Sings," "The Handmaid's Tale," "Narrative of the Life of Frederick Douglass," "A Raisin in the Sun," "Brave New World," and "Beloved." These are books written by some of the greatest American authors, including trailblazing Black women like Toni Morrison and Maya Angelou. Even works written by Martin Luther King, Jr., were banned temporarily in a fervor to limit access to books about race or racism, all in the name of prohibiting material supposedly related to Critical Race Theory.

Let's be clear: Efforts to ban books are wrong, whether they come from the right or the left. While we ban books like "Maus" or "To Kill a Mockingbird" in the name of protecting students, we are instead denying these students an opportunity to learn about different people and difficult subjects. Limiting access to a book about antisemitism or racism does not protect students from the actual history, or the reality, that hate still exists.

In the name of protecting students, politicians have targeted books that include LGBTQ+ subject matter. One out of every 4 banned books features LGBTQ+ characters and themes, according to PEN America. No one is advocating for sexually explicit content to be available in an elementary school library or a children's section of a library. That's a distraction from the real challenge.

I understand and respect that parents may choose to limit what their children read, especially at younger ages. My wife and I did. Others do, too.

But no parent should have the right to tell another parent's child what they can and cannot read in school or at home. Every student deserves access to books that reflect their experiences and help them better understand who they are.

I want to commend Senator Cornyn, who said last year, and I quote, "As a general rule, I don't favor banning age-appropriate and subject-appropriate books for children. They need to hear a diversity of views." I agree with him. That's exactly right.

Unfortunately, librarians and teachers across this country, who are just doing their jobs, have been threatened with physical violence and criminal prosecution by a small group of zealots. These efforts to ban books violate our most cherished principles as Americans and betray our values as a Nation. We must protect our students and their freedom to read and learn. With that, I hand this off to Ranking Member Graham for his opening statement.

OPENING STATEMENT OF HON. LINDSEY O. GRAHAM, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator GRAHAM. Thank you, Mr. Chairman. So, if you're a parent out there listening to this hearing, I would encourage you to advocate for your child. I would encourage you to go to the school district, the library, wherever you believe is appropriate, on behalf of your child. You have an obligation, as a parent, to lend your

voice to the cause you think helps your child develop in the right way.

About this hearing, what is our role here? What am I supposed to do? Am I supposed to take over every school board in the country and veto their decisions about what books go into public schools? In the library—you know, I didn't spend a lot of time in the library. That speaks poorly of me. But am I supposed to, as a United States Senator, take over the libraries all over this country and be the final say of what goes in a library? I hope not. I think not.

So, this is an important hearing in this regard: It shows the difference of the two parties on this issue. School boards, whether elected or appointed, in our system, should be the people we go to to talk about what's in a school. A library board should be the group of people decides what goes in a library. And if you don't like the outcome, at least you can complain.

And to all the parents out there who believe there's a bunch of stuff in our schools being pushed on your children that go over the line, you're absolutely right.

To governors and to local officials who want to make sure that agendas are not being pushed upon your children, you're right to speak up.

In Burbank, California, some school district banned "Huckleberry Finn" [holds up a book cover], "To Kill a Mockingbird" [holds up a book cover.] I don't agree with that, but that was your right to make that decision.

So, what I want to leave with you, Mr. Chairman, is that we, on this side, I think to a person—I understand what Senator Cornyn's saying, but he'll speak for himself in a minute. I don't think there's one person on our side of the aisle believes that we, the Federal Government, should be deciding these issues.

And if you don't like the outcome, pick a school board you do like. And it's wrong for conservatives to try to pick school board members—it's absolutely okay for every liberal organization to destroy conservatives who make decisions they don't like.

So, we're not buying this. We're not going to be intimidated. To governors out there, I look to you for leadership on such issues. Some are providing it, and congratulations to you. To parents, don't give an inch on this. Speak up. Violence is never the answer. But show up, speak up. And a lot of the times, the books that are being complained about by parents you can't even read in the public hearing. And I won't read it today. But somebody needs to understand that this is a big issue for many parents in this country.

And, Mr. Chairman, this Committee has done a lot of good work on social media reform. I like you. We've worked on immigration. We can have our differences. But to me, here's what we should be talking about right now. And I'll be brief.

[Poster is displayed.]

Senator GRAHAM. As we talk about the Federal Government's role in deciding what goes in a library or a school, there's been 347 percent increase in illegal crossings since 2020—183,000 people came over illegally in July. We've had 146 people on the terrorist watchlist. In FY22, which is about 2.4 million, came across.

Since President Biden's been President, five-and-a-half million people have come across illegally. That's bigger than the State of South Carolina.

[Poster is displayed.]

Senator GRAHAM. Last couple of weeks, smugglers with ISIS ties helped migrants enter U.S. from Mexico, raising alarm bells. I'd like to be talking about that. And, matter of fact, you can go get the classified briefing. You ought to. It would scare you. And, finally——

[Poster is displayed.]

Senator GRAHAM [continuing]. It's just not me saying these things. New York City—the mayor—is "at capacity . . . We have no more room in the city, and we need help." "This is a national crisis that's begged for a national response since day one." The migrant crisis "will destroy New York City." "New York City will experience a 'financial tsunami'."

The mayor is right. We should be trying to find a way to fix this problem. That, to me, is the biggest priority facing this Committee.

And as to this panel, I'll listen, but I'll end where I started. It's not our job to decide these things, and if you're a parent, don't be intimidated.

Chair DURBIN. I'll say to my colleague and friend from the State of South Carolina that we joined in a bipartisan effort a few years ago. Gang of Eight—four Democrats, four Republicans—wrote a comprehensive immigration reform bill, which I still think, in the whole, can be used today as a template for where we need to go.

But for 30 years, Congress has failed to pass immigration reform, and as a consequence, many of the things that are happening on the border and across our Nation are the result.

I stand ready, and I mean it, sincerely and personally. I say this, to my friend from South Carolina, to gather together for another Gang of Eight or Ten or Four, whatever the number may be, to put together a comprehensive immigration reform bill. I think we both know what the likelihood of that passing in the other body is, but that shouldn't deter us from doing our duty. I'm ready to do it again.

Is the publication of books an important part of——

Senator CORNYN. Mr. Chairman?

Chair DURBIN. I'll be with you in just a second. Is the publication of books an important part of our jurisdiction? The Constitution is our jurisdiction, and the Constitution raises questions that I think will be addressed today in this hearing. Senator Cornyn.

Senator CORNYN. Thank you, Mr. Chairman. I just want to point out that we haven't had a markup of an immigration bill in this Committee, which is the Committee of jurisdiction, since the current Chairman has been Chairman, and even when our Democratic colleagues were in charge of both the House, the Senate, and the White House, we haven't considered any immigration bills.

I think Senator Tillis joined me in a letter to you, as Chairman, asking that we make some attempt to try to craft something that might generate bipartisan support.

About 2 years ago, Senator Sinema, the Senator from Arizona, and I, and also Tony Gonzales, who represents the largest border district in the country, and Henry Cuellar, a Democrat, introduced

a bipartisan, bicameral Border Solutions Act, I think we called it. And my thought was that at some point things would get so bad that President Biden, or perhaps even our Democratic colleagues, might be prompted to actually do something instead of just talk about it. And I guess I was wrong.

In the meantime, as Senator Graham points out, there've been literally millions—I think seven million people coming across the border since President Biden was President.

There've been 108,000 Americans died of drug overdoses last year alone, and we know that the fentanyl, which is taking many of our children's lives in our schools—that 71,000 of those 800,000 were synthetic opioids. We know where it comes from. We know where the precursors come from. We know where the drugs are manufactured and pressed into pills that kids take and die.

And then, of course, there's the 300,000 children who've been placed with sponsors, unaccompanied children, and the Biden administration can't tell you where they are. They can't tell you whether they're going to school, whether they're getting health care. They can't tell you whether they're being trafficked for sex, or forced into involuntary labor. They just can't tell you, and frankly, they don't care, because if they did, they would want to do something about it.

So, I will volunteer to work with you, or anybody, but it's got to be more than just talk. It's got to be action. Nobody else can do this job. We are the ones who have to do the job, if it's going to get done, and so far, I don't see much in the way of action. Thank you.

Chair DURBIN. I would just say, in response, that the bill we worked on with the Gang of Eight—Senator McCain, Senator Graham, and others—was a good faith, bipartisan effort, which I still think has validity to this day. And it took more than just a Committee hearing to achieve. It took people of good will, trying to work together and compromise. I'm sorry that you didn't support that bill, but I think it was a bill that we ought to return to, at this time. I'm ready to do that at any point, and I think we need to do so.

Senator GRAHAM. Mr. Chairman, I'll take you up on that. Bring the bill forward. Let John tell us what he doesn't like about it, how we can make it better, and let's vote. America is really in a national crisis, according to the mayor of New York City—not Lindsey Graham. This is incredibly dangerous, incredibly irresponsible. Afghanistan is now in the hands of the Taliban. The threat of terrorism against the United States is getting worse, not better. ISIS smugglers are involved with getting people into the United States. I think if you brought the Gang of Eight bill, or any other bill, as the base bill and have a debate on it, this Committee would be well served. We could all vote, we could all amend it, and I look forward to doing that.

Chair DURBIN. So, let's start by having our staff take a look at the bill. What is it, 7 or 8 years now since——

Senator GRAHAM. Count me in.

Chair DURBIN [continuing]. And let's update it, which I'm sure we'll have to do in some respects, and see if we can move it forward. As long as it's bipartisan and has a chance of passing in the Senate, as well as the House, I think it's a good effort.

Senator CORNYN. Mr. Chairman, if I can just respond briefly? I can't even remember when the Gang of Eight bill was on the floor. Was that 2016?

Chair DURBIN. 2013.

Senator CORNYN. 2013. Oh, 10 years ago. And it didn't pass the House. I mean, I know you are proud of that product, but, unfortunately, it didn't pass the House.

And, of course, as we all know from "Schoolhouse Rock," a bill becomes a law when it passes both Chambers of Congress and gets a Presidential signature.

So, forgive me for saying this, but that bill failed to succeed. I know you're proud of it, but that was also at a different time than we're in now, and before the Biden border crisis became so dire. And I think there's a different dynamic. Certainly, there's a Republican House. They're not going to take up and pass a Gang of Eight bill. You know that. I know that. Everybody knows that. So, forgive me, but when you keep talking about the Gang of Eight bill as somehow being the gold standard, I have to disagree.

Senator KENNEDY. Mr. Chairman, may I ask you a question?

Chair DURBIN. You may.

Senator KENNEDY. Mr. Chairman, I wasn't here when the bill that you obviously favor was considered by the Senate. My question's simple: Did it grant amnesty to folks who are in our country illegally?

Chair DURBIN. No, Senator, I don't believe it did. I think the decision in the bill was that those who are undocumented, currently living in the United States, would report themselves to the Government and pay their taxes and their Social Security. They would not qualify for citizenship, at least in the outset. And the idea was to get everybody on the books, once and for all. I think that is a positive step forward. It did have favorable sections for DREAMers, which you can imagine I had some interest in, but there were several things we——

Senator KENNEDY. How is that not amnesty?

Chair DURBIN. DREAM Act?

Senator KENNEDY. How is that not amnesty?

Chair DURBIN. Well, it isn't as if they're being forgiven for wrongdoing. They were brought to this country as children and infants. I don't think that there was any culpable conduct on the part of these DREAMers, if you wish. And amnesty——

Senator KENNEDY. So, you were allowed to register, and if you registered, you could stay indefinitely?

Chair DURBIN. No, it was a path to citizenship for DREAMers. But there was no culpable conduct on the part of infants brought here to this country.

Senator KENNEDY. I'm just trying to understand. It just sounds to me like that's amnesty.

Chair DURBIN. In your eyes, it may be, but if a child is brought here at the age of two, to say that they are guilty of some criminal act or should have criminal culpability, I think, is an extreme position.

Senator KENNEDY. Well, I'm not trying to say two-year-olds are bad people. I'm just trying to understand what your bill does, and it sounds like——

Chair DURBIN. It's lengthy.

Senator KENNEDY [continuing]. It's amnesty.

Chair DURBIN. It's lengthy.

Senator GRAHAM. If I may, Mr. Chairman?

Chair DURBIN. Sure.

Senator GRAHAM. I was part of that, and sort of—here's what I'll tell my good friend from Louisiana. You got to get bipartisan buy-in. Right? You got to secure your border. If you don't, it's a fruitless exercise. You need to increase legal immigration, because we don't have enough people to work in our economy, and you need to deal with the people here illegally.

And I've been very open to doing all those things, but it is 2023, and Senator Cornyn mentioned our effort didn't make it. If you want to use it as a base product, fine.

But even I would say, in 2023, the problem is so much bigger than it was before. It would take more effort on the border. It would take a real lift to stop the flow. And I'm willing to work with you. I'm willing to compromise. But the administration has done nothing.

Senator Kennedy, they sent a bill that nobody on our side would support, and it was a dream of the left. I mean, again, at the end of the day, I don't mind disagreeing with Republicans about how to fix an immigration system. I do mind doing nothing about it.

And the sooner we can have this debate in this Committee—and you may be surprised, there might be consensus, be it big bill, small bill, middle bill. Something's better than nothing. America is under siege, and we need to fix this problem.

Chair DURBIN. We're going to return——

Senator KLOBUCHAR. Mr. Chairman——

Chair DURBIN. Just a second. We're going to return to the subject of this hearing—shortly.

[Laughter.]

Chair DURBIN. Senator Klobuchar.

Senator KLOBUCHAR. Yes. I'm looking forward to hearing the witnesses. But Mr. Chairman, I did want to point out, the argument that nothing has been considered for 8 years, or something like that—I actually view, when you look at the arc of time on this, when President Bush was in, he wanted desperately—a Republican President—to get this done.

I remember Senator Graham was in the group that worked on this. Then you fast-forward, right, to Obama, and this was the effort you're talking about during that time. But even during President Trump, there was a major effort made, led by Senator Rounds, if you remember, an introduced bill that was, maybe, what Senator Graham was getting at when he talked about a more limited bill.

It had funding for the border, significant funding for the border, but it also included more work on work permits and on visas, something people on this Committee, a number of people on both sides of the aisle, care about very much. DREAMers were covered under that bill. Temporary status people, who are already here, were covered under that bill.

I don't remember every single detail, but I do remember, is that we had enough Republican Senators to get it over the line. The

House was going to pass it, and then, unfortunately, President Trump rejected the proposal, and so then it died. That is what happened. I only point that out because that was a very recent bipartisan effort, compared to the one that was 8 years ago.

So, this has continued, and there has been a—to say that this was about amnesty or any of that, this was actually about moving our country forward, because, yes, border—do more, but no great country has expanded with a shrinking workforce, and we have made it so difficult for doctors and nurses and for people that want to be here. It has made it really hard, in many of our States, in the ag sector, in the hospitality sector, and others. And I just believe immigrants don't diminish America, they are America. And we have to find a way to do this. And one of the arguments that always seems to get lost is the economic argument for how important this is right now for our country's future.

Chair DURBIN. Thank you, Senator. Senator Whitehouse.

Senator WHITEHOUSE. I just wanted to observe, Mr. Chairman, your long and passionate advocacy for immigration reform, particularly around DREAMers, and recognize the Ranking Member for his helpful participation in multiple efforts at reforming the immigration system.

I think with you both, as Chair and Ranking Member, there really is a prospect for doing something bipartisan and useful in this Committee, and count me in. I would also flag that the next Budget Committee hearing coming up is on the economic value of more robust immigration, which has very powerful economic value for Americans. Thank you.

Senator GRAHAM. Mr. Chairman, if I may? Then I'll——

Chair DURBIN. Senator Graham.

Senator GRAHAM [continuing]. Get you—I know you want to conduct the hearing, but I'm glad I brought this up. It seems to be—there are a lot of interest about what to do, and the bill that Senator Klobuchar mentioned got 54 votes. I remember it well. There're many combinations, small, medium, and large. The problem is not just small, medium, and large. It's unbelievably out of control.

I've been doing this since 2006. I never dreamed that we'd be where we are, here today, with policies that basically are—are in shambles. Whether you like President Trump or not, we had the lowest illegal crossings, in the last 40 years, on his watch. Now, what happened? A Democratic President changed all those policies, and we have a tsunami of illegal immigrants that are destroying New York City and other cities.

Rather than talking today about what we should do—I don't care what the base bill is. It could be what Senator Klobuchar said. It could be any bill you want as the base bill. I'd like to get this Committee involved in trying to fix this problem.

Chair DURBIN. I accept your invitation to be part of that, and let's do it starting with that bill, perhaps others.

Today we welcome five witnesses. I'll introduce the Majority witnesses, then turn to Ranking Member Graham to introduce the Minority witnesses.

Our first witness is the Secretary of the State of Illinois Alexi Giannoulias. Secretary Giannoulias serves as State librarian for Il-

linois, as well. He's advocated for libraries in our State and successfully worked to prohibit restrictions on books, based on partisan or personal objections in Illinois. I look forward to hearing more about his effort in my home State.

We're also joined by Professor Emily Knox, associate professor at the University of Illinois, an expert on censorship of literature, and the author of the book, "Book Banning in 21st-Century America."

The final Majority witness is Cameron Samuels. Cameron is a current student at Brandeis University and graduate of Seven Lakes High School in Katy, Texas. In high school, Cameron led efforts to fight censorship in their community. They are the co-founder of Students Engaged in Advancing Texas, an organization that seeks to protect access to books for young people.

Ranking Member Graham, would you like to introduce your witnesses?

Senator GRAHAM. Thank you, Mr. Chairman.

We have Nicole Neily. Is that right? Ms. Neily. Yes, I got it right. She's president and founder of Parents Defending Education, the organization that has the goal of reclaiming schools from activists promoting political agendas, by fostering education based on scholarship and facts. She's also the founder of Speech First, a national campus free speech organization, has worked at the Independent Women's Forum and the Cato Institute. She received a bachelor of arts in political science from the University of Illinois, Urban-Champaign, I guess that is——

Chair DURBIN. Urbana.

Senator GRAHAM [continuing]. And her master of public policy, in economic policy and foreign policy, from Pepperdine.

Our second witness is Max Eden. Max, thank you. He's a research fellow at AEI, American Enterprise Institute, focusing on education reform, specifically K through 12, and early childhood education, and was briefly senior member at the Manhattan Institute.

AEI is a public policy think tank dedicated to defending human dignity, expanding human potential, and building a freer and safer world. He co-wrote the book, "The Book Ban Mirage," a report with scholars from the Heritage Foundation, debunking the myth of a book ban crisis in the United States. He received his B.A. in history from Yale University. Thank you.

Chair DURBIN. Thank you, Senator Graham. The procedure is customary: 5 minutes for each witness to make an opening statement, and then rounds of questions, each Senator allotted 5 minutes. Please try to remain within your allotted time. Now I'm going to ask the witnesses as a group to stand and raise their right hands and take an oath.

[Witnesses are sworn in.]

Chair DURBIN. Let the record show that the witnesses have answered in the affirmative. Secretary Giannoulias, you're the first up.

STATEMENT OF ALEXI GIANNOULIAS, SECRETARY OF STATE, STATE OF ILLINOIS, CHICAGO, ILLINOIS

Secretary GIANNOULIAS. Good morning, Chairman Durbin, Ranking Member Graham, and distinguished Members of the Committee

on the Judiciary. Thank you for allowing me the honor and privilege of being here this morning.

One of the most exciting responsibilities of serving as Secretary of State in the State of Illinois since January of this year is the ability to serve as the State's librarian. As our youth continue to need educational assistance in catching up after the disruption caused by COVID, I believe libraries, in every single community across this country, have had an especially critical role to play in increasing educational opportunities for all Americans. So imagine my surprise when, in the year 2023, instead of inheriting a debate over what more can be done with and for our libraries, I was confronted with a book banning movement upon taking office.

You see, our libraries have become targets by a movement that disingenuously claims to pursue freedom but is instead promoting authoritarianism. Authoritarian regimes ban books, not democracies. Tragically, our libraries have become the thunderdomes of controversy and strife across our Nation, the likes of which we've never seen before. These radical attacks on our libraries have divided our communities, and our librarians have been harassed, threatened, and intimidated for simply doing their jobs. The need to stand up and fight for our freedoms and our librarians, especially at this perilous time for our democracy, is why I initiated House Bill 2789 in Illinois.

This legislation, the first of its kind in the United States of America, is a triumph for our democracy, a win for First Amendment rights, and, most importantly, a great victory for future generations to come.

Under this legislation, Illinois libraries will not be eligible for State-funded grants if they ban books. This right-to-read legislation will help remove the pressure that librarians have tragically had to endure over the last couple of years. This legislation is important because both the concept and practice of banning books contradicts the very essence of what our country stands for and what our democracy was founded on. It also defies what education is all about: teaching our children to think for themselves.

If the book banners care to, they can go to our libraries and check out the Federalist Papers, the U.S. Constitution, and even Supreme Court cases on the First Amendment. What they will learn is that our democracy depends on the marketplace of ideas.

That marketplace of ideas will not function if we ban books, because we will be banning ideas and preventing our children from thinking for themselves and having the ability to debate and learn and understand different perspectives. We will be banning knowledge, culture, empathy, understanding, and diverse and differing world views.

Ray Bradbury, the acclaimed Illinois author, who wrote "Fahrenheit 451," was quoted as saying, "The problem in our country isn't with books being banned but with people no longer reading. You don't have to burn books to destroy culture. Just get people to stop reading them." And that's where the real danger lies.

Parents—parents, and only parents—have the right and the responsibility to monitor the access of their children, and only their children, to library resources.

There are more than two-and-a-half thousand instances of books being banned in schools last year, including many American classics such as "1984," "The Adventures of Huck Finn," "The Catcher in the Rye," "The Color Purple," "The Kite Runner," "Of Mice and Men," and "I Know Why the Caged Bird Sings," by Maya Angelou.

Look, I have three young daughters, and there are some books and titles that my wife and I don't feel are age appropriate for them, but I could never imagine a world where I would tell another family what books their kids should or should not be allowed to read.

Book banners say they want, quote, "local control." What's more local than controlling what takes place in your own household? That's the very definition of local control. And the ultimate irony is that by instituting more book bans, these groups want the Government to have more of a say in telling everyone's children what to think and believe. Well, that's government overreach at its peak.

Books are a vital way to open our minds to other cultures, religions, identities, and possibilities. Let's also remember the mental health crisis growing across the country. Access to books and the freedom of expression help battle isolation. Books connect us and promote empathy and understanding. Our legislation establishes a clear path, opposite and away from the damaging trend to ban and censor books that a small but loud few disagree with.

We need to take any hint of censorship seriously, because free speech is not only crucial to democracy but imperative for the survival of our civilization.

Last point I will make. This issue should have nothing to do with political party. This isn't a Republican or Democrat issue. This is a freedom of speech and a freedom of ideas issue. Not once during the creation of this legislation did I ask a librarian if they were a Democrat or Republican.

Not once did I ask an author if they were a Democrat or Republican. Not once did I ask a constitutional expert if they were a Democrat or Republican. Every single person we spoke to not only was in favor of our legislation but was deeply concerned with even the concept of book banning.

We want our schools and libraries to be open and welcoming settings for education, not cultural battlefields. This legislation aims to unify our communities and seeks to restore a right that some of us may have grown to take for granted: the freedom to think for ourselves.

It's my hope that others may look toward Illinois and see the value in adopting our legislation as a model to stop book banning in its tracks and to protect the right to read freely and without fear of retribution. I could not be more proud of this legislation, and I implore everyone in this room to please, please be on the right side of history and push back against these book bans in every and any way possible. Thank you, again, to the Committee.

[The prepared statement of Secretary Giannoulias appears as a submission for the record.]

Chair DURBIN. Thank you, Secretary Giannoulias. Mr. Eden.

STATEMENT OF MAX EDEN, RESEARCH FELLOW, AMERICAN ENTERPRISE INSTITUTE, ARLINGTON, VIRGINIA

Mr. EDEN. Chairman Durbin, Ranking Member Graham, Members of the Committee on the Judiciary, thank you for inviting me to testify. My name is Max Eden, and I'm a research fellow with the American Enterprise Institute.

To put it bluntly, books aren't being banned, and it's good that they are. The media keeps using the word "banned," but that word doesn't mean what you think it means. In common usage, "banned" means "made unavailable," yet the most-banned "Gender Queer" is still available on Amazon. The same, unfortunately, can't be said for Ryan Anderson's "When Harry Became Sally." Only books on one side of that issue, it seems, actually get banned.

Rather, this conversation focuses on school library availability. If "banned" means "made unavailable," then virtually every book ever published has been effectively banned in school libraries, but that's not even what this word means here. Indeed, a book can be both banned and totally available in a school library. That's because the media has accepted the expansive definition of "banned" offered by PEN America. If a book has been taken off the shelves, reviewed, and placed back on the shelves, it has, according to PEN, been banned. If a school places a parental permission requirement on a book, it has, according to PEN, been banned. If a school moves a book to a guidance counselor's office, it has, according to PEN, been banned. In their report, "Banned in the U.S.A.," PEN draws parallels in all this to Nazi Germany.

Now, my public school library didn't carry "Mein Kampf." Was it banned? I don't know. But I do know that I've read a few books about this era since, and I've so far missed the part where the Nazi party forced schools to relocate books to guidance counselors' offices. To provide a linguistically honest account, the Heritage Foundation's Jay Greene and Madison Marino and I set out to assess how many of the 2,532 books in PEN's 2022 report, that were labeled as "banned," were actually removed from school libraries.

We did this with one simple trick. We checked the card catalogues. As it turns out, nearly three-quarters of the books that PEN labeled as banned were still in school libraries. Careful analysis also belies the claims that books are being banned because of race or LGBT issues, or as PEN America labels the Black Lives Matter-inspired "The Hate U Give" as the fifth-most-banned book, we found it available in every single school library in question.

And when The Washington Post examined over 1,000 review requests made by parents, less than 7 percent mentioned LGBT without also containing the word "sexual," although those requests may have contained words like "pornographic" or "obscene." And that's what this issue is really about: the provision of sexually explicit material to children by public employees.

This is a question of judgment. Few would say it's unreasonable to keep Hustler, with its close-up genital photographs, out of school libraries, and few would insist that "Romeo and Juliet," with its lyrical allusions to sex, should be removed. Communities must draw the line somewhere between those two points. But where, exactly? Take the previously mentioned book, "Gender Queer." That

graphic novel famously includes a picture of a strap-on dildo blow job.

Is this okay for kids? Some think that it is, and some think that it isn't. You know something weird is going on, though, when parents try to read passages of these books at school board meetings, and the school board cuts them off because they insist the material is too obscene to be read out loud. I guess kids could be listening? Great for them to read, but unacceptable for them to hear? I think that's the principle, maybe.

It's kind of gross to say, and I don't want to, but this hearing has been called, and we really can't have an honest discussion without knowing what we're actually talking about. We're talking about books with explicit passages about fisting, butt plugs, anilingus, the spit-or-swallow decision, and rape. I won't read those verbatim, but I will read a passage from a few of the most-banned books.

From the fourth-most-banned, "All Boys Aren't Blue": "You were fully erect at this point. You promise that you not going to tell anyone? I promised. You then grabbed my hand and made me touch it. It was the first time I'd ever touched a penis that wasn't my own. I knew that what was happening wasn't supposed to happen. Cousins weren't supposed to do these things with cousins."

And from the also fourth-most-banned, "Lawn Boy": "In the fourth grade, at a church youth group meeting, out in the bushes behind the parsonage, I touched Doug Goble's dick, and he touched mine. In fact, there were even some mouths involved."

Ten-year-olds performing sodomy, underage incest, strap-on dildo blow jobs. Is this okay for kids? Judging by the fuss made by the media, NGO's, and some Democratic politicians, it seems there is a politically significant contingent that believes this is all actually very good for kids.

But personally, I'm not at all troubled by the fact that some moms believe that this is inappropriate and that some school boards agree. And I find it kind of weird that the United States Senate is troubled enough to call a hearing about all this. Thank you.

[The prepared statement of Mr. Eden appears as a submission for the record.]

Chair DURBIN. Thank you, Mr. Eden. Professor Knox.

Professor KNOX. Thank you, Chairman Durbin——

Chair DURBIN. You need to turn on the microphone. There you go.

STATEMENT OF EMILY KNOX, ASSOCIATE PROFESSOR, UNIVERSITY OF ILLINOIS, BLOOMINGTON, ILLINOIS

Professor KNOX. Thank you, Chairman Durbin, Ranking Member Graham, and Members of the Committee, for giving me the opportunity to testify at this hearing.

I'm an associate professor in the School of Information Sciences, the iSchool at the University of Illinois, Urbana-Champaign. I'm also board chair of the National Coalition Against Censorship. I previously served as president of the Freedom To Read Foundation, the legal arm of the American Library Association. My testimony does not reflect the views of the University of Illinois, NCAC, FTRF, or the ALA.

My research focuses on information access, intellectual freedom and censorship, information ethics and policy, and print culture studies. I was born in Nashville, Tennessee, and grew up in Columbia, Maryland. I studied religion at both Smith College and the University of Chicago. And after working as a project assistant at the law firm of Kirkland & Ellis, I received my MSLIS from the iSchool at Illinois. After working as a theological librarian for 5 years, I attended the doctoral program at the School of Communication Information at Rutgers University.

Books and libraries have always been a part of my life. My mother was a high school librarian at Magruder High School, in Montgomery County, Maryland, for 32 years. And I often spent my summers with her, shelving, conducting inventory, and checking in magazines. We always observed Banned Books Week. Ma would bring home the list of books that had been challenged, and my favorite author, Judy Blume, was almost always on the list. The characters in her books seemed like real people to me, like me and my friends. I could not understand why people would want me to not read books—to read books—would not want me to read books about my own life.

My father was a professor at Morgan State University in Baltimore, and when I followed in his footsteps by getting a Ph.D., I knew exactly what I wanted to study: Why do people attempt to ban books? It is not surprising that the reasons are clear. Reading is powerful, and the freedom to read can be frightening.

According to the ALA's Office for Intellectual Freedom, over 2,500 unique titles were targeted for censorship in 2022. Almost all of the books can be categorized as diverse, or books by and about LGBTQIA, Native, people of color, gender diversity, people with disabilities, and ethnic, cultural, and religious minorities. At the same time, researchers have found that 71 percent of Americans oppose book bans in public libraries, and 67 percent oppose banning books in school libraries.

Books are one of the most powerful technologies in the world. They bring ideas across both time and space in a small, portable package. During this current crisis, there's a lot of discussion about whether or not books are harmful or dangerous or hurtful. This actually depends on who is reading them.

As Jesse Shera noted, we do not know what happens when an individual reads a book. Each person brings their own experiences to the book, and those experiences will determine their response. These interpretations are never static. Rudine Sims Bishop argued, books are mirrors, windows, and sliding glass doors—a book can "help us understand each other better by helping to change our attitudes toward difference."

What we see right now is that people are fixated on the idea that books are only mirrors and sliding glass doors: they only reflect something true about the reader themselves, or the reader's world, or they invite the reader to mimic an identity, or action, they read about in a book. It's important to remember that books are also windows. They give us access to other people's lives. Kerry H. Robinson notes that adults often censor difficult knowledge or knowledge that many adults find challenging to address in their own

lives, but especially with children. What could be more difficult than knowledge that can define your identity?

But in order to describe your truth, you must have the words to do so. These campaigns to censor books are unconstitutional and against every person's right to intellectual freedom. That is, the right of every individual to hold, express opinions, and seek access, receive, and impart information and ideas without restriction. The First Amendment states that Congress shall make no law abridging the freedom of speech. Our right to speak, write, publish, and read are all protected by the Constitution. This right is not based on whether or not people agree with the ideas being expressed. We must remember that, as citizens of the United States, we are a free people, and it is our right to read freely.

[The prepared statement of Professor Knox appears as a submission for the record.]

Chair DURBIN. Thank you, Professor Knox. Ms. Neily.

STATEMENT OF NICOLE NEILY, PRESIDENT, PARENTS DEFENDING EDUCATION, ARLINGTON, VIRGINIA

Ms. NEILY. Chairman Durbin, Ranking Member Graham, and distinguished Members of the Committee, thank you for inviting me today.

My name is Nicole Neily, and I'm the president of Parents Defending Education, a membership association that gives parents the knowledge and tools they need to be effective advocates for their children's education.

Yes, books have become a flashpoint in schools over the past few years, yet headlines and research papers by activist organizations have intentionally muddied the waters between World War II book burning and what's happening in America's K–12 schools. If you hear one thing today, know this: Families' concerns about books in schools are not book banning.

First, the book issue is a curation issue. It should be obvious that a book that is part of a lesson plan in a second-grade classroom is more concerning than a book that can be voluntarily checked out from a public library. And also, that sensitive topics read to children at very young ages is more concerning than high schoolers learning about the human body in health class.

But today, merely suggesting that kids who believe in Santa not have unfettered access to graphic sexual novels is tantamount to murder. In Connecticut, one resident said that the school board's desire to put parental consent rules in place for a few books described as obscene and explicit was, quote, "a matter of life and death." It's not. When we do hear from parents about books, the phrase that we hear the most frequently is, "age appropriate." Radical, indeed.

School boards across the country cut the mics on parents who read passages from these books, stating, this is inappropriate. There are children in the room. Yet those same books are being provided to children in schools. While it may seem politically convenient to scapegoat parents, I ask you to read some of these explicit paragraphs and look at these sexual images with your children, or your grandchildren, and then tell your constituents whether you consider such content educational.

As a society, we don't put Playboy in kindergartens. This isn't considered a book ban but common sense. Strangely, media coverage over this issue frames any discussion at all as tyranny. It is disingenuous at best and deceptive at worst. Classrooms, schools, and libraries have finite space and must select which materials are on display at any given time. Nor do they have unlimited budgets so must prioritize certain purchases over others. How these decisions are made and who is involved in that process is a matter of public accountability. Yet, when people ask questions, they're crucified. Pretending that objections to minors accessing explicit sexual content is a threat to liberty and literature is a strawman and a distraction from real concerns about the quality of children's education and whether students are safe in school.

Second, the book issue is a parental awareness issue. It is not partisan to assert that children do better when their families know what's going on in their lives. This isn't rocket science. The more information parents have, the better they can support their kids, emotionally and academically.

America has a youth mental health crisis. Yet, while schools lobby for increased mental health funding, for which the Federal Government has provided hundreds of millions of dollars, they're exacerbating that problem. When kids are given assignments beyond their comprehension level, that even adults find challenging—violence, war crimes, rape, incest, and more—it should come as no surprise when children become depressed or hopeless. Books from schools should be discussed with loved ones, perhaps to provide historical context or another perspective.

Parents know their young learners' quirks and preferences and whether certain material might resonate with, or would be appropriate for, their loved ones. These decisions may differ between children in the same family at the same age, based on factors like maturity and sensitivity.

Children deserve an education that meets their specific needs. Yet, when families ask to simply know when their children have—what their children have access to, or may wish to put guardrails on material for children of certain ages, they're pilloried in the public square. Such public flagellation is intended to not only extract a pound of flesh from the perpetrator but to send a message to any other parent with similar reservations: Speak up, and the mob will come for you, too.

Far too many schools keep families at arms' length, which could not come at a worse time. Kids would benefit if the adults in their lives worked together in their best interest. But families are now considered adversaries, not even entitled to basic information about their children. In Wisconsin, one school district's teacher training session stated, "Parents are not entitled to know their kids' identities. That knowledge must be earned."

My organization has documented over 1,000 districts across the country with parental exclusion policies, which state that families don't have a right to know their child's gender identity in a taxpayer-funded school.

And finally, it is not evil to want to be involved in your child's education. Every time a parent is falsely accused of wanting to ban a book because of reasonable concerns about subject-matter appro-

priateness, neighbors are pitted against each other based on dishonest premises. This is a deliberate attempt to demonize parents, and to chill both their speech and activism.

Twenty years ago, if a 6-year-old went to school and talked about sex, teachers would assume that that child was being abused. In 2023, children are not only learning about sex at school but are being told to keep secrets from their families, as well. Please stop mocking parents. Please stop name-calling. Please listen to the families who want their children to learn basic grammar rather than be policed on pronouns, who want their children to read at grade level and not taken out of class for political rallies, who want their young children's innocence to be preserved for a few years longer than an activist academic might insist. We are your constituents, too. Thank you.

[The prepared statement of Ms. Neily appears as a submission for the record.]

Chair DURBIN. Thank you, Ms. Neily. Cameron Samuels.

STATEMENT OF CAMERON SAMUELS, STUDENT, BRANDEIS UNIVERSITY, CO-FOUNDER, STUDENTS ENGAGED IN ADVANCING TEXAS, KATY, TEXAS

Mx. SAMUELS. Members, thank you for this opportunity to address you this morning.

I am Cameron Samuels, a student from Katy, Texas, and I use gender-neutral pronouns, "they/them." I'm the executive director of Students Engaged in Advancing Texas. In 2022, I graduated in a district of more than 90,000 students.

In recent years, we have faced a so-called culture war over books. My experience began when a few people sought to ban Jerry Craft's "New Kid," a children's book like any other, but some weaponized identity to censor Black books.

The conversation on books quickly escalated, and I signed up to speak at the next meeting. Walking into the board room that night, I realized I was the only student there. I was the only one whose future was directly affected by the district's decisions. Adults spoke for restricting student access to literature. When my turn came, I spoke for a complete education and the freedom to learn. They applauded the adults but gave me silence, leaving me isolated in a room of people making policy about students without us at the table.

In the following months, I stood up for my freedoms, but my school district removed age-relevant books at record pace. Nearly all were targeted for identity, such as LGBTQ themes, racial diversity, and religion. These books represent students. We found ourselves more in challenged books than in school libraries. So, I gathered student groups to distribute hundreds of challenged books, district wide. We packed board meetings with a community who knew that students deserve better. Libraries offer discovery beyond classrooms. Censorship limits our liberty to learn and erases our identity and humanity.

When Katy targeted Art Spiegelman's "Maus," I could not fathom that cartoon mice, walking shamefully naked to Nazi gas chambers, were considered sexual by the book's challengers. My ancestors fled religious persecution in Eurasia. I've faced too many

antisemitic remarks in school to remember. Classmates told me the Holocaust did not exist. Many cannot name a Jewish person, so they learn about Judaism from media representation, often dominated by stereotypes. Books like "Maus" teach accurate reflections of Jewish identity. If a friend knew the real extent of the Holocaust, maybe they would've thought twice before spraying cologne in my face, saying he was gassing the Jew.

Where they burn books, they burn people. Mike Curato's "Flamer" illustrates a queer Boy Scout bullied and traumatized. I saw myself in the book, having faced similar harassment in school. "Flamer" gave me words for my trauma, but it was banned. Censorship bars students from age-relevant materials, leaving them unable to realize their actions can traumatize others.

Responding to a police report against the book, officers entered a high school in my district to remove it. In history, the Gestapo secret police in Nazi Germany acted similarly. My community faced tactics my ancestors fled from across the world to escape.

Not only schools censor books, but our State. Students and I introduced amendments with senators to book-ban bills for accountability and nondiscrimination. They were rejected, and already the bill faces a court injunction.

Historically, censorship is never on the right side of history. My State is home to 8 million people under the age of 20, and since everything is bigger in Texas, we lead the Nation for book bans. Censorship impacts our futures. Students deserve to be decision-makers. Censorship is undemocratic. Viewpoint discrimination is contrary to the First Amendment. The Supreme Court rules to protect literature from scrutiny against identity.

We may not see eye to eye, but we are facing a students' rights crisis, nationwide. As a 17-year-old, I should not have been focused on defending my rights from bigotry. I should have been learning. Ensuring education reflects its primary stakeholders, the students, we can proceed with a solution to censorship that facilitates collaboration between students, families, and educators. Thank you.

[The prepared statement of Mx. Samuels appears as a submission for the record.]

Chair DURBIN. Thank you, Mx. Samuels. We have a round of questions from the Senators. Each have 5 minutes.

I'd like to direct my question to Secretary Giannoulias. The American Library Association has written the following: "1,269 demands to censor library books and resources in 2022, the highest number of attempted book bans since ALA began compiling data about censorship in libraries more than 20 years ago. The unparalleled number of reported book challenges in 2022 nearly doubles the 729 challenges reported in 2021."

My first part of my question is going to ask you to address that statement by the American Library Association, in light of testimony before us that this is much ado about nothing.

And the second one is the notion that extremist attacks on student and book bans are not that prevalent. Book banning has reached new heights over the past 2 years. Local leaders in States such as Texas, Florida, Utah, Missouri, Iowa, Indiana, and others, have all recently enacted legislation facilitating banning books in local school districts and libraries. These new laws provide for civil

penalties and/or jail time for violations, and pose great risks to teachers and librarians, and that's why groups like the American Library Association have spoken out. Can you reflect on those two statements?

Secretary GIANNOULIAS. Thank you, Mr. Chairman. The two are related. As State librarian, I travel the State of Illinois, and we talk to librarians, we talk to libraries—school libraries, public libraries. The level of threats—intimidation, physical threats—in talking to librarians, these are not my viewpoints—they have never seen it in their entire careers.

Because of these political attempts to ban books, we're seeing libraries close down at record numbers. It's difficult to find new librarians who want to serve in roles that used to be their dream jobs. And just a few weeks ago, in the suburbs of Chicago, numerous libraries received bomb threats and were forced to close their doors.

So, I can tell you, in Illinois, it's a very real—and across the country, the problem is worse. And again, what our bill aims to do, and will do, is to fight for and protect these librarians. We have to fight for our librarians.

We also have to trust that they have the professional judgment, experience to make decisions on what books belong in circulation. It should not be up to fringe elements screaming from the rooftops about books that they've never read. These are librarians and individuals that have advanced degrees in library science, masters of library science, masters of information and library science. And it's important to make sure that we allow them to determine what's in circulation, and it's important for us to trust parents to determine what books their kids should read. And again, it is not up to parents to tell other parents what books kids should read.

Another point I'd like to make, when it comes to our legislation: We are not advocating for any single book to be at a library, or not be at a library. What we're saying is, let's trust our librarians to make these decisions, not an individual parent that's angry or disagrees with a certain viewpoint. Judy Bloom said recently, "I believe that censorship grows out of fear, and because fear is contagious, some parents are easily swayed. Book banning satisfies their need to feel in control of their children's lives. This fear is often disguised as, quote, 'moral outrage.' They want to believe that if their children don't read about it, then their children won't know about it. And if they don't know about it, it won't happen."

As I mentioned in my opening remarks, I have three young daughters. Of course, there are books that are not age appropriate, but that's what being a parent is all about: Doing your best to keep an eye on what your children read, and what they consume. Thank you, Mr. Chairman.

Chair DURBIN. I would just add, as well, to put this in the context of the world we live in, where so much information is so available to people carrying simply iPhones, or any laptop computer that they have access to, that we ought to be honest and realistic about that. I agree with you. The first responsibility is the parents' responsibility, and we believe there are age-appropriate restrictions that can be introduced in libraries, and other places, which gen-

erally are consistent with freedom of expression. I thank you. Senator Graham.

Senator GRAHAM. Thank you. Let's just build on what has been said. How do you say your name, sir? Alex——

Secretary GIANNOULIAS. Alexi Giannoulias.

Senator GRAHAM. Okay.

Secretary GIANNOULIAS. Alexi is fine.

Senator GRAHAM. I want to see if I got the point here. A public library is supported by public dollars. Does that make sense?

Secretary GIANNOULIAS. Yes.

Senator GRAHAM. Okay. Are you telling taxpayers of this country to shut up? Is—all you worry about is your kids, don't have a voice about how your taxpayer dollars are being spent, and what kind of community you're living in here? Because you're a parent and you don't let your three daughters read something, is it possible that the other things—that the books in question may hurt the community, in the eyes of parents? Can a parent, a taxpayer, complain, under this theory, or should they just shut up?

Secretary GIANNOULIAS. I would make the exact argument you are. This is about parents——

Senator GRAHAM. No. We're——

Secretary GIANNOULIAS [continuing]. Making decisions——

Senator GRAHAM [continuing]. Not making the same argument. My argument is, you just said, if you've got kids, you police your kids. Otherwise, just shut up and trust the library system, the school system. Let them decide for your community. I completely, totally reject that. I don't have any kids. Should I shut up? I pay taxes. When you have a public library, and you have a board, somebody decides what books go in, and what not to go in. Lend your voice to the cause. It's okay to speak out for your community.

Cameron, you have an advocacy group in Texas. Right?

Mx. SAMUELS. That is correct.

Senator GRAHAM. And you have every right to do that. You can advocate for your point of view, and somebody in Texas has to decide who wins. But never shut up. Never be quiet. My point is, the theory of this case is, parents have a very limited role in life. Apparently taxpayers have a very limited role in this area. You're paying money to run these libraries. I mean, you're getting money from taxpayers. They should speak up.

Ms. Knox, you said—is it unconstitutional for a parent to go to a school board, or a public library, and complain?

Professor KNOX. Thank you for giving me the chance to respond. Actually, almost all libraries have in their policies something called a "request for reconsideration," that allows parents, or interested community members, to object, or say what they would like to have changed, in a library collection.

I think what's important to remember is that this is a collective decision. It's not just one person who gets to say what is in a library collection.

Senator GRAHAM. I'm not arguing with you. Somebody has to decide. But the point is the individual here, the individual taxpayer, the individual parent—there's an effort in this country to shut you up. Ms. Neily, are you going to shut up?

Ms. NEILY. We will absolutely not shut up. I am here on behalf of more than 10,000 members of Parents Defending Education, who want to have a voice in their children's education. Yet they, every time they speak up, are mocked, are shamed, are intimidated, and silenced, and bullied, by elected officials and community members, who do not want them to speak up, who are told that they are book burners, who are shamed of that. And you know what? We will not stop, because after COVID, we saw—we had a window into what our children were learning or were not learning, and we were disappointed by that. So, parents have not stopped, and they will not stop, advocating for their children, because the gatekeepers—be it the teachers' unions, or anyone else—have shown that they do not have our children's best interest at heart. They have their money and their power structure at heart, at the end of the day.

Senator GRAHAM. Mr. Eden, is it your testimony there's an organized effort in this country to push ideas, books, literature, through the public school system and libraries, that has a very strong political agenda behind it? Is that what you're telling us?

Mr. EDEN. I think it's pretty clear that that is what is going on. Yes, sir.

Senator GRAHAM. And if you don't see that, you're blind. You know, in Florida, Ron DeSantis did something you may not like, Mr. Chairman. In Illinois, you do it a different way. But Governor DeSantis decided he would step in and stop what he thought was abusive, from his point of view.

My point about this hearing is, there's no role up here for any of us. Illinois, you do it the way you want. Florida, you do it the way you want. Each school library, you'll decide, but the day that a parent, a concerned citizen, can't come forward and say, I object, without being humiliated, is a bad day for America.

And there's nothing in the Constitution preventing everybody in this country from having a say, to express yourself, to try to mold the community in a way that you think is better. And some of the things being pushed through this agenda are just, quite frankly, offensive.

Chair DURBIN. I think you made the point earlier, and I want to repeat it. We all, I hope, agree, regardless of our political philosophy, that there are lines that cannot be crossed. Violence is one of those lines. Humiliation is one of those lines, as far as I'm concerned. I think what we're talking about is policy here in this country when it comes to the basic rights guaranteed by the Constitution. Senator Whitehouse.

Senator WHITEHOUSE. Thanks very much. My question is going to be for Secretary Giannoulias. There is one view of the facts here, which is that the conflicts that we have seen in school libraries and in school board meetings, involving the school librarian and the local people who serve on the school board, grow out of natural concerns by school parents.

There is also significant reporting suggesting that national groups, funded by right-wing organizations, fueled by dark money, using people who have no child in the school, and may not even be from the State, come into town and mount a surprise attack on local people, like a school librarian, people who work in the school, people who serve on the school committee, who are just local people

trying to serve the school, and who don't have any preparation for dealing with that kind of sudden disruption and political attack, particularly one that is well scripted, well financed, and basically comes in like an out-of-State artillery barrage on the unsuspecting school. In your investigation into all of this, which of those two factual descriptions is closer to the truth?

Secretary GIANNOULIAS. Thank you, Senator. We have seen, heard, and read about instances where right-wing groups, extremist groups, are trying to shut down, or censor, a certain book, access to certain books, which is why, again, our legislation is so very important: to protect librarians and their ability to determine what books belong in circulation.

I'm saddened that Senator Graham left. He didn't give me a chance to respond. And this whole notion that protecting the right to read and fighting against censorship is somehow anti-parent is one of the most ludicrous arguments I've ever heard. What we're saying is, don't let one parent, who disagrees with a certain world view, determine what book—whether or not a book should be in the library.

That goes against the very point of our democracy; what it means to educate our youth, which is to allow them to think for themselves; and, quite frankly, it's an anti-Republican argument. Republicans are the ones that—allegedly—are the ones who fight against censorship, and the ones who fight for our Constitution and the freedom of speech. Yet, here they are, picking a page out of a random book that they don't agree with, and making it sound like parents have no say. That's the exact opposite argument that we're trying to make.

Senator WHITEHOUSE. And that——

Secretary GIANNOULIAS. The goal——

Senator WHITEHOUSE [continuing]. Would be particularly true if the people involved weren't parents, weren't from the community, or even from the State, but were being shipped in just in order to stir up trouble, make news, and create division and controversy.

Secretary GIANNOULIAS. That's 100 percent correct.

Senator WHITEHOUSE. Let me ask consent that an article by a very good reporter named Amanda Milkovits, who covers Rhode Island for The Boston Globe, be made a matter of record. It's entitled "Libraries Face Increased Attempts to Ban Books," and it's quite a comprehensive piece of coverage about the way in which this movement has appeared in Rhode Island to make its points, I guess, I'd say, would be the nicest way to say it. Thank you very much.

Chair DURBIN. Without objection.

[The information appears as a submission for the record.]

Chair DURBIN. Senator Grassley.

Senator GRASSLEY. Mr. Speaker, I'm going to submit questions for answers and use my time just to make a few points on this subject.

First and foremost, the notion that this is a, quote, "book ban" is misleading, and not truthful. This has nothing to do with restricting books to the general public. These books can still be purchased through various retailers, if parents want their children to

have access to these materials. The issue is protecting parental rights and their ability to raise their children.

As a father of five, I can confidently say, no one knows what's best for a child more than their own parents. As such, I believe the first principle in education is that parents have a fundamental right and responsibility to guide their children's upbringing. This means parents ought to have the greatest say in determining what is best for their children.

The Constitution gives this function to the States. Decisions on education need to be made at the State and local levels. These levels of education are closest, and most accessible, to the parents and children directly affected. States and school districts are best equipped to craft education policies according to the unique needs of the students. Further, moms and dads can more easily advocate for their children's needs in the classroom, or even voice concerns to teachers, school officials, and that's closest to home. And, if needed, they can reach out to their local and State elected officials to pursue broader educational policy changes much more easily than coming to Washington.

In fact, this is something I regularly tell parents. Parents are their children's best advocate. Our children, and their future, thrive when State and local communities have this freedom to respond to the unique needs of families they serve.

However, when this principle is violated, the results aren't to the benefit of children. For example, we saw this after the passage of No Child Left Behind. This law was enacted with the best of intentions, but showed just how challenging it is for one approach to successfully help millions of students attending schools in thousands of classrooms across the country.

I've always been a critic of one-size-fits-all government. Those concerns ring especially true in education. Every child is unique. When we implement Washington-knows-best policy, like No Child Left Behind, the children suffered the most, and the teachers couldn't teach according to the way they want to.

That is why Congress passed the Every Student Succeeds Act, to restore local decision-making, and better serve individual parents, schools, and educators. A Federal policy regarding classroom content set by Federal legislators, or some distant faceless bureaucrats in Washington, would take decision-making away from the parents, who know best how to raise their kids.

Throughout my 99 county tours of Iowa this year, moms and dads shared their experience and concerns about some books and materials that have been presented in Iowa schools. They have expressed reasonable concern about young, impressionable minds to explicit and graphic materials and content, in some classrooms and school libraries.

So, common sense knows best. Unsurprisingly, we've seen every State and school district—or, we've seen various State and school districts respond to parents' consent by enacting policies aimed at protecting children.

Parents, in conjunction with State and local officials, must determine what is age appropriate for kids to ensure they are nurtured as they grow up. I'll continue to support efforts preserving the right of parents to determine their kids' education, and give State and

local districts the flexibility to shape policies that fit communities they serve. Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Grassley. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. Nobody's talking about interfering with the right of a parent to determine what kind of material his or her child should have access to. The issue really is the ability of a group of people, not even parents of students in schools, but a group of people, or individuals, who are able to go into a school district, a school board, in an effort to ban certain books. That is really the issue, and by any definition, I would consider that kind of effort to be an effort on book banning.

And, in fact, there are States that have already enacted legislation that makes it pretty easy for anybody to go in and list a book as inappropriate, and therefore removed, until it goes through some sort of a review process. I'm specifically talking about Florida, as an example.

So, Professor Knox, you've done some research on why there is this effort to ban books. Can you tell me what sorts of books are usually—usually get on these banned book lists?

Professor KNOX. Yes, I would say that—thank you for the question. So, the books that usually show up on banned books lists are books that we consider to be diverse, and these are basically books about anybody who is not white, heterosexual, male, cis—books that are about LGBTQIA people, about people of color. These sorts of books are the books that we see on the banned books list.

And I do want to approach—address the idea of banning books. So, really, what we often say is that these books are not banned, but they are challenged. So, like "Biden's border crisis," "Banned Books Week" has a nice alliterative ring to it, but in fact, we talk much more about challenging books.

And what this is, is removing books from access to its intended audience. So, that includes both age appropriateness—but also, who did the author intend this book to be read by? That is an important part of thinking about what we call collection development in libraries. We consider all sorts of issues when books are put in a collection, not just issues of, you know, do we agree with what is being put on the collection, but also, how do we show many different viewpoints and ideas? When we look at the diverse books that——

Senator HIRONO. Okay. I'm sorry to——

Professor KNOX. Sure.

Senator HIRONO [continuing]. Interrupt you, but I do understand that the target of a lot of these kinds of lists is books that depict diverse–diverse lifestyles, for example, if you want to call it that. And so, for example, one of the books that is being sought, or challenged, in Iowa is a book called "Ho'onani: Hula Warrior."

[Poster is displayed.]

Senator HIRONO. This is a book about a child who doesn't see herself as a girl or a boy but something in between, and this child dreams of leading the hula group, but everyone else thinks that only the boys should lead the hula group.

And Native Hawaiians have traditionally recognized the existence of a third gender, called māhū, and this book explores this, and many other parts, of Native Hawaiian culture. Yet, this book

could potentially be banned, as I mentioned, from a school district in Iowa for running afoul of a law against books for younger grades that deal with gender identity. Mr. Giannoulias, do you think—and also, Dr. Knox, do you think this book should be removed from school libraries?

Secretary GIANNOULIAS. Thank you, Senator. I personally do not, which goes, again, to the fundamental nature of our legislation, which is to allow librarians to make that decision. My guess is they would determine this book belongs in our libraries. But the point I also want to make is, especially with regard to "Hula Warrior," the goal of literature

Senator HIRONO. Mm-hmm.

Secretary GIANNOULIAS [continuing]. Is to reflect back to the reader either the struggles that the reader is facing or to provide insight into struggles that the reader has never had to imagine. Books are a safe place for people who are struggling, who need help. And I would——

Senator HIRONO. Thank you.

Secretary GIANNOULIAS [continuing]. Disagree with one of the opponents here today who——

Senator HIRONO. I do need to get to—sorry. And I don't even need the answer from Dr. Knox, but I do have another question for you. Is there any evidence that says that exposure to certain kinds of books leads to harm to a community? Does exposure to an LGBTQ+ book somehow cause harm to the reader? Is there any evidence to that effect?

Secretary GIANNOULIAS. Zero.

Professor KNOX. No, there is not. What I mentioned before is that books can be windows to learn about other people. So, it might be that you have a friend who is thinking about their own gender identity, and you want to know more. And reading a book like that one will help you understand what your friend is going through.

Senator HIRONO. Mr. Chairman, I should think that there is more harm to a young person who thinks that he or she can be shot to death in a school than being exposed to certain kinds of subjects in books. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Hirono. Senator Lee.

Senator LEE. I'm going to be showing a video clip in just a second, but at the outset of this, I want to make clear, I think nearly every American could agree that parents have some legitimate interest in what their child reads, or is taught, or otherwise exposed to, about sex. I think it's very, very difficult for anyone to disagree with that. That being the case, I think we need to proceed with this conversation with that backdrop and that understanding.

I'm going to play a video clip right now. The video clip is from Deborah Caldwell-Stone. She's the legal counsel for the American Library Association. Here's what she has to say on some of these topics, these topics that deal not with book banning—because no one here has banned any book. You can still get these books anywhere you want them. The question isn't whether to ban them. The question is whether they should be included in curriculum, or in a school library. A library or a school curriculum, by definition, will be finite. There are a finite number of books that you can put in there. The question is which books should be included and which

should not. Let's hear what Ms. Deborah Caldwell-Stone has to say on this topic.

[Video is shown.]

Senator LEE. Okay. So, I think what we saw here right now is someone saying the quiet part out loud, acknowledging what the goal is. There is a goal here, and the goal is to sexualize children, to provide minors with sexually explicit material, and then hide this content from the parents, hide it by changing the messaging, avoiding the heat by saying, no, no, these are not the droids you're looking for. This is not about sexually explicit content. This is about equality. This is about justice. This is about what's right and wrong. Has nothing to do with sex. Well, of course that's what someone would do if they were grooming your child, if someone were trying to sexualize your child.

And make no mistake. That is what's happened. You see, there has been something that has happened in the last few years. During COVID, a lot of kids had online school, and parents were able to observe in the classroom in ways that they haven't been in the past—observe what was being taught, how it was being taught.

And it's awakened something significant among parents throughout America, and that's why you've got groups that're standing up, groups of parents in places across the country, including Utah, like Utah Parents United, the American Accountability Foundation, and Ms. Neily's group, Parents Defending Education. They're providing parents with the tools they need, and the information that they desire, about how best to protect their kids from inappropriate things that they may be being taught, or may be being given at the school, where they spend most of the best hours of most days of the week throughout the school year, every year.

Now, one of the explicit excerpts read by Mr. Eden just a few minutes ago, and presented to this Committee, is from "All Boys Aren't Blue," a book available without restriction in at least 1 Utah junior high school attended by children ages 13 to 15, and at least 5 Utah high schools. In 3 Utah high schools, the book was available to children over 16. Now, remember, from what was shared with us from Mr. Eden, this book has some really graphic sexually explicit stuff. This is pornographic. This is obscene. It's certainly not appropriate for children, and it is—no matter what else you think about it—it is something that is sexual in nature.

And I really do think very few, if any, Americans could reasonably disagree with the statement that parents have an interest in what their children are taught when it comes to sex. And so the moment parents take reasonable steps to protect their children, and lawmakers honor those efforts to protect their children from exposure, then all of a sudden we've got a problem. The left, and Vice President Harris, cry, "book ban," even though all of these books are still available. You can still buy them, all of them, on Amazon. You can still buy them, all of them, all over the place. You can't, by the way, buy Ryan T. Anderson's book, "When Harry Became Sally," on Amazon. That's been taken down from Amazon.

But the point is this: This is not a ban. This is about schools deciding what's appropriate for schoolchildren. And sexually explicit, obscene, pornographic material isn't appropriate, and many parents are legitimately concerned about that. So, I'm concerned about this

in a variety of respects, and I'd just like to ask the question, Mr. Eden, is placing common-sense age restrictions on pornographic content or removing sexually explicit books from school curriculum and school libraries—is that book banning? And does that carry any ramifications for what we would talk about in terms of the First Amendment, in terms of book banning in the First Amendment sense?

Mr. EDEN. No, sir. No.

Senator LEE. It does not. And why is that? Why is that not book banning? Why does that not offend the First Amendment in any way, shape, or form?

Mr. EDEN. It's a question of community curation, and no student is actually blocked from acquiring the book in a broader sense.

Senator LEE. So, if you're providing content to a child, if spoken to a child by you, by the school—if that would constitute, in some jurisdictions, in some circumstances, a crime, or a tort, you've got a problem.

These school districts are acting in response to legitimate parental concerns. They should be removing these. Shame on them if they don't, and shame on those who want to groom children sexually. Thank you.

Chair DURBIN. Senator Booker.

Senator BOOKER. Thank you, Mr. Chairman. I'd love to pick up exactly where my friend, Mike Lee, left off, by reaffirming, I think, the agreement—the bipartisan agreement is that there is no one in this Committee that believes that children should have access to materials that are inappropriate for their age. There is no one that believes that children should have access to inappropriate, pornographic materials. This, to me, is about something deeper that's going on in the American culture right now that is really troubling. And that's why I want to pick up where he talked about what's going on in our schools. I actually agree with Ranking Member Graham that I don't see much Congress can do. We will make no laws addressing this. But I do think it's important that we hold a Committee like this to talk to these larger issues.

We have a country right now that is based in the ideals of a commitment to one another. We weren't founded on sameness: same religion, same ethnicity. We were founded on big principles of democratic ideals. And in a diverse democracy, it is so necessary that we know each other, that we see each other, that we understand each other. That's what makes us stronger. And in many ways, our schools become areas—especially the ideals of public schools—where diverse people come together for an education.

I am suspect of these books being taken out of libraries and schools, because I started seeing books that had been there not just for years but for decades, literally generations—25-, 30-, 40-year-old books on shelves suddenly being taken off—stunned that there were books that were important to me, when I was growing up.

My parents, in 1969, had to fight a court case—had to go, to do legal fights to get into the town I grew up in. We were the first Black family ever to move in. They had to get a white couple to pose as them, to buy the home, to move into the community. I grew up, as my father used to call us, four raisins in the tub of sweet vanilla ice cream. And for me, finding certain books on my library

shelf that not only gave me affirmation but a celebration, that expanded my understanding of history, they were anchors to me, lifelines in some ways.

And, at a time that I was forming my self-concept and my sense of self-worth, these were the books that became the foundation of who I am, some of the greatest works of American literature. And so when I see books by some of the greatest authors—I see "Frederick Douglass" there—being taken off the shelf, that's when I begin to worry that we're falling into this trap where we are failing to do what is necessary in a democracy, which is to create public forums, educational pathways that engender empathy and understanding, that engender deep knowledge, that engender the kind of sentiment that is necessary for democratic democracies to exist. Not a culture of contempt for one another, but a deeper culture of understanding.

Now, I had conversations with my parents as I got older and more sophisticated, like, wow, you brought up two Black boys in a predominantly white community. What were you thinking then? And we talked about a lot of the books that we read at home, and read at school, and she would laugh at me right now and say, of course, I could've bought you those books if they were removed from the library, but what was important to have them in the library wasn't for you. It was for your peers, for them to have access.

I remember the power of reading "Invisible Man" in my high school English class, and the impact it had on my peers. I had the most nurturing, positive community to grow up in, but to hear what they experienced, expanding their understanding.

I remember when I was a college student, counseling on a suicide crisis hotline to LGBTQ youth, coming out, who were considering suicide, and the power of just knowing they weren't alone, that there are other people sharing that experience. And so a lot is talked about today, but there are deeper issues of what kind of culture are we going to promote in our country? One of compassion, of empathy, of understanding, or one that is going to continue this false narrative of us versus them?

Professor Knox, in the remaining seconds that I have, I—I actually think there's a problem when we are attacking our own history and trying to Disneyify it, as opposed to celebrating what was a rough, difficult, uncomfortable, messy American history. That what makes us even greater is the fact that we had a history that we had to overcome—but that there is some negativity when young people are learning a history that is bereft of the complications and the difficulties of race issues, of gender issues, of LGBTQ issues. Is there a danger in giving people a sanitized version of American history?

Professor KNOX. Absolutely, there is. It is important that we know the truth of our history. There was a time when I would not have been able to sit here in this hearing to speak to this Committee. We've grown from that, but it is important that people know that we have a history of trauma in our country that we have overcome, for some people, but we gain nothing by not telling our children the truth of genocide, and slavery, and Jim Crow. We gain nothing if we don't tell people the truth about that history.

And this is one concern I have about many of the books that are being challenged right now, is that people want to sanitize this history and say, well, it was all in the past or, even if it was all in the past, it's too painful to discuss.

It may be painful, but it is still the truth, and it must be said. It is important, to be citizens of this great country, that we know where we came from, so we can make the world better as we go forward.

Senator BOOKER. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator. I might say that there's a vote on, and I may have to leave and recess for a few minutes, but the Senator from Tennessee is recognized.

Senator BLACKBURN. Thank you, Mr. Chairman, and thank you, to each of you, for being here today. And as I've listened to your testimony and your answers to questions, Mr. Chairman, one of the things that has been of concern to me today is that there is apparent—your concern, or outrage, over some of the books and things that are being banned, or omitted, or disallowed, but there has been nothing said about what Big Tech platforms, or major publishers, are doing by banning, or refusing to work with, conservative authors. And that is a troubling trend that I have seen.

I have heard from Tennesseans about some companies that are more left leaning, or are liberal media companies, and they are choosing to disallow publications. You've had something with Vice President Pence. You've had something with Justice Barrett. But that is not brought into this hearing. And there are—there are two discussions that ought to be taking place, because we do have very talented people that are being blocked out of that publishing, and that distribution network. So, that is of concern to me.

Ms. Neily, in your testimony, you did talk a little bit about some of the egregious attempts that the left has made to silence anyone that doesn't agree with them, to remove publishing deals, to disallow distribution on platforms. So, I want to give you the opportunity to talk a little bit more about that, and the effect that that has.

Ms. NEILY. Sure. Parents are being intimidated, challenged, and canceled——

Senator BLACKBURN. Your microphone.

Ms. NEILY. Parents are being intimidated, challenged, and canceled for speaking up. And I think, aside from the Big Tech platforms, what also concerns me is the State action that is being taken. You know, as much as we talk about the districts that might be discussing when a book can, or can't be, in a school district, I think it's also worth discussing the local control, the issue that Mr. Giannoulias mentioned, about districts that are actually removing control from families.

In Montgomery County, Maryland, in Dearborn, Michigan, there have been countless Muslim families that have spoken up because they want the right to opt their children out of sexually explicit lesson plans. They are being denied that opportunity. They are being forced to have their children read books, again, that are graphic, that are sexual. And these are books that not only maybe aren't relevant to the curriculum but that don't comport with their family values. Those decisions are being taken away by localities. In some

States, there are efforts by State actors, by the States themselves, as well. This is something that parents are concerned with. And so to conflate that issue, that I don't want my child to be forced to read something, with a book that is being burned in Nazi Germany, is disingenuous and false.

Senator BLACKBURN. Well, parental rights are something we hear a lot about in Tennessee, and I think we are just very fortunate to have some really wonderful, dedicated teachers who have worked with parents, and have allowed parents to be involved in a child's education. I think it's important that parents have the ability to participate, and to have that say. So, tell me what you're hearing from parents, when it comes to directing the children's education, and what they are hearing. You've spoken about a couple of things. What are they hearing, when it comes to blocking some of this sexually explicit or pornographic material?

Ms. NEILY. One problem they have is simply gaining access, to know what their child is learning at all. Parents are being forced, on a regular basis, to file public records requests, and when they file those records requests, they are being charged hundreds, if not thousands, of dollars. Recently, from Fairfax County, Virginia, I received a FOIA estimate of $35,000 to gain access to materials. That is appalling. That is meant to discourage and chill parental involvement and engagement in these issues. It is meant to tell families, go away, you're not welcome here, the experts know what they're doing.

We saw the Democrat party of Michigan put a Facebook post out saying the purpose of public education is to teach children what society needs them to know. Implicit in that is that they know better than we do, than families do, what society needs them to know. That is an insult. It is a slap in the face to families. And that is something that families will continue to fight against.

Senator BLACKBURN. Thank you. Thank you, Mr. Chairman.

Chair DURBIN. Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman. Thanks to the witnesses for being here. I think it's safe to say that all of you are here today because you are opposed to government censorship. Is that right? Have I got that broadly correct? Okay, we can agree on that much. Book banning is a form of government censorship. Is that, broadly speaking, correct?

Professor Knox, you're an expert on this. Let me just ask you. Book banning is a problem under the First Amendment because it's the Government telling private individuals—authors, what have you—what they can and cannot write, telling the public what they can and cannot read. Is that, broadly speaking, correct?

Professor KNOX. Yes, that's correct.

Senator HAWLEY. So, now, what if—what if the books were digital only? Could the Government ban them then? So, no, no hard copies, no, no physical copies. It's just digital books. Could the Government engage in book banning, then, under the First Amendment, no problem?

Professor KNOX. No, that's about a format of the particular book, and that really doesn't matter when it comes to whether or not government is banning a book.

Senator HAWLEY. Okay. What—what if—what if the Government made a list of authors whose books it wanted banned, and also went to all of the publishing houses in America—the Government did—and said, do not publish the books by any of these authors, or we will punish you? Is that a problem under the First Amendment?

Professor KNOX. My hope is that the Government would not be involved in the decisions of a private company.

Senator HAWLEY. Good. I would hope so, too. But apparently that is not the case in the United States of America today, under this administration, because the hypotheticals I've just given you aren't hypotheticals at all. They've happened. And we know that they are happening. The Fifth Circuit Court of Appeals just ruled in a case, *Missouri v. Biden*, I'm sure you're all familiar with this, it's going to go down, I think, as a landmark case in the worst possible way in First Amendment law. Because what the Court of Appeals found is that the White House—not just the Federal Government, but the White House—actively coerced every major social media platform in America—let me say that again, every major social media platform in America, to ban speech that the White House did not like.

What are we talking about here? Well, we're talking about speech on the COVID–19 pandemic, speech on the 2022 congressional elections, speech related to mask mandates, speech related to vaccines. What did the White House do? Well, over a period of years, they met with, on a regular basis, the leaders of social media companies, and demanded that the speech they did not like be taken down.

They further demanded that these same social media companies amplify the White House's speech. Amazing. So, take down all of this speech that we don't like. Amplify our own speech. Unbelievable.

What kind of speech are we talking about? Well, for example, not just public officials but parents. Here's an example from my State, the State of Missouri. This is—I'm reading from the opinion, here—one parent, who posted on Nextdoor.com, which is a site operated by Facebook, posted an online petition to encourage his school to remain mask optional, found that his posts were removed without notifying him, and his friends never saw them.

Another parent in the same school district, who objected to mask mandates for schoolchildren, responded to Dr. Fauci on Twitter, and promptly received a warning from Twitter that his account would be banned if he did not delete the tweets criticizing Dr. Fauci's approach to mask mandates.

These objections, amazingly, these—this censorship was taken at the direct behest of the Federal Government, the direct behest of the Biden administration. Professor Knox, is this a violation of the First Amendment?

Professor KNOX. Only a judge can make that determination.

Senator HAWLEY. And a judge has. I'm glad you said that. Multiple judges. District court—Federal district court said there was a direct First Amendment violation. Court of appeals, unanimously, three-judge panel unanimously said, direct First Amendment violation. I can't think of another time in American history when the President of the United States—and I say that advisedly, because

the record reflects that White House officials were sending emails and communications to these companies, saying that the President himself wanted the censorship. So, you've got the Government doing exactly what Professor Knox said is not permitted under the First Amendment, directly coercing the speech of private parties, and not just one or two authors, but parents all across the country. Unprecedented in the history of this Nation.

So, I'm glad we're having this hearing today. I hope that we will have more like it, to expose the censorship happening at the highest levels of our government. Mr. Chairman, I'd ask that this opinion, this judgment by the Fifth Circuit, *Missouri v. Biden*, be entered into the record in full.

Chair DURBIN. Without objection.

[The information appears as a submission for the record.]

Senator HAWLEY. I will leave it there. I know there are others—Senator Kennedy's here—who want to ask questions. But I just want to say, for the record, that this kind of censorship is un-American, it is unconstitutional, and I hope it will go down as a sad chapter in American history that we can close, here and now. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Hawley. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

I confess, I'm a little confused. And I appreciate the argument that, that we've—or, discussion that we've been having, but, for me, it's a little too conceptual or, I don't know, metaphysical, or teleological, or whatever you want to call it. I want to try to understand what you're asking us to do.

Let's take two books that have been much discussed. The first one is called "All Boys Aren't Blue," and I will quote from it: "I put some lube on and got him on his knees, and I began to slide into him from behind. I pulled out of him and kissed him while he masturbated. He asked me to turn over while he slipped a condom on himself. This was my ass, and I was struggling to imagine someone inside me. He got on top and slowly inserted himself into me. It was the worst pain I think I have ever felt in my life. Eventually, I felt a mix of pleasure with the pain," closed quote, "All Boys Aren't Blue."

The second is another much-discussed book. I'm sure you're familiar with it. It's called "Gender Queer." Okay? Let me read an excerpt from that, quote, "I got a new strap-on harness today. I can't wait to put it on you. It will fit my favorite dildo perfectly. You're going to look so hot. I can't wait to have your cock in my mouth. I'm going to give you the blow job of your life. Then I want you inside of me," end quote.

Now, Mr. Secretary, what are you asking us to do? Are you suggesting that only librarians should decide whether the two books that I just referenced should be available to kids? Is that what you're saying?

Secretary GIANNOULIAS. No.

Senator KENNEDY. Okay. Tell me what you're saying.

Secretary GIANNOULIAS. Well, first of all, there's this——

Senator KENNEDY. Don't give me a speech. Tell me what you're asking——

Secretary GIANNOULIAS. I won't——

Senator KENNEDY [continuing]. Me to do.

Secretary GIANNOULIAS. With all due respect, Senator—the words you spoke are disturbing, especially coming out of your mouth—it's very disturbing. But I would—I would also tell you, that we're not advocating for kids to read porn, to Senator Booker's point.

Senator KENNEDY. What are you advocating for?

Secretary GIANNOULIAS. We are advocating for parents, random parents, not to have the ability, under the guise of keeping kids safe, to try and challenge the world view of every single manner on these issues.

Senator KENNEDY. You're getting conceptual again.

Secretary GIANNOULIAS. I'm not getting conceptual. I'm——

Senator KENNEDY. Well, yes——

Secretary GIANNOULIAS [continuing]. Saying that——

Senator KENNEDY [continuing]. You are. Yes, you are, because I want to know what you're recommending. It sounds to me like some of you are saying the librarians should decide who gets to see that book.

Secretary GIANNOULIAS. I'm saying, when you're making—when individual parents are allowed to make a decision of where that line is, and, "To Kill a Mockingbird," which involves a rape scene—should that book be pulled from our libraries? I think it becomes a slippery slope.

Senator KENNEDY. Well, I think you ought to think about it a little bit more before you come here——

Secretary GIANNOULIAS. I've thought about it, Senator——

Senator KENNEDY. If you're going to propose something, you ought to be able, in 30 seconds, to be able to explain——

Secretary GIANNOULIAS. Senator——

Senator KENNEDY [continuing]. What you're asking us to do.

Secretary GIANNOULIAS. Senator——

Senator KENNEDY. Ms. Kelly, what do you understand—well, let me skip you for a second. Mr.—Cameron, tell me what you're—you're proposing.

Mx. SAMUELS. It's pronounced "Mix."

Senator KENNEDY. Mx.? Is that how you—how would you like me to refer to you?

Mx. SAMUELS. Senator, your definition of sexual is synonymous with LGBTQ identity. Libraries——

Senator KENNEDY. I'm not asking you that. I'm asking you to tell me—you read those two excerpts. Do you——

Mx. SAMUELS. "Gender Queer"——

Senator KENNEDY [continuing]. Think that—are you asking that only librarians, and not parents, have any say in whether minors can read those books? Is that what you're saying?

Mx. SAMUELS. "Gender Queer" has never been in my school library, so it's never been banned. It's——

Senator KENNEDY. Well, suppose it was. Should it be up just to the librarian, or should parents have a say?

Mx. SAMUELS. There should be facilitation of collaboration between students, parents——

Senator KENNEDY. Do parents have a say?

Mx. SAMUELS [continuing]. And educators. Parents should be working with students and educators to be——

Senator KENNEDY. Okay.

Mx. SAMUELS [continuing]. Making decisions——

Senator KENNEDY. All right.

Mx. SAMUELS [continuing]. Because students are——

Senator KENNEDY. All right. Who decides, ultimately? The librarian? Or do you take a vote, or who takes the vote?

Mx. SAMUELS. Book review committees in the community in my school district.

Senator KENNEDY. You want a committee to decide?

Mx. SAMUELS. There are committees.

Senator KENNEDY. Okay. Well, I'm asking you, how do we decide whether the two books that I just referenced should be available in the library? What—what would you—if you were running things, what would you do?

Mx. SAMUELS. "All Boys Aren't Blue," the scene you mentioned, is about sexual abuse.

Senator KENNEDY. I know what it's about.

Mx. SAMUELS. It's not erotic.

Senator KENNEDY. What would you do, in terms of making the books available? Would you say anybody can see them? Or, they have to be in a special section?

Mx. SAMUELS. Students who do not read books like "All Boys Aren't Blue" cannot learn what is appropriate.

Senator KENNEDY. I understand that.

Mx. SAMUELS. They cannot learn——

Senator KENNEDY. I understand, but——

Mx. SAMUELS [continuing]. About abuse.

Senator KENNEDY [continuing]. None of you want to answer my question. You come here and you say, censorship is bad, and, of course, it's bad. But the obvious response is, okay, you heard the books we're talking about. Okay? We're not talking about "The Catcher in the Rye." So, tell me what you want. Who gets to decide? And all I've heard is, the librarians, and parents have nothing to do with it. And if that's your response, what planet did you just parachute in from?

Secretary GIANNOULIAS. Parents, Senator——

Senator KENNEDY. Or what country, more appropriately? This is not China.

Secretary GIANNOULIAS. Parents, Senator, with all due respect, parents absolutely have a say. My parents were immigrants, came to this country. We never checked out books without our parents seeing what—what books we were reading. They encouraged us to read books——

Senator KENNEDY. Mr. Secretary, I understand this is good for your politics back home.

Secretary GIANNOULIAS. It's got nothing to do with my politics.

Senator KENNEDY. But I'm not——

Secretary GIANNOULIAS. My bill has passed.

Senator KENNEDY. Of course, it does. It has——

Secretary GIANNOULIAS. My bill has passed.

Senator KENNEDY [continuing]. Everything to do with your politics.

Secretary GIANNOULIAS. I'm here to——

Senator KENNEDY. But you came here with a problem, and I'm trying to understand the solution, and you don't have one.

Secretary GIANNOULIAS. We solved the solution——

Senator KENNEDY. Other than——

Secretary GIANNOULIAS. We solved——

Senator KENNEDY. Other than——

Secretary GIANNOULIAS [continuing]. The solution in Illinois.

Senator KENNEDY. Other than to tell us that if we don't agree with you, you're on the wrong—we'll be on the wrong side of history.

Secretary GIANNOULIAS. We solved the problem in Illinois. We fixed it, because we——

Senator KENNEDY. Well, there are others——

Secretary GIANNOULIAS [continuing]. Passed laws that make——

Senator KENNEDY [continuing]. You could work on.

Secretary GIANNOULIAS. Well, that's why I'm here, to——

Senator KENNEDY. I'm out of time. Thank you, Mr. Chairman.

Secretary GIANNOULIAS [continuing]. I'm here to help other States make these decisions.

Chair DURBIN. At this point, there are no Senators here who have not been recognized, and——

Senator KENNEDY. Can we have——

Chair DURBIN. No.

[Laughter.]

Senator KENNEDY. I've got some more books I can read.

[Laughter.]

Chair DURBIN. I'm sure you do.

I appreciate all our witnesses appearing before the Committee today, and I know that all my colleagues on the Committee want our children to have access to books that are appropriate for their age. There are some serious disagreements, however, about what content is objectionable. It is inevitable and healthy for our democracy. We need to work together as a country to try to create clear standards for access to books, so that no one individual can cause a book to be banned for an entire community.

I'm proud of my home State and Secretary Giannoulias for leading the effort to push back against book bans, and I hope other States will follow your example.

Libraries, and the treasured books within them, are just too important to allow this rise in censorship to continue any longer. Let's come together to protect the freedom to read, and learn, and stand up against book banning, wherever it occurs. The record for today's hearing will remain open for 1 week.

Chair DURBIN. The hearing is adjourned.

[Whereupon, at 12:03 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

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Statement before the Senate Committee on The Judiciary
On: "Book Bans: Examining How Censorship Limits Liberty and Literature."

Books Aren't Being "Banned"

But Some Parents Don't Want Public Employees to Provide Their Children with Sexually Explicit Material

Max Eden
Research Fellow

September 12, 2023.

The American Enterprise Institute (AEI) is a nonpartisan, nonprofit, 501(c)(3) educational organization and does not take institutional positions on any issues. The views expressed in this testimony are those of the author.

Chairman Durbin, Ranking Member Graham, members of the Committee on the Judiciary, thank you for inviting me to testify.

My name is Max Eden, and I am a research fellow at the American Enterprise Institute.

Put succinctly: Books aren't being banned, and it's good that they are.

The media keeps using the word "banned." But that word doesn't mean what you think it means. In common usage, "banned" means "made unavailable." Yet the "most-banned" *Gender Queer* is still available on Amazon. The same, unfortunately, can't be said for Ryan Anderson's *When Harry Became Sally.* Only books on one side of that issue, it seems, actually get banned.

Rather, this conversation focuses on school library availability. If "ban" means "made unavailable," then virtually every book ever published has been banned in school libraries. But that's not even what that word means here. Indeed, a book can be both "banned" and totally available.

The media has accepted the expansive definition of "ban" offered by PEN America. If a book has been taken off the shelves, reviewed, and then put back on the shelves it has – according to PEN – been "banned." If a school adds a parental permission requirement to a book it has – according to PEN – been "banned." If a book is moved to the guidance counselor's office, it has – according to PEN – been "banned." In their report, "Banned in the USA," PEN draws parallels to Nazi Germany.[1]

Now, my public-school library didn't carry *Mein Kampf.* Was it banned? I don't know. But I've read a few books on this era since and have missed the part where the Nazi party made schools relocate books to guidance counselors' offices.

To provide a linguistically honest account, the Heritage Foundation's Jay Greene, Madison Marino, and I set out to assess how many of the 2,532 books PEN's 2022 report labeled as banned were actually removed from school libraries.[2] We did

[1] Jonathan Friedman and Nadine Johnson, "Banned in the USA: Rising School Book Bans Threaten Free Expression and Students' First Amendment Rights," PEN America, April 2022, https://pen.org/banned-in-the-usa/.
[2] Jay Greene, Max Eden, and Madison Marino. "The Book Ban Mirage," Education Freedom Institute, July 20, 2023, https://www.aei.org/research-products/report/the-book-ban-mirage/.

this with one simple trick: we checked the card catalogues. As it turns out, nearly three quarters of books that PEN labeled as "banned" were still in school libraries.

Careful analysis also belies the claims that books are being banned because of race or LGBT issues. Whereas PEN America labels the Black Lives Matter inspired *The Hate U Give* as the fifth most banned book, we found it available in every school library in question. And when the Washington Post examined over a thousand review requests made by parents, less than 7 percent mentioned LGBT without also containing the word "sexual."[3] (Although those requests may have contained words like pornographic or obscene.)

That's what this issue is really about: the provision of sexually explicit material to children by public employees. This is a question of judgement. Few would say it's unreasonable to keep *Hustler,* with its closeup genital photographs, out of school libraries. And few would insist that *Romeo and Juliet,* with its lyrical allusions to sex, should be removed. Communities must draw the line somewhere between those two points. But where exactly?

Take the previously mentioned *Gender Queer.* That graphic novel famously includes a picture of a strap on dildo blowjob. Is this okay for kids? Some think it is. Some think it isn't.

You know something weird is going on, though, when parents try to read passages of these books at school board meetings, and the school board cuts them off because they insist that the material is too obscene to be read out loud.

I guess kids could be listening? Great for them to read, but unacceptable to for them to hear? That's the principle?

It's kind of gross to say, but we can't have this discussion without knowing what we're talking about. We're talking about explicit passages about fisting, butt plugs, anilingus, "crap-covered condoms," the spit-or-swallow decision, and rape. I won't read those verbatim, but here are two tamer quotes:

From the fourth-most banned *All Boys Aren't Blue*:

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[3] Hannah Natanson, "Objection to Sexual, LGBTQ Content Propels Spike in Book Challenges," *The Washington Post,* May 23, 2023, https://www.washingtonpost.com/education/2023/05/23/lgbtq-book-ban-challengers/.

"You were fully erect at this point. … 'You promise that you not gonna tell anyone?' I promised. You then grabbed my hand and made me touch it. It was the first time I had ever touched a penis that wasn't my own. I knew what was happening wasn't supposed to happen. Cousins weren't supposed to do these things with cousins."[4]

From the also fourth-most removed *Lawn Boy:*

"In fourth grade, at a church youth-group meeting, out in the bushes behind the parsonage, I touched Doug Goble's dick, and he touched mine. In fact, there were even some mouths involved."[5]

Ten-year-olds performing sodomy. Underage incest. Strap on dildo blowjobs.

Is this okay for kids?

Judging by the fuss made by the media, NGOs, and some Democratic politicians, it seems there is a politically significant contingent that believes that this is all actually very good for kids.

But, personally, I'm not at all troubled by the fact that some moms believe that this is inappropriate, and that some school boards agree. And I find it kind of weird that the United States Senate is troubled enough to call a hearing about all of this.

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[4] George M. Johnson, *All Boys Aren't Blue,* Farrar, Straus, and Giroux, April 2020. Quote accessed from Pavement Education Project: https://www.pavementeducationproject.com/about-4-7.

[5] Jonathan Evison, *Lawn Boy*, Algonquin Books, April 2018. Quoted accessed from Pavement Education Project: https://www.pavementeducationproject.com/about-4.

Questions for the Record from Senator Charles Grassley
U.S. Senate Committee on the Judiciary
"Book Bans: Examining How Censorship Limits Liberty and Literature"
September 12, 2023

Questions for Mr. Eden:

1. In your written testimony you reported that you found nearly three-quarters of the books labeled as "banned" by PEN were in fact still available in school libraries. Can you elaborate on this discrepancy and the harm to broader constructive dialogue as a result of misleading figures like this one?

The result is that the public has a massively inflated understanding of the scope of the problem. It also wrongly believes that school districts are limiting access to books on the basis of their stance on race. While it is true that parents have objected to books that they deem racist, school districts by and large are not agreeing to remove these books. If parents understood the true number and nature of books being removed, they would almost certainly be very sympathetic to the so-called "book banners."

2. What is the primary population pushing back against what many would consider to be reasonable age-appropriate restrictions? Why do school boards and other stakeholders insist on children having access to explicit material over parents' reasonable concerns?

The pushback against age-appropriate restrictions comes from a triad of leftwing non-profits, Democratic partisans, and liberal media outlets. Each have their own reasons for doing this. It's a great issue for non-profits to fundraise on. Poll suggest that voters oppose book bans (so long as they're never actually informed of the contents of the books). And the media can indulge its narrative bias. All of this constructs a form of conventional wisdom that is taken as moral gospel by many education administrators, which lead school board members to believe that social justice requires school libraries stocked with pornographic material.

SECRETARY *of* STATE
ALEXI GIANNOULIAS

Illinois Secretary of State Alexi Giannoulias' Testimony
U.S. Senate Judiciary Committee – September 12, 2023

One of the most exciting responsibilities of serving as Secretary of State in the State of Illinois since January of this year, is the ability to serve as the "State Librarian".

As our youth continue to need educational assistance in catching up after the disruption caused by COVID, I believe LIBRARIES, in every single community across this country, have had an especially critical role to play in increasing educational opportunities for ALL Americans.

So imagine my surprise when, in the year 2023, instead of inheriting a debate over what *more* can be done **with** our libraries and **for** our libraries, I was confronted with a "book banning" movement upon taking office.

You see, our libraries have become targets by a movement that disingenuously claims to pursue "freedom" but is instead promoting authoritarianism.

Tragically, our libraries have become the Thunderdomes of controversy and strife across our nation – the likes of which we've never seen before.

These radical attacks on our libraries have divided our communities. Our librarians have been harassed, threatened & intimidated for simply doing their jobs.

The need to stand up and fight for our freedoms and our librarians – especially at this perilous time for our democracy -- is why I initiated House Bill 2789.

This legislation – the first of its kind in the United States of America – is:
A triumph for our democracy,
A win for First Amendment rights, and most importantly
A great victory for future generations to come.

Under this legislation, Illinois libraries will NOT be eligible for state-funded library grants if they ban books.

This "*Right to Read*" legislation will help remove the pressure that librarians have tragically had to endure over the last couple years.

This legislation is important because both the *concept* and the *practice* of "banning books" contradicts the very essence of what our country stands for and what our democracy was founded on.

It also defies what education is all about: Teaching our children to think for themselves.

If the book banners care to, they can go to our libraries and check out the Federalist Papers, the U.S. Constitution and even Supreme Court cases on the First Amendment.

What they will learn is that our democracy ***depends*** on the "marketplace of ideas".

That "marketplace of ideas" will not function if we ban books -- because we will be banning **IDEAS** and preventing our children from thinking for themselves and having the ability to debate & learn & understand different perspectives.

We will be banning KNOWLEDGE, CULTURE, EMPATHY, UNDERSTANDING, and DIVERSE & DIFFERING WORLDVIEWS.

Ray Bradbury, the acclaimed Illinois author who wrote Fahrenheit 451, was quoted as saying:

"The problem in our country isn't with books being banned, but with people no longer reading. You don't have to burn books to destroy a culture. Just get people to stop reading them."

And **that's** where the real danger lies.

Parents – and only parents – have the right and the responsibility to monitor the access of their children – and only ***their*** children – to library resources.

There were more than **2500** instances of books being banned in schools last year, including many American Classics such as:
"1984"
"The Adventures of Huckleberry Finn"
"The Catcher in the Rye"
"The Color Purple"
"The Kite Runner"
"Of Mice and Men", and
"I Know Why the Caged Bird Sings" by Maya Angelou

Look, I have three young daughters, and there are some books and titles that my wife and I don't feel are age appropriate for them.

But I could never imagine a world where I would tell another family what books *their* kids should or should not be allowed to read.

Book-banners say, they want "local control".

What's more "local" than controlling what takes place in your own household??? That's the very **definition** of "local control".

And the *ultimate* irony is that, by instituting more book bans, these groups want the government to have **MORE** of a say in telling everyone's children what to think & believe. That's government overreach at its peak.

Books are a vital way to open our minds to other cultures, religions, identities and possibilities.

Let's also remember the mental health crisis growing across the country. Access to books and the freedom of expression help battle ISOLATION. Books connect us and promote empathy & understanding.

Our legislation establishes a clear path, opposite and away from the damaging trend to ban and censor books that a small, but loud few, disagree with.

We need to take any hint of censorship seriously because free speech is not only crucial to democracy, but imperative for the survival of our civilization.

This issue should have NOTHING to do with political party. This isn't a Republican or Democrat issue. This is a "freedom of speech" and a "freedom of ideas" issue.

Not *once* during the creation of this legislation did I ask a Librarian if they were a democrat or a republican.

Not *once* did I ask an author if they were a democrat or a republican.

Not once did I ask a constitutional expert if they were a democrat or republican.

Yet every-single-person we spoke to, not only was in favor of this legislation, but was deeply concerned with even the *concept* of "book banning".

We want our schools & our libraries to be open and welcoming settings for education, *not* cultural battlefields.

This legislation aims to unify our communities and seeks to restore a right that some of us may have grown to take for granted: The freedom to think for ourselves.

It's my hope that others may look toward Illinois and see the value in adopting our legislation as a model to stop book banning in its tracks, and to protect the "Right to Read" freely and without fear of retribution.

I could not be prouder of this legislation and I implore everyone in this room to be please be on the right side of history, and push back against these "book bans" in every and any way possible!

Thank you.

Senator Hirono Questions for the Record for the September 12, 2023 Hearing in the Senate Judiciary Committee Hearing Entitled "Book Bans: Examining How Censorship Limits Liberty and Literature."

QUESTIONS FOR SECRETARY GIANNOULIAS

Current Library Review Policies

Having spoken with our state librarian, I know Hawaii's public libraries have a comprehensive process in place to identify materials appropriate for their collections. The process is based on national best practices. It is implemented by professionals who review materials for accuracy, age suitability, and content quality. Perhaps most importantly, the process is transparent, and it is available online for anyone to review.

I have serious concerns about recent efforts to undermine well-established processes like these that are already in place, especially legislation that takes the decision-making power away from the community and gives it to people who sometimes do not even have children in schools.

QUESTION:

1. Do most libraries have processes in place to review materials before adding them to their collections? **Yes, and public libraries in Illinois are required to have collection development policies that direct their selection of materials which will be added to their holdings. Librarians and staff designated to this responsibility have extensive education, training and experience that guides them in reviewing materials before adding to their collections and with respect to culling those collections from time to time to ensure that the needs of the community are reflected in the circulation. Reviews in professionally recognized resources are a primary source for materials selection. Book lists by recognized authorities and bestseller lists are also used.**
2. Are the processes to review materials generally effective? **Yes. I trust the librarians in the State of Illinois to continue to effectively review materials.**
3. Do libraries have sufficient resources to support these best practices? **While there is always more than can and should be done to provide for our libraries and librarians, the answer is yes. Libraries have sufficient resources and librarians have sufficient information, training, education, and experience to support the best practices that are already in place throughout the State of Illinois.**

Availability of Books Online

During the hearing, some Senators suggested that some of the banned books are not really banned because they are still available to purchase online.

QUESTION:

1. What are the implications for accessibility, particularly for low income children and adults, to books exclusively available for purchase rather than available for free through a school library or public library? **Children do not have access to their own Amazon accounts and cannot possibly purchase every book they find interesting or compelling in a bookstore. Low-income adults are also entitled to the same free exchange of information and ideas as any other person. We still have a digital divide in this country that does not allow everyone access to materials online, even if they are available free of charge. Removing a book from**

a library is a complete prohibition for a lot of adults and children from accessing that material. We should be lifting our libraries and librarians up and ensuring that every person has access to read freely and without the constraints of financial limitations.

Avoiding Bulk Challenges to Books

We have seen many challenges to books coming from a small number of people. According to the Washington Post, people who file more than 10 complaints account for two-thirds of all book challenges. In response, a number of schools have set a requirement that you must have a personal connection to the school in order to challenge a book. It seems reasonable that a challenger should be a member of the community. You may have rights to influence your own child's education, but not everyone else's.

QUESTION:

1. Do you believe that anyone challenging a book at a school library should at the very minimum have a child that goes to that school? **As I have often said, parents have the right and responsibility to determine what their own child—and only their own child—may read. Challenging a book at a school library when you have no child enrolled that will even access it is absurd.**
2. What would encourage more school districts to adopt this requirement? **In Illinois we have seen students, parents, librarians, community stakeholders and school officials take the lead in demanding their schools keep books in circulation despite the protests of outside interests. While it's unfortunate that we have put this responsibility on students, it is very motivating to see the students stand for their rights in this regard. School districts can avoid the unnecessary time and burden of responding to each and every challenge if they simply require a parental connection to the school district before entertaining every person that wants to disrupt the flow of education within that school district.**

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Secretary Alex Giannoulias, Illinois Secretary of State

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. Do children have a right to view and read sexually explicit materials in their school library?
   I agree with the right of a child to access library materials at their school library that their own parent or guardian has determined is appropriate for them to read. Materials that can be classified as obscenity are not protected by First Amendment rights and you won't find those items in the library collections of school libraries.. Librarians and staff designated the responsibility to acquire materials for school library collections have extensive education, training and expertise in determining whether a book or any other library material meets the needs of its patrons.

2. Are there books that depict minor children engaging in sex with one another in American schools and libraries?

   Not to my knowledge.

3. Is *Gender Queer* available in Illinois schools or children's libraries?
   ***Gender Queer* is available in some, but not all Illinois school or public libraries. As the State Librarian, I do not determine the collection development policy of any library in the State of Illinois, other than the Illinois State Library.**

   a. Does it include a graphic illustration of sex?
      Yes. It should be noted that this answer pertains to three pages in a 256-page graphic novel.

   b. Does it have an illustration of an adult and minor boy engaged in a sexual act?

      Not to my knowledge.

4. *Gender Queer* book ignited a firestorm at Keller Independent School District in Texas, and parents demanded the school board remove the book.

   a. Were the parents correct to demand the book's removal?

Each parent has the right to determine what book is appropriate for their own children to read. No parent or group of parents has the right to determine what anyone else's children may read. I am a parent of three young daughters. While my children are minors, my wife and I will continue to take an active interest in what each of our daughters is reading. At any given time we may decide that a book is not age-appropriate for our daughters. I would never consider telling any other parent, or the child of any other parent, what anyone else's children can and cannot read.

5. Should public libraries allow drag performers to host story hour for young children?
Libraries are public institutions and should be treated as such. As the State Librarian I do not consider it appropriate for me to either mandate or prohibit any performance that a library in this State determines appropriate. Again, each parent must be allowed to decide whether a performance is appropriate for their child.

6. Should there be any age requirement at all for children to attend drag story hours?

That is a decision for each individual parent to make for their child, and only their child.

7. Under HB 2789, could a school library remove material that is racist, anti-Semitic, or bigoted or would that constitute "doctrinal disapproval"? Yes. Through a library's own evaluation of their collection or in response to a request for reconsideration, a school library might determine that a title is not responsive to the community it serves and is inconsistent with the collection development policy it has established for its operation.

A person or a group of persons cannot determine that a book is "racist, anti-Semitic, or bigoted" and insist that the book be removed. HB2789 does not require that any library carry any particular book and relies upon the experience, expertise, and education of librarians to make that determination. In certain instances, the book "To Kill a Mockingbird" has been banned for being racist, as if it has no literary value.

The United States Supreme Court decided this issue in Board of

Education v. Pico, 457 U.S. 853 (1982) and found that "'If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion...If there are any circumstances which permit an exception, they do not now occur to us."

8. Who should be deciding what materials are seen by kids: school librarians or parents?
Librarians should decide what materials are in a library and available to the community. The collection should reflect the needs and interests of all individuals that the library serves. Each parent should decide what materials are seen by their own children—and only their own children.

9. Do you disagree with the Supreme Court's opinion in *Board of Education v. Pico* that book removal is permissible based on educational suitability or vulgarity?
I wholeheartedly agree with the Supreme Court's opinion in *Board of Education v. Pico*, 457 U.S. 853 (1982). And while the opinion does include the sentence, "[R]espondents implicitly concede that an unconstitutional motivation would not be demonstrated if it were shown that the petitioners had decided to remove the books at issue because those books were pervasively vulgar," that is not the substance of the opinion.

Instead, the substance of the opinion is that, "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion...If there are any circumstances which permit an exception, they do not now occur to us."

The substance of the opinion supports my position that students and library patrons have a First Amendment right to read freely and that removal of a book from a library's circulation should not be done on the basis of partisan or doctrinal disapproval. The US Supreme Court actually ruled against the school board for doing just that in this case, finding that "In making their removal decisions petitioners ignored 'the advice of literary experts,' the views of 'librarians and teachers within the Island Trees School System,' the advice of the Superintendent of Schools, and the guidance of publications that rate

books for junior and senior high school students." The Court also stated in its opinion that school boards may not remove books "simply because they dislike the ideas contained in those books and seek their removal to 'prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'" In so holding, the Court explained at length that while the school board may determine the curriculum of the school, it must act within the context of the First Amendment, particularly where the school library is concerned.

Finally, I do agree with the Court's holding in this case. "In sum, just as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon become adult members. Of course, the First Amendment rights accorded students must be construed 'in light of the special characteristics of the school environment.' [citation omitted] But the special characteristics of the school library make that environment especially appropriate for the recognition of the First Amendment Rights of students." *Id.*

10. In an interview with the Chicago Sun Times, you described the purported book ban as an "assault on democracy."

    a. How is a law removing the ability of parents and local school boards to make decisions concerning what materials young children can view under the threat of losing state funding not an assault on democracy? **Each parent may determine what is appropriate for their child—and only their child. The State has a responsibility, though, to ensure that publicly funded applicants for state grants are not in violation of the First Amendment. The First Amendment prohibits the government from restricting or prohibiting access to the free exchange of speech, expression and ideas. No person or group of people have the right to determine what the rest of the community may access in a library. That decision should be left to the library's staff who have worked to select and maintain age-appropriate content in the library to meet the needs and interests of all individuals it serves. Every time one parent determines what a community of children can access, every time one group determines what the rest of the community can learn, read, or say is an assault on our democracy. Our democracy depends on the**

free exchange of ideas—books represent those ideas. Free people have the right to read freely. Any attempt to thwart that is an assault on democracy.

11. In the same interview, you also stated, "to me, this is a slippery slope, and it goes against what education is about. The purpose of education is to teach children to think for themselves."

How do books on sodomy, masturbation, and the graphic descriptions of these events constitute what education is about for young children? **This question presumes that the dedicated library workers that support education in this country have not selected and maintained age-appropriate content to meet the needs and interests of all individuals the library serves. Age-appropriate content can ultimately lead minors to healthier decisions.**

Testimony before the U.S. Senate Committee on the Judiciary

Hearing on

"Book Bans: Examining How Censorship Limits Liberty and Literature"

September 12, 2023

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University of Illinois at Urbana-Champaign
Chair of the Board of the National Coalition Against Censorship (NCAC)

Introduction

Thank you, Chairman Durbin, Ranking Member Graham, and members of the Committee for giving me the opportunity to testify at this hearing.

I am an associate professor in the School of Information Sciences (iSchool) at the University of Illinois Urbana-Champaign where we use multidisciplinary information sciences to create solutions to real-world problems. I am the chair of the board of the National Coalition Against Censorship (NCAC) which promotes freedom of thought and inquiry and opposes censorship. I also serve as the editor of the *Journal of Intellectual Freedom and Privacy*. I am also a former president of the Freedom to Read Foundation (FTRF), the legal arm of the American Library Association (ALA). My research focuses on information access, intellectual freedom and censorship, information ethics and policy, and print culture studies.

I was born in Nashville, Tennessee and grew up in Columbia, Maryland. I attended Smith College in Massachusetts where I spent my Junior Year Abroad at Hebrew University in Jerusalem. I then received my AM from the Divinity School at the University of Chicago. After spending two years as a project assistant at the law firm of Kirkland & Ellis, I attended what was then the Graduate School of Library and Information Science at the University of Illinois. After receiving my MSLIS, I worked as Reference Librarian and eventually Associate Director of the library at the General Theological Seminary of the Episcopal Church in New York City. I then attended the doctoral program at the School of Communication & Information at Rutgers University. I joined the faculty of the iSchool at Illinois in 2012.

I appreciate the opportunity to discuss book banning, intellectual freedom, and libraries today. My testimony does not reflect official positions of the University of Illinois, NCAC, ALA or FTRF.

Book Banning in the U.S.

First, while "book banning" is nicely alliterative, I believe the term "book challenges" more precisely describes the various actions that are taking place around the country. A challenge occurs when an individual or group asks to redact, remove, restrict, or relocate materials within libraries and schools. Challenges do not always lead to banning, that is, the removal of materials,

or to a change in the classification of materials. Sometimes books remain accessible to their intended audience following these requests.

Second, materials in public institutions have always been challenged but we have never seen anything like the current number of cases. When the American Library Association's Office for Intellectual Freedom released its data for book challenges in 2022 the headlines were glaring. "A record 2,571 unique titles were targeted for censorship, a 38% increase from the 1,858 unique titles targeted for censorship in 2021."[1] Almost all of the books can be categorized as "diverse" or books by and about "LGBTQIA, Native, people of color, gender diversity, people with disabilities and ethnic, cultural, and religious minorities. [2] These attacks on our freedom to read, our libraries, and our schools are unconstitutional and unpopular. 71% of Americans oppose books bans in public libraries and 67% oppose book bans in school libraries.[3]

Why do people attack diverse books? In my research I found that books about LGBTQIA folks are believed to be only about sex (even if they are picture books that do not discuss sex in any way) and are therefore "inappropriate."[4] Books about non-white people must have what Chimamanda Ngozi Adichie called the "Single Story." [5] That is, these books must be a story of triumph over adversity without really discussing the specifics of that adversity.

Both of these attacks flatten the people's humanity. People are always more than their sexual or gender identity. Telling only a triumphant story about our nation's history of genocide, slavery, Jim Crow, and intergenerational trauma means that we do not confront the truth of our origins or how people have fought back against these sins. Knowing these truths is one aspect of our right to intellectual freedom.

Intellectual Freedom and Freedom of Expression

Intellectual freedom is a bit of an insider term. Most people, when they discuss these issues, often talk about free speech or something related. Intellectual freedom is the right of every individual to hold and express opinions, and seek, access, receive, and impart information and ideas without restriction. The First Amendment states that "Congress shall make no law abridging the freedom of speech." Our right to speak, write, publish, and read are protected by the Constitution. This right is not based on whether or not people in government agree with the ideas being expressed. One of the core beliefs of the NCAC is that free expression, including the freedom to express oneself through arts and through protest, is fundamental to both individuals

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[1] American Library Association, "Book Challenges Nearly Doubled From 2021," Text, News and Press Center, March 22, 2023, https://www.ala.org/news/press-releases/2023/03/record-book-bans-2022.
[2] We Need Diverse Books, "Our Definition of Diversity," About We Need Diverse Books, accessed October 25, 2018, https://diversebooks.org/about-wndb/.
[3] American Library Association, "Voters Oppose Book Bans in Libraries," Text, Advocacy, Legislation & Issues, March 21, 2022, https://www.ala.org/advocacy/voters-oppose-book-bans-libraries.
[4] Emily J. M. Knox, "Silencing Stories: Challenges to Diverse Books," *The International Journal of Information, Diversity, & Inclusion (IJIDI)* 3, no. 2 (2019).
[5] Chimamanda Ngozi Adichie, "The Danger of a Single Story," https://www.ted.com/talks/chimamanda_adichie_the_danger_of_a_single_story?language=en.

and society.[6] The right to free expression is a basic human right and essential to human fulfillment and autonomy and it is our right as citizens of the United States.

Autonomy

Autonomy is not "total independence, but rather the ability of an individual to make life choices guided by his or her own values."[7] Making choices is key to being able to think for oneself. Autonomy and making choices are linked to intellectual freedom because it is through exposure to others' ideas and opinions that we discover others' values which, in turn, helps us establish our own values. We then use these values to influence society. Everyone has the right to autonomy and to the vocabulary to describe their own beliefs and values. In fact, people have the right to their own opinions and beliefs even if they are misinformed. However, as Nicole Cooke writes, information professionals including librarians, must "determine their community's needs, strive for community engagement and community problem solving when working to combat [mis- and disinformation]. [8]

When it comes to parents, they do have the responsibility to talk to their kids about what they are learning and reading and to steer them towards appropriate choices for their children and their family. However, they do not have the right to make those choices for *other* children and families. What schools and libraries try to provide for everyone, including children, are the skills to make good judgements. Discernment is key to encountering ideas and beliefs that you disagree with. You do not have to read books you don't like, and you can work with teachers to find an alternative for your child, if necessary.

Censorship Practices

What parents are engaging in when they tell library workers and teachers that they disapprove of a title and challenge it is a censorship practice. By "practice" I mean that they are putting a belief into action. These challenges impede access to the materials. I use the "4 Rs" to categorize censorship practices: redaction, restriction, relocation, and removal. Briefly, redaction means marking through text or image so that it cannot be viewed. Restriction and relocation are limits on the availability of a work to its intended audience. Restriction means that the work is, for example, put behind the reference desk so that someone can only access it with permission. Relocation means that the work is moved from its proper classification to another, less accurate, classification. For example, a chapter book in the library is moved from the children's section to the adult section. Removal is what most people think of as censorship—a work is removed from the collection or curriculum entirely.

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[6] NCAC, "About Us," *National Coalition Against Censorship* (blog), accessed September 7, 2023, https://ncac.org/about-us.

[7] Audrey Barbakoff, "Libraries Build Autonomy: A Philosophical Perspective on the Social Role of Libraries and Librarians," *Library Philosophy and Practice (e-Journal)*, January 1, 2010, https://digitalcommons.unl.edu/libphilprac/463.

[8] Nicole A. Cooke, "A Right to Be Misinformed? Considering Fake News as a Form of Information Poverty," in *Libraries and the Global Retreat of Democracy: Confronting Polarization, Misinformation, and Suppression*, ed. Natalie Greene Taylor et al. (Bingley, United Kingdom: Emerald Publishing Limited, 2021), 56, http://ebookcentral.proquest.com/lib/uiuc/detail.action?docID=6784254.

The Library

The library is the physical embodiment of the right to freedom of expression in a community. Libraries provide materials from a variety of viewpoints and opinions along with the services needed to access those materials. Libraries are not labyrinths that lead to the truth but gardens that contain many truths.[9] Education and discernment allow people to make choices among these truths. As Shannon Oltmann notes, "freedom of speech is impossible or valueless without the right or ability to access that speech."[10] In many communities, libraries provide that ability.

All libraries, whether they are public, school, academic or special, are mission driven. The services they provide are almost too numerous to count. Along with books, video games, and other physical materials, libraries have makerspaces and computers. They provide electronic and streaming services. The Library of Congress and its Congressional Research Service and Knowledge Services Group provide research and resources for this body!

More than that, libraries provide students of all ages—from kindergarten through grad school—with a quiet place to study and space to do group assignments. They have newspapers for people who still read broadsheets every day and cooling centers during heatwaves. Libraries offer programming for all patrons and lunches for kids during the summer. Libraries provide their communities with the services and resources people need to flourish.

What is most amazing about visiting the library is that the dignity of every human being is respected. From the toddlers at storytime to the older folks in a computer skills class to the adults in a book club to students working on a book report. To paraphrase Ranganathan and his Five Laws of Library Science: Library resources are for use by everyone. You can find your resource—if you don't like the book you picked up, find another. Because every resource has someone who will use it and libraries are here to save your time and find something that works for you.[11]

Libraries and schools need more funding. More funding for materials and services. More funding to provide resources that cover a variety of ideas and beliefs—more books and more freedom because Free People Read Freely.[12]

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[9] Robert V. Labaree and Ross Scimeca, "The Philosophical Problem of Truth in Librarianship," *The Library Quarterly* 78, no. 1 (January 1, 2008): 43–70, https://doi.org/10.1086/523909.
[10] Shannon M. Oltmann, "Intellectual Freedom and Freedom of Speech: Three Theoretical Perspectives," *The Library Quarterly* 86, no. 2 (March 17, 2016): 153–71, https://doi.org/10.1086/685402.

[11] S.R. Ranganathan's 5 Laws of Library Science are:

1. Books are for use.
2. Every person his or her book.
3. Every book its reader.
4. Save the time of the reader.
5. The library is a growing organism.

[12] This is the motto of the Freedom to Read Foundation

Appendices

A. Chapter 1 – *Foundations of Intellectual Freedom*
B. Chapter 2 – *Book Banning in 21st Century America*
C. Knox, Emily J. M. "Silencing Stories: Challenges to Diverse Books." *The International Journal of Information, Diversity, & Inclusion* 3, no. 2 (2019): 24–39. https://www.jstor.org/stable/48645178.

Foundations of Intellectual Freedom

Emily J. M. Knox

ALA Neal-Schuman

CHICAGO :: 2023

EMILY J. M. KNOX is an associate professor in the School of Information Sciences at the University of Illinois at Urbana-Champaign. Her book *Book Banning in 21st-Century America* was published by Rowman and Littlefield and is the first monograph in the Beta Phi Mu Scholars Series. She is also the editor of *Trigger Warnings: History, Theory Context* (Rowman and Littlefield) and is coeditor of *Foundations of Information Ethics* (ALA Neal-Schuman). Her articles have been published in *Library Quarterly*, *Library and Information Science Research*, and the *Journal of Intellectual Freedom and Privacy*. Dr. Knox has served on the boards of the Association for Information Science and Technology, the Freedom to Read Foundation, and the National Coalition Against Censorship. Her research interests include information access, intellectual freedom and censorship, information ethics, information policy, and the intersection of print culture and reading practices. She is also a member of the Mapping Information Access research team. She received her PhD from the Rutgers University School of Communication and Information. Her master's degree in library and information science is from the iSchool at Illinois. She also holds a BA in religious studies from Smith College and an AM in the same field from the University of Chicago Divinity School.

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For Aaron, with all my love.
We should get that ice cream sometime soon.

"We uphold the principles of intellectual freedom and resist all efforts to censor library resources."

—***ALA Code of Ethics*** **(June 29, 2021)**

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PREFACE

WHEN I FIRST DISCUSSED THIS BOOK with my editor, support for intellectual freedom among librarians seemed to be on the wane. There were bitter disputes—mostly online—that centered on whether or not intellectual freedom harmed underrepresented populations and was not in keeping with the values of librarianship. The world has changed since I first agreed to write this book in 2019. I could not have imagined that there would be a global pandemic, a political insurrection in the United States, or a doubling of the number of reported book challenge cases. The latter has led to a reconsideration of the position of intellectual freedom in librarianship and, I would argue, reasons for supporting intellectual freedom as a core value of the profession and a basic human right are clearer than ever.

I have taught an elective class called Intellectual Freedom and Censorship at the School of Information Sciences at the University of Illinois at Urbana-Champaign every year except one since I first joined the faculty in 2012. The course was originally sixteen weeks and was shortened to eight weeks in 2014 to encourage more students to take the elective. Since 2015 the Freedom to Read Foundation (ftrf.org) has provided support in the form of organizing guest speakers and scholarships for non-Illinois students to take the course. In its eight-week format, the course is intensive and requires students to read a lot of material in a very short time.

The course includes two assessments that were originally designed by the previous instructor, Loretta Gaffney. The first is a presentation on intellectual freedom allies that exposes students to organizations other than the American Library Association that support intellectual freedom. A second assessment asks students to write a short overview of an intellectual freedom issue. Students may choose any topic that interests them as long as it relates to the themes of the course.

The third is a role-playing portfolio on responding to a library challenge, for which students must respond in character to one of several scenarios in a variety of library settings. The portfolio consists of five parts:

1. A 1-2 page letter of response to the complainant
2. A 1-2 page letter to the library board, school board, or decision-making committee detailing the challenge and your recommendation for resolution
3. An annotated support file of 3-4 documents
4. A 3-4 page plan for community public relations and outreach
5. A 1-2 page reflection on your process for addressing this controversy

This assessment is intended to prepare students to apply what they have learned in the course when they are confronted with an intellectual freedom challenge in their working lives. The scenarios are updated regularly and often mirror current challenges that are reported in the media.

The primary purpose of *Foundations of Intellectual Freedom* is to provide a primer on this core value. It is intended to introduce intellectual freedom to librarians and other

information professionals. I use the term "information professionals" throughout to indicate *all* library workers (whether degreed or not) and workers in aligned fields including archives, museums, information sciences, and others. The book is also intended to be accessible to readers outside of information fields. Although the geographic context for the book is the United States, each chapter includes at least a brief overview of global implications of the various subjects that are presented.

The book is a distillation of the eight-week University of Illinois course. Although the emphasis and timing for any particular topic change from year to year, the subjects of the chapters in this volume form the general outline of the syllabus.

Chapter 1 introduces and defines important concepts related to intellectual freedom, including censorship, and discusses intellectual freedom as a value and a right. Chapter 2 provides an overview of the history of intellectual freedom as a modern value based primarily on the work of John Stuart Mill and how it was incorporated in the United Nations Universal Declaration of Human Rights. Chapter 3 provides context for understanding the right to freedom of expression and its intersections with free speech, hate speech, and the embeddedness of communication. Information access and censorship are the focus of chapter 4. Chapter 5 addresses privacy and intellectual freedom with an emphasis on power and context. Chapter 6 is an introduction to copyright and its impact on intellectual freedom. Chapter 7 examines the history of intellectual freedom as a core value in librarianship. Chapter 8 provides short summaries of emerging topics in intellectual freedom.

Each of the first seven chapters includes discussion questions and a list of recommended readings with short annotations. Readers should also consult the reference list at the end of each chapter for additional readings and resources. Newsworthy events, statistics, and citations are accurate as of March 2022. The book can be read as a whole or as individual chapters. The book's goal is for the reader to develop a better understanding of why intellectual freedom matters and how supporting this right leads to a more just world.

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ACKNOWLEDGMENTS

THIS BOOK IS TWO YEARS LATE due to many factors and never would have been finished without the support of my community. After working as an interim associate dean for two years during the pandemic, I was able to relinquish the role with the support of my colleagues and finish this manuscript. My editor, Rachel Chance, was extremely patient over the two years of delays. My friends in Champaign, Illinois, and around the world never lost their faith in me. My parents, Jo Emily and Nathaniel Knox, have always provided love and support. Finally, my fiancé, Aaron Wilson, always had an ear for talking through the manuscript and supported me through the inevitable difficult times of writing a book.

CHAPTER 1

Intellectual Freedom

A Core and Contested Value

INTELLECTUAL FREEDOM: DEFINITIONS

"Intellectual freedom" is a term that most people have heard and yet may have only a vague sense of its definition. In the United States, for example, people often use the term "free speech" as a catchall for concepts relating to how information circulates instead of using intellectual freedom. There are some who might say that intellectual freedom has something to do with reading banned books or writing offensive content on Twitter. Others seem to have a sense that intellectual freedom is both important and contested but difficult to define. In her article on legal foundations for intellectual freedom, Shannon Oltmann (2016) notes that there are generally three different theoretical grounds for understanding intellectual freedom: the marketplace of ideas, democratic ideals, and individual autonomy. Each of these provides differently nuanced definitions and applications of the principle that will be discussed throughout this chapter and the book.

As noted in the introductory chapter of the tenth edition of the *Intellectual Freedom Manual* (IFM), intellectual freedom has never been officially defined by the American Library Association (ALA) even though intellectual freedom is a core value of librarianship (Jones and LaRue 2021, 3). The IFM, which is published by ALA's Office for Intellectual Freedom (OIF), offers a short definition: intellectual freedom is "the right of every individual to both seek and receive information from all points of view without restriction" (Jones and LaRue 2021, 3). Not surprisingly, this definition focuses on works which are fixed—such as books, magazines, movies, CDs, and digital files—that might be included in library collections. The meaning of free speech and freedom of expression are implied but not explicitly stated in this definition.

However, intellectual freedom does not have to be solely focused on fixed works that can be collected in a library or assigned as schoolwork. OIF itself offers a broader definition on its question-and-answer web page. Here OIF defines intellectual freedom as "the right of every individual to both seek and receive information from all points of view without restriction. It provides for free access to all expressions of ideas through which any and all sides of a question, cause or movement may be explored" (ALA n.d.). This definition includes both the circulation of works (broadly defined) and the expression of ideas.

Other definitions, like Eliza Dresang's, also explicitly include the right of the individual to have their own expression. Dresang (2006, 169) defines intellectual freedom as the "freedom to think or believe what one will, freedom to express one's thoughts and beliefs in unrestricted manners and means, and freedom to access information and ideas regardless of the content or viewpoints of the author(s), or the age, background, or beliefs of the receiver." In a previous work, *Book Banning in 21st-Century America,* I stated that intellectual freedom is "the right to access the whole of the information universe without fear of reprisal from the powers that be" (Knox 2015, 11). Outside of library and information science, the ethicist Piers Benn (2021, 2), for example, defines intellectual freedom as a state that "fosters the ability to think, speak and act without being stifled by an atmosphere of taboo, whether this is legally, intuitionally, or socially enforced." This definition includes the idea that intellectual freedom is related to both explicit and implicit bans on certain ideas or knowledge.

Each of these definitions provides a window into why intellectual freedom can be difficult to define. Intellectual freedom is a condition of being—one in which an individual's mind has ultimate liberty—that is in many ways an impossible state to achieve given that, as Sue Curry Jansen (1988, 4) notes, censorship is "an enduring feature of all human communities." Individuals live in societies that each have their own norms, values, and laws, which means that intellectual freedom is always subject to circumscription. This is why it is imperative to be aware of both context and power when discussing intellectual freedom.

Throughout this book, intellectual freedom is defined as the right of every individual to hold and express opinions, and seek, access, receive, and impart information ideas without restriction. This definition is based on Article 19 of the United Nations Universal Declaration of Human Rights (1948), which states: "Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers." The definition used in this book explicitly includes the term "access," as this is in keeping with the core values of librarianship. The definition also refers to all aspects of the communications circuit (Darnton 1991). Article 19 is one of thirty rights and freedoms enumerated in the Universal Declaration of Human Rights, which was ratified by the United Nations in 1948. It is no mistake that in the ruins of a horrifying world war that was the deadliest in history, the United Nations included the right to freedom of opinion and expression in this document.

ARTICLE 19 (article19.org)

The international human rights organization ARTICLE 19 takes its name from the United Nations Universal Declaration of Human Rights. Founded in 1987, the organization bases its work on two interlocking freedoms: the freedom to speak and the freedom to know.

FLOURISHING, AUTONOMY, AND HUMAN RIGHTS

In the early twenty-first century, discussions of intellectual freedom can become heated quickly. There is no longer a general liberal consensus on the issue as there was in the mid- to late-twentieth century. One reason why discussions of intellectual freedom are so contested is that they are entangled with human rights, individual autonomy, and personal

flourishing. Here "flourishing" is used as a less self-oriented term for self-actualization. As John Burgess (2016, 134) notes:

> [Flourishing] is the good that results from living in accord with the virtues. In its simplest form, flourishing is the idea that to be good is to fulfill one's purpose in life. Put another way, to flourish is to pursue the ideal self. Since everyone determines his or her ideal self, flourishing is an internally created good.

Along with classical virtues such as courage or patience, virtues can also include such concepts as caring for others or compassion for those less fortunate than oneself. This means that flourishing does not have to be solely focused on the self but can also point to whether or not others in society are flourishing. The second concept, individual autonomy, is linked to flourishing, and as Audrey Barbakoff (2010) writes, "it is not total independence, but rather the ability of an individual to make life choices guided by his or her own values." Making choices is key to both autonomy and flourishing. These ideas are linked to intellectual freedom because it is through exposure to others' ideas and opinions that we discover their values which, in turn, help us establish our own values. We then use these values to influence society.

Along with these ethical concepts, intellectual freedom is a right endowed to every individual. Rights are moral and legal entitlements that are due to human beings. Societies have a moral and legal obligation to uphold these entitlements. One method for analyzing rights is through a typology. Information philosopher Kay Mathiesen (2012) defines several types of rights that are interconnected and demonstrate how intellectual freedom is vital to human autonomy and fulfillment. First, some rights are *primary*. These are basic, fundamental rights like food, shelter, and water. There are also *linchpin* rights, which make other rights possible. The key linchpin right for intellectual freedom is the right to communicate. Mathiesen (2015, 1312) notes that the right to communicate is slightly different from the right to information or the right to expression: "Although these three rights are closely interrelated and interdependent, they differ in whether the focus is on the rights of the speaker (expression), the rights of the receiver (information), or on the rights of both at the same time (communication)." In this book, these three rights are combined into one right called intellectual freedom. Mathiesen goes on to argue that from linchpin rights come derived rights, which often focus on specific circumstances. For example, freedom of the press is a derived right that comes from the right to communicate.

Mathiesen (2012, 14) makes a strong case for communication as a linchpin right. Without it, she argues, it is impossible for humans to even understand that they have other rights: "The ability to exercise the rights of expression and access to information promotes the realization of all other human rights." Elsewhere she goes into in more detail:

> Indeed, one could argue that, without the ability to communicate, we do not have rights at all. A right licenses a person to speak up for herself. . . . One cannot claim a right if one does not know that one has the right and one cannot claim a right if one lacks the means to express oneself. The idea of claiming in relation to rights is so important that some philosophers have argued that only those who can make claims can be rights holders. While we might want to include such beings as animals and small children within the realm of rights holders, there is still something of special dignity to adult human rights holders who can take an active role in exercising their rights. (Mathiesen 2012, 15)

This discussion may seem in the weeds, but it is important to understand why intellectual freedom is so highly contested. When someone argues, for example, that they are being censored by social media companies when their accounts are removed from private platforms, they are often using arguments that are based on a misunderstanding of what rights are and the legal status of private media platforms. Also, as John Budd notes, rights are not simply about what we *should* do but what we *must* do: "When we speak of rights we should do so with care. We are not talking about situations where certain actions should be taken, we mean something more specific and more explicitly binding" (Budd 2017, 136). Intellectual freedom is at the heart of what it means to be human and a part of a community.

Many also argue that intellectual freedom is the heart of democratic society. Free inquiry is necessary to have an informed citizenry that will shape their government. Paul Sturges (2016, 169) notes:

> At its simplest, democracy is the idea that power resides in the people whose will is consulted through elections. The basic simplicity becomes more complex the closer one examines the principle and processes, but it is important to hang on to the idea that those who vote are being asked to exercise intellectual freedom. Intellectual freedom begets and supports democracy, and democracy in turn provides appropriate conditions for the further development of intellectual freedom.

The relationship between democracy and intellectual freedom can be fraught as there is always concern that free inquiry will not necessarily lead to votes and subsequent adoption of policies that will benefit all. However, this possibility becomes even more improbable without intellectual freedom.

This argument also helps to explain why intellectual freedom is necessary for social justice. Although we are all entitled to rights, they are often circumscribed by laws. In order to ensure that we are given the rights due to each of us, we must know what they are, and these rights must be claimed. This happens through communication. Having access to information and utilizing the right to intellectual freedom mean that individuals can learn about their own rights without fear of repercussions from those in power who want to deny them those rights. Freedom of expression means that they can express their knowledge of their rights to others. Although these rights are also held by those in power, upholding intellectual freedom means that people who are not part of the dominant culture have the same rights as those who are. Everyone, regardless of their social status, has the right to intellectual freedom.

CENSORSHIP

"Censorship" is the inverse of intellectual freedom. It is also a more common term that people use when they discuss issues of information access and circulation. Although in many respects all language is political, "censorship" has a decidedly more political valence than intellectual freedom. What counts as censorship often depends on both one's worldview and what one might be trying to accomplish. To employ Sue Curry Jansen's (1988) term, censorship is the knot that combines power and knowledge. Researching and analyzing censorship also provide a window into how the right to intellectual freedom is exercised in a given society.

In a previous work, I have noted that there are both broad and narrow definitions of censorship (Knox 2014b). Narrow definitions tend to focus on government censorship, while broad definitions focus on individuals or institutions. These definitions are not static and can be held by the same person or group of people at the same time. In addition, the definitions are often focused on who or what is engaging in censorship. For example, the *Intellectual Freedom Manual* defines censorship as "a decision made by a governing authority or its representative(s) to suppress, exclude, expurgate, remove, or restrict public access to a library resource based on a person or group's disapproval of its content or its author/creator" (Garnar et al. 2021, 295). This definition has a few features that should be noted. First, it focuses on the government. Second, it covers a wide range of censorship practices. Finally, it is focused on library resources. In practice, librarianship often takes a much wider view of who can engage in censorship and its effects.

The American Civil Liberties Union's (https://www.aclu.org/other/what-censorship) definition of censorship states that:

> Censorship, the suppression of words, images, or ideas that are "offensive," happens whenever some people succeed in imposing their personal political or moral values on others. Censorship can be carried out by the government as well as private pressure groups. Censorship by the government is unconstitutional.

This definition, unlike ALA's definition, includes private pressure groups as actors along with the government. It also focuses on "moral disapproval" rather than just simply "disapproval," implying that it is focused on values and ethics. Finally, its scope is wide-ranging and broader than libraries.

The dictionary definition of "censorship" refers to the transitive verb "censor" which, according to Merriam-Webster, means to "examine in order to suppress or delete anything considered objectionable" or "to suppress or delete as objectionable" (https://www.merriam-webster.com/dictionary/censor). This definition has a somewhat limited view of censorship practices and leans heavily on the word "objectionable."

In my own work, I have previously defined censorship as control over the production of texts and other cultural goods (Knox 2015, 4). This may seem overly broad, but it does capture more fully how the term is used by the general public, where it seems to mean that "someone in power has taken away my ability to circulate the knowledge that I want to in the way that I want to." The latter part is key to understanding this colloquial understanding of censorship—who has control over a particular medium is often what matters more than just what is being communicated. (This topic will be explored more in chapter 3.)

Censorship can be understood as a constellation of practices rather than a dichotomous act. Although the term is often employed this way, the question of whether or not a work or a person has been censored is rarely black and white. One way to think about censorship is to consider how someone or an entity has engaged in censorship. Jansen (1998), for example, discusses constitutive and regulative censorship. Regulative censorship refers to the type of censorship that institutions engage in and generally concerns access to information. Constitutive censorship, on the other hand, is how "the powerful invoke censorship to create, secure, and maintain their control over the power to name" (Jansen 1998, 8).

Another way to think about censorship is to consider that there are both active and passive censorship practices. Passive practices take place before a work is circulated or obtained and include self-censorship and professional bias (e.g., in acquisition practices). Active practices occur when a work is already in circulation; they include the 4 Rs:

redaction, restriction, relocation, and removal. Briefly, redaction means marking through text or images so that it cannot be viewed. Restriction and relocation are both based on whether or not a work is available to its intended audience. Restriction means that the work is, for example, put behind a desk so that someone can only access it with permission. Relocation means that the work is moved from its proper classification to another. For example, a book intended for juveniles in a library is moved to the young adult or adult section. Removal is what most people think of as censorship—a work is removed from circulation by some entity. Being aware of the level of analysis is always important for understanding censorship—engaging in censorship practices in a school district is different from engaging in censorship practices through the use of a national firewall. Both are types of censorship, but their effects are different.

The 4 Rs of Censorship Practices

- Redaction
- Restriction
- Relocation
- Removal

Note that the word "work" is used above in a general sense to refer to any type of expression—not necessarily only those that are fixed, such as a book. For example, permission for protests is often restricted to certain times of day or limited to certain spaces. This might be the case for many reasons, including the safety of the participants, but these restrictions can also be understood as a censorship practice.

As with many things in life, censorship is often in the eye of the beholder. This is because censorship is inherently political and social. It is through the censorship and circulation of ideas, information, and knowledge that individuals and societies come to agreed values and norms. What is permitted to circulate and what is not defines what matters. Intellectual freedom, on the other hand, is more concretely about individuals and their personal right to information.

SOCIAL JUSTICE

Throughout this book, I argue that intellectual freedom is necessary for a just society. I acknowledge that this is a contested position and, in the early twenty-first century, many believe that social justice is not compatible with intellectual freedom. As Shannon Oltmann, Toni Samek, and Louise Cooke (2022, 8) note in the context of librarianship:

> It is fair to say that intellectual freedom is under siege from across the political spectrum, as librarians' professional and personal ethics diverge. There is a certain proportion of librarians who do not adhere to the promises of the IFLA Statement, thereby creating an ethical void and, arguably, although with positive intentions, committing a disservice to their patrons.

Although this is a longstanding argument, especially in librarianship, this critique is probably most easily viewed through the lens of the critical librarianship movement.

Critical librarianship originally began in 2014 as an extended Twitter conversation on how librarianship can more fully incorporate progressive values into practice. Critlib .org writes on their home page (http://critlib.org/about/) that the movement is "dedicated to bringing social justice principles into our work in libraries." Social justice is not fully

defined by the movement but refers to bringing down the "regimes of white supremacy, capitalism, and a range of structural inequalities." Over the next few years, this movement grew online and also has sponsored several events. The hashtag #critlib is regularly used in online discussions.

In the introduction to *Knowledge Justice: Disrupting Library and Information Studies through Critical Race Theory*, Sofia Leung and Jorge López-McKnight (2021, 16) argue that critical librarianship alone is not enough and library and information science should fully incorporate critical race theory (CRT) into its theory and praxis. As they note, "CRT rejects liberal frameworks as they do not examine and center critiques of power, race, and racism. We argue that current and past diversity frameworks continue to ignore these critiques." Although intellectual freedom is not explicitly addressed in their book, the opening chapter critiques the concept of neutrality and how it is commonly used to support content-neutral policies in libraries rather than one that uplifts marginalized voices (Chiu, Ettarh, and Ferretti 2021).

Social justice, when employed as a critique of intellectual freedom, refers to the harm that an individual might endure when exposed to ideas that are hateful, biased, or discriminatory. I have written elsewhere that this perceived incompatibility is due to intellectual freedom and social justice having political foundations that are shared but with different emphases (Knox 2020). This difference can be glossed as "intellectual freedom is a liberal value while social justice is a progressive value" (Shockey 2016). However, both social justice and intellectual freedom are politically liberal orientations toward society as opposed to anarchist or conservative.

An extended Twitter discussion in January 2020 using the hashtag #timetotalkaboutIF (https://twitter.com/talkaboutif?lang=en) provides a useful overview of some of the current discourse regarding intellectual freedom and social justice. One question that was explored was: "The current approach to IF undermines human rights b/c it acts like IF is in a vacuum—like it's, as a value, no way connected to, or reflective of, actual social and material power relations." Overall, I would argue that the progressive critique of intellectual freedom is incomplete because it does not account for power imbalances as they currently exist. That is, because we live in a world built on white supremacy, racism, heterosexism, misogyny, transphobia, ableism, and other inequities, laws and practices that are enacted to withhold information from certain groups often end up benefitting the group in power. For example, during the Black Lives Matter (BLM) protests in summer 2021, President Trump called the movement a "symbol of hate" (Sprunt and Snell 2020). If he had been empowered to censor "hate speech," Trump would never have targeted the Proud Boys in Richmond, Virginia. He preferred to (and often did) set his sights on the BLM protests that happened across the United States in the wake of George Floyd's murder.

Although strides have been made, the upheavals of recent history indicate that there is still a long way to go to a just society. In the United States, in particular, people do not have shared understandings of what constitutes hate across political and social boundaries. As with censorship, bias, prejudice, and discrimination are often, unfortunately, in the eye of the beholder.

A SOCIOLOGY OF KNOWLEDGE

Many books on intellectual freedom and, more specifically, freedom of expression, focus on the legal aspects of these concepts. Although it is important to be familiar with the law,

this book is less rooted in legal frameworks for understanding intellectual freedom and is instead focused on a sociology of knowledge. Briefly, academics in this field center their work on investigating how language is "created" to make the world "real" and then to communicate that world to our fellow human beings. Communication is based in language and this area of sociology explores how knowledge is transmitted and maintained across time and space. Although an in-depth review of these theories is not necessary, it is helpful to understand what is happening when, for example, people engage in what seems to be an irrational act, such as trying to remove a database aggregator from libraries across an entire state (Cortez 2018). What are these people trying to accomplish? The theories of sociology of knowledge demonstrate that they are trying to maintain a particular reality or worldview. The resources in those databases contain not simply information but knowledge that threatens who they are as people.

In a *Social History of Knowledge* (2000), Peter Burke explores epistemic history from 1450 to the end of the eighteenth century. This time period is important because it saw the invention of the printing press by Johannes Gutenberg around 1440 (this was some time after the development of movable type in China in the eleventh century), which allowed for faster and often more reliable circulation of texts. For information professionals, one of the most important theories of the sociology of knowledge is the classification of knowledge into different types.

These types are divided into pairs and they can be useful for librarians and information professionals who are attempting to understand the arguments people are using when they attempt to restrict access to information resources. According to Burke (2000, 83), the pairs are:

1. Theoretical versus practical
2. High versus low
3. Liberal versus useful
4. Specialized versus universal
5. Public versus private
6. Legitimate versus forbidden

One approach to thinking about this is to consider the many challenges that are brought against sexual education books for children and young adults. For challengers, these books contain knowledge that should be forbidden to children even when the books are written at an appropriate age and reading level. Some people believe that sexual knowledge is only legitimate knowledge for adults. When an Arizona senator called for Robie Harris's book *It's Perfectly Normal* to be removed in December 2019, a commenter on the senator's Facebook post stated:

> Thanks for taking up the cause, but give me one good reason why "sex" needs to be added to reading, writing, and arithmetic curriculum. Schools have no legitimate cause for indoctrinating our children on matters of sex or morality; which belongs squarely on the shoulders of their parents. (https://www.facebook.com/TownsendForHouse/photos/a.10152486902763914/10157926730488914/?type=3&theater)

This comment demonstrates that intellectual freedom is truly a social and not merely political or legal phenomenon. According to the poster, schools, which are institutions that help mold future generations, should focus only on what the poster considers to be legitimate

Constructing Reality through Language

Berger and Luckmann's *The Social Construction of Reality* (1966) is a seminal work in understanding how knowledge is transmitted and maintained across generations. The authors argue that the foundations of knowledge in everyday life are based in language. Although their argument is somewhat esoteric, they are basically saying that language makes objects real. What is most important for understanding why this matters for intellectual freedom is that eventually language leads to an understanding of what is "legitimate" in a particular setting—including what knowledge is legitimate. In this typology classifying a particular knowledge as forbidden or private helps keep chaos at bay in one's life.

Language is very important for understanding censorship practices. The words that book challengers use (e.g., inappropriate, innocence, indoctrinate) are important for understanding what they are attempting to accomplish.

knowledge: reading writing, and arithmetic. "Sex," on the other hand, is in the realm of private and forbidden knowledge.

In her work on children and knowledge, Kerry H. Robinson (2013) argues that many censorship efforts are in relation to what she calls "difficult knowledge." This is knowledge that is linked to powerful emotional responses in adults and therefore there are often attempts to shelter children from such knowledge. This is similar to private or forbidden knowledge. Robinson argues that these attempts are often harmful because they deny children both agency and the vocabulary to describe their own bodies and lives.

This is important because it demonstrates why legal arguments are often unpersuasive in censorship cases. As will be seen throughout this book, intellectual freedom is not simply a legal construct but a social one, and the arguments that people use against the right to intellectual freedom are often social and political.

AREAS OF INTELLECTUAL FREEDOM

Intellectual freedom encompasses several interrelated areas which will be discussed throughout the chapters that follow. Although all of the areas do not map directly onto the chapters, each of the areas provides a lens through which the reader may analyze the subjects discussed in the chapters. Note that there is no hierarchical relationship between these issues—in fact, all of them are interrelated. One of the reasons why it can be difficult to research or analyze intellectual freedom is that arguments for or against intellectual freedom tend to highlight one particular theoretical or philosophical lens. For example, the idea that "information wants to be free" can be understood through the lenses of access, philosophy, policy development, and privacy.

In general, there are five areas that most scholars and practitioners focus on: access, philosophy, policy development, legal issues, and privacy. As with all typologies, these areas have a great deal of overlap (e.g., is copyright a legal issue or policy?), but it is helpful to use these areas to think through what the underlying assumptions of an argument might be. For example, when a person argues that someone should be blocked on social media or that

a book should be removed from a classroom, they are making a moral and therefore philosophical argument. The response will often be a legal argument: "that's against the First Amendment" or "the Supreme Court ruled that you can't do that." These arguments are not employing the same lens for analysis and that is why people are often talking past each other when discussing intellectual freedom.

The first area, access, refers to whether or not people are able to obtain information. It can be argued that the most salient area of research for intellectual freedom is access and the defense of free inquiry. This incorporates more than just the concept of "what is on the shelf." Access includes questions of selection (what was not chosen for the shelf) and classification (how the bookshelf is arranged). Challenges to materials in libraries also fall under this umbrella because such actions threaten access. Peter Lor and Johannes Britz (2007) argue that access is a social justice issue and state that knowledge societies cannot exist without freedom of access to information. The authors use their own country, South Africa, as an example in order to demonstrate how lack of access to information can have deleterious effects on a society. "Our experience in South Africa during the apartheid years," the authors write, "taught us that restrictions on access can cause a regime to lose touch with reality. Curtailment of freedom of information is invariably associated with the dissemination of disinformation" (Lor and Britz 2007, 394). Lor and Britz describe four pillars of information societies—information and communication technology infrastructure, usable content, human intellectual capacity, and physical delivery infrastructure—which cannot be brought to fruition without access to information.

As mentioned above, Lor and Britz's thesis is heavily dependent on the concept of social justice. This links access to the next area of research issue—philosophy. One's beliefs and actions regarding intellectual freedom and censorship often rely on philosophical ideas relating to ethics, values, and morality. As an example, Lor and Britz (2007) use philosopher John Rawls's theory of justice and their own experiences in apartheid South Africa to support their view that knowledge societies must have freedom of access to information.

In *Fundamentals of Information Studies*, June Lester and Wallace C. Koehler (2007) define morals as a "set of mores, customs, and traditions that may be derived from social practice or from religious guidance." Values, in turn, are "enduring beliefs that a specific mode of conduct or end-state of existence is personally or socially preferable. Value systems are an enduring organization of beliefs" (Lester and Koehler 2007, 253). Ethics, on the other hand, are the application of values along with an area of study in philosophy.

Eliza Dresang (2006) uses "professional philosophy" as an umbrella term for the many policies and codes that librarians have developed in the area of intellectual freedom. Elsewhere, I have used the term "practical philosophy" (Knox 2014a). These terms are meant to undergird the idea that these policies are not necessarily subject to formal philosophical analysis but are often general guidelines for practice in information institutions.

These policies are part of the third interlocking issue within intellectual freedom, policy. Susan K. Burke (2008) divides these into two types: first, foundational documents, which include the IFLA Statement on Libraries and Intellectual Freedom and the ALA Library Bill of Rights, the Freedom to Read Statement, and the Freedom to View Statement that ALA developed in concert with the American Book Publishers Council. The second type of policy includes newer statements such as ALA's Code of Ethics and Core Values Statement. Policy development is an important interlocking issue within intellectual freedom and librarianship because it affects each librarian individually. Even if a particular librarian or other information professional does not hold to the Code of Ethics, this becomes an active choice

because she or he is introduced to these statements through the professionalization process of library education.

Although in the United States these policies borrow language from the United States Constitution, First Amendment issues constitute a separate, supplementary issue within intellectual freedom. The library and legal professions in the United States hold that the right of freedom of access is guaranteed in the First Amendment of the Bill of Rights. To ensure this right is unabridged, the Freedom to Read Foundation is the legal arm of ALA that supports intellectual freedom in the courts. On a global level, Article 19 of the Universal Declaration of Human Rights focuses on freedom of expression (UN 1948). This indicates that members of the global community have recognized freedom of access to be a legal and moral right of humanity. The IFLA Statement on Libraries and Intellectual Freedom mirrors much of the language found in Article 19.

The final interlocking issue within intellectual freedom and censorship is closely related to the legal realm and involves issues of privacy. Within librarianship, the most common privacy issues are internet filtering and records management. There are many research articles that discuss the Children's Internet Protection Act (CIPA) and the effect of the PATRIOT Act on libraries in the United States. However, government censorship of the internet is a global issue. In their article on censorship and internet search engines, Mark Meiss and Filippo Menczer (2008) compare search results in different coutries. Because "search engines are essential in discovering new sources of information . . . a censored search engine can hide that a blocked site even exists. How can you know what you're not being shown?" As with issues of selection, "what is not on the shelf" is just as important as "what is on the shelf." Although Meiss and Menczer's article primarly describes the search comparison tool, using the interface allows users to viscerally experience how censorship impedes access to information.

BOOK OVERVIEW

Some might argue that the social ills of the early twenty-first century have shown us the negative consequences of what unfettered access to information can do. Writing this in the midst of the coronavirus pandemic means that we are inundated with false information concerning the spread of SARS-CoV-2 and the efficacy of the vaccinations that will save lives. Challenging political situations around the world are exacerbated by the ubiquity of misinformation and disinformation on the web, in addition to the inciting language that is used to encourage people to attack political and society enemies.

This book is not intended to answer all of the questions raised by these issues but to provide a framework for understanding what intellectual freedom is and why it is an important value for not only librarians and other information professionals, but also to ensure that the entire world is able to meet the challenges of the information age. As noted above, although this book will discuss the legal aspects of intellectual freedom and censorship, that is not its focus. Instead, the book will discuss these ideas as social phenomenons based in frameworks of the circulation of knowledge, print and digital cultures, and reading practices. That is, the book argues that how a society views intellectual freedom and censorship is based on how knowledge is understood to be absorbed and acted upon by individuals. Legal frameworks such as the First Amendment law in the United States and hate speech laws in the European Union are just one aspect of the overall foundation for discussions in the book.

Note that in the preceding paragraph, the subject of the book was listed as "intellectual freedom and censorship." This is because it is difficult to discuss one without the other. In many ways, intellectual freedom is the opposite of censorship. However, I hope to demonstrate in the following chapters that intellectual freedom is much broader and richer than simply allowing or denying access to information. Intellectual freedom is vital to thriving both as an individual and as a society. Censorship, on the other hand, is a group of negative practices that are often based on fear of the unknown.

Intellectual freedom is also intimately tied to ideas of social justice. Social justice has many meanings but, when it comes to knowledge, social justice centers on basic questions of what, who, and how. What types of knowledge should be out of bounds? Who makes those decisions? How is that knowledge circulated in society? The answers to these questions are disputed in the early twenty-first century. Western societies are grappling with their white supremacist, colonialist, heteronormative, ableist, and classist histories sometimes in ways that seem at odds with the value of intellectual freedom.

I, and therefore this book, take the position that social justice is impossible without intellectual freedom. It is only through the free circulation of ideas that citizens can understand what the terms "white supremacist," "colonialist," "heteronormative," "ableist," and "classist" even mean. It is in the interest of those in power to not allow these ideas to become part of everyday parlance. Throughout this book, I hope to show that censorship only helps those in power. I fully recognize that some readers will not be convinced; however, I hope that the book at the very least explains why arguments advocating censorship of hateful and hurtful ideas are not always the best course of action when attempting to protect the voices of people who are marginalized.

Some caveats are in order. This book is not meant to be a comprehensive overview of all intellectual freedom issues, and there will inevitably be some information that is left out or glossed over. Readers are encouraged to explore the supplementary readings listed at the end of each chapter. In addition, this book is primarily focused on intellectual freedom in the United States, although there is some discussion of intellectual freedom issues around the globe. Finally, although the primary audience for the book is all library workers and other information professionals, it is intended to be accessible and of interest to all who want to know more about intellectual freedom. Readers may consider reading this primer in tandem with the latest edition (at the time of this writing, the tenth edition) of the *Intellectual Freedom Manual* (2021) in order to have practical guidelines and parameters for better understanding intellectual freedom as a fundamental value of librarianship and related fields.

This introductory chapter sets the stage for exploring several aspects of intellectual freedom. The rest of the book is divided into seven areas that provide breadth in understanding the issues that constitute intellectual freedom. None is meant to be exhaustive, and the reader is again encouraged to explore the supplementary bibliographies at the end of each chapter.

Chapter 2 focuses on the historical foundations of intellectual freedom. It includes discussion of John Stuart Mill's *On Liberty*, US court cases, and some information about IFLA and the Committee on Freedom of Access to Information and Freedom of Expression (FAIFE) and provides historical, philosophical, and legal overviews of the topic. Chapter 3 discusses the value of freedom of expression and includes an overview of current issues such as protection for hate speech in the United States as well as misinformation and disinformation. Chapter 4 centers on information access and provides an overview of what access means as well as other issues such as internet filtering, pro- and anti-censorship arguments, and a short discussion of book banning. Privacy is the focus of chapter 5. It

is primarily concerned with definitions of privacy and its relationship to information services. Chapter 6 is on copyright and provides a brief overview of US copyright law with a focus on fair use as well as some discussion of international copyright law. Chapter 7 discusses how intellectual freedom is supported within the information professions. Finally, the book concludes with a chapter that explores current and future issues in intellectual freedom.

It should be clear that intellectual freedom has two dominant concepts: information access and freedom of expression. These work in tandem with each other because one leads to the other: there is no information to access without the freedom of expression, which leads to there being information for people to access. This is clearly part of the communications circuit (Darnton 1991). It is hoped that this book will provide a foundation for understanding why supporting intellectual freedom is an important professional and personal value to hold in the information age.

DISCUSSION QUESTIONS

- How do you define intellectual freedom? Censorship? Social justice?
- Have you encountered censorship practices in your own life? Personal or professional?
- Do you agree that intellectual freedom is necessary for social justice? Why or why not?
- What does it mean to flourish as a human being? As a society?

FURTHER READING

Alfino, Mark, and Laura Koltutsky, eds. 2014. ***The Library Juice Press Handbook of Intellectual Freedom: Concepts, Cases, and Theories.*** **Sacramento, CA: Library Juice Press.**
This volume of essays covers the gamut of intellectual freedom issues from theoretical foundations to specific areas, including journalism, defamation, and government secrecy. It is an excellent resource for understanding a wide variety of debates within intellectual freedom.

Atkins, Robert, Svetlana Mintcheva, and National Coalition against Censorship (U.S.), eds. 2006. ***Censoring Culture: Contemporary Threats to Free Expression.*** **New York: New Press.**
The authors of the essays in this collection provide a wide array of perspectives on censorship. Although it was published some time ago, the essays remain relevant to intellectual freedom debates today.

Benn, Piers. 2021. ***Intellectual Freedom and the Culture Wars.*** **New York: Palgrave Macmillan.**
There are very few books outside of library and information sciences that focus on intellectual freedom, and Benn's monograph is one of the few examples. This ethical treatise provides a well-reasoned, philosophical justification for intellectual freedom.

Garnar, Martin, Trina Magi, and Office for Intellectual Freedom, eds. 2021. ***Intellectual Freedom Manual.*** **10th ed. Chicago: American Library Association.**
The most recent edition of the *Intellectual Freedom Manual* is a crucial resource for anyone interested in intellectual freedom and related issues. It provides clear overviews, definitions, checklists, and recommendations for implementing policies that support intellectual freedom in an information institution. Although primarily intended for library workers, it is useful for anyone interested in intellectual freedom.

Leung, Sofia Y., and Jorge R. López-McKnight, eds. 2021. *Knowledge Justice: Disrupting Library and Information Studies through Critical Race Theory*. Cambridge, MA: MIT Press.
This important book, which is available fully open access, pushes both academics and practitioners to reconsider firmly held theories and practices in the information professions. There are critiques of conventional ideas of intellectual freedom, information access, and freedom of expression that should be carefully considered by every librarian and information professional.

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Book Banning in 21st-Century America

Emily J. M. Knox

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Preface

At the beginning of the 21st century, an incredible assortment of media including books are readily available to anyone with a computer, tablet, smartphone, and an Internet connection, so what is the point of trying to ban a book from the public library or remove it from the school curriculum? This book attempts to provide some answers to this question. I have long been interested in exploring the reasons why people challenge books. My mother was a high school media specialist for over 30 years and she would bring home Banned Books Week literature every year and encouraged me to write my book reports on frequently challenged books. Books that I loved, like Judy Blume's *Are You There God? It's Me, Margaret*, appeared on the list every year. What were people trying to accomplish trying to remove or restrict these books? What did they think would happen if I read them?

Unlike a lot of research on intellectual freedom and censorship, which tends to focus on bibliography, ethics, and policy, *Book Banning in 21st-Century America* explores the arguments of the challengers themselves. These arguments are often dismissed in both the general and professional media, but I believe that by taking challengers' justifications for their actions seriously, information professionals can be better prepared for challenges to materials in their collections. *Book Banning* is based on research that I initially completed for my dissertation. Over the four years since the initial study I have added three cases to the analysis, and there are additional interviews, public hearings, and documentary data. One of the most difficult aspects of the study was finding challengers who were willing to be interviewed, and I am grateful to all who agreed to speak to someone on the "other side." This study would not have the same resonance without their thoughtful answers to my questions.

As stated throughout the book, the practices of censorship demonstrate the relationship between knowledge and power. The study presented here focuses on the discourse of challengers particularly with regard to their understanding of the effects of knowledge and how they use their symbolic power to control access to certain cultural materials within public institutions. Through analysis of challengers' discourse, we can more clearly understand the connection between knowledge and power and also provide better responses to those who attempt to remove, restrict, and relocate materials.

As a former professional librarian, I should note that I am not neutral on the issue of censorship, although I have attempted to adopt a neutral tone. I strongly support the ALA's policies on intellectual freedom and work to uphold them in my academic and professional life. In some respects, this makes me a direct antagonist to people who bring challenges against books. However, what unites me and the challengers is our belief that reading is powerful. Books change lives. With this in mind, I endeavored throughout this study to be open to challengers' arguments and not impose my own biases on their own worldviews concerning books and reading.

Chapter Two

Power and Knowledge

Most of my interviews take place over the phone. This is not ideal, as quite a bit of the interaction is lost when you can't see someone's nonverbal communication. Despite these drawbacks, my recorder is on and I'm concentrating on being an active listener. The interview begins with questions about the participant's life and how reading fits into it and only later on do we discuss the book challenge. The reasons for the book challenge in this particular case are notable. In the United States many books are challenged for their sexual or political content, but this parent was concerned about the violence in the text. I ask her about her reasons for challenging the book:

> I think it's damaging for children to read literature, damages them psychologically . . . that literature, not dark as in Harry Potter dark. But dark as in holding a gun to the head and describing holding a knife to a two-year-old's throat. That's just too graphic. Too much. Crossing a line. If they weren't doing a story about a kidnapping they wouldn't have . . . you know they get kidnapped and trapped in a closet. But it [should] never [cross] that line where somebody is holding a knife to her throat. To me the line has been crossed and I felt like I had to stand up and say my piece about it. (Interview with challenger, Central York, PA, December 7, 2011)

Although the stated reasons for targeting this particular book are not typical, the parent's justifications for wanting the book removed can be found in many challenge cases: "A line has been crossed." "I needed to say something." "The books will damage children." These themes occur with regularity in challengers' arguments for removing a particular title from a public library or school. As noted in chapter 1, censorship demonstrates an intimate relationship between power and knowledge. When a group or individual endeavors to remove, restrict, or relocate an item within a public

institution they are both demonstrating their concern over the knowledge contained within the book and also exercising their symbolic power over the institution. This chapter explores these concepts more fully, first by introducing a theory of power—specifically, symbolic power—and second by exploring the construction of knowledge and the practice of reading.

By way of introduction to these theoretical frameworks, note that this study is a work of discourse analysis. There are many different types of discourse analysis (see the Methodological Note in appendix A for more on this method of analysis). According to Nelson Phillips and Cynthia Hardy, discourse is "an interrelated set of texts and practices of their production, dissemination, and reception that brings an object into being."[1] More specifically, discourse is constructed from language. However, it is not simply "words" that exist outside of a particular individual but also what individuals "do" with the language. The theories given below describe how language is "constitutive of reality."[2] Language does not simply describe the world—it also constructs the objects that exist within it. The challengers' arguments analyzed in the following chapters use language that both describes and constructs their worldviews concerning society, the materiality of books, the act of reading, and institutions within their communities.

The chapter begins with a discussion of social constructionism, the metatheoretical framework for the study that clarifies the emphasis on language in the analysis. It then discusses symbolic capital and power in the theory of Pierre Bourdieu as these two ideas help to explain the intersection of language and power that are employed in challenge cases. These two theories clarify the emphasis on language in the analysis. Next, the chapter explores how past and present reading practices can be used to understand the current reading practices of challengers. Although these frameworks for analysis come from different paradigms, they provide robust concepts and vocabulary for understanding the discourse of challengers and also position their discourse within a broader social-theoretical framework.

SOCIAL CONSTRUCTIONISM AND SYMBOLIC POWER

The analysis in this study is based in the work of Peter Berger and Thomas Luckmann's *The Social Construction of Reality*.[3] In this classic treatise in the sociology of knowledge, Berger and Luckmann explore how reality is constructed through everyday knowledge that is transmitted and maintained through society and its institutions. The book describes how "language marks the co-ordinates of [one's] life in society and fills that life with meaningful objects."[4] Based on the work of Max Scheler, Robert Merton, Karl Mannheim, and others, Berger and Luckmann posit two concepts from their work

that are particularly important for the analysis used in this study: stocks of knowledge and the symbolic universe.

Stocks of Knowledge

In order to understand what Berger and Luckmann mean by "stocks of knowledge" it is necessary to understand their theory of how language and the social world operate as the foundation of reality in everyday life. Language, including written language, is used for the *objectivation* of things as well as a bridge to experience and organize everyday life. Note that the term "objects" is used broadly in this context and includes both everyday objects such as books as well as institutions such as the school or library. Through the process of objectivation we develop a system of signs through which we build up a socially distributed stock of knowledge. Stocks of knowledge are based in language and include both everyday and specialized knowledge. Everyday knowledge includes, for example, the ability to read and write. Specialized knowledge, on the other hand, is the domain of experts within a particular field. This would include, for example, the knowledge that subject librarians have for sources in a particular area of study or the knowledge of programmers of coding languages.

Prior to publishing *The Social Construction of Reality*, Luckmann coauthored *The Structure of the Life-World* with Alfred Schutz, in which the concept of stocks of knowledge is described in more detail.[5] Here Luckmann and Schutz demonstrate how stocks of knowledge are constituted by both *types* and *typical actions*. Types are individuals' construction of objects in their everyday life—including their fellow human beings—that are developed through a process of socialization. Schutz and Luckmann note that these types are abstract, incomplete, relative, and relevant to the situation at hand. That is, they do not provide a "complete picture" but are used as a heuristic device to interpret situations and objects in one's life. Types also are mutable depending on the intimacy and relevance of the involved object. For example, a book is a type of object for which I might have a general perception in my head, but this perception will change when I encounter a book in my everyday life. I will also employ my construction of "book" to perceive and identify that the object in front of me is, in fact, a book. However, depending on the nature of the interaction, this encounter might also change my typification of books in general. It is salient for this study to note that types can also apply to institutions such as the library or schools. An individual's particular understanding of "what a library should do" or "what a school should be" within a community is based on a typification of "library" and "school." As will be demonstrated in the following chapters, challengers argue that such institutions should be "safe"—not just physically but also in terms of having "appropriate" types of knowledge on shelves or in

curricula. A typical action describes how one responds to others' actions and provides information on how to get things accomplished. One example of typical actions that is salient to this study is the interpretive strategies that one uses when reading a text. For example, when the interviewee quoted above states that reading "dark" literature damages children psychologically, she is describing a particular interpretation that she brings to the text. According to Berger and Luckmann, stocks of knowledge are learned through socialization. Types and typical actions are passed down from one generation to the next through social institutions such as the family and schools. Stocks of knowledge operate within what Berger and Luckmann call the symbolic universe, which both produces new interpretations of objects and makes these interpretations credible.

The Symbolic Universe

The symbolic universe, as described by Berger and Luckmann, is particularly important to understanding the worldviews and arguments of challengers, as it is a concept that helps to illuminate the origin of the common themes found in their discourse. Objective reality, that is, the reality of everyday life, is constructed through processes of institutionalization and legitimation. Types and typical actions that make up stocks of knowledge are passed down through these two processes. Institutionalization describes the process of socialization that takes place through childhood. Individuals become "selves" through a process of social integration with both their environment and other humans. One's "self" is the outcome of all of these interactions. Legitimation, on the other hand, is the process by which institutionalization is made plausible and passed from one generation to the next. The symbolic universe, through which meaning is created, emerges from this process of legitimation as it makes stocks of knowledge credible to succeeding generations. The symbolic universe encompasses all levels of legitimation in everyday life including the incipient or "things are just like that" level, theoretical propositions, and explicit theories. These legitimating functions allow the symbolic universe to play an important part in constructing an individual's worldview because it supplies meaning to unexplained and random events and helps to explain divergent worldviews among individuals.

Symbolic universes perform important functions within objective reality. First, they have a "law-giving" quality and allow for everyday life to have complete integration. They also order one's individual biography and provide legitimacy for death. In short, symbolic universes provide a basis for rationalizing the events in one's life and are an integral part of one's worldview. For example, religion operates as a symbolic universe sine qua non since it completely orders reality. As noted above, symbolic universes provide a foundation for an institutional order for the entire universe and help

individuals fill in gaps for aspects of life that are not readily explained. As will be demonstrated in chapter 6, some challengers sometimes use religious language to argue for removing or relocating a particular text. It is clear from this use of language that, for these challengers, their religious beliefs provide a particular order for understanding their lives.

Social constructionism, as briefly outlined above, provides the metatheoretical foundation for this study because it offers a framework for understanding how language shapes an individual's worldview on the deepest levels of legitimation and rationalization. For Berger, Luckmann, and Schutz, the constitutive view of language is axiomatic. Since this is a study of the discourse employed by individuals in challenge cases, it is important to understand how analysis of language provides a window into the wider worldviews of challengers. That is, it is possible to understand why challengers target particular books in an age of ubiquitous access to texts by exploring the language they employ to justify their actions. As noted previously, this study can be classified as culturalist discourse research that explores the arguments challengers use to justify their arguments for removing, relocating, or restricting books in public school libraries. Research of this type focuses on how both language and symbolic capital affect the distribution of knowledge. While the previous section of this chapter discussed language, the following section explores Pierre Bourdieu's theory of practice and symbolic power.

Symbolic Capital and Power

As will be demonstrated in the analysis chapters, challengers use their symbolic power as citizens, parents, and taxpayers in challenge cases in order to shape public institutions in their communities. The symbolic is an important aspect of Bourdieu's philosophical project, the development of a theory of practice. Bourdieu's project is called theory of *practice* because it focuses on how individuals conduct themselves within both institutional and personal constraints.[6] According to Bourdieu, constructions within the social world have three attributes: First, they are always subject to structure. Second, cognition is socially structured. Finally, practices are both individual and social. Bourdieu's well-known concept of *habitus* comes out of these three points—it is what produces structure for classification within the world. The concept of habitus is crucial to understanding Bourdieu's theory.[7] It describes how individuals operate within the "space" between objective structures and subjective structures. As Bourdieu notes, practice is never automatic and people do not always know that they are operating within socially constructed boundaries. By turning "history into nature" and "nature into common sense," an individual's habitus offers a collection of repertoires on which an individual can draw throughout a particular event.[8] In this study,

one set of repertoires on which challengers rely are particular reading strategies that are based on a strong correlation between the written word and the idea of truth. In Bourdieu's terms, challengers' habitus provides the structures for interpreting text in this manner. It is important to note that the world is not seen by people as being completely structured—individuals have "space" in which to operate and interact within the symbolic system.

Another important aspect of Bourdieu's theory is the concept of capital. Capital refers to an individual's "accumulated labor which, when appropriated on a private, i.e., exclusive basis by agents or groups of agents, enables them to appropriate social energy in the form of reified or living labor."[9] In other words, capital is a form of currency broadly construed. According to Bourdieu, there are four different types of capital that an individual possesses: economic, cultural, social, and symbolic. First, economic capital is simply one's monetary worth. Next, Bourdieu describes three different states of cultural capital. Art, music, and literature are examples of cultural capital in its objectified state. Second, table manners and other such habits of the body exemplify an embodied state of cultural capital. Finally, academic credentials are an institutionalized form of cultural capital. The third type of capital, social capital, is particularly important for this study because it primarily consists of one's social networks which can be leveraged for political influence in the local community. Social capital also includes one's inherited capital such as is found in the nobility.

Symbolic capital is a "transformed and thereby disguised form of physical 'economic' capital that produces its proper effect inasmuch and only inasmuch, as it conceals the fact that it originates in 'material' forms of capital which are also, in the last analysis, the source of its effects."[10] That is, symbolic capital is economic capital in a different form. For example, when challengers describe themselves as "taxpayers" they are conveying the idea that they have a certain kind of fiscal authority over public institutions. This is a method of converting one's economic capital into power. Symbolic power is important because it is often misrecognized as something else such as common sense or justified actions. Bourdieu defines symbolic power as those symbolic instruments (including discourse) that are used by one social group to dominate another social group.[11] Both the division of labor and ideology are included as types of symbolic power, and it is understood to be one of the primary building blocks for a social group.

It is the combination of symbolic capital and symbolic power that delineates the knowledge classification struggles found in challenge cases. These cases are a struggle for domination over who has the authority to determine the boundaries of legitimate and illegitimate knowledge in the public sphere. Challengers use their own symbolic power against the symbolic power of librarians, teachers, and administrators. Bourdieu describes this struggle as a form of symbolic violence in which hegemonic norms and procedures are

used by one group to dominate over another.[12] As will be demonstrated in the following chapters, challenge cases are essentially symbolic struggles between individuals and groups who have different values and operate within differing symbolic universes. The following section discusses the foundations of one aspect of the symbolic universe in which challengers operate—their conceptualization of the book and the interpretive strategies that they impose on texts.

WRITTEN KNOWLEDGE

In his book on understanding and managing challenges titled *The New Inquisition*, James LaRue, a former public library director, argues that book challenges are essentially about respect for writing:

> Behind the challenges of many patrons is awe of the written word. This may well be rooted in the profound respect granted to the Bible, based on several factors but not least upon its endurance. This belief, incidentally, is also shared by the secular left, which believes education—mainly exposure to the written word—is also very powerful.[13]

That is, understanding an individual's reverence for the written word is foundational for understanding why he or she challenges a book. This argument can be found throughout challengers' discourse. Within this particular worldview, it is easy to see why challengers are arguing that children should not read a particular book because reading is a powerful act—one that has effects on individual character and behavior. While the sections above focused on theories of discourse and power, the following sections elucidate the other half of the censorship equation—a particular understanding of knowledge and how it operates in everyday life.

Grounded in the idea of the power of writing, the following explores how past and present reading practices can be used to understand challengers' construction of current interpretive strategies. Since the practices of writing and reading have changed over time, it is necessary to define what these practices are and how they may influence contemporary challengers. This section begins with a discussion of writing practices and the materiality of books. It then offers a brief overview of historical reading practices in the West, starting in the Middle Ages through to the contemporary era. Finally, this overview offers a framework for understanding how the "undisciplined imagination" is conceptualized in challengers' discourse.

Writing Practices

Writing, in contrast to oration, is a form of symbolic authority that acquires its power through material form. Writing is a performative action and its real-world effects outstrip the physical action of putting words to page.[14] There are many examples of this performative power of writing. Some legal contracts, for example, are not considered binding unless they are written down. This can be most clearly seen in the common legal agreement of marriage. Even if there is a ceremony, there is no marriage without a written and signed marriage license. Another example concerns the institution of slavery. Before manumission, the act of writing someone's name under the heading "slave" made them a slave.[15] When the slave's owner struck through his or name on this list, the slave was free. However, freedmen and freedwomen were required to carry papers that proved their status in society. These acts of writing had and have actual ramifications in the "real world."

It is a complex task to conceptualize how writing produces these effects. In the Western world the writing practices described above seem to operate as indexical signs. A concept first developed by Charles S. Peirce, an indexical sign has a tangible link between the signifier and the signified where there is a *correlation* between the meaning of the sign and reality.[16] In this case, there is a correlation between writing and reality. Indexical signs indicate a concrete reality: It is a sign wherein "smoke means fire, pawprints mean the presence of a cat."[17] In the example given above, the words on the page (e.g., a person's name under the heading "slave") have a direct correlation with his or her status in the reality. Further, the writing imbues the individual with that status. Another example of the indexical status of writing might be the words on a legal contract, or the act of signing a marriage license signifying an ontological change among the signatories. At the same time, it also produces this change. That is, by signing the marriage license the two individuals are now "married" and they are now bound to fulfill the duties that go along with that status. Note that these writing practices take place within wider institutional and social contexts that continually construct the written word as a powerful act. As demonstrated in this study, challengers are very concerned with truth in the written word and it is possible that this is due to understanding of text in this sense where the text operates as an indexical sign. That is, the fact that something is written text means that is (or should be) true. This concept of correlation between the sign of the text and signified reality is particularly helpful in understanding challengers' discourse regarding the nature of truth and fictional texts as described in chapter 5.

Writing, which in its performative capacity can give shape and framework to the social world, also has a direct influence on the authority given to books in modern society. Because they "contain" writing and are a fixed

medium, books also have a particular kind of "power." They operate as symbolic, stabilizing objects within the social world that can legitimate the ideas that are contained within them. That is, the book *as a book* legitimizes and gives credibility to ideas in texts. This connection between writing and books is a major theme in the discourse of censorship. One model for understanding this relationship between texts and books can be found in the work of Lisa Jardine, who titles one chapter in her monograph "The Triumph of the Book." Jardine notes that books "revolutionized the transmission of knowledge and permanently changed the attitudes of thinking Europe."[18] It is the book as a medium for the dissemination of knowledge that is crucial here, as its material form allowed for the spread of a limitless number of ideas across the West and throughout the world. As demonstrated in the analysis chapters that follow, challengers are finely attuned to the legitimating power of writing and its influence over people in the sense that this power can validate the assumption presented in a particular text.

Materiality of Books

If one allows that, for challengers, the book is a symbolic object of authority, it must be noted that this authority is complicated by the fact that books may contain limitless content and ideas. As a consequence of this, books are simultaneously a stabilizing and a destabilizing force in society. A common theme in challengers' discourse centers on whether or not the presence of a controversial idea in a book gives legitimacy to the idea as such. Their arguments reveal the tension between the book as a stabilizing and destabilizing object. Book history scholarship demonstrates that the book operates not only as a legitimizing agent but also as a symbolic object that can be used to verify one's particular cultural sensibility. For example, during the early modern period, simply having a copy of the *Encyclopédie* on one's library shelf demonstrated a particular sensibility and showed that the owner shared the progressive opinions of the *philosophes* who wrote the articles in the encyclopedia.[19] Another historical example that demonstrates the importance of the book's symbolic authority is the reverence that the 19th-century New England families described by William J. Gilmore held for their single-volume Bibles. Even if the household had no other books, there was always a Bible, which served as a family archive and a manual for living.[20] This concept of the book as signifier of one's sensibilities is linked to challengers' concern over having objectionable material in public institutions such as libraries and schools. If such books are present it means that, for the challengers, the institutions approve of all aspects of the texts within. In her monograph on a censorship controversy in Oklahoma, Louise Robbins argues that libraries are particularly susceptible to challenges and that this "vulnerability comes both from the importance and authority Americans ac-

cord the books . . . the library collects, organizes and circulates . . . from its position as a public institution charged with the preservation and transmission of culture."[21] For challengers, having a book in a public or school library collection, and especially if the book is approved for use in a school curriculum, means that the institution believes in the ideas that are presented in the text. In this context, ownership of books becomes a sign of a particular worldview.

It should be noted that perhaps the most well-known debate in the area of the authority of the book relates to the relationship between the presentation of the text and how it is interpreted by readers. In her treatise on the impact of printing on Western society, Elizabeth Eisenstein argues that printing changed culture not simply because ideas shifted but because the printing press allowed many more people to have access to these new ideas.[22] Eisenstein contends that printing allowed for the standardization of texts (i.e., fixity) and permitted people to discuss the same work across space and time. There are some historians who consider Eisenstein's argument to be overly deterministic. Adrian Johns, in particular, believes the idea of fixity in early printing to be overstated.[23] He argues that early modern printings of books were not uniform editions of texts and therefore could not be considered to be a source of stable knowledge. Nevertheless, the idea of the fixed work underpins and enables the practice of indexing the book and allows for ideas to be maintained over temporal and spatial distances. Challengers, like almost all contemporary readers, take this idea of fixity of the text as a given and assume that the text they are challenging is the same for all.

The juxtaposition of the book as a revered material object and the importance of the text contained therein is also emphasized by Daniel Selcer in his monograph on early modern philosophy titled *Philosophy and the Book*. Of particular interest is Selcer's discussion of Baruch Spinoza and how the mechanized printed word changed people's interpretation of text especially in relation to the Bible. Selcer notes that Spinoza posits two somewhat contradictory positions. First, that scripture itself is a fixed entity but its new status as simply "a book" means that it has lost some of its sacred character. Second and concurrently, that sacred meaning is inextricable from the materiality of the text.[24] The words on the page are capable of creating real effects on the reader:

> A concatenation of letters on the page is capable of generating in me devotion to God (or its opposite . . .) means the disposition of these letters produces effects in my mind and in my body, and that those effects are transitions in my power to produce effects (i.e., to act and to exist). This is what constitutes the meaning of the words in question: the meaning of words is nothing but the effects they produce.[25]

This idea of meaning and interpretation, even in the secular realm, leading to real effects is integral to understanding the discourse of censorship as a whole and discourse of challengers in particular. As demonstrated in the analysis chapters, challengers often fear that reading the targeted texts will not only lead to short-term harmful effects but also puts the reader's soul in jeopardy. The book, as a material object that both stabilizes and transmits knowledge, is of primary importance to understanding how these effects become manifest in a reader. The circular interaction between books and texts means that these material objects have the power to affect an individual's character and soul. The next section of this chapter describes in more detail some models for understanding how this takes place by exploring the historical models that inform challengers' construction of the practice of reading, in particular with regard to the effects of texts on certain readers.

HISTORICAL READING PRACTICES

Reading, like writing, is somewhat difficult to theorize. In this study, reading is constructed as a social practice that has changed over time and encompasses different physical modalities and interpretive strategies. In order to understand why people challenge books, it is necessary to delve into their understanding of how reading works, what it means to read a text, and how they construct the idea of "appropriate" reading materials. In her article on textual interpretation, Elizabeth Long demonstrates the social and collective nature of the practice of reading.[26] Even though reading is often seen as a solitary activity (a concept that Long vividly illustrates through a series of images that show lone readers), Long establishes the collective nature of reading by demonstrating its reliance on both social infrastructure and social framing. By social infrastructure, Long means that reading is an activity that is learned through social relationships and relies on the social base of literary culture. Social framing constructs certain materials as being "worth reading" and is a socially defined concept. As shown in the following chapters, this concept of "worthy" reading becomes visible in challengers' discourse when they refer to the challenged material as "garbage" or "junk" in opposition to books that they consider to be worth reading.

The following sections of the chapter briefly describe reading practices from the Middle Ages to the present with particular emphasis on the interpretive strategies employed when encountering written texts.[27] Here one can see the development of "typical actions" with regard to reading. Stanley Fish notes that "interpretive strategies are not put into execution after reading . . . they are the shape of reading and because they are the shape of reading they give texts their shape, making them rather than, as it is usually assumed, arising from them."[28] As Fish explains, the meaning of a text is never fixed

and is open to polysemy (i.e., multiple meanings) across time, groups of people, or even within a single individual. Interpretive strategies are defined here as a set of implicit decisions regarding analysis that one makes both before and while one is reading. These decisions have many different influences including how written texts are socially constructed and, as noted previously, the perceived authority of the book. As will be shown in the analysis chapters, challengers, in fact, disagree with this view of texts being open to many different meanings and often argue that there is only one possible interpretation of the texts that they target.

The Middle Ages

Historians have shown that in the Middle Ages, writing was understood to be a medium of authority that held the record of obligations of the poor and had both magic and evil powers.[29] This conceptualization can be connected to the performative aspects of writing described above. It was, according to historical accounts, an era of "restricted literacy" in which few people could read or write. Restricted literacy is defined as a society in which only the gentry, clerics, and other elites are able to read—everyone else lives on the margins of these literate classes.[30] This meant, ipso facto, that problematic texts were not accessible to most of the population. Many people could not read and those who could did so primarily for religious purposes. Christianity is a religion whose doctrines are based almost exclusively on texts. The Christian canon consists of the written texts of the Hebrew Bible (or Old Testament—one section of which is called "The Writings") and the New Testament that includes the four canonical written Gospels and letters to Christian communities from wandering apostles. For the Christian, almost everything that one needed to know for salvation was contained in these texts and he or she considered reading to be the path to redemption. As will be demonstrated in the analysis chapters, the negative of this idea (that reading can be a pathway to sin) is a common theme in challengers' discourse.

Levels of Interpretation

In the Middle Ages, those who could read would often engage with scripture—and possibly other texts—on a dialogical level. They would employ interpretive strategies that did not encourage a single fixed meaning but, as described below, methods that allowed for simultaneous polysemy of a given text. These codified interpretive strategies were intended to guide the reader away from a negative interpretive pathway of sin. According to M. B. Parkes, there were four levels of interpretation that readers used when studying texts. The first was *lectio*, in which the student had to identify the elements of the text. *Emendatio* referred to the corrections made by the student to the manuscript text. The third, *enarratio*, described the process of inter-

preting the text's subject matter. Finally, *iudicium* referred to judgment of the aesthetic qualities of the text. Discrepancies in texts, especially sacred texts, could be attributed to the multiple senses of scripture.[31] Scholars engaged with and produced their own personal readings or exegesis of texts through a process that was fully systematized. Although, as time went on, students used a variety of glosses and abridgments to help them better understand difficult texts, all were encouraged to be readers and not simply reciters. For example, Jacqueline Hamesse offers an anecdote of Robert of Melun who, next to a passage on *lectors* and *recitators* writes: "Concerning those who apply themselves to the exercises of reading and citations of authorities and do not understand them."[32] In this time period, there were professional recitators who simply read aloud while lectors were those who attempted to read and understand the text.

Silent Reading and Private Interpretation

According to accounts of the history of reading, physical reading practices shifted during the Middle Ages. Hamesse discusses modes of reading that existed at the time. First, people read by murmuring in low voices to themselves. People also continued to read aloud publicly—a practice that dated from antiquity.[33] Third, although it took some time for this practice to take hold, Hamesse notes that people also read silently. When reading silently—in contrast to reading aloud—one's thoughts and therefore one's interaction with the text is private. This historical shift to silent reading is important for understanding the discourse of challengers. When someone reads silently, an observer has no knowledge of how the reader is interpreting the text. Paul Saenger notes that the connection between silent reading and accusations of heresy began in the 11th century. Reading aloud in community (public *lectio*) meant that others would be able to provide corrections to heretical statements. Saenger explicitly links the spread heresy to the silent, private reading of tracts:

> Alone in his study, the author, whether a well-known professor or an obscure student, could compose or read heterodox ideas without being overheard. In the classroom, the student, reading silently to himself, could listen to the orthodox opinions of his professor and visually compare them with the views of those who rejected established ecclesiastical authority. . . . Private visual reading and composition thus encouraged individual critical thinking and contributed ultimately to the development of skepticism and intellectual heresy.[34]

When one reads silently, one could be thinking heretical thoughts and there is no method for correcting them. This point of distinction between reading silently and reading aloud is vitally important for understanding the discourse of contemporary challengers. Silent reading places interpretation

primarily in the hands of the individual. As demonstrated in the following chapters, the issue of unmediated text is a salient one for understanding the actions of challengers. While other mediums, such as broadcast television, can be censored by standards and practices boards, reading silently means that outsiders do not know where one is located or how one might be interpreting the text. This adds to the fear challengers have that people will have access to the ideas presented in objectionable texts.

Early Modern Period (1500–1800)

Along with changes to reading practices in the Middle Ages described above, new reading practices in the early modern period also provide models for understanding some distinctive aspects of challengers' construction of reading in the early 21st century. Several shifts in reading practices described by historians in this period appear in the discourse of contemporary challengers. Some notable differences in the practice of reading include an emphasis on unmediated texts and the fear of the effects of unmediated interpretation; along with these practices there was also increased distributions of printed materials and a continuing growth of literacy throughout the time period. Each of these changes is briefly described below.

Unmediated Texts

As noted above, silent reading became a more widespread practice during the Middle Ages. Without the intervention of fellow "readers" who were listening to a text as it was read out loud, reading became a personal, individualized experience between the reader and the text. The text itself, however, often had its own mediatory attributes. As Brian Stock notes, there were "textual communities" or "'microsocieties' that shared a common understanding of scripture."[35] Sacred and classical works usually included annotations, glosses, and commentaries that would guide the reader toward a "correct" interpretation of the original text. According to Stock, individuals who shared a particular understanding of the text became a community even if they were dissimilar in other ways.

During the early modern period, sacred and classical works that were published in their original languages circulated without commentaries and annotations.[36] This particular model of reading did not focus on the interpretations of others; instead, historians argue that individuals could form interpretations of classics unmediated by the annotations of other readings. Similar to the Middle Ages, when a "typical" reader who read silently no longer had to contend with the influence of others who were *hearing* the same text, during the early modern age, the "typical" reader did not always have to contend with the work of others in the text itself. As a consequence of this, interpretive strategies that one brought to the text exerted considerable influ-

ence when reading a text. It should be noted that humanist scholars in the early modern age eventually produced their own commentaries and these were often published alongside the original text. As Anthony Grafton writes, "The glosses of humanist teacher, usually offered first as lessons in classrooms, then rewritten for print, twined themselves like the illuminators' vines around the texts."[37] However, the early modern age also placed considerable emphasis on the individual and his own interpretation of the texts. As described by Grafton, often readers would write their own annotations to supplement the printed ones, thus revealing their individual interpretation of the texts.

The early modern age was also a time of religious upheaval in Europe. Although there were many doctrinal variations in what eventually became Protestant Christianity, one—*sola scriptura* or salvation through knowledge of the Bible alone—is particularly important for understanding the contemporary discourse of challengers as it points to why reading is such a powerful activity. Inherent in this idea is the belief that each person can read and understand for himself or herself the truth of the good news of Jesus Christ.[38] Along with the doctrine of the priesthood of all believers (a belief that there is no mediator between the believer and God), the doctrine of *sola scriptura* indicates a belief that each person can bring about his or her own salvation through reading. These shifts, along with the loss of the fourfold sense of scripture described above, are crucial for understanding how contemporary challengers construct the practice of reading.

The Consequences of Unmediated Interpretation

When one considers the doctrine of *sola scriptura*, it is not surprising, then, that Protestant reformers viewed the practice of reading with some trepidation. This doctrine as well as the practice of reading unmediated texts silently led to two contradictory notions regarding reading the Bible. First, since the reformers assumed that God wants to save his people, the Bible was considered to be a simple text for anyone to understand. However, reformers simultaneously feared that this might not be the case and were concerned that individual interpretations might lead to heresy—the negative interpretation described above.[39] This fear was, in some respects, exacerbated by the events of the Peasants' War (1524–1525) in which tenant farmers animated by the antiauthoritarian doctrines of the revolution rose up against feudal lords. Martin Luther, in particular, was highly influenced by the war and published commentaries and catechisms on the scriptures in order to guide his followers toward "correct" interpretation.[40]

As noted earlier, fear of unmediated interpretation is critical for understanding the discourse of contemporary challengers. As Martyn Lyons notes:

> Neither Protestant writers nor the Catholic hierarchy could predict readers' responses. Lutherans, Calvinists and Inquisitors alike confronted the independence of individual readers who could not easily be influenced or guided in the desired direction. . . . The interpretation of scripture could not be controlled.[41]

In the early modern age, reformers encouraged their followers to read on their own but with a reference text to guide them. These readers were not "trusted" to arrive at this correct interpretation on their own. This is an argument similar to those made by challengers. Although the segments of society who are not trusted to have adequate interpretive skills have changed over time, this study demonstrates that the fear of unmediated interpretation is paramount to understanding why people challenge materials in public institutions.

Increased Distribution and Literacy

Along with an increase in unmediated texts and the fear of how individuals would interpret such texts, the early modern period also saw the advent of the printing press and greater distribution of texts as well as increased literacy. As noted earlier, Jardine argues that the book altered the nature of knowledge in Western society.[42] How this happened and the nuances of this change remain highly contested among scholars. One of Jardine's explanations for this change, that books were less expensive than manuscripts, seems the most salient for understanding of the discourse of censorship. Since books were less expensive they were (eventually) more widely disseminated in society. This meant that more people might have access to knowledge that was not previously readily available to them. And yet by implication, people were in danger of becoming poor interpreters of texts.

According to some accounts of history, not only were there more texts available for reading in the early modern period, there were also more people to read them. The spread of literacy during this time period is well documented.[43] For the purposes of this study, it is important to note that this increase in the literate populace meant that more people would be susceptible to the dangers of the unmediated text. One might surmise that as more people were able to engage in the practice of reading, anxieties that they would do so "incorrectly" would also be intensified. This fear of unmediated interpretation relates to the concept of "undisciplined imagination" described in more detail below and helps inform some of the unease found in challengers' discourse on reading.

Modern Period (1800–Present)

During the 19th century, some sources note that there was a "print explosion" in the modern world.[44] Technological changes eventually gave rise to the

mass production of books, which meant that many different types of texts were available to many different members of society. Books were no longer the province of the wealthy. A few notable changes in reading took place during this time period. Both Europe and the United States experienced a reading fever, characterized by marked rises in literacy and the "secularization" of literature. Particularly important to understanding the discourse of censorship are the concepts of critical distance to the text and commonsense interpretive strategies. These latter changes are described in some depth below.

Secularization and Extensive Reading

According to William J. Gilmore, the secularization of reading material occurred more slowly in the United States than in Europe. Even if the household had no other books, there was always a Bible present in the homes of the New England families. For 19th-century American families, the family Bible served as both a family archive and a manual for living.[45] However, reading fever for texts other than the Bible grew in the antebellum period, and the reading public in the United States became especially enamored of novels, which "threatened not just to coexist with elite literature but to replace it."[46] There was a fear of a reading public who subsisted on popular literature that is familiar to many observers in contemporary America.

Individuals also began to read texts less intensively. Rolf Engelsing's well-known theory regarding intensive versus extensive reading primarily refers to practices of the bourgeois in 18th-century Germany; however, because of the slower pace of change in reading practices in the United States, his thesis regarding changes in reading practices provides a useful starting point for understanding the practice of reading in the modern age in America.[47] Intensive reading, a style that characterized many readers up to this point, involved reading a few items closely, while extensive reading describes reading many items with less care. Leah Price argues that Engelsing established a contrast between "reverent readers and passive consumers . . . [that] fuels a conservative distaste for modern mass culture and mass markets."[48] This distaste for mass culture and mass reading was marked in this time of reading fever and is well documented in Stephen Colclough's *Consuming Texts*, which uses newspaper illustrations from the industrial age to demonstrate this leeriness toward the reading public. One such illustration shows a father ignoring his daughters who are looking at suspicious books while he is distracted by advertisements.[49] As will be demonstrated in chapter 4, this scene illustrates a particular fear that is common in the discourse of challengers wherein they are afraid that other parents are not "living up to their jobs" by setting proper boundaries for their children. The image de-

scribed above situates this fear within a long tradition of discourse about reading practices.

Critical Distance and Common Sense

Another concept of primary importance to understanding reading practices in the modern era is the idea of *critical distance* to a text, which is linked to the modern idea that humans are capable of rational thought and are able to apply their own ideas to a particular text. That is, they have "the capacity for resistance and disbelief" and do not simply accept whatever is written in the text.[50] This is a conceptualization of readers that defines many interpretive communities throughout the West today and it is an interpretive strategy that many librarians, administrators, and other staff of public libraries and schools share. When students are required to read a particular book in school, one surmises that the staff members who assigned it believe that the students employ both the interpretive strategies to understand the text and also maintain a critical distance from the text. In public libraries and schools, librarians and other staff members often hold parents responsible for ensuring that their children are reading materials at the appropriate level. That is, that the children are sufficiently mature to have critical distance from and maintain a rational relationship to text in the book.

In the late 18th and early 19th centuries, a particular conception of the idea of "rational thought" took hold in the United States in which rational thought is limited to "commonsense" ideas. Although it does not necessarily have resonance for many modern Americans, it is this philosophical framework that informs the discourse of challengers in this study as it helps to explain some of the intensity of challengers' actions and their position regarding the targeted books. Their discourse concerning interpretive strategies of text is grounded in a particular understanding of how one views text, wherein "rational thought" is coupled with a view of "common sense" that elevates a monosemic rather than a polysemic interpretation of text. As noted above, the fourfold sense of scripture shifted during the Reformation and interpretation became a matter of direct experience. In his monograph examining the American commonsense tradition and its major advocates including John Witherspoon and William James, Scott Philip Segrest notes that the tradition reigned in American philosophy until the post–Civil War era.[51] The American idea of common sense, which is based in a Scottish philosophical tradition, is an attitude

> grounded in experience in the sense of staying in touch with the world . . . and it is grounded by experience, in that it is the fruit of innumerable encounters with the world's basic features and innumerable judgments both of fact and logic. The common sense attitude, once highly developed, enables the clarifi-

> cation, collection, and synthesis of common sense truths into a body of knowledge accessible to a broader community.[52]

Although Scottish Common Sense philosophy never became very popular on the European continent, it exerted a strong influence over the American imagination. Common sense permeates many founding documents of the United States. As Segrest persuasively argues, when the founding fathers wrote that "we hold these truths to be self-evident," they were referring to a self-evident truth that is grounded in the Scottish Common Sense tradition wherein truths must be experienced.[53]

In his monograph on the philosophical foundations and development of theology in the United States, Mark Noll argues that Common Sense philosophy provided a necessary epistemological framework for the Revolution era.[54] Previous eras including the Reformation, Puritanism of the 17th century, and the First Great Awakening of the 18th century "stressed human disability as much as human capability, noetic deficiency as much as epistemic capacity, and historical realism as much as social optimism."[55] Common Sense, on the other hand, emphasizes the self-sufficiency of individuals and their ability to observe and understand the world around them. Noll's work traces the spread of Common Sense philosophy from Scotland through the work of Scottish immigrants including John Witherspoon to institutions of higher learning in the United States, especially the College of New Jersey (later Princeton University). Of particular importance for these philosophers was an epistemology based on scientific rationality. This orientation toward the scientific, especially in the realm of the interpretation of texts, is explained in more detail by George Marsden in his writings on fundamentalism and evangelicalism in the United States.[56] According to Marsden, rational ideas based in a commonsense understanding of the world are of great importance in fundamentalist and evangelical culture. This is particularly prevalent in the idea of scientific Christianity wherein the Bible is seen as a book of scientific facts that can be understood by any reader and simply need to be rationally classified. A commonsense orientation toward reading the Bible means that

> mystical, metaphorical and symbolic perceptions of reality have largely disappeared. Instead most Americans share what sociologist Michael Cavanaugh designates an "empiricist folk epistemology." Things are thought best described exactly the way they appear, accurately with no hidden meanings.[57]

That is, when one reads the Bible—and possibly other texts—the meaning of the text is plain. In marked contrast to the fourfold sense of the scripture from the Middle Ages described above, polysemy is impossible. One example of this reading practice can be found in so-called Young Earth Creationists who do not allow for any allegorical interpretation of the Gene-

sis 1 creation story. For them, a day *means* a 24-hour period. This viewpoint is clearly demonstrated on the website for the Young Earth Creationist group Answers in Genesis (answersingenesis.org), which states that "the Bible clearly teaches that God created in six literal, 24-hour days a few thousand years ago."

This foundation in Common Sense philosophy means that the idea of critical distance has a slightly different implication in this context. It does not necessarily refer to the idea that a *rational* interpretation of text is based in a given individual but that the *text itself* is only open to a particular interpretation—one that is self-evident to any rational reader. This study demonstrates that, for many challengers, the idea of reading a text with critical distance as an interpretive strategy is suffused with the concept of reading with common sense. The concept of reading with common sense is exceedingly important for understanding the discourse of censorship and the literalism with which challengers approach texts. Challengers often state that anyone who reads a particular text can see why they are requesting that it be removed or relocated. The problems with a particular text are self-evident and a rational person need only read it to understand this. For them, polysemy is impossible and there is only one probable interpretation for a given text. However, the manner in which this interpretation will have an effect on the reader may vary wildly depending on the mental abilities of the individual. For challengers, *it is the effects of this commonsense reading that take precedence*. Rational people (usually defined by challengers as adults) have the capacity and skill to maintain critical distance from the effects of commonsense reading while other members of society—especially children—are unable to maintain this distance. This is particularly clear when challengers discuss how the imagination operates, another idea that can be understood through past practices.

UNDISCIPLINED IMAGINATION AND MIMESIS

In his chapter on texts and images in the Renaissance, Peter Stallybrass observes that illustrations in scripture were crucial to interpreting the text. He focuses on the story of Genesis 2–3 where Adam and Eve are expelled from the garden and notes that images of the text portray them as naked while that text states that they were clothed. However, for Stallybrass, "the visual images have effectively rewritten the biblical text. These visual exegeses are more fascinating and important precisely because they produce meanings for which there is no textual support."[58] The connection between text and image is of primary importance to challengers. However, as many of the books that are the targets of challengers do not contain illustration, challengers are more often concerned with mental images that are conjured by the text on the page. That is, challengers conceptualize imagining as a mimetic experience where,

through reading a text, the reader experiences the actions in the text. Since reading conjures images in one's mind, reading about a particular event is akin to living through it.

Cathy Davidson, in her monograph on the increase in novel reading in antebellum United States, describes the phenomenon as "undisciplined imagination" wherein the reader is unable to maintain distance between the events in a text and his or her own response. Davidson links fear of the undisciplined imagination to the influence of Common Sense philosophy described above. Teachers at the Ivy League colleges in the 18th century passed on to their students "an implicit suspicion of the undisciplined imagination, a conviction that literature must serve clear social needs, and a pervasive assumption that social need and social order were one and the same. Through these students—many of whom served as ministers—these ideas were readily disseminated throughout the populace."[59] This suspicion of the imagination continues to inform the discourse of challengers. They fear, as the critics in the time period that Davidson studies, that there is no space between the events in the text and the reader's response to the text. She writes that "the very act of reading fiction asserted the primacy of the reader and the legitimacy of that reader's perceptions and responses."[60] Like the critics in the 18th and 19th centuries, challengers are concerned with the effect of reading objectionable material on the maintenance of social order.

To summarize, in the modern era an orientation toward written texts developed wherein the reader maintained a critical distance toward texts. In the United States, this idea of critical distance is linked to the concept of common sense. Some people—such as in historical examples of women in the 18th and 19th centuries or children and youth in our time—are believed to be constitutionally unable to maintain critical distance toward a text. That is, the text will affect them adversely. Although challengers may disagree, it is important to note that reading practices and interpretive strategies are never isolated from one another and it is possible to read some texts with critical distance and other texts using more modular interpretive strategies. In some respects, the arguments of challengers harken back to some of the responses of the Reformation when leaders wanted their followers to read scripture on their own but were also frightened of what the consequences of this practice might be. These concepts of commonsense interpretive strategies and fear of the undisciplined imagination are an important aspect of the worldview of challengers and are key to understanding the knowledge side of the censorship equation.

WORLDVIEWS AND CHALLENGES

The metatheory of social construction, Bourdieu's theory of practice, and the historical practices of reading detailed above provide a framework for understanding the worldviews of challengers as revealed through their discourse. As noted in the introductory chapter, worldviews provide both a lens for understanding everyday life and a road map for action. Challengers' arguments and justifications for requesting the relocation, restriction, and removal of books in public institutions provide insight into their worldviews especially with regard to the state of society, the role of public school libraries in local communities, and the power of reading. Although there are other theoretical frameworks, such as childhood development and studies in children's literature, that can be employed to understand the actions of challengers, it is my contention that these frameworks do not fully explain the targeting of books in public institutions in an age of ubiquitous access to books.[61] These actions can only be understood through an analysis that explores the link between symbolic power and written knowledge. In fact, as will be demonstrated in the analysis chapters, child development and education discourse operate as what Bourdieu terms structuring structure for challengers. That is, these are the discourses on which they draw to justify their targeting of particular books. Although the cases in this study focus on literature for children, similar arguments to those found in the following analysis were made when libraries refused to buy *Fifty Shades of Grey*, an erotic book intended for adults. In keeping with their professional ethics, information professionals should always be wary when individuals argue that certain materials should be removed from the public sphere, especially when such requests are made on behalf of people who have little political agency of their own.[62]

The following chapters of the book offer an analysis of challengers' discourse using the theoretical frameworks above. Throughout these chapters the words of the challengers are shown in block quotations. Analyzed quotations are followed by a parenthetical citation indicating the quotation's source, the location of the challenge case, and date. Hearings include the gender and number of the speaker. Documents include document type and date. These quotations are exemplars of particular themes and one quotation might be used to illuminate several different concepts throughout the chapters. Except when interviewees specifically stated that I did not need to maintain confidentiality in their informed consent forms, great care is taken not to give any identifying information other than gender in the analysis. Gender is included solely for clarity and concision. All quotations are from transcripts produced by me and any errors are my own.

NOTES

1. Nelson Phillips and Cynthia Hardy, *Discourse Analysis: Investigating Processes of Social Construction* (Thousand Oaks, CA: Sage, 2002), 3.
2. Phillips and Hardy, *Discourse Analysis*, 12.
3. Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality* (New York: Anchor, 1966).
4. Berger and Luckmann, *Social Construction of Reality*, 22.
5. Alfred Schutz and Thomas Luckmann, *The Structures of the Life-World* (Evanston, IL: Northwestern University Press, 1973).
6. It is called a theory of *practice* because it is midway between structuralism and subjectivism and focuses on how individuals conduct themselves within both institutional and personal constraints. In other words, the theory focuses on the practices of individuals who themselves operate in dialectical relationship between the objective and the subjective. It endeavors to explain why and how people act as if social classes actually exist even though they do not. For Bourdieu, people are neither wholly controlled by the structures of the social world nor are they only subject to their inner lives.
7. Karl Maton, "Habitus," in *Pierre Bourdieu: Key Concepts*, ed. Michael Grenfell (Durham, UK: Acumen, 2008), The concept of habitus is similar to the idea of worldview. As noted previously, a worldview is a road map for action and is the preferred term in this study. One's habitus operates in a similar fashion to a worldview as it is the embodiment of the structures that one uses for cognition and meaning in practice.
8. Pierre Bourdieu, *Outline of a Theory of Practice* (New York: Cambridge University Press, 1987).
9. Pierre Bourdieu, "The Forms of Capital," in *Handbook of Theory and Research for the Sociology of Education*, ed. John G. Richardson (Westport, CT: Greenwood, 1986), 241.
10. Bourdieu, *Outline of a Theory of Practice*, 183.
11. Pierre Bourdieu, *Language and Symbolic Power* (Cambridge, MA: Harvard University Press, 1991).
12. Pierre Bourdieu, "The Social Space and the Genesis of Groups," *Theory and Society* 14, no. 6 (1985): 734. The term "violence" refers to the domination of one social group with greater symbolic capital and power over another group that has less symbolic capital and power. Although this violence takes place in the realm of the symbolic, it is still a real form of suffering, as it affects how a particular group is able to live out their lives.
13. James LaRue, *The New Inquisition: Understanding and Managing Intellectual Freedom Challenges* (Westport, CT: Libraries Unlimited, 2007), 51. This is an important point. Although the majority of the challengers in this study are from the right, there are also left-wing challenges of books. Many of these focus on the effects of stereotyping on readers.
14. Martyn Lyons, *A History of Reading and Writing in the Western World* (New York: Palgrave Macmillan, 2010).
15. David Finkelstein and Alistair McCleery, *An Introduction to Book History* (New York: Routledge, 2005), 40.
16. For more on Peirce's theory of signs see Albert Atkin, "Peirce's Theory of Signs," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Summer 2013 ed., http://plato.stanford.edu/archives/sum2013/entries/peirce-semiotics/.
17. Ellen Seiter, "Semiotics, Structuralism, and Television," in *Channels of Discourse, Reassembled: Television and Contemporary Criticism*, ed. Robert C. Allen, 2nd ed. (Chapel Hill: University of North Carolina Press, 1992), 36.
18. Lisa Jardine, "The Triumph of the Book," in *Worldly Goods* (New York: Norton, 1998), 177.
19. Robert Darnton, *The Business of Enlightenment: A Publishing History of the 'Encyclopédie,' 1775–1800* (Cambridge, MA: Belknap, 1979).
20. William J. Gilmore, *Reading Becomes a Necessity of Life: Material and Cultural Life in Rural New England, 1780–1835* (Knoxville: University of Tennessee Press, 1989).
21. Louise S. Robbins, *The Dismissal of Miss Ruth Brown: Civil Rights, Censorship, and the American Library* (Norman: University of Oklahoma Press, 2001), 160.

22. Elizabeth L. Eisenstein, *The Printing Revolution in Early Modern Europe*, 2nd ed. (Cambridge, UK: Cambridge University Press, 2005).

23. Adrian Johns, *The Nature of the Book: Print and Knowledge in the Making*, 1st ed. (Chicago: University of Chicago Press, 2000).

24. Daniel Selcer, *Philosophy and the Book: Early Modern Figures of Material Inscription* (New York: Continuum, 2010), 188.

25. Selcer, *Philosophy and the Book*, 192.

26. Elizabeth Long, "Textual Interpretation as Collective Action," in *The Ethnography of Reading*, ed. J. Boyarin (Berkeley: University of California Press, 1992), 180–211.

27. It must be noted that this overview has a distinctly Christian and Western bent. However, as the majority religion in the West during the time periods described, these are the practices most studied by researchers. For a description of Jewish reading practices during the Middle Ages, see Robert Bonfil, "Reading in the Jewish Communities of Western Europe in the Middle Ages," in *A History of Reading in the West*, ed. Guglielmo Cavallo and Roger Chartier (Amherst: University of Massachusetts Press, 2003), 149–78. For more on the history of the book and reading in the East, see individual national histories in *The Book: A Global History*, edited by Michael F. Suarez, S.J., and J. R. Woudhuysen. New York, NY: Oxford, 2013.

28. Stanley Eugene Fish, *Is There a Text in This Class?* (Cambridge, MA: Harvard University Press, 1982), 168.

29. Roger Chartier, "The Practical Impact of Writing," in *The Book History Reader*, ed. David Finkelstein and Alistair McCleery (New York: Routledge, 2002), 157–81.

30. Lyons, *History of Reading and Writing*, 13.

31. M. B. Parkes, "Reading, Copying and Interpreting a Text in the Early Middle Ages," in *A History of Reading in the West*, ed. Guglielmo Cavallo and Roger Chartier (Amherst: University of Massachusetts Press, 2003), 90–102.

32. Jacqueline Hamesse, "The Scholastic Model of Reading," in *A History of Reading in the West*, ed. Guglielmo Cavallo and Roger Chartier (Amherst: University of Massachusetts Press, 2003), 108.

33. Hamesse, "Scholastic Model of Reading," 104.

34. Paul Saenger, "Reading in the Later Middle Ages," in *A History of Reading in the West*, ed. Guglielmo Cavallo and Roger Chartier (Amherst: University of Massachusetts Press, 2003), 137.

35. Brian Stock, *Listening for the Text* (Baltimore: Johns Hopkins University Press, 1996), 23.

36. Anthony Grafton, "The Humanist as Reader," in *A History of Reading in the West*, ed. Guglielmo Cavallo and Roger Chartier (Amherst: University of Massachusetts Press, 2003), 179–212.

37. Grafton, "Humanist as Reader," 204.

38. Robert Mullin, *A Short World History of Christianity* (Louisville, KY: Westminster John Knox Press, 2008).

39. Jean-François Gilmont, "Protestant Reformations and Reading," in *A History of Reading in the West*, ed. Guglielmo Cavallo and Roger Chartier (Amherst: University of Massachusetts Press, 2003), 213–37.

40. Gilmont, "Protestant Reformations and Reading," 226.

41. Lyons, *History of Reading and Writing*, 55.

42. Jardine, "Triumph of the Book."

43. Finkelstein and McCleery, *Introduction to Book History*, Lyons, *History of Reading and Writing*.

44. Lyons, *History of Reading and Writing*.

45. Gilmore, *Reading Becomes a Necessity of Life*.

46. Cathy Davidson, *Revolution and the Word: The Rise of the Novel in America*, expanded ed. (New York: Oxford University Press, 2004), 54.

47. Gilmore, *Reading Becomes a Necessity of Life*.

48. Leah Price, "Reading: The State of the Discipline," *Book History* 7 (2004): 318.

49. Stephen Colclough, *Consuming Texts: Readers and Reading Communities, 1695–1870* (New York: Palgrave Macmillan, 2007).

50. Lyons, *History of Reading and Writing*, 117.
51. Scott Philip Segrest, *America and the Political Philosophy of Common Sense* (Columbia: University of Missouri Press, 2010).
52. Segrest, *America and the Political Philosophy*, 23.
53. Segrest, *America and the Political Philosophy*, 6.
54. Mark Noll, *America's God: From Jonathan Edwards to Abraham Lincoln* (New York: Oxford University Press, 2002).
55. Noll, *America's God*, 95.
56. George Marsden, *Understanding Fundamentalism and Evangelicalism* (Grand Rapids, MI: Eerdmans, 1991).
57. Marsden, *Understanding Fundamentalism*, 157.
58. Peter Stallybrass, "Visible and Invisible Letters: Text versus Image in Renaissance England and Europe," in *Visible Writings: Cultures, Forms, Readings*, ed. Marija Dalbello and Mary Lewis Shaw (New Brunswick, NJ: Rutgers University Press, 2011), 87.
59. Davidson, *Revolution and the Word*, 114.
60. Davidson, *Revolution and the Word*, 118.
61. For examples of works in these fields that address some of the issues raised in the study, see Kerry H. Robinson, *Innocence, Knowledge, and the Construction of Childhood: The Contradictory Nature of Sexuality and Censorship in Children's Contemporary Lives* (London: Routledge, 2013); Alyson Miller, "Unsuited for Age Group: The Scandals of Children's Literature," *College Literature: A Journal of Critical Literary Studies* 41, no. 2 (April 1, 2014): 120–40; and Herbert R. Kohl, *Should We Burn Babar? Essays on Children's Literature and the Power of Stories* (New York: New Press, 1995).
62. Bill Thompson, "County Library Shuns '50 Shades of Grey,'" *Ocala (FL) Star-Banner*, May 15, 2012, http://docs.newsbank.com.proxy2.library.illinois.edu/s/InfoWeb/aggdocs/AWNB/13ED04E00DD58100/0D0CB57DF8A1C275?s_lang.

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Silencing Stories: Challenges to Diverse Books

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Abstract

This research expands on a previous discourse analysis of censorship on challenges to diverse books through more robust analysis of the challenge cases. The article specifically focuses on two common themes found in the arguments that book challengers give for the redaction, restriction, relocation, and removal of diverse titles in and from school curricula, school libraries, and public library collections in the U.S. The article begins with a working definition of diverse books and a brief overview of the campaign to increase their publication and circulation in the U.S. An overview of previous research on general book challenges and challenges to diverse literature is provided, as well as the methodology for analysis. The article concludes with a discussion of recommendations for protecting access to diverse books in public libraries and schools.

Keywords: book banning; censorship; diverse books; intellectual freedom; reading practices

Publication Type: research article

Introduction

Since the young adult novel *The Hate U Give* was published in February 2017, author Angie Thomas has received much praise. The book stayed at the top of the *New York Times* young adult bestseller list for almost a year and received glowing accolades from many review outlets. Sometimes dubbed a Black Lives Matter book (Canfield, 2018), *The Hate U Give* is a gripping tale that centers on an African American female protagonist, Starr, whose best friend Khalil is killed by a white police officer when Khalil drives them home from a party. Starr is deeply affected by Khalil's death and eventually becomes part of the movement to fight against injustice in the U.S.

Along with effusive reviews, *The Hate U Give* has also been the subject of controversy since its publication for various reasons such as "being 'pervasively vulgar' and for the depiction of drug use, profanity, and offensive language" (Gomez, 2018). For example, in 2017, the Katy (Texas) Independent School District removed the book from its school libraries after a parent complained about the language used in the book (Aragon, 2017).[1] In the summer of 2018, the Fraternal Order of Police Tri-County Lodge #3 in the state of South Carolina objected to the book's inclusion in a local high school summer reading list because they felt the novel promotes "negativity towards the police" (Leah, 2018). For the year 2017, *The Hate U Give* was one of the 10 most challenged books according to the American Library Association's Office for Intellectual Freedom (ALA OIF, 2017).

One of the things that *The Hate U Give* has in common with all but one other book on the ALA OIF's 2017 most challenged books list is that it is a story about a non-majority protagonist and

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focuses on what might be called "diversity." While the number one book on the OIF list, Jay Asher's *Thirteen Reasons Why* (2007), focuses on the suicide of a white teenage girl, the other books on the list center on members of diverse populations. Such titles include *I Am Jazz* by Jessica Herthel and Jazz Jennings (2014), which discusses gender identity. *And Tango Makes Three*, (a perennial entry on the OIF list) written by Peter Parnell and Justin Richardson (2005), features penguins in a same-sex relationship. Harper Lee's *To Kill a Mockingbird* (1960) discusses race in the segregated U.S. South. *George* by Alex Gino (2015) centers on a transgender child. *Drama* by Rina Telgemeier (2012) includes lesbian-, gay-, bisexual-, transgender-, and queer-(LGBTQ) identified characters. *The Kite Runner* by Khaled Hosseini (2003) is set in Afghanistan, a majority-Muslim country invaded by the U.S., and focuses on an oppressed minority. The summary for *Sex is a Funny Word* by Cory Silverberg (2015) is also on the 2017 OIF list. On the author's website, the book is declared to be "an essential resource about bodies, gender, and sexuality for children ages 8 to 10 as well as their parents and caregivers" ("Sex is a funny word," n.d.) and includes descriptions of different gender and sexual identities. Finally, the protagonist in the perennially challenged text *The Absolutely True Diary of a Part-Time Indian* by Sherman Alexie is a Native American boy who decides to leave his reservation to attend the local predominately white high school. Of these 10 titles listed on the OIF's "Top 10 Most Challenged Books of 2017," nine out of the 10 titles listed include characters with diverse identities.

Malinda Lo, an author and co-creator of the We Need Diverse Books (WNDB) campaign, completed a study (2014) that found that book challengers often target publications that feature diverse protagonists. Lo's research focused on recent ALA banned/challenged book lists: the Top 100 Banned/Challenged Books, 2000-2009 and the OIF Top Ten Challenged Books lists for 2010-2013. In 2016, I offered a brief expansion of Lo's research, which further confirmed and substantiated Lo's original findings (Knox, 2016).

This article offers more robust analysis of the challenge cases. I specifically focus on two common themes found in the arguments that book challengers give for the redaction, restriction, relocation, and removal of diverse titles in and from school curricula, school libraries, and public library collections in the U.S. Discussion begins with a working definition of the concept of "diverse books" and a brief overview of the campaign to increase publication and circulation of diverse books in the U.S. An overview of previous research on book challenges in general and challenges to diverse literature more specifically is offered, as well as the methodology for analysis of the challenge cases. Next, the article presents two common themes in the discourse of challengers of diverse books. Finally, recommendations are offered for protecting access to diverse books in public libraries and schools.

Diverse Books and Book Challenges

The current American usage of the term "diverse" is a bit of a catchall, but the definition used by We Need Diverse Books (WNDB) provides an excellent working definition. WNDB (diversebooks.org) is a grassroots, nonprofit advocacy organization based in the United States that primarily focuses on encouraging the publishing industry to solicit and distribute books for young people that reflect all human lives. Their programs include awards, grants, and research. WNDB defines diversity as "LGBTQIA, Native, people of color, gender diversity, people with disabilities*, and ethnic, cultural, and religious minorities" (https://diversebooks.org/about-wndb/).The asterisk in the definition is further defined to include a broadened view of the term "disability." WNDB (n.d.) states that disability "includes but is not limited to physical, sensory,

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cognitive, intellectual, or developmental disabilities, chronic conditions, and mental illnesses (this may also include addiction).” This full definition for “diversity” is the definition ascribed for the research presented here.

Although it is taken as a given by some, it is still important to discuss why the accessibility of diverse books is important. At the most fundamental level, diverse books accomplish what all books do—allow people to be introduced to various ideas, theories, people, and cultures. However, books about diverse characters have two special roles to play. First, they allow all human beings to see themselves reflected in books, and second, they allow everyone to learn about people who are not like themselves. This argument is rooted in the “mirrors and windows” theory of reading that was first introduced by Rudine Sims Bishop. Bishop (1990) noted that a book “could help us understand each other better by helping to change our attitudes towards difference” (p. xi). The importance of diverse books for all was also powerfully described by Chimamanda Ngozi Adichie’s TED talk (2009) on the “Danger of a Single Story”:

> So that is how to create a single story, show a people as one thing, as only one thing, over and over again, and that is what they become. It is impossible to talk about the single story without talking about power. There is a word, an Igbo word, that I think about whenever I think about the power structures of the world, and it is "nkali." It's a noun that loosely translates to "to be greater than another." Like our economic and political worlds, stories too are defined by the principle of nkali: How they are told, who tells them, when they're told, how many stories are told, are really dependent on power. (09:26)

Adichie demonstrates why it is imperative that diverse books remain accessible to all. Without them, human beings are bound by single stories that can constrain lives.

It should be noted that not very many diverse books are published in the U.S. in the first place, but this disparity is especially true of books published for children and youth. The Cooperative Children’s Book Center (CCBC) found that out of 3,700 books for children published in the U.S., about 25% had main characters or subjects who were people of color or where people of color were prominently featured (n.d.). Using the CCBC’s terminology, 340 books were about Africans/African Americans, 72 were about American Indians/First Nations, 310 texts were about Asian Pacific/Asian Pacific Americans, and 216 titles were about Latinxs (CCBC, n.d.). Given that 75% of children’s books published in 2017 were focused on non-diverse stories or topics, it is a significant concern that diverse books featuring various cultural groups are so prevalent on banned and challenged booklists, especially when one considers that these book challenges do not include other types of diversity such as gender diversity or people with disabilities.

For the purposes of this research, the term “challenge” refers to the process of formally requesting that a book be in some way removed from a school curriculum, school library collection, or public school collection. “Challenge” is used because the books are not always censored or formally removed from the curriculum or collection. In the U.S., although there are local and institutional differences, written policy usually provides procedural guidelines for challenge cases. Formal complaints are typically made by filling out a “Request for Reconsideration” form, which is then submitted to the institution. These requests may be escalated up the administrative ladder to a governing board. Sometimes the requests culminate in a hearing in which the merits of the book are debated publicly. Generally, the board makes a final decision regarding the status of the book in the institution.

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Book challenges can be included under what might broadly be called censorship practices, which include the redaction of text, the restriction of books to only certain age groups, the relocation of a book to another section of the library collection, or the removal of a book from the collection, entirely. Redaction, restriction, relocation and removal of books from circulation in publicly accessible libraries are all censorship practices. It is also important to note that, for this study, "challenge" also refers to requests that books no longer be accessible to their intended age groups. As will be noted in the analysis section, the question of "intended age group" can be highly contested.

Previous Research

Previous research on diverse books has primarily focused on questions regarding creation and publication. For example, a recent article by Shea et al. (2018) discusses whether or not more diverse books are published by the "Big Five" U.S. corporate publishers (Hachette, HarperCollins, Macmillan, Penguin Random House, and Simon & Schuster) or by independent publishing companies. They found that the Big Five are no less likely than independent publishers to publish diverse books (p. 217). Other research focuses on library collection development policies, like Warsinske's (2016) overview of the availability and accessibility of multicultural picture books in library catalogs and databases such as *NoveList*. Mabbott (2017) discusses the history and development of the WNDB campaign.

To date, there is very little research on challenges to, or censorship of, diverse books in the U.S. As noted, Lo's (2014) study found that diverse books are often the targets of challenges in public libraries and schools in disproportionate numbers. She states: "It's clear to me that books that fall outside the white, straight, abled mainstream are challenged more often than books that do not destabilize the status quo." PEN America (2016) published a wide-ranging report on diverse books. The "Challenged Books" section focuses on the 2012 challenge to *Beloved* in Fairfax County, Virginia, which eventually led to a 2016 bill in the Virginia legislature regarding "sexually explicit content" in the classroom (p. 9). In previous research (Knox, 2015), I found that challenges reduce children's access to books that feature protagonists who do not fit within various cultural norms in American society. The analysis in this article further states the case of the previous research cited by focusing not just on how many and which diverse books are challenged, but why people brought challenges in the first place.

Methodology

This article centers on why and how people construct arguments against reading certain materials. This "discourse of censorship" is distinctive for its opposition to arguments for "freedom" that permeate American culture and society. By analyzing challengers' arguments, it is possible to see how access to information is impeded through the use of language and symbolic power (Bourdieu, 1991).

Book challenges can be understood as a type of reading practice. With this understanding in mind, this analysis is grounded in the social construction theory of Berger and Luckmann (1966) and Schutz and Luckmann (1973). According to Berger, Schutz and Luckmann, language is the most important element for the construction, transmission, and maintenance of knowledge in society. One of the methods for this process is the development of "stocks of knowledge" which are used to frame interactions in the everyday world. "Typical actions" and "types" compose

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these stocks of knowledge. Typical actions can be characterized as maps for "getting things done" in everyday life while types are constructions of objects that are incomplete, abstractive, relative yet still relevant. The analysis discussed below focuses on the typical action of interpreting text and "the book" as a type of object.

Since this research discusses how diversity is challenged and constructed in the U.S., it is important to discuss critical race theory (CRT). CRT originated in the legal field and centers on the relationship between power, race, and racism. Delgado and Stefanic (2012) write that CRT "questions the very foundations of the liberal order including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law" (p. 3). Mabbott (2017) also makes the relationship between diverse books and CRT with the argument that WNDB fulfills essential tenets of CRT through acknowledgment of "experiential knowledge" and having an "interdisciplinary" perspective" (p. 510-11). Orozco (2011) discusses the "literal and (assumed) rational translations" employed by the dismantled Tucson (Arizona) Unified School District's Mexican American Studies program, where some of the program's opponents did not give credit to "emotive interpretations" and argued that only literal translations are "sensible and reasonable" (p. 827). Orozco's work shows how the interpretive strategies of text that are used against diverse books can also be linked to issues of race and power. As will be discussed in the analysis below, this "common sense" interpretation is used throughout the discourse of people who challenge books that center on diverse identities as a whole.

Procedures

Arguments against diverse books in the study came from documents including forms, emails, and letters from the challengers that were produced through the course of challenge cases. These were obtained through state public records act requests. Twenty-seven requests were sent to administrative boards across the U.S. and 11 usable responses that included the challengers' own voices were received (see Appendix). The books were all from the 2016 and 2017 ALA Banned Books Field Reports by Robert Doyle (2016, 2017). One case, the Virginia *Beloved* case, is included because, even though it started in 2012, it continued into 2016 and was included in the field report for that year. Meeting minutes were excluded since they contain only paraphrases of arguments.

Although all 11 responses were analyzed, most of the arguments below come from four cases which had a wide range of people involved in the challenges. The first is the Virginia *Beloved* case described above. The second is the 2017 challenge against Alexie Sherman's *The Absolutely True Diary of Part-Time Indian* in the New London-Spice School District in Minnesota. Third is a 2016 challenge to *The Bluest Eye* in Northville Public Schools in Michigan. The fourth case, also from 2017, focuses on *This Day in June* by Gayle Pitman at the West Chicago Public Library in West Chicago, Illinois.

In order to find common themes in these arguments, I employ discourse analysis to focus on how challengers' arguments communicate "the constitution and construction of the world in the concrete use of signs and the underlying structural patterns or rules for the production of meaning" (Keller, 2012, p. 2). All of the challengers' arguments were analyzed for common themes using Atlas.ti software for qualitative research. The analysis is an example of what Keller (2012) calls culturalist discourse which focuses on how people combine symbolic power and language to effect change. Codes were applied at a paragraph level for context and paragraphs often received more than one code. Coding was an iterative process and both previous research

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and the discourse itself provided codes for analysis. In particular, I analyze how people name themselves (e.g., as taxpayers, parents) and thereby invoke their own symbolic power and how they discuss the practice of reading.

Themes in the Discourse of Challengers to Diverse Books

The discourse of censorship, as noted, combines symbolic power and language to effect change in the world. When people bring challenges against diverse books, the arguments are similar to those against non-diverse books, but they have a different valence. This is because the arguments made against the books often target elements that are constitutive to life as a member of a non-majority group.

Some of the more common themes in all challenges include the moral decline of society, the importance of institutional support for parenting, and indoctrination (Knox, 2015, 2017). Two themes are presented below that characterize the arguments made against diverse books. The first focuses on the theme of "unsuitable for age group." This reason is often given in many challenge cases but, as will be demonstrated below, has special resonance when applied to diverse books. The second theme is "provide an alternative." This argument is difficult to respond to when used against diverse books for two reasons. First, as noted above, there are not many diverse books published. Second, the requests for alternatives often focus on essential aspects of diversity that challengers prefer not to be included in replacement texts.

Note that only representative quotations are given for each theme. Identifying information only refers to the administrative body for the case and, when more than one person is challenging the book, the date of the letter, form, or email are given (see Appendix). A time stamp was also noted for multiple emails.

Theme 1: Unsuitable for Age Group

One of the primary arguments that diverse book challengers make is that the book is not age appropriate. I have noted before (Knox, 2015) that age suitability is strongly tied to constructions of innocence in children. As stated above, this particular argument has a different resonance when discussing diverse books. What does it mean to have a book that discusses slavery in the U.S. but not its more horrific aspects? For example, here is an argument against *Beloved* by Toni Morrison:

> Throughout *Beloved*, there is a pervasive, repetitious pattern of gratuitous "mature" content or themes that are not age appropriate for high school students. "Age appropriateness" should not be construed as an attempt to unnecessarily shelter or protect students from human depravity or disturbing events that have occurred throughout history. Rather, "age appropriateness" in this context, refers to the extraordinary graphic examples of mature and sexual themes, infanticide and profanity the author has chosen to include in her novel. (Fairfax Request Exhibit A, Attachment B, 2012)

Slavery was a moral horror and it is difficult to discuss "human depravity or disturbing events" without employing some of the literary devices that the challenger lists. The sentence below in some respects argues against the entire essential theme of *Beloved*:

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> This book is not age appropriate for high school students and is patently offensive and obscene throughout the book. Unconscionable acts of bestiality and graphic rape scenes pervade the entirety of the book in addition to a brutal murder of an infant child. (Fairfax Appeal Letter, 2012)

> The author's summary includes the description, "the hideous logic of slavery." While the horrors of slavery are revealed, two additional themes that are referenced throughout the book are omitted. The reoccurring themes of deviant sexual behavior and a graphic, gruesome murder of an infant baby are as much a part of the story as the horrific effects of slavery. In fact, there are approximately eight references to bestiality (sex with cows and goats), 29 references to a violent graphic rape, 38 references to breasts, and 12 references to reproductive organs. (Fairfax Request Exhibit A, Attachment B, 2012)

Note that enumeration of portions of the text that are considered problematic are common in the discourse of censorship.

Movie ratings are used as proxies for age appropriateness in challengers' discourse. For example, a challenger states that *The Hate U Give* should only be for teenagers older than 17 since the movie based on the book will be rated R. The following answer responds to the question: For what age group would you recommend this resource?:

> >17 years of age. This book is currently being made into a movie and the movie guild is projecting an R rating for the film due to language and violence. (Katy ISD Request, 2017)

Below, Morrison's *The Bluest Eye* is equated to a pornographic movie as an argument for removing it from the school curriculum.

> I compare *The Bluest Eye* book to an XXX rated movie - not R. Children should not be reading the book as it is developmentally inappropriate. An R rating would require a parental warning. Since parents trust the schools to take care of their most prized little ones, they do not expect this kind of book. A warning has to be extremely obvious upon sign up of the class, AND when the book comes up for reading. A few words in the course guide will not be adequate, nor will a note going home. (Northville Public Schools, Proposed Resolution from Challenger, 2016)

As I have argued elsewhere (Knox, 2015): "The MPAA's system offers parents a marker regarding the content of a particular movie and many parents use the ratings as a benchmark for determining whether or not their children may watch a movie. The presence of the ratings system creates a sense of order and safety with regard to movies" (p. 129). This is because reading is often seen as being the same as viewing. Here the argument is about Morrison's *The Bluest Eye*:

> Finally, if the scenes of graphic pedophilic and extramarital sex described in this book would not be appropriate to view on the screen in the classroom, then they shouldn't be read in a novel. Reading these accounts on the page create the same mental images that occur when viewing movies. The book is actually more offensive because it describes both the mental and emotional state of the character along with the visual cues of the act itself. (Northville Public Schools, April 7, 2016 9:25 pm)

Pornography arguments are somewhat similar to movie rating arguments as they use an already

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established structure for restricting information:

> You have to be 18 to buy porn. In the book it makes everything serious a joke. It's not fact or sex ed. (New London Spicer Request, May 12, 2017)
>
> Regardless of how highly acclaimed Ms. Morrison is as an author, this work of literature is pornographic and completely inappropriate for a classroom setting. If these exact same words were written in a playboy magazine or on a porn website, they would never be allowed into the classroom. Being written in a novel does not change the content or make it any more appropriate for our children. (New London Spicer Request, April 12, 2016)

It should be noted that there is special emphasis on age-appropriateness for books that center on LGBTQ people and issues. This is not surprising as some argue that any discussion of such topics is ***necessarily*** about sexual matters. Here are three arguments, made by different challengers, against *This Day in June* by Gayle Pitman:

> Please remove "this day in June" from our children's book section. It is very disturbing and not suitable for young children as early as 3 finding this on our shelves. (West Chicago Public Library Form, August 7, 2017)
>
> The book, out this month, aims to teach children respect and understanding of LGBT people and families by showcasing a pride parade of facts on its pages. The book also includes age-specific advice to parents and caregivers on how to talk to children and even teenagers about sexual orientation and gender identity.
>
> I demand that this book be moved to the education section of the library, not showcased in the children's fiction section. (West Chicago Public Library Form, August 21, 2017)
>
> This book is not age appropriate. My reasons are two-fold: For some time I've been discouraged by the content of the children's section of West Chicago Public Library, noticing a trend away from the classics and tried-and-true literature I've come to know and love which I desire to pass onto my homeschooled children, and towards a preponderance of occult fantasy literature which I don't want my children to read. When I heard that this book was being added to the collection, my discouragement became more frustrated.
>
> Second, I feel strongly that adult human sexuality is not an appropriate topic for children's books, no matter what the "orientation" of the adults in question may be.
>
> Heterosexual, homosexual, lesbian, gay, straight, transgender, these are not appropriate topics for the developing young minds of children. (West Chicago Public Library Statement, August 28, 2017)

It is, of course, impossible for a book on LGBTQ topics not to discuss human sexuality in some respects because, by definition, this is an integral part of the LGBQ—if not the T—experience. Also note that these arguments take the viewpoint that books about heterosexual and gender-conforming children do not discuss human sexuality. The argument below has an interesting twist that demonstrates this conundrum. The challenger argues that the book is age appropriate and therefore not okay:

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> I was surprised to find that the book is dedicated to explaining to very young children what a Gay Pride parade is about. It features men holding hands, women wearing bras with no shirt, men wearing leather, as well as men in drag. Despite believing the topics covered in this book are inappropriate for my daughters at their young age, this book was right on their level. (West Chicago Public Library Form, July 19, 2017)

For this challenger, children simply should not be introduced to non-dominant sexual and gender identities.

Theme 2: Something (Anything) Else Would Be Better

Related to the idea that books are inappropriate even when they discuss topics that are essential to diverse identities is the argument that another book would be able to convey the same story. This, of course, relates to Adichie's idea of the single story—that any story about someone who has a non-dominant identity will suffice. This argument can be seen in the quotation below:

> In terms of materials that ghetto-ize blacks, we have that more than covered in Northville, and we need to treat African Americans equally and have books that detail good things they have done. Martin Luther King is not the only African American person that has even[sic] done anything great. How about *Gifted Hands* by Dr. Ben Carson - a Detroit Native that became a world-renowned pediatric neurosurgeon and recently ran for President of the United States? An excellent book about overcoming poverty and the importance of learning. Developing minds are heavily impacted by the books they read. Let's give them some great messages to learn from.
>
> A true literary analysis of *The Bluest Eye*, which is not Pulitzer Prize winning as was said last week, by the way, could be made when a brain is fully developed, and the reader has had more life experiences. Reading the book as a teen, especially all the graphic descriptions of child rape, can be many things other than educationally helpful to a child. (Northville Public Schools Proposed Resolution, April 12, 2016)

Here the challenger argues that the African American experience is a single story. Ben Carson's memoir is similar and would convey the same message as Morrison's *The Bluest Eye* even though one is non-fiction, the other fiction, one discusses a year in a young girl's life, the other a man's journey to adulthood.

In the following quotation, the challenger states that since other works are suitable for children to read for the assignment, then the *Bluest Eye* should simply be removed from the curriculum:

> First of all, there are many valuable works of literature that could be substituted for this book. Mr. Cronin said that students who choose to opt-out of reading "The Bluest Eye" will have two or more choices of texts to substitute from.
>
> So, there are obviously many options that will offer students a comparable learning experience without exposing them to the graphic, explicit, sexually dysfunctional acts this book portrays as enjoyable and pleasurable. It isn't about legally banning The Bluest Eye, but about changing the curriculum in order to protect our children. (Northville Public Schools Email, April 7, 2016)

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This argument presents a problem for teachers and librarians. *The Bluest Eye* is the preferred text but due to the coercive nature of curricula and parental involvement, other books can be used. However, the presence of this alternative provides a structure for arguing for the removal of the targeted book altogether.

In general challengers tend to recommend books that are banal. Although these books have their place, they rarely grapple with the human condition:

> Toot and Puddle, the Cat in the Hat, Curious George, Goodnight Moon, Amelia Bedelia, these books and other like them deal with themes of friendship of children, what happens when children make a mess and parents aren't there to see how horrible it is right away, curiosity which sometimes leads to trouble but is resolved in the end, comical exploits of someone who doesn't understand language and colloquial expression quite yet…these are appropriate topics for children's literature. (West Chicago Public Library Statement, August 28, 2017)

Overall the themes in this discourse of censorship against diverse books center on the idea that an entirely different story should be told, one that does not necessarily tell the truth of what it means to be a person with minority identity. For example, the following quotations discuss Alexie's book:

> We have no problem with students reading a novel about how a young person overcame the challenges of physical disabilities, bullying, a dysfunctional family, and difficult situations on his Indian reservation and how he ultimately achieved a successful career. We object to this book, however, because it contains gratuitous and unnecessary passages describing masturbation, profanity, and taking God's name in vain. Parents have the right to teach their own values to their children regarding these topics and have no assurance that a classroom teacher would teach those same values (New London-Spicer Letter, May 8, 2017).
>
> Please instruct the eighth-grade teacher to replace "The Absolutely True Diary of a Part-Time Indian" with a similar book that does not contain passages that conflict with the traditional family values held by many in this community (New London-Spicer Letter 2, May 8, 2017).
>
> I do not believe we send our young minds to be victimized to read such immoral drivel. Problems on the rez. [sic] can be brought forth in many other ways. It is totally abhorrent that I must come forward on this. It should never have been a part of the curriculum (New London Spicer Form, May 15, 2017)
>
> I am not looking to discredit life on the reservation. I am against the language used (New London-Spicer Request, May 15, 2017).

These arguments all demonstrate the contradictory notion that, yes, there is hardship when one lives on a reservation, but it should not be portrayed in a realistic manner. As with Morrison's books, it is difficult to think of how "physical disabilities, bullying, a dysfunctional family, and difficult situations" would be portrayed without aspects of the story that are objectionable to challengers.

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The question of the nature of truth is often part of challengers' discourse. Elsewhere (Knox, 2015), I have demonstrated that challengers tend to make a strong correlation between the written word and truth. In essence, challengers of all types tend to argue that the books must contain moral truths. In addition, fiction is seen as "untrue" and therefore not as valuable as nonfiction. This argument is found in the quotation below:

> Furthermore, the fact that *Beloved* is fictional and that there is little to no documentary evidence to suggest that sexual perversity and infanticide existed on such a grand scale during the time of slavery than at other times in history, FCPS should find this novel inappropriate for high school students. If FCPS believes that it is important for students to understand slavery and appreciate the role of infanticide throughout history from Roman times, Biblical times and even today in modern day China, then these topics should be addressed without the fictional references to gratuitous sex. (Fairfax Request Exhibit A, Attachment B, 2012)

This challenger also states the following "Although the likely intended messages of the dehumanization of slavery are likely to come across clearly, the book also brings up many issues of sexuality, including rape and bestiality" (Fairfax Request Exhibit A, Attachment B, 2012). For many, these concepts are inherently combined. It is not surprising that, as the above challenger notes "sexuality is used as a form of power and control by many characters in the book, and sexuality is a major subject matter in the book." This power and control were, of course, integral to the institution of slavery. Without books that grapple with these subjects, the voices of members of diverse populations are removed from society.

Silenced Stories

During Banned Books Week 2018, *Entertainment Weekly* (EW) published a short interview of *The Hate U Give*'s author, Angie Thomas. EW's David Canfield (2018) stated there was "hardly a better novel to discuss" than *The Hate U Give*. After reviewing the Katy, Texas, challenge case and offering some background on what people find objectionable about the book. Canfield noted:

> Thomas believes it's too important to ignore and reminds that the book is written for and targeted to an adolescent audience. 'We have to have discussions about police brutality. . . . Honestly, there is a fear among some parents— I'll just say it: white parents— who say, 'I'm not sure my child is ready for this,' Thomas explains. 'The fact is, black parents are [needing] to have these conversations with their 9-and 10-year-olds about the subject matter in this book. I need white children to be aware of that.' (2018)

One of the most striking aspects of challengers' arguments against diverse books is that, generally speaking, the topic of the book is fine, but—according to the challenger—the story should be presented in some other way that does not really engage the topic. This stipulation is less true of books that center on LGBTQ protagonists where challengers argue that the topic should simply not be addressed at all. As demonstrated throughout the themes discussed above, what the challengers want is a sanitized view of diverse peoples' stories—one that does not take into account what it means to have a non-dominant identity in American society. Although challengers are clearly driven by their concern for children, if their requests are granted, the challenge results in the silencing of diverse voices.

It is incumbent upon librarians and teachers to protect diverse voices in their libraries and

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schools. As Shannon Oltmann (2017) notes "having diverse perspectives represented in one's library can help fulfill the ideal of intellectual freedom" (p. 415). This can be accomplished in two different ways. First, it is important to recommit to the principle of supporting intellectual freedom. Support for intellectual freedom is codified in the ALA Code of Ethics and Library Bill of Rights. Second, be sure to have robust policies that reflect this principle. The Intellectual Freedom Manual (Magi et al., 2015) recommends five policies that every library should have: one for collection development and resource reconsideration, another policy for use of meeting rooms and exhibit spaces, an internet use policy, a policy concerning user privacy and confidentiality, and finally, a user behavior and library use policy. Most important for protecting diverse voices are the collection development and resource reconsideration policies. These actions are imperative for ensuring that people are exposed to more than just a "single story" (Adichie, 2009). The lives of "LGBTQIA, Native, people of color, gender diversity, people with disabilities*, and ethnic, cultural, and religious minorities" (WNDB, n.d.) must be told. All people deserve both windows and mirrors that describe the human condition and that cannot be accomplished when diverse voices are silenced.

Endnotes

[1] The book was returned to Katy Independent School District shelves in January 2018.

Appendix

FOIA Requests

Book	Date of Challenge	State	Administrative Body	Documents Received
Absolutely True Diary of a Part-Time Indian	2017	IL	Alton High School	Policy, Meeting Minutes, Emails
Iqbal	2016	TX	Argyle Independent School District	No response
My World History	2017	FL	Brevard County	No responsive documents
The Hate U Give	2018	SC	Charleston County Schools	No responsive documents
Jacob's New Dress	2017	NC	Charlotte Mecklenburg Schools	Emails, meeting notes
Tyrell	2016	VA	Chesterfield County Public Schools	No response
Push	2016	VA	Chesterfield County Public Schools	No response
Dope Sick	2016	VA	Chesterfield County Public Schools	No response
Absolutely True Diary of a Part-Time Indian	2017	CA	Cornejo Valley Unified School District Board	Video
Absolutely True Diary of a Part-Time Indian	2017	NV	Democracy Prep	No responsive documents

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Buck	2107	MD	Digital Harbor High School	No responsive documents (only response)
A Lesson Before Dying	2017	FL	Dixie County	Challenge Form
Bad boy	2017	FL	Duval County	Challenge Form
Beloved	2016	VA	Fairfax County Public Schools	Challenge, Emails, response
Morris Micklewhite and the Tangerine Dress	2016	MI	Forest Hills Public School District	No response
You're in the Wrong Bathroom	2017	IL	Geneva Public Library	Challenge, Board docs
The Hate U Give	2017	TX	Katy Independent School District	Challenge form
I Know Why the Caged Bird Sings	2016	IL	Lemont Illinois High School District 210	Emails
Go Tell it on the Mountain	2016	IL	Lemont Illinois High School District 210	Emails
The God of Small Things	2016	IL	Lemont Illinois High School District 210	Emails
The Land	2016	FL	Marion County Public Schools	No response
Absolutely True Diary of a Part-Time Indian	2017	MN	New London-Spicer School District	Forms, emails
The Bluest Eye	2017	NC	North Buncome High School	Meeting Notes, Request for Reconsideration
The Bluest Eye	2016	MI	Northville Public Schools	Forms, emails, resolution
The Perks of Being a Wallflower	2016	FL	Pasco Middle School	Emails
Liberation of Gabriel King	2017	FL	Pinellas country	Emails
I am Jazz	2017	CA	Rocklin Academy	No responsive documents
Red: A Crayon Story	2017	CA	Rocklin Academy	No responsive documents
Absolutely True Diary of a Part-Time Indian	2017	WI	Sauk Prairie Schools	Emails
Is He a Girl?	2017	NC	Union County Public School District	No response
George	2017	KS	Wichita School District	No responsive documents
This Day in June	2017	IL	West Chicago Public Library	Emails
28 Requests				11 responses

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Testimony of Nicole Neily
President, Parents Defending Education
Before the Senate Committee on Judiciary
September 12, 2023

"Book Bans: Examining How Censorship Limits Liberty and Literature"

Chairman Durbin, Ranking Member Graham, and distinguished members of the Committee on the Judiciary, thank you for inviting me to testify today.

My name is Nicole Neily, and I am the president and founder of Parents Defending Education – a membership association that gives parents the knowledge and tools they need to be effective advocates for their children's education. I'm also the executive director of PDE Action, a 501(c)4 advocacy organization, and the founder of Speech First – a campus free speech organization – so "censorship," properly understood, is a topic of great interest to me.

Without a doubt, books have become a flashpoint in schools over the past few years. Yet headlines and "research papers" by activist organizations have intentionally muddied the waters between "pre-World War 2 book burning in Berlin" and what's really happening in America's K-12 schools in 2023.

If you take away one thing from this hearing, know this: families' concerns about books in schools is not "book banning".

First, the "book issue" is a CURATION issue.

It should be obvious that a book that is part of a lesson plan in a second-grade classroom[1][2] is more concerning than a book that can be voluntarily checked out from a public library; and

[1] Chrissy Clark, "Second-Graders To Learn About Genitals, Gender Identity As New Jersey's New Sex Ed Standards Begin," Daily Caller, September 1, 2022 https://dailycaller.com/2022/09/01/second-graders-learn-about-gender-identity-genitals-new-jersey/

[2] Parents Defending Education, "Illinois governor passes bill that updates state's education standards to ensure that second graders learn to 'define gender, gender identity, and gender-role stereotypes'," March 22, 2022 https://defendinged.org/incidents/illinois-governor-passes-bill-that-updates-states-education-standards-to-ensure-that-second-graders-learn-to-define-gender-gender-identity-and-gender-role-stereotypes/

also, that sensitive topics read to children at very young ages[3][4] is more concerning than high schoolers learning about human physiology in health class.

But today, merely suggesting that graphic novels which detail sexual poses not be made available to elementary-aged students is tantamount to endorsing a totalitarian regime. In February 2023, The Guardian[5] asserted "Banning ideas and authors is not a 'culture war' – it's fascism." And in a June 2023 interview on MSNBC, Maryland governor Wes Moore claimed that "book bans" are equivalent to "castrating" children.[6]

It's not.

When we do hear from parents about books, the phrase that we hear the most frequently is "age appropriate." Radical, indeed.

As the Heritage Foundation's Dr. Jay Greene has documented, statistics about "book bans" are, simply, incorrect. In nearly all instances of a so-called "ban," books are still available in the districts in question – although they may have been moved from younger grades to older ones.[7]

As a society, we don't put Playboy in kindergartens; this isn't considered a "book ban," but merely common sense.

On a recent podcast episode of "Velshi Banned Books Club," MSNBC host Ali Velshi interviewed Margaret Atwood, author of "The Handmaid's Tale," who stated:

> "Well, first of all, not teaching a book in a high school is not the same as totally and completely banning it. It was banned for years in a couple of dictatorships – the one in Spain and the one in Portugal. It could not be published there at all. So the Portuguese and Spanish editions were published in the New World – so Brazil and Argentina. That's totally banning. You can't get ahold of it at all.

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[3] Parents Defending Education, "Seattle Public Schools utilize K-5 gender lessons that teach kindergartners about transitioning and pronouns," April 21, 2022 https://defendinged.org/incidents/seattle-public-schools-utilize-k-5-gender-lessons-that-teach-kindergartners-about-transitioning-and-pronouns/

[4] Parents Defending Education, "Denver Elementary School announces plans to instruct kindergartners and 1st graders about why it's important to disrupt the nuclear family and be trans and queer affirming; they host racially segregated playground nights too," Janury 19, 2022 https://defendinged.org/incidents/denver-elementary-school-announces-plans-to-instruct-kindergartners-and-1st-graders-about-why-its-important-to-disrupt-the-nuclear-family-and-be-trans-and-queer-affirming/

[5] Jason Stanley, "Banning ideas and authors is not a 'culture war' – it's fascism," The Guardian, February 14, 2023 https://www.theguardian.com/us-news/2023/feb/13/african-american-studies-republican-ban-florida

[6] Inside with Jen Psaki, "Gov. Wes Moore to DeSantis: 'Come spend some time in Baltimore'," June 18, 2023, https://www.youtube.com/watch?v=LI_ZTlStavA (5:05)

[7] Jay Greene and Madison Marino, "Are School Libraries Banning Thousands of Books? Here's Why You Shouldn't Trust the Left's Narrative," Heritage Foundation, May 15, 2023, https://www.heritage.org/education/commentary/are-school-libraries-banning-thousands-books-heres-why-you-shouldnt-trust-the

> "And I'm sure the none of us would say that parents should not have any input at all to what their kids read in school. We would all agree with that.
>
> "And we would probably also agree that there are age considerations. For example, 'War and Peace' is not for seven-year-olds, not because of the sex, blasphemy, and violence, but because of the big words. So, it's always going to be in negotiation and there has never been a time when you can publish absolutely anything. So that time has never existed. So the goal posts have moved. And I think we all probably draw the line at child pornography using real children, or even child pornography. So it's going to be a discussion."[8]

Strangely, media coverage over this issue frames any discussion at all as tyranny. It is disingenuous at best and deceptive at worst.

Classrooms, schools, and even libraries have finite space, and must select which materials are on display at any given time. In addition, they do not have unlimited budgets, and must prioritize certain book purchases over others.

This is a manufactured crisis that distracts from families' valid concerns about the quality of their children's education and whether students are safe from drugs, assaults, and bullying in schools today.

As Ms. Atwood has alluded to, however, true censorship efforts do, indeed, continue outside of schools, which I hope some of the other panelists will be able to address and condemn. A few recent examples that come to mind include the open letter signed by over 700 publishing industry employees[9] demanding the cancellation of Supreme Court Justice Amy Coney Barrett's book deal;[10] Amazon employees' efforts to remove Abigail Shrier's book "Irreversible Damage" from the platform;[11] and Amazon's continued refusal to sell Ryan Anderson's book "When Harry Became Sally."[12] These fights center around whether certain materials will be available – for adults – in the public square, and they should deeply concern all Americans who believe in the marketplace of ideas.

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[8] MSNBC, "Velshi Banned Books Club: Margaret Atwood," August 31, 2023 https://podcasts.apple.com/us/podcast/id1702778436 [7:17-8:39]

[9] "We Dissent," https://docs.google.com/document/d/e/2PACX-1vToh2N4z_Q509Beuyw3oMR9nZCk5PI84TqIR4-sw9lXicS3v4pXzSM8RCf0La0WSBFwnwbinDJ-Tr3L/pub [last accessed September 9, 2023]

[10] Brittany Bernstein, "Hundreds of Publishing Staffers Call for Cancellation of Amy Coney Barrett's Book Deal," National Review, October 28, 2022, https://www.nationalreview.com/news/hundreds-of-publishing-staffers-call-for-cancellation-of-amy-coney-barretts-book-deal/

[11] Katherine Anne Long, Amazon overrules employees' calls to stop selling book questioning mainstream treatment for transgender youth," Seattle Times, May 3, 2021, https://www.seattletimes.com/business/amazon/amazon-overrules-employees-calls-to-stop-selling-book-questioning-controversial-treatment-for-transgender-youth/

[12] Sam Dorman, "Amazon says it 'won't sell books that frame LGBTQ+ identity as a mental illness'," Fox Business, March 11, 2021 https://www.foxbusiness.com/politics/amazon-books-lgbtq-mental-illness-anderson

Second, the "book issue" is a parental awareness issue.

It should not be a partisan issue to assert that children do better when their families know what is going on in their lives. This isn't rocket science: the more information parents have, the better they can support their kids, both emotionally and academically.

It is widely acknowledged that America faces a youth mental health crisis,[13] which is manifesting in the form of drug overdoses, suicides, and violent outbursts both in and out of schools. Yet while school officials lobby for increased mental health support – which the federal government has funded[14] through hundreds of millions of dollars in grants – they are exacerbating the problem. When students are given assignments beyond their comprehension level that even reasonable adults find challenging – violence, war crimes, rape, incest, and more – it should come as no surprise when children become depressed or hopeless.

Books from school should be discussed with loved ones, perhaps to provide historical context or different perspectives. Parents know their young learners' quirks and preferences, and whether certain material might resonate with – or would be appropriate for – their loved ones. These decisions may differ between children in the same family at the same age based on factors like maturity level or sensitivity. Children are individuals and deserve an education that meets their specific needs.

Yet now when families ask to simply know what their children have access to – or may wish to put guard rails on accessing specific material for children of certain ages – they are pilloried in the public square. Such public flagellation is intended to not only extract a pound of flesh from the perpetrator but to send a message to any other parent with similar reservations: speak up, and the mob will come for you too.

Far too many schools keep families at arm's length, which could not come at a worse time. Struggling students would benefit if the authority figures in their lives worked together in their best interest.

But families from coast to coast are now considered adversaries, not even entitled to basic information about their children. In Eau Claire, Wisconsin, a school district gave teachers a training session which stated "parents are not entitled to know their kids' identities. That

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[13] U.S. Department of Health and Human Services Office of the U.S. Surgeon General, Current Priorities of the U.S. Surgeon General: Youth Mental Health," https://www.hhs.gov/surgeongeneral/priorities/youth-mental-health/index.html

[14] U.S. Department of Education, "U.S. Department of Education Announces More Than $188 Million from the Bipartisan Safer Communities Act to Support Mental Health and Student Wellness," February 16, 2023 https://www.ed.gov/news/press-releases/us-department-education-announces-more-188-million-bipartisan-safer-communities-act-support-mental-health-and-student-wellness

knowledge must be earned."[15] My organization, Parents Defending Education, has documented 1042 districts across the country – and counting – that maintain "parental exclusion policies" which state that families don't even have a right to know their child's gender identity in their taxpayer-funded public school.[16]

And finally: It is not evil to want to be involved in your child's education.

Every time a parent is falsely accused of wanting to "ban" a book because of a reasonable concern about subject matter availability, neighbors are pitted against each other based on dishonest premises. More likely than not, the person wearing an "I read banned books" shirt would sympathize with the father who doesn't want his young child seeing detailed cartoons of private parts, and respect his concerns if they chatted over coffee.

But hearings like this aren't designed to bring those two perspectives together. Hearings like this are used to burn mothers like me at the stake, and to chill the speech and activism of parents who simply want to protect their minor children.

Please stop mocking parents. Please stop name-calling. Please listen to the concerns of families who want their children to learn basic grammar, rather than be policed on pronouns. Who want their children to learn to read at grade level, and not taken out of class to participate in political rallies that they do not fully understand.[17] Who want their young children's innocence to be preserved for a few years longer than an activist academic might insist.

We are your constituents too.

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[15] Wisconsin Institute for Law & Liberty, "Parents Sue Eau Claire School District over policy that hides gender transitions," September 7, 2022 https://will-law.org/parents-sue-eau-claire-school-district-over-policy-that-hides-gender-transitions/

[16] Parents Defending Education, "List of School District Transgender – Gender Nonconforming Student Policies," last updated August 31, 2023 https://defendinged.org/investigations/list-of-school-district-transgender-gender-nonconforming-student-policies/

[17] Hank Berrien, "WATCH: Kindergartners March Chanting 'Black Lives Matter' At Posh Private D.C. School," Daily Wire, February 7, 2022 https://www.dailywire.com/news/watch-kindergartners-march-chanting-black-lives-matter-at-posh-private-d-c-school

Questions for the Record from Senator Charles Grassley
U.S. Senate Committee on the Judiciary
"Book Bans: Examining How Censorship Limits Liberty and Literature"
September 12, 2023

Questions for Ms. Neily:

1. **In your written testimony you mentioned parents who are bold enough to question the appropriateness of explicit material in a school setting are publicly shamed and likened to totalitarian dictators. Aside from the obvious irony of this, can you please elaborate on the various experiences you or other parents have had while having an active role in your children's education?**

   Parents across the country have been mocked and vilified by politicians and activists. Examples include:

   - the White House's behind-the-scenes work with the National School Boards Association, which culminated in the NSBA's September 29, 2021 letter sent to President Biden requesting federal intervention in school board issues, citing the Patriot Act and other statues as justification;[1]
   - Attorney General Merrick Garland's refusal – as recently as September 20, 2023[2] – to rescind his October 4, 2021 memo[3] released in response to the NSBA's letter, which directed federal law enforcement agencies to engage on school board issues;
   - two state legislators in Virginia calling parental rights "garbage," "crap," and "stupid";[4]
   - failed Virginia gubernatorial candidate Terry McAuliffe's infamous "I don't think parents should be telling schools what they should teach" statement in 2021;[5]

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[1] Michael Best & Friedrichs, "Final Report on the Events Surrounding the National School Boards Association's September 29, 2021 Letter to the President," May 20, 2022 https://www.nsba.org/-/media/Files/NSBA-Report.pdf?la=en&hash=A001354D23C9AE88B54D398270C9790D91B01FF9

[2] Heather Hunter, "Merrick Garland hearing: Texas representative grilled Garland over whether his department was still targeting parents," Washington Examiner, September 20, 2023 https://www.washingtonexaminer.com/news/merrick-garland-hearing-texas-rep-grilled-ag-garland-over-whether-his-department-was-still-targeting-parents

[3] Office of the Attorney General, Department of Justice, "Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff," October 4, 2021 https://www.justice.gov/media/1170056/dl?inline

[4] Brandon Gillespie, "Democratic lawmakers caught on hot mic mocking parental rights as 'garbage,' 'stupid'," Fox News, April 26, 2023 https://www.foxnews.com/politics/democratic-lawmakers-hot-mic-mocking-parental-rights-garbage-stupid

[5] The Editors, "Terry McAuliffe's War on Parents," National Review Online, October 1, 2021 https://www.nationalreview.com/2021/10/terry-mcauliffes-war-on-parents/

- AFT President Randi Weingarten comparing parental rights advocates to "segregationists";[6] and
- the Southern Poverty Law Center's 2023 addition of numerous parental rights organizations to its "Hate Map."[7]

Families have also had their livelihoods threatened: in Michigan, Rochester Public Schools paid approximately $190,000 to a mother who was fired from her job.[8] Other families have lost their seats in private schools, as two families in Ohio faced,[9] and in Rhode Island, the teacher's union sued a parent over documents that a district lawfully released to her under the state's open records law.[10] Fear of such consequences chills the speech of would-be activists; Parents Defending Education's tip line asks "do you wish to remain anonymous," to which nearly all of our tipsters say yes.

Indeed, when parents have spoken up in public at school boards, a number of districts have affirmatively silenced parents and been sued as a result. Recent examples can be found in Pennsylvania, where the Pennsbury School District paid out $300,000[11] – as well as in Maine, the School Board of Regional School Unit 22 paid $44,000 to an activist who was banned from a public meeting.[12]

2. **Do you find that these laws narrowly tailored to limiting young children's access to prurient and salacious material substantially threaten the spirit and purpose of the First Amendment?**

   No, they do not threaten the spirit and purpose of the First Amendment. The Supreme Court has made clear that States may regulate "works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value." *Miller v.*

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[6] Ian Miller, "Randi Weingarten Compares Parental Rights to Segregation," Outkick, September 14, 2023 https://www.outkick.com/randi-weingarten-compares-parental-rights-to-segregation/

[7] Victor Nava, "Southern Poverty Law Center adds parental rights groups to 'hate and extremism' report," New York Post, June 7, 2023 https://nypost.com/2023/06/07/southern-poverty-law-center-adds-parental-rights-advocates-to-hate-map/

[8] Ed White, "Rochester schools settles with parent for $190K after she said lost her job criticizing their Covid policies," Fox 2 Detroit, March 23, 2022 https://www.fox2detroit.com/news/rochester-schools-settles-with-parent-for-190k-after-she-said-lost-her-job-criticizing-their-covid-policies

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In short, parents should have transparency regarding the content that their children can access and the ability to set guard rails for their own family. This is entirely consistent with the First Amendment.

3. **Do the titles, particularly those more explicit ones which are subject to frequent restriction under these laws substantially contribute to the value of general K-12 education?**

We believe that families are best positioned to know what their young learners' educational needs and sensitivities are – and that a title that might be appropriate for one child in a family might not be appropriate for that child's sibling at the same age.

4. **Have you found parents generally want their children to have access to explicit material, and if not, from where do these efforts to expose children to what many would consider age-inappropriate materials generally derive?**

In our experience, we have found that parents want to be both academically and emotionally supportive of their loved ones – so that if (or when) their children are exposed to such material, the themes, context, and imagery can be discussed at a level suitable for the child.

We believe parents know their minor children's needs best, and have yet to encounter parents who wish to push explicit content on their children beyond age-appropriate levels; if anything, there are likely parents who would choose to err on the side of caution in this setting.

Accordingly, these efforts to expose children to age-inappropriate material originate from outside the home; in the school setting, where Parents Defending Education operates, we have identified lesson plans and curriculum originating with nonprofits and activist

organizations such as GLSEN,[13] the Trevor Project,[14] and Gender Spectrum;[15] professional associations such as the American School Counselors Association,[16] National Education Association,[17] National School Libraries Association; and school employees themselves.[1819]

These efforts are not occurring in a vacuum; donors such as Arabella Advisors' New Venture Fund,[20] the Tides Foundation,[21] and the Bill & Melinda Gates Foundation[22] are funding such activism through organizations like the American Library Association.[23] Organizations like Students Engaged in Advancing Texas receive the backing of entities like the Human Rights Campaign & Campaign for our Shared Future[24] – also a project of Arabella Advisors' New Venture Fund.[25]

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Witness Testimony to the U.S. Senate Committee on the Judiciary

for a hearing of the Full Committee on

"Book Bans: Examining How Censorship Limits Liberty and Literature"

September 12, 2023

Cameron J. Samuels

Student – Katy, TX

Co-Founder, Students Engaged in Advancing Texas

Committee members,

Thank you for this humbling opportunity to address you here at the nation's capital. My name is Cameron Samuels, I am a student from Katy, Texas, and I use gender-neutral pronouns, "they/them." I am the Executive Director and Co-Founder of the nonprofit Students Engaged in Advancing Texas, known as SEAT.

During my early childhood, I lived alongside fields of cattle when I entered kindergarten in the Katy Independent School District. Thirteen years later in 2022, I graduated from Seven Lakes High School when the district had more than 90,000 students. I always loved my school district, but over the past few years, we have faced a so-called "culture war" over book bans.

My firsthand experience began in Fall 2021 when a few parents sought to remove Jerry Craft's *New Kid* from school libraries and cancel his author visit. In the novel, Craft uses his personal experiences to illustrate a Black child attending a nearly all-White school. *New Kid* is a children's book, like any other, but some in the community decided to weaponize identity to remove Black books from the shelves.

I always believed my community celebrated its diversity, with my school's annual International Festival as a highlight of my year, but the conversation on books quickly escalated at following school board meetings. Eventually, I could no longer watch board members speak for me without hearing my concerns, so I decided to sign up to speak at a meeting.

Walking into the board room that Monday night, with class at 7:25 AM the very next morning, I quickly came to realize I was the only student there. I've now recognized that meant, as a student, I was the only one whose future was directly affected by the district's policymaking.

The board president began calling speakers to the lectern, and when my turn came, the room gave no applause but silence and stares as I walked back to my seat. They continued applauding the adults who sought to restrict student access to literature, but for me, I was met with silence. I was left to feel isolated and alone in a room of people making policy about students like me, but without us at the decision-making table.

Over the following months, I continued standing up for my freedom to read, but my school district continued removing books from shelves at record pace. Nearly all these books were targeted for identity – such as LGBTQ+ themes, racial diversity, religion, or addressing gender-based violence. These books represent our diversity as a student body and give us an opportunity to learn beyond classroom curriculum.

When students found themselves more represented in books being challenged than books left in school libraries, I gathered student groups to lead efforts to distribute hundreds of banned books to students district-wide. We packed school board meetings with community members who knew we deserved better. The stares I once received three months earlier were stairs we climbed on.

There's only so much that can be learned in the classroom, and libraries offer an extended opportunity for discovery. Libraries are centers for voluntary inquiry. Censorship, however, places a limit on students' liberty to learn.

Censorship erases our social identity, and in result, censorship erases our humanity.

Decades before the Holocaust, a German poet wrote, "wherever they burn books, they will also, in the end, burn human beings." When the Katy school district began targeting Art Spiegelman's *Maus*, I could not fathom that depictions of cartoon mice, walking naked to Nazi gas chambers, were considered "pervasively vulgar" by the book's challengers.

My ancestors fled from Eurasia because of religious persecution against Jewish identity, and as a religious minority in Texas, it has never been easy. I have faced too many antisemitic remarks in school to remember, and classmates have told me the Holocaust does not exist.

The censorship of Holocaust education erases my culture and identity from the narrative before it was even sufficiently there. When my peers cannot name a single Jewish person they know, media representation is where they learn about us, and often, it is dominated by stereotypes and caricatures.

Books like *Maus* teach students an accurate reflection of Jewish identity. If a classmate of mine knew the real extent of the Holocaust, maybe they would have thought twice about their actions.

Maybe they would have thought twice about spraying cologne in my face. He said he was "gassing the Jew."

Where they burn books, they burn people.

Last year, a parent filed a police report against Mike Curato's *Flamer*, a novel about a biracial and effeminate Boy Scout who is bullied and traumatized by toxic culture. The book is based on the author's experience, but the book also illustrates my experience. I saw myself in the story, having gone through the same harassment in middle school.

After so many years, I came to recognize that I was not alone. I was traumatized and felt I simply did not belong, but I was wrong. Toxicity does not belong, and *Flamer* gave me words for it. Unfortunately, this book was banned, along with many others with LGBTQ+ themes, leaving many queer students unable to find themselves represented in our school libraries. Censorship policies bar students from age-relevant materials, leaving them unable to realize how their actions could traumatize others with unique experiences unfamiliar to them.

Local police responded to the parent's report by entering a high school library to remove the book. In history, the Gestapo secret police force in Nazi Germany acted alarmingly in the same fashion. I could not believe my community was facing similar tactics of intimidation and fear mongering that my ancestors fled from across the world to escape. When, may I ask the nation, will I need to flee for my safety?

It's not only school districts taking on this censorship, but it's also the state of Texas with a requested investigation into school district library collections and House Bill 900. During the state legislature this year, my peers and I worked with senators to introduce amendments to the bill, providing accountability measures and nondiscrimination protections. These amendments were rejected, and already, the bill is caught up in legal proceedings and faces an injunction.

From a historical lens, censorship has never been on the right side of history.

Furthermore, censorship most certainly is a slippery slope. In Katy, they have even banned children's books like *Wacky Wednesday* by Dr. Seuss and *No, David* by David Shannon for comical reasons. Next door, the state of Texas has converted many libraries in the Houston school district into discipline centers. Discipline centers, where book shelves have been turned around to face the wall. Censorship like this sounds satirical, but it's our reality in Texas.

My state is home to more than 8 million people under the age of 20, and because everything is bigger in Texas, we happen to be the leading state for book bans. Policies made by our school

districts and state legislature affect us and our futures. We must recognize the decisions of individual families do not supersede students' rights to our own education.

Students deserve to be active decision-makers in our daily experiences as we attend class. The actions of one person alone, challenging a book in a school library, should not burden and restrict the education of 90,000 students in my district without due process. The Katy school district now allows for merely two board members – out of seven – to reject the decision of a book review committee and officially remove books from every shelf in the district.

Censorship is undemocratic when it suppresses the marginalized and silences the vulnerable.

School board meetings should be centers for growth and opportunities for students to engage with those making decisions for them, but these lengthy meetings have become the frontlines of a "culture war." It's about time students have agency in our education.

We cannot stand for viewpoint discrimination that contradicts our First Amendment principles and targets the most vulnerable students. We must ensure library review policies nationwide protect literature from ideological scrutiny against identity, as affirmed by the Supreme Court, and we must hold accountable any effort to remove books from library collections. We need research and oversight, not blanket permission to remove "Pride sections" from libraries like they voted on in my school district.

Libraries are for learning about oneself through the lens of literature. Libraries are not for certain people to challenge identities they disagree with, at the expense of the broader community.

Censors create silence when they diminish our education, deplete our libraries, deprive students of our rights, and discredit educators.

You may not see eye-to-eye with me, but as a student, I must tell you that we are facing a students' rights crisis in Texas and nationwide.

It should not have been my responsibility as a 17-year-old to defend my rights and challenge bigotry. Protecting children requires empowering us students, not allowing one or two parents to dictate the policies of an entire community.

Ensuring our decision-making represents and reflects education's primary stakeholders – the students – we can proceed with a sophisticated solution that facilitates collaboration between students, families, and educators.

Thank you.

AMERICAN BAR ASSOCIATION

Mary Smith
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September 14, 2023

The Honorable Richard Durbin
Chair
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

RE: Submission for September 12th Hearing on Book Bans

Dear Chairman Durbin and Ranking Member Graham:

I write on behalf of the American Bar Association (ABA), the largest voluntary association of lawyers and legal professionals in the world, to commend you for holding a hearing this week on the status of state and local legislation to ban books and to bring to your attention the association's views on the issue. Please include this submission in the official record of the hearing entitled "Book Bans: Examining How Censorship Limits Liability and Literature."

In August 2023, the ABA House of Delegates adopted policy that states in part:

> RESOLVED, That the American Bar Association opposes all federal, state, local, territorial, and tribal legislation, regulations, ordinances, and policies that:
>
> (1) ban books in public education, public libraries, or public school libraries;
> (2) create arbitrary procedures or processes by which parents or other stakeholders can demand the removal of books from public education, public libraries, or public school libraries for invidious or discriminatory reasons;
> (3) ban or remove books as "obscene" or "pornographic" because they include discussion of gender, sexual orientation, gender identity, gender expression, or any other protected class; or
> 4) ban or remove books because they include discussion of race, racism, anti-racism, religion, or ethnic studies;
>
> provided that nothing herein shall limit the legitimate, good faith, nondiscriminatory exercise of discretion by a professional librarian or licensed educator in making determinations as to the best use of their library resources….

In sum, the ABA believes:

1. **Book Bans Are Bad Public Policy.** According to the American Association of School Librarians, inclusion is one of the "six essential foundations" of school libraries. "An effective school library includes diverse and inclusive resources, programs, and services that meet the needs of all learners; represents various points of view on current and historical issues; and provides support across a wide range of interest areas with opportunities for learners to recognize themselves." Book bans violate this core purpose of school libraries.

2. **Book Selection Decisions Should be Made by Trained Administrators.** Politicians are particularly unsuited to make decisions about the appropriateness of books in school libraries. Few policymakers have the training, or the time, to make well-informed decisions about which specific books belong in school libraries. Nor are elected school board members required to have any special expertise or training that would enable them to second-guess professional librarians and educators as to whether certain books are age-appropriate or not. The nature of politics creates incentives for policymakers to make such decisions for improper reasons.

3. **Book Bans Will Have Unintended Consequences.** While the current wave of book-banning statutes, regulations and resolutions is associated primarily with the political and religious right, book-ban laws and regulations will adversely affect people of all ideologies.

4. **Book Bans Violate the Constitutional Rights of Students.** Book bans clearly violate the First Amendment rights of students. As the U.S. Supreme Court articulated in *Tinker v. Des Moines Independent Community School District* (1969) and has repeated over the subsequent decades, "students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate… they are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate.

5. **Book Bans Violate the Constitutional Rights of Educators.** Banning books also undermines the professional discretion and First Amendment rights of educators and librarians when it comes to matters of public education, disrupting the potential for effective relationships between parents, teachers and administrators that can serve to advance student learning and civic engagement.

Civic education and constitutional democracy are a vital part of a student's education. Book bans can remove important resources for teaching the subjects that are vital to an informed citizenry and a healthy democracy.

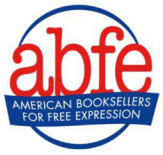
We urge your committee to take appropriate steps to discourage the use of book bans for partisan political purposes.

Sincerely,

Mary Smith

Mary Smith
President, American Bar Association

cc: Members of the Senate Judiciary Committee



September 11, 2023

Dear Chair Durbin, Ranking Member Graham, and members of the committee:

On behalf of the American Booksellers for Free Expression, the free speech initiative of the American Booksellers Association—the not-for-profit trade association representing over 2,500 independent bookstores across the country—we respectfully submit this testimony in regard to tomorrow's Senate Judiciary hearing, "Book Bans: Examining How Censorship Limits Liberty and Literature."

ABFE was founded in 1990, but at no time in its 33-year history has access to books been more profoundly threatened.

The precipitous increase in book bans over the past two years represents a clear danger to the prosperity, safety, and growth of our members and their communities. Over the past year, we've seen a proliferation of bills in state legislatures that would censor books and limit access to lawful materials in schools and libraries, attempting to codify censorship into law in direct violation of the First Amendment.

These bans clearly threaten free expression, equal representation in society, and free enterprise.

In the past year, our members in Arkansas, with the passage of Act 372, have faced threats of prosecution based on highly subjective questions of age-appropriateness in book displays and marketing. Our members in Texas, with the passage of the so-called READER Act, face state mandates to rate the "sexual content" of books that they sell to school libraries, requiring every book vendor to know every passage of every book they sell to schools—both impossible and unconstitutional. And our members nationwide have faced disruptions, violent protests, and worse based on misinformation about the content of books and the intent of booksellers.

It is likely no coincidence that recent attempts to ban books, either at the local level or via state legislation, disproportionately limit access to books written by or for marginalized people. Under some of these laws, booksellers and librarians could face criminal prosecution for merely representing the diversity of their communities on their shelves.

Book challenges especially limit speech on topics related to people of color and the LGBTQ+ community. According to PEN America, 30 - 41 percent of books challenged since 2021 contain characters of color or discussion of race. In the same period, a quarter to a third of banned books contain LGBTQ+ characters or themes. A *Washington Post* study showed that 75 percent of challenged picture books contained LGBTQ+ characters or themes, while 25 percent contained characters of color or mentioned race. In short, most recent book challenges target books by and about minority communities.

These books are banned or challenged under the guise of not being "age appropriate," but this ignores the fact that the books are written and published to help children navigate complex topics and are selected by trained professionals following set policy guidelines. Of course it is important to ensure that children are reading age-appropriate material. Nobody is better equipped to make these judgments than booksellers and librarians, who draw on years of experience and in-depth knowledge of literature to curate their shelves for their communities.

We have no qualms with parental input, either, and believe a parent should be involved in their child's education. That does not mean parents should be allowed to dictate what other people's children are allowed to read. Yet in many instances across the country, a small group of would-be book banners would force their own preferences on the majority of parents who value a diverse selection of books to choose from. Book challengers often not only lack comparable expertise, but in some cases have not even read the book beyond the cover and a few pages. In many cases, they are misled by groups such as Moms for Liberty, who falsely claim that young children are being forced to read material inappropriate for their age.

Government book bans have no place in American society. The First Amendment exists to protect us from state censorship. It was written for instances such as the aforementioned laws in Texas or Arkansas, where lawmakers think they can dictate what citizens can and cannot read. A majority of judges appointed by Democrats and Republicans have ruled against book bans. A strong majority of parents oppose book bans—over 70 percent according to the American Library Association. The Constitution and the will of the majority are clearly on our side.

Thank you for holding this important hearing on the escalation of book bans across the country. The American Booksellers Association and our members call for an end to these attacks on the right to read.

Thank you for your consideration.
Sincerely,

Allison K Hill, CEO
American Booksellers Association



Lee Saunders
President
Elissa McBride
Secretary-Treasurer
Vice Presidents
Jody Barr
New Britain, CT
Denise Berkley
Albany, NY
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#241-23

September 11, 2023

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Graham:

On behalf of the 1.4 million members of the American Federation of State, County and Municipal Employees (AFSCME), I am writing with respect to the September 12 hearing entitled, "Book Bans: Examining How Censorship Limits Liberty and Literature." AFSCME Cultural Workers United represents over 35,000 cultural workers across the country, more than any other union, including 10,000 museum workers at 100 cultural institutions and 25,000 library workers at 275 libraries. We applaud your leadership in holding this hearing and request that this letter be included in the record of the hearing.

Whether they introduce a child to a next favorite book or teach new skills like how to code or start a business or file a job application, or use a computer to access government assistance, library workers are the backbone of our communities. Because these workers ensure that the library is a welcoming space for all, they support literacy, education and lifelong learning and, most importantly, democracy and an informed electorate. The vitality of our nation's democracy requires that everyone be able to exercise rights to information and services, and it is especially important for young people to have the opportunity to learn and encounter and debate all manner of ideas, including controversial ones. Library staff must make decisions about the books and media in their collections and assist patrons in accessing those materials as a fundamental responsibility of their job, without fearing censorship or reprisal for fulfilling their role in providing information and resources to the public. Library workers routinely curate books and programs with an eye toward age appropriateness and inclusiveness.

Sadly, over the past year, there have been horrible incidents throughout the country that have been calculated to intimidate library staff and prevent them from fulfilling their central work responsibility to provide the public with free and unfettered access to information. In response, library workers across the country are mobilizing for a collective union voice in their workplaces to elevate their profession, ensure safe and adequately resourced spaces that meet the needs of the communities they serve and to protect the essential role of libraries in American democracy.

A recent exemplar of this solidarity is the Missouri library workers. Because they came together to form the Daniel Boone Regional Library Workers United, as part of

American Federation of State, County and Municipal Employees, AFL-CIO
TEL (202) 429-1000 FAX (202) 429-1293 TDD (202) 659-0446 WEB www.afscme.org 1625 L Street, NW, Washington, DC 20036-5687

AFSCME Council 61, becoming the first active library union in the Show-Me State, in May 2022, they were a unified force ready to oppose library censorship rules in that state. The rule proposed by Missouri Secretary of State Jay Ashcroft in October 2022 requires Missouri's 160 public libraries to adopt policies on the age-appropriateness of literature within that library's collection. In addition, children attempting to check out any material would need parental permission. The rules state that "no person employed by or acting on behalf of the library shall knowingly grant access to any minor any material in any form not approved by the minor's parent or guardian." Any library patron must be able to challenge the age designation for any material provided by a library. Libraries would be under threat of having their state funding pulled if they do not comply.

The Daniel Boone Regional Library Workers United stood up, spoke out and rallied the community to protect and defend libraries from censorship or funding cuts. They argued that the state is taking away families' rights to access books. They succeeded in generating a record-breaking number of responses, reportedly 16,000, with a majority expressing opposition. But Secretary of State Ashcroft moved forward despite the clear community opposition and the new rule went into effect on May 31. The response by some in the state House of Representatives has been to defund public libraries – contrary to what Missourians want. Throughout this spring, the Daniel Boone Regional Library Workers organized calls for funding public libraries and additional activism against the censorship rule.

From the Library of Congress and public libraries in Boston, New York, the District of Columbia, Chicago, Detroit, Salt Lake City, Los Angeles and Seattle/King County to public school, college and university libraries nationwide, AFSCME librarians and library workers have a long history of refusing to be silenced about understaffing, inadequate budgets, racism, unsafe conditions for workers and patrons and other challenges which undermine the vital role libraries play in our communities and democracy.

- The members of Local 3425 who work in the Louisville Free Public Library in Kentucky have raised alarms about threats, vehicle vandalism, stalking, physical assault, sexual assault and tense situations involving fights and brandishing weapons, which have traumatized workers.

- When the majority of newly elected board of trustee members openly criticized library services, the library workers at the Niles-Maine District Library in Illinois fought back. The library staff came together and created their union with AFSCME Council 31. Through their collective action, which included petitions, open letters from local leaders and a rally, the new local was able to both establish a union and significantly reduce proposed budget cuts to staff and popular community-oriented programming.

- At the Indianapolis-Marion County Public Library, represented by AFSCME Council 962, library workers who spoke up about their experiences of racism and ableism while working at the Central Library branch were muted May 2021during a library board meeting. AFSCME made sure their members' voices were heard and fought for changes to be made throughout the entire library system, starting at the top. After months of action, the library CEO announced she was resigning in response to the calls for change from AFSCME.

We urge Congress to recognize that library workers, whether they are at the information desk, check-out desk, or do other work to keep libraries functioning and open, are heroes that protect intellectual freedom, the right to read, to learn, to think and participate in democracy. We owe them respect by protecting them from harassment, censorship and providing them with the resources they need to deliver their vital services to the community.

Sincerely,



Edwin S. Jayne
Director of Federal Government Affairs

ESJ:LB:dmg

ALAAmericanLibraryAssociation

September 12, 2023

The Honorable Dick Durbin
Chair
Committee on the Judiciary
U.S. Senate

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
U.S. Senate

Re: "Book Bans: Examining How Censorship Limits Liberty and Literature"

Dear Chair Durbin and Ranking Member Graham,

Thank you for your attention to the issues that will be raised in the Committee's upcoming hearing on "Book Bans: Examining How Censorship Limits Liberty and Literature." On behalf of the American Library Association (ALA), I am writing to share our concerns about the growing number of recent book censorship efforts.

Every day, more than 360,000 library professionals in every community across America work to promote literacy, provide access to information, and introduce children to the joy of reading. Rooted in the promises of the First Amendment and the Founders' vision of individual liberties, the freedom to read is central to libraries' mission. The Constitution prohibits public bodies, such as libraries, from censoring reading choices based on their viewpoint, or from enacting censorship motivated by a discriminatory purpose. Libraries uphold these Constitutional principles by enabling readers to choose materials representing a variety of ideas and views.

ALA is alarmed by increasing efforts to censor reading choices in libraries around the country. In 2022, ALA's Office for Intellectual Freedom tracked the highest number of demands to ban books reported since we began compiling data. In addition to attempts to censor individual books, in recent years several state and local governments have enacted or proposed policies and laws that undermine the freedom to read.

ALA objects to book bans in the strongest possible terms for the following reasons:

Book bans are unconstitutional and an affront to the Founders' vision of individual liberties and the reader's right to receive information.

The First Amendment protects an individual's right to receive information, including a positive right of access to the public library and its resources. As public institutions governed by the First Amendment, libraries may not restrict or remove books or other resources because of a dislike or disapproval of the viewpoints expressed in the work. As Justice Brennan wrote, "Our Constitution does not permit the official suppression of ideas." *Island Trees School District v.*

Pico, 457 U.S. 853, 870 (1982); *also see Sund v. City of Wichita Falls, Tex.*, 121 F. Supp 2d 530 (N.D. Tex 2000). Furthermore, the equal protection clause of the Fourteenth Amendment prohibits censorship that is motivated by a discriminatory purpose. *See Arce v. Douglas*, 793 F. 3d 968, 977 (9th Cir., 2015).

Book bans are unnecessary under libraries' professional standards for acquiring a variety of materials to meet users' developmentally-appropriate information needs and interests.

Library collections are developed in accordance with professional standards, the library's collection development and reconsideration policies, and the requirements of applicable law, including the U.S. Constitution. Library collections are typically overseen by librarians who hold a Master's in Library Science or comparable degree from an ALA-accredited graduate program, and who in many states are required to hold a state certification. These collection development practices are validated by evidence that the opportunity to select from a wide range of developmentally-appropriate reading materials positively impacts children's reading abilities.

Parents are best suited to determine which books are appropriate for their own children, free from government censorship.

Librarians respect a parent's right to guide their child's reading, and encourage parents and children to talk together about the materials that they are reading. A child's own parents are best equipped to understand the child's intellectual and emotional development. However, a parent does not have a right to restrict through government action what *another* parent's child may choose to read, which would intrude on the other parent's right to decide for their own child.

In summation, we believe it is the library's job to make a variety of reading choices available, and the individual's job to choose for themselves what to read. If we can provide additional information, please contact Gavin Baker (gbaker@alawash.org).

Sincerely,

Deborah Caldwell-Stone, J.D.
Director, Office for Intellectual Freedom
American Library Association

The American Library Association ("ALA") is the foremost national organization providing resources to inspire library and information professionals to transform their communities through essential programs and services. For more than 140 years, the ALA has been the trusted voice for academic, public, school, government, and special libraries, advocating for the profession and the library's role in enhancing learning and ensuring access to information for all.

Statement of

Cheryl L. Davis
General Counsel
The Authors Guild

Before the

SENATE COMMITTEE ON THE JUDICIARY

September 12, 2023

Dear Chair Durbin, Ranking Member Graham, and members of the Committee:

Thank you for the opportunity to submit this written testimony on behalf of the Authors Guild. The Authors Guild is a national non-profit association of almost 14,000 professional writers. Since its founding in 1912, the Guild has promoted the rights and professional interests of authors in various areas, including copyright, freedom of expression, and, more recently, artificial intelligence. It counts as members leading historians, biographers, academicians, journalists, and other writers of nonfiction and fiction whose works have appeared in the most influential and well-respected publications in every field. The Guild has a fundamental interest in ensuring that works of authorship and the rights of authors are protected, and that the hard work and talents of our nation's authors are rewarded so that they can continue writing, as intended by the Framers of the Constitution. The Guild believes that it is crucial for our culture and the future of democracy to ensure that our literature and arts remain vibrant and diverse.

The Importance of Free Speech

The fact that the very First Amendment to the Constitution bars Congress from passing laws "abridging the freedom of speech" shows the importance of free speech to our system of government. It is one of our core liberties, and when governmental bodies reduce diversity of speech and voices, it strikes at the First Amendment rights of readers and authors, diminishing our culture as a whole. We all benefit from reading books about worlds and experiences other than our own—children perhaps most of all. This exposure to a variety of speech and views deepens our empathy and understanding. Removing these stories from stores, libraries, and classrooms because they express different views and perspectives is a disservice to our children, who will live in a far more diverse world than we do, and only adds to the sense of division that is already rampant in this country. Indeed, part of the Authors Guild's core mission is to ensure that a rich, diverse body of literature, that represents the voices of all Americans, can flourish in this country.

We see efforts from groups on both the left and the right to stop the publication of, or restrict access to, certain books, because they fear the ideas expressed in them or they disapprove of the conduct of the authors. School boards and libraries have removed books, while some recent state and local laws make it a crime for teachers and librarians to provide access to books that deal with sexuality, sexual identity, race, and other subjects deemed controversial. Attempts have been made to prohibit their sale, or even criminalize communications about such topics. Some groups have demanded that publishers not publish the books of certain authors whose political or social views they find objectionable. A healthy democracy requires vigorous literary debate, a diversity of ideas, and a tolerance for discourse that some find offensive or challenging. Regardless of one's political, social, or religious views, suppressing books is anti-democratic, harmful, and a dangerous step toward autocracy.

Censorship Does More Harm than Good

Advocates for these censorship efforts argue that certain books containing explicit material are not age-appropriate and could prematurely expose children to complex themes of sexuality. This is a red herring, however. Librarians and educational professionals already have processes to determine the age appropriateness of books. Rather, these bans not only stifle freedom of expression but also inhibit important discussions that could be educational and empowering for young readers. The ability to write and speak freely is vital to readers, as well as authors. Stifling and chilling speech means that there are fewer viewpoints and perspectives available—especially to children and young readers, who are still developing their own perspectives and are in greater need of knowing the breadth of the options and attitudes that are out there in the world and available to them.

These laws and book challenges can also impact the free speech rights of adults and older minors. In June 2023, the Authors Guild, together with the Central Arkansas Library System, five residents of Little Rock, and a coalition of other organizations, brought a lawsuit in the District Court of Arkansas asking the court to declare portions of an Arkansas law unconstitutional for violating plaintiffs' rights to disseminate, receive, and read constitutionally protected books and other media. One section of this law imposes criminal penalties on librarians, booksellers, and others for providing minors with materials considered "harmful to minors." The Fayetteville District Court denied the state's motion to dismiss the case and preliminarily enjoined the enforcement of the law. In a detailed decision in which the Court

discussed the history of libraries and their importance to American culture, the Court granted the plaintiffs' request for a preliminary injunction, and looked to the potential harm the bill might cause older minors and adults, recognizing that if the law restricted access to books with sexual content for all minors under 18, this could unfairly limit older minors from accessing age-appropriate literature. Moreover, adults accompanied by their younger children might also face restricted access to adult-appropriate content in bookstores and libraries, given concerns about minors coming into contact with such material. Consequently, the sweeping scope of such legislation and its curtailment of constitutionally protected speech seem unwarranted. The Arkansas law, like other similar laws designed to limit access to books, is vague and ambiguous. As the Court recognized, "the lack of clarity seems to have been by design. After all, by keeping the pivotal terms vague, local governing bodies have greater flexibility to assess a given challenge however they please rather than how the Constitution dictates."

In July 2023, the Authors Guild also joined a coalition of Texas bookstores, national booksellers, authors, and publishers to challenge a new law in Texas that would require vendors who want to sell books to school libraries to review and rate millions of books and library materials for sexual content. These ratings must follow vague labels dictated by the state, with no recourse for judicial review. The definitions of "sexually explicit material" and "sexually relevant material" are particularly problematic as they lack clarity and have no basis in existing law. This represents a significant departure from the traditional rights of local communities to determine the appropriateness of materials for their schools.

Under this law, many authors' books would effectively be banned in the significant Texas school market, even when there is nothing remotely obscene or sexualized in them. Since most

publishers can't afford to create and sell different versions of books to different markets, these authors would lose sales to the school market throughout the country—a market that authors of children's books, young adult books, and literary classics rely on. Moreover, the vagueness of the Texas standard makes it virtually impossible for an author to comply with it when writing future works; the only way would be to avoid references to sex or sexuality entirely. This would compel authors who want to sell their books to schools to censor themselves and avoid writing books that address issues many teenagers experience in their lives or communities, such as family, love, and preventing or dealing with pregnancy. It also runs the risk of discouraging publishers from investing in new works, and authors may hesitate to write books that could be subject to such stringent regulation.

A joint statement by the various plaintiffs in the case recognized the rationale behind the law and how it failed to meet its stated goals:

> "There is no question that reading in schools should be guided and age appropriate, but this law does not accomplish that goal. It is inferior to existing constitutional standards because it robs parents, schools, and teachers from across the state of Texas of the right to make decisions for their respective communities and classrooms, instead handing that role to a state entity and private businesses. It is central to the First Amendment that the government can neither restrain nor compel speech, but this law will force booksellers to label constitutionally protected works of literature and nonfiction with highly subjective and stigmatizing ratings, effectively forcing private actors to convey and act upon the government's views even when they disagree."

In addition to the harm this law would do to readers and authors, this law also infringes the rights of local schools and communities to decide what is appropriate for their students. It goes against local autonomy, parental choice, diversity of interests, and freedom of expression. The Authors Guild advocates for the preservation of individual communities' rights to determine what is age-appropriate and valuable for their schools, without undue government interference. We note that the law in Texas has also been preliminarily enjoined pending resolution of the litigation.

The Outsized Impact of These Bans on BIPOC and LGBTQ+ Communities

In 2022, according to the American Library Association, our nation saw the highest number of book bans in 20 years. A record 2,571 unique titles were targeted for censorship, reflecting a 38% increase from the prior year. Of those titles, the vast majority were written by or about members of the LGBTQIA+ community and people of color. The recent wave of bans has had a disproportionate impact on LGBTQIA+ and BIPOC authors—whose views are already underrepresented in our society—as well as books that explore issues relevant to these communities.

Such targeted censorship not only imposes the moral views of a minority (the *Tampa Bay Times* recently reported that more than half of the book challenges recorded in Florida since July 2022 came from two people) on the broader community, but also stands in contrast to the foundational American principles of freedom of religion and freedom of speech, values often touted by proponents of these bans. This violates our most fundamental principle: the crucial need to protect authors' rights to free speech, readers' rights to read what they want and the right of all Americans to learn. It may also lead to a future in which we lose both future works on these topics and authors from these communities.

The Minority Deciding what the Majority Can Read

While schools can and do decide what students read and the views of local communities must be respected, some of these new legislative and advocacy initiatives effectively give individuals the ability to remove books from school and public libraries. Local communities have traditionally had the right to determine what materials are appropriate for their students at what age. Books are chosen by trained librarians, and teachers and parents in the community have the right to object to books so selected. These often vague and overbroad laws are taking a blunderbuss approach to a nonexistent problem.

Author Nora Roberts put it well when she spoke out on CNN against the removal of her books from school libraries:

> I say, why does one parent have the right to push their opinion and their feelings on all the parents in the school district? Isn't that un-American? What's that about liberty? One person said these books were inappropriate, and so they're gone from the shelves in the school library. The librarian, who is trained and educated and curated the books, didn't say that. One person [did], and one person then usurps the rights of the rest of the parents and takes that access away from the high schoolers. This is the tyranny of the few over the many. That's just not American. Reading and books open windows and doors to other worlds, other points of view, other experiences. Isn't that what we want in our educational system? Don't we want kids to read for fun so they become readers and broaden their outlook?

The Chilling Effect of Bans and Censorship

Some groups have demanded that publishers not publish the books of certain authors whose political or social views they find objectionable; we protest such behavior, no matter the political point of view. The Authors Guild included a series of questions in its 2023 income survey about the impact of book bans and censorship. Authors reported that the current wave of book removals and challenges has impacted them in a variety of ways:

- Books have been blocked from consideration by libraries or being included in syllabi;
- Books have been removed from libraries and courses where they were previously being taught;
- Author visits and book signings have been cancelled;
- Authors have been blocked from participating in special book fairs or sales events;
- Books have been removed from their shelf placement in bookstores and from existing inventory.

These events have tended to reduce the income of the authors in question. This reflects only the data on books which already exist; the loss of future BIPOC and LGBTQIA+ books and authors who fear that their books will be unsellable because of the views expressed cannot be calculated.

The new state laws and regulations sprouting up around the country to replace the expertise of teachers and librarians with vague, impossible to implement standards are almost all unconstitutional, and unnecessary given the laws and procedures that school systems already have in place throughout the country. In many cases, the new laws and regulations appear to be nothing more than political stunts meant to feed on the fears of parents and gain political capital, and sadly our young people are the victims.

EveryLibrary Institute NFP
6433 Fairfield Ave.
Berwyn, IL. 60402

September 12, 2023

Honorable Richard Durbin, Chairman
Senate Judiciary Committee
United States Senate
Washington, DC. 20510

Dear Mr. Chairman,

The EveryLibrary Institute NFP is a national public policy organization focused on libraries. Our network includes the librarians, staff, and boards of public libraries and the certified school library media specialists and aids who staff school libraries across the country. We are respectfully submitting written comments to the Senate Judiciary Committee today to inform its discussions during the hearing of September 12, 2023, on "Book Bans: Examining How Censorship Limits Liberty and Literature."

We appreciate the attention that the Committee is paying to the topic of book bans and censorship. We agree with the theme of the hearing that the current climate of censorship restrains liberty and also negatively impacts the culture of reading and learning in the United States. We would like to offer our perspective on five key issues affecting public libraries and school libraries that are informed by our work supporting public policy issues around the country.

Conflicts Between the Right to Petition and Free Speech in Libraries

The First Amendment guarantees several fundamental rights, one of which is "the right of the people...to petition the Government for a redress of grievances." While the freedom of speech and the press often overshadow it, the right to petition holds significant implications for democratic engagement, enabling citizens to voice their concerns and seek remedies from the government. This right to petition is being stress-tested during the ongoing debate over book bans and material reviews in public libraries and schools.

Many petitioners use their right to petition to challenge content that they find offensive. When the petitioner approaches a challenge with sincere belief or concern while also participating in the process, the right to petition is properly applied. However, in many schools and public libraries across several states, the legitimacy of the petition should be questioned. In June 2023, Hannah Natson at the Washington Post analyzed over 1,100 book ban petitions and found that "Nearly half of filings — 43 percent — targeted titles with LGBTQ characters or themes, while 36 percent targeted titles featuring characters of color or dealing with issues of race and racism.

The top reason people challenged books was “sexual” content; 61 percent of challenges referenced this concern.”

Ms. Natson goes on to report that the “majority of the 1,000-plus book challenges analyzed by The Post were filed by just 11 people… Each of these people brought 10 or more challenges against books in their school district; one man filed 92 challenges. Together, these serial filers constituted 6 percent of all book challengers — but were responsible for 60 percent of all filings.” She coined the term “serial filer” to describe these petitioners.

The concept of what is appropriate or inappropriate is hotly debated at board meetings, on social media, and in the public square. One of the three tests within the Miller Test requires that a book violates contemporary community standards to be considered obscene. When only eleven people across the country are driving most book ban petitions, no reasonable person should consider their viewpoint to be pervasive within the American community, however defined. And yet, these eleven petitioners utilized their First Amendment rights to define a narrow concept of “appropriateness” for schools and libraries across the country.

When petitioners challenge a book or request its removal, they are formally expressing their grievances or concerns about its content, and they are asking the library or school to take specific actions in response. This process is essentially a way of seeking a remedy or redress from a government-affiliated body. However, it's worth noting that while individuals have the right to express their concerns and challenge materials, the library or school also has a responsibility to uphold principles of intellectual freedom, ensuring broad access to diverse ideas and materials. As such, petitions do not always result in the removal of the material. The decision involves a careful review process and considerations of First Amendment rights, professional guidelines, and the institution's commitment to intellectual diversity.

While this is within any American’s right to petition, it is important to balance this right to petition with other First Amendment principles. Public libraries are institutions that aim to provide diverse materials to promote intellectual freedom and the free exchange of ideas. School libraries are uniquely positioned to not only support the curriculum but also empower students’ independent reading and discovery. Book bans run the risk of limiting access to a range of perspectives and voices. It is important to exercise the right to petition judiciously to ensure that the broader goals of the First Amendment are upheld, and a well-informed and free society is fostered.

Again, as the Washington Post reported, only eleven serial petitioners are responsible for 60 percent of the book ban requests. This could be seen as a form of the "heckler's veto" on free expression and the right to read. Essentially, it is a situation where the schools or public libraries limit or restrict speech to avoid potential disturbances and disruptions rather than because the speech itself is unlawful. When a single individual files dozens or even hundreds of book ban requests, the sheer volume of these requests is meant to overwhelm the system, leading to de facto suppression of certain materials simply due to bureaucratic inefficiencies. One could argue that it is an agenda-driven way to suppress speech.

Threats to Pico

In the last Congress, Representative Jamie Raskin chaired two hearings of the House Subcommittee on Civil Rights and Civil Liberties on free speech issues. In his opening remarks during the “Free Speech Under Attack: Book Bans and Academic Censorship” hearing, he observed that:

> “In *Pico*, Justice Brennan found that the Constitution protects not just the right to speak but “the right to receive information and ideas.” The First Amendment plays the central role in “affording the public access to discussion, debate, and the dissemination of information and ideas.” Freedom of inquiry, the Court ruled, extends to school libraries, and the selective removal of books from libraries because someone considers the content offensive “directly and sharply” implicates students’ freedom of speech and thought. In school libraries, “the regime of voluntary inquiry holds sway.” The answer to books whose content or viewpoint you oppose—check out this powerful logic—is to not read them or to write a negative review or even, shades of Voltaire, to write your own book in answer.”

As a Constitutional scholar and author, Representative Raskin knows he is correct in his assertion that *Pico* provides a positive, affirmative framework for the application of the First Amendment in school libraries. The *Pico* ruling affirmed that students' First Amendment rights do not end at the schoolhouse door, emphasizing that school officials cannot remove books from school libraries simply because they disagree with their content. This landmark decision underscored the principle that school environments should foster critical thinking and diverse viewpoints, rather than enable censorship based on personal or political beliefs.

Unfortunately, we are beginning to see an erosion of the role that *Pico* plays in supporting student self-determination in their reading and learning. In *Wentzville*, a recent case in Missouri, plaintiffs sought to enjoin the Wentzville R-IV School District from following a policy that allows parents, guardians, or students to initiate challenges to library materials. The judge for the Eastern District of Missouri ruled against the plaintiffs, in part because of his belief that *Pico* no longer applies in the modern era.

> “The plurality in *Pico* eschewed the idea of schools denying students "access to ideas." Today, though, denying students access to a particular book at a school library does not deny them access to the book or its ideas. The forty years since the Court decided *Pico* have allowed for easier and greater access to ideas more so than perhaps any other forty-year period since the invention of the printing press.” (C.K.-W v. Wentzville R-IV Sch. Dist., No. 4:22-cv-00191-MTS, 2022 U.S. Dist. LEXIS 139554, 29 E.D. Mo. Aug. 5, 2022).

We disagree with the judge’s interpretation. There is no substantive difference between the negative impact of removing books based on viewpoint today then it was forty years ago. Also, the judge’s characterization that restrictions within schools are not harmful today because

students live in a world where information is easily accessible and exchanged on the internet is a straw man. Internet access in schools is required by federal e-rate regulations to be filtered. Likewise, in Missouri, Secretary of State and State Librarian Jay Ashcroft recently promulgated rules for public libraries that limit access, among other provisions, to “age-inappropriate materials in any form” (15_CSR_30_200_015) without providing an actionable definition of what constitutes appropriate or inappropriate.

If state and federal courts continue to look at *Pico* with a suspicious eye, Congress should act to reinforce the core principles of *Pico*. In this Congress, Sen. Jack Reed introduced S. 1307, the Right to Read Act of 2023, which would, among other provisions, amend 20 U.S.C. 7901 at SEC. 8549D by adding a section on “Protecting Constitutional Rights in School Libraries”. This new section would “[P]rotect the First Amendment rights of students in school libraries and will affirmatively further the right to receive information”. The EveryLibrary Institute supports the aims and objectives of the Right to Read Act and hopes that Congress will consider this legislation this session.

Threats to the Miller Test

The Miller Test, stemming from the Supreme Court's decision in *Miller v. California* (1973), provides the standard for determining what constitutes obscenity, which the First Amendment does not protect. This three-part benchmark assesses whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable state law; and whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. The Miller Test is foundational in guiding lower courts on matters of obscenity in various forms of media.

The Miller Test also influences how local public library boards and school boards conduct materials reviews after a challenge, but its application in these contexts can be nuanced. While the Miller Test primarily addresses issues of obscenity in broader legal contexts, library and school board decisions often revolve around more general considerations of appropriateness, educational value, and community standards. When library or school materials are challenged, often due to perceived inappropriate content, boards will generally evaluate the content based on its educational merit, the accuracy of the information, its relevance to the curriculum (in the case of school materials), and its potential to enrich readers' experiences. However, if an item is specifically challenged for its sexual content, the principles of the Miller Test might be referenced, especially the third prong about lacking serious literary, artistic, political, or scientific value.

Recent efforts by state legislatures have the potential to undermine the core principles of the Miller Test. State criminal codes broadly address obscenity, focusing on commercial actions and personal behavior, whereas "Harmful to Minors" statutes typically concern the conduct, accessibility, and distribution of materials to young individuals or students. Various bills have

been introduced and passed to refine state descriptions of obscenity or materials viewed as detrimental to young people. These legislative measures often aim to limit access to certain materials in public and school libraries deemed obscene or harmful to minors, with the definitions of such materials varying, sometimes including explicit content, nudity, or depictions that cater to sexual interests. Some propose age verification for accessing particular content, aiming to shield minors. This gives certain authorities, like attorneys general, the power to monitor and implement these rules, and in some cases, funding may be denied to institutions not compliant with these protective measures.

In Kentucky, SB5 (2023) introduces a section about Harmful to Minors in the educational code. It adopts elements from the criminal code but gives school principals the authority to decide on the appropriateness of materials. Schools must adopt a compliant complaint process, with appeals directed to the local school board, and decisions disclosed online and in local papers. South Carolina's S0506 (2023) proposed changes to the Miller Test, removing certain exemptions and adding "profane language" to potential harm indicators.

In Idaho, the legislature in H0314 (2023) removed the Miller Test-compliant condition of “prevailing standards in the adult community, with respect to what is suitable for minors” from its state obscenity laws. The Governor subsequently vetoed the bill. Likewise, in Iowa, the state legislature proposed SF305/HF361 (2023), to amend the state education code to include definitions of “hard-core pornography” and prohibit the distribution thereof by “(1) An administrator shall not knowingly provide hard-core pornography to a student in a library operated by the school, in a school classroom, or in any other area on school property.” This is despite a lack of evidence that any school anywhere in the state is providing obscene, harmful, or pornographic content under any definition.

North Dakota's HB1205 (2023) mandates public libraries exclude sexually explicit children's books. It modifies the Miller Test's community standards component, necessitating materials be reviewed based on North Dakota's adult community's standards regarding suitable content for minors. The law also necessitates the library to regularly ensure the absence of explicit sexual content. Early consideration of SB2360 (2023) proposed removing the term “contemporary” from “contemporary North Dakota standards” for the state’s Miller Test alignment language. The final law, which was passed over the Governor’s veto, instead introduced a new nuance to determine if an item is "Explicit sexual material": “Is patently offensive under prevailing standards in the adult community in North Dakota as a whole with respect to what is suitable material for minors.”

By embedding criminal definitions into educational code, states are encouraging arbitrary book challenges, possibly leading to subjective, bias-driven decisions. Legislative efforts that attempt to redefine obscenity contradicting the Miller Test's principles clash with constitutionally protected speech rights. Ambiguous terms like "patently offensive" can cause biased implementation due to their open-ended nature. Such ambiguities, coupled with potential First Amendment infringements, underline the constitutional dilemmas these proposed laws might

face. These bills are examples of state efforts to use the current censorship crisis to water down the Miller Test, thus making it easier for local administrators to remove or relocate materials based on viewpoint. This Committee should be vigilant to states attempting to alter the aims, purposes, and goals of the Miller Test through state legislation.

Attempts to Criminalize Libraries and Educational Institutions

Several states made significant attempts to criminalize librarianship and education under state obscenity laws during the 2023 session. These bills seek to remove existing exemptions that protect librarians and educators from criminal prosecution under state obscenity laws. This movement is happening alongside the debate over what content in books and other materials is considered obscene or harmful. The definition of "appropriateness" is often subjective and varies from person to person, which makes it difficult to establish clear guidelines.

In 2023, several states passed or attempted to pass criminalization bills targeting educators and librarians. In Arkansas, SB81 (2023) passed. It removed the historic defense from prosecution exemption from public libraries and museums. That provision was recently enjoined by the Western District of Arkansas. In Indiana, HB1447 (2023) removes the defense from prosecution guarantee from educational settings. That bill goes into force on January 1, 2024. These and similar bills all share provisions that seek to eliminate historic defenses from prosecution under state obscenity laws. This can lead to spurious prosecutions of teachers and librarians over materials that make certain individuals uncomfortable.

Some special interest groups and conservative commentators are calling for more expansive definitions of criminal offenses and new prosecutorial powers. However, changing obscenity statutes to subject educators and librarians to prosecution would be a significant disruption to the stability and continuity of our institutions. There is no pressing need to remove these institutional or professional exemptions, and states should be cautious before making such a significant change to the criminal code.

It is important to defend the integrity of schools and public libraries and prevent librarians and educators from being brought up on politically motivated charges. Criminalization bills undermine the principles of a harassment-free workplace and attack the dignity of work in schools and libraries. Professionals should be able to perform their duties without the threat of spurious prosecution. It would be more appropriate to handle issues related to education policy through regulatory processes rather than through the criminal code.

Conflating the First Amendment and the Publishing Sector

An operative principle of the First Amendment is that of viewpoint neutrality. As noted by the Free Speech Center at Middle Tennessee University, “Viewpoint discrimination is a form of content discrimination particularly disfavored by the courts. When the government engages in content discrimination, it is restricting speech on a given subject matter. When it engages in viewpoint discrimination, it is singling out a particular opinion or perspective on that subject

matter for treatment unlike that given to other viewpoints." While public libraries are required by the First Amendment to remain viewpoint-neutral, the publishing industry that supplies books, databases, audiobooks, and other materials is not, as private actors, bound by the First Amendment to publish in a viewpoint-neutral way.

Penguin Random House, the largest publishing house in the United States, clearly understands the location of censorship within the publishing industry. An April 2018 memo from its legal counsel titled "Protecting Our Authors' Right to Freedom of Speech and Expression" lays out the difference between government interference and marketplace pressures on its choices to publish.

> "Under the American legal system and the constitutional protections of the First Amendment, the predominant system of censorship is financial. Because our Constitution outlaws so-called "prior restraints" (judicial suppression of written material), plaintiffs can threaten only monetary damages. Unfortunately, the cost of litigation is so high that defending a lawsuit can cost hundreds of thousands of dollars, regardless of whether one wins or loses. For many authors and publishers, legal threat is too great a financial risk to withstand. Our lawyers and editors are mindful of these risks and the costs that can arise when legal challenges are asserted. We work closely with our authors to avoid or minimize legal risks while maintaining a firm and steadfast commitment to pursuing the fundamental truth and integrity of the books we publish.

Unlike in the marketplace, the role of public libraries is to make collection development decisions based on the relevance of a title to readers (in a viewpoint-neutral way). Unfortunately, many Americans do not understand that the First Amendment only applies to the role of government limiting or imposing speech or viewpoints and not to the publishing sector. According to a 2023 survey from the National Constitution Center, "Most Americans do not know that the First Amendment applies only to the government limiting rights. Just under one-quarter (24%) know that private workplace policies are not bound by the First Amendment." In trade publishing, the decision to publish or not is located within the editorial department and marketing department. In public libraries, the economic viability of a title is not relevant to its collection development policies.

Confusing consumer behavior with public library collection development policy is pernicious. Individual readers have the absolute right to not purchase titles or authors with whom they disagree. However, when individual readers believe that a library collection should reflect their own views and not offend their own comfort, they misunderstand the role of the public library as a limited public forum. The line between public and private can sometimes be blurred, especially in institutions that receive both federal funding and private donations. Public libraries, as government entities, must uphold First Amendment free speech rights even in the face of pressure from readers with a particular viewpoint.

Conclusion

The Supreme Court's decision in *Pico* affirmed the crucial role that schools play in nurturing free minds. This decision implicitly supports the idea that our schools should be free from censorship. The Miller Test continues to provide a framework for evaluating speech and obscenity, emphasizing the importance of contextual and community-based evaluations. This standard recognizes the value of diverse perspectives and the critical role that libraries and schools play in presenting a wide array of materials.

As a society, we must continue to support the principles of free thought, expression, and the exchange of ideas. Nowhere is this more important than in our public libraries and schools. These institutions are part of the basic civil infrastructure of knowledge, critical thinking, and democratic engagement. It is imperative that Congress continue to support public policy that opposes the arbitrary removal of books from public libraries and school libraries.

Beyond legal precedents and tests lies the culture of reading. Encouraging a robust culture of reading is more than an educational goal; it is a commitment to preserving the democratic ideals that our nation holds dear. As this Committee considers issues related to the First Amendment, we must remember the pivotal role of our public libraries and schools. Their integrity, independence, and commitment to fostering a culture of reading are integral to the health of our democracy. Protecting their ability to serve as centers of free thought and exploration ensures that future generations will continue to engage in the kind of informed and critical thinking that our nation needs.

Respectfully submitted,

John Chrastka,
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Written Testimony of Julia Garnett

To the United States Senate Judiciary Committee

Book Bans: Examining How Censorship Limits Liberty and Literature

September 9th, 2023

My name is Julia Garnett, and I am a seventeen-year-old high school student and activist from Tennessee. Thank you for the opportunity to submit this written testimony. It's important to include student's voices and opinions in these discussions on book banning because we are among those most affected by the disappearance of books from our libraries.

I would like to start with the fact that I have spent too many years of my life without representation- without meeting an openly gay person or even reading about someone who is like me. I have spent too many years of my life confused about why I didn't like any boys on the playground or why I needed to fake a crush on a boy to fit in with the people around me. Things have progressively improved since my elementary school years. However, it feels like a step backward every time a school board decides to ban a book from school libraries. We look back at history and see that book banning has always occurred at the lowest times in a governing body's past. Yet somehow, many in local communities and across the country turn to books to blame. They don't target just any books, though. They take aim at queer books, books dealing with mental health and suicide, books illustrating the harm of racism and portraying black people, and ultimately any book that they believe "incites division" or causes "controversy". The types of books that are challenged send a message to students. When a school board tries to ban a book, they are telling students that our pasts, our emotions, and our experiences are not valid and should not be discussed. As a queer student, this is very frustrating to witness. As the leader of my school's Gay-Straight Alliance and Young Women's Studies Clubs, it hurts my heart to look into the faces of my peers and see that we are all effectively losing access to much-needed representation. As an advocate for mental health, it is devastating to see LGBTQ+ books removed from our schools because of the number of queer students who already deal with mental health from the lack of acceptance that surrounds us. Additionally, we lose too many students each year to suicide. Books can be a lifesaving force for students, and yet, many parents, community members, and board members promote book banning. I will say that one of the best ways to encourage students to read a book is to ban it. The book *Lawn Boy* was removed from my school last year, and it had not been checked out of the library once the entire time that it sat on the shelf. However, after its removal, forty-seven students came to the library asking to check it out, and I couldn't have been more proud.

One of the more common book banning arguments states, "just go to the public library, or just buy the book for your kid". However, I have learned that this is a very privileged thing to say, and it most often comes from those who are living privileged lives. When I was in elementary school, my mom taught at a Title One school. Many students did not have the resources to visit a public library. For many students, the school library was the only way that they could even have a book in their home. Despite all of this, book banning members of my community continue to wage war against inclusive books.

As a witness to all of this, I cannot remain silent. I find myself pulled to board meetings even though it can be scary-even though I have to be walked to my car after the meeting ends to

ensure my safety. When I speak at school board meetings in defense of challenged books, the tension in the air is palpable. I can feel the glares, and I can hear the groans as I speak. My teachers are called “indoctrinators” and “groomers”. My librarians are verbally attacked when deciding to keep a book on the shelves. Some of my school board members fight like children, and these same members deem it necessary to read explicit passages out of context to the entire room during meetings. Articles are published in local newspapers with lists of books that should be challenged, and parents cry crocodile tears at the school board podium over books with black children. This should not be the reality for my community, but it is. Book banning has created a giant rift through the heart of my county.

To go along with this, I do believe that it is fear that drives these book bans. It is the fear of difference, the fear of acceptance, and the fear of change that fuels these book bans. However, as my current generation grows older, we are only going to continue to embody these traits. We are only going to keep fighting for change and acceptance, and we want a library selection that matches this. We will not sit down or stop demanding representation for the next generations. We want the representation in our libraries that our younger selves did not receive. Our hope is that our government will stand with us. Our hope is that legislation will be passed in order to stop book banning because, ultimately, it should be up to individual parents to decide what their child can and cannot read, and this decision should not take away access to books for the rest of the students in our schools. In the end, we need to put a stop to the conflict that book banning has introduced to my community and communities across the country. This is not a singular issue; this is a widespread attack on books and education. We cannot continue to allow the fear from small, clamorous groups to dictate what students can access in the library. As members of the Senate Judiciary Committee, you hold the positions to enact change, and my hope is that you will find the will to do so for the students (like me) across the country who are just wanting to read diverse books in their libraries.



Statement for the Record of

Human Rights First

On

U.S. Senate Committee on the Judiciary

"Book Bans: Examining How Censorship Limits Liberty and Literature"

September 12, 2023

I. About Human Rights First

Established in 1978, Human Rights First is an independent, non-profit organization that for more than four decades has pressed the United States to take a leading role in promoting and defending human rights. The organization's work includes advocacy and action to challenge authoritarianism, systemic injustice, and the antidemocratic extremist movement that represents an existential threat to our communities and our democracy. Efforts to protect the rights of Black and Brown communities as well as the LGBTQ+ community are central to this work.

II. Overview

Human Rights First is alarmed at the scale of educational censorship being implemented across the United States. Book bans have historically been used to oppress free speech and limit public education, especially on topics that promote dialogue around civil and human rights. The current book ban campaign is part of the far-right extremist movement's weaponization of disinformation targeting minority voices, experiences, and representation.

The struggle for free and public access to library services has been a cornerstone of American democracy since the early nineteenth century, even as that struggle was often marred by segregation and institutional oppression. The recent attacks on libraries and schools are the lineage of that oppression and a stain on the progress made by countless civil rights activists. We stand with the librarians, educators, parents, and advocates who are protecting our children's right to a full education.

III. Bans Part of Movement to Erase Black, Brown, and LGBTQ+ Rights

According to a report by Pen America, there were 2,532 instances of individual books being banned, including 1,648 unique book titles, between July 2021 to June 2022. The bans occurred in 138 school districts across 32 states. Of the 1,648 unique titles, 41 percent dealt with LGBTQ+ themes, and 40 percent featured prominent characters of color. Likewise, 21 percent of the titles directly address issues of race and racism. Collectively, the majority of unique titles under attack feature topics on LGBTQ+ representation, race, or racism.

The attack on books depicting race, LGBTQ+ diversity, and racism is directly linked to the movement's broader attack on civil and human rights in the education sector. Their campaign against curriculum and policies that create diverse and equitable learning environments has spread across the country, and includes discriminatory state legislation. Often coded as restrictions on diversity, equity, and inclusion or so-called 'Critical Race Theory', these attacks damage the rights of teachers, administrators, parents, and students.

IV. Book Bans Are an Authoritarian Tactic

The United States has a shameful history of banning books that address racism, discrimination, and sexual diversity. Often framed as an attack on 'indecent' or 'explicit' material, these campaigns, both historic and contemporary, are a veneer to erase diverse voices. Prior to the Civil War, books depicting the evils of enslavement were regularly censored. Like today's efforts, early book bans used claims of 'indecency' or 'explicit content' to target quintessential American literature. This led to state-sponsored book burnings, destroying works by Ernest

Hemmingway and Walt Whitman. Globally, book bans, and the destruction of books through systemic book burnings, were a tool of authoritarian regimes of the early twentieth century, including by Nazi Germany.
Today's campaign to rewrite history and erase specific communities through censorship is the same tactic used by authoritarian regimes and leads to oppressive and antidemocratic policies and legislation. PEN America found that 31 percent of book bans in the last six months of 2022 were connected to legislation passed in Florida, Utah, and Missouri. Legislation like Florida's 'Don't Say Gay' and 'Anti-Woke' bills have a chilling effect among educators and librarians and promote self-censorship out of fear of retaliation and retribution. These bills spread bigoted disinformation to generate paranoia, adversely impacting human and civil rights. This, too, is an historic authoritarian tactic, and one that we see as an imminent threat to our democracy.

V. Recommendations for Protecting Literary Freedom

Human Rights First supports federal and state efforts to protect educators and librarians working to safeguard literary freedom. The amendments to the Illinois Library System Act, which makes Illinois the first state to outlaw book bans, are an example of an important first step to this end. We likewise support other states' efforts, such as the resolution adopted by Michigan's State Board of Education that expresses concern with censorship. However, we recognize that widespread censorship efforts and book bans in states across the nation represent a direct and pervasive threat to our democracy as well as civil and human rights. Therefore, we recommend Congress:

- **Reject the Mainstreaming of Extremist Narratives and Disinformation in Education:** The antidemocratic far right's most effective weapon is disinformation and that extends to their promotion of book bans. The intent of book bans is to limit the ability of children and youth to learn about topics like racism, discrimination, and the history of equal rights. Members of Congress must challenge the use of dog-whistles and disinformation that obscures the discriminatory intent behind educational censorship.
- **Support Department of Education Efforts to Protect the Civil Rights of All Students:**
    - Encourage the Department of Education to fulfill the Administration's promise to create and fund a national "book ban coordinator," ensuring the Department's Office for Civil Rights is equipped to challenge censorship that violates students' rights to equal education.
    - Increase funding for the Department of Education's Office for Civil Rights, to enable them to effectively protect students and educators against discriminatory censorship.
    - Ensure that federal regulations and guidance regarding curriculum and school materials are accessible to districts, parents, librarians, and educators. This includes methods of redress for individuals and communities who have experienced discriminatory book bans.

- **Support Inclusive Education Policies and Reject Discriminatory Policies:**
    - Support policies inclusive of all communities, such as the Equality Act, especially those promoting more inclusive education, such as the Teaching Asian American Pacific History Act.
    - Oppose bigoted policies, such as those attacking the rights and representation of the LGBTQ+ community and Black and Brown communities, in libraries and in school curriculum.

NATIONAL EDUCATION ASSOCIATION

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September 11, 2023

Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Senator:

On behalf of the 3 million members of the National Education Association, who are devoted to teaching and nurturing students across America, we appreciate this opportunity to submit comments for the committee's September 12 hearing, "Book Bans: Examining How Censorship Limits Liberty and Literature."

Across the country, certain politicians and groups continue to distract and divide citizens by banning books, particularly books that represent marginalized and oppressed people, and imposing "gag orders" on educators who are committed to teaching the truth. Those who want to censor what students read and what educators teach are hoping that targeting inclusive curricula, stoking fears, and sowing discord in communities will bring them closer to their ultimate goal: discrediting and dismantling public education and public-school educators.

The PEN America Index of School Book Bans lists more than 2,500 instances of book bans across the country from June 2021-June 2022, affecting more than 1,600 titles. In its report, PEN America noted:

"Many Americans may conceive of challenges to books in schools in terms of reactive parents, or those simply concerned after thumbing through a paperback in their child's knapsack or hearing a surprising question about a novel raised by their child at the dinner table. However, the large majority of book bans underway today are not spontaneous, organic expressions of citizen concern. Rather, they reflect the work of a growing number of advocacy organizations that have made demanding censorship of certain books and ideas in schools part of their mission."

The report noted that banned books are most often those that look honestly at history and the difficult events that have shaped America, or tell stories of the struggle for self-acceptance in hostile or oppressive circumstances. The censored books include:

- *Maus,* by Art Spiegelman, a graphic novel depicting the experience of the author's father, a Holocaust survivor
- *Walk Two Moons,* by Sharon Creech, about a girl of Native-American heritage coping with the disappearance of her mother
- *The Bluest Eye*, by Nobel Laureate Toni Morrison, about a young African American girl's struggle to appreciate her humanity in a culture that devalues her
- *Separate is Never Equal: Sylvia Mendez and her Family's Fight for Desegregation,* by Duncan Tonatiuh, about a family's efforts to desegregate California schools

Students as well as educators bear the consequences of censorship: Just last month, the Cobb County school boarded voted 4-3, along party lines, to fire Georgia teacher Katie Rinderle because her fifth-grade students chose a book from her shelf called *My Shadow is Purple* for their morning "read-aloud." After a parent complained the next day, the principal summoned Rinderle to tell her the book was too divisive. Rinderle

predicts that teachers will increasingly censor themselves "in fear of not knowing where the invisible line will be drawn."

We cannot prepare young people to succeed in our diverse nation and interconnected world by removing books from library shelves and curricula and censoring what educators, based on their expertise and experience, teach. We prepare students for the future by planting the seeds for lifelong curiosity and growth, and nurturing the skills of discernment and reasoning. ***All students must be free to learn, free to read, and free to be who they are.***

We appreciate this committee's focus on the alarming rise in censorship. At the same time, we urge all elected leaders to focus on other issues that are crucial to the success of students, including ensuring that they have the individualized support they need, safeguarding the learning environment by keeping guns out of schools, and addressing educator shortages. If you join with parents and educators, we can support learning by seeing that students across our great nation—no matter their race, background, sexual orientation, or gender identity—have the resources, one-on-one attention, and well-rounded curricula they need and deserve.

Sincerely,



Marc Egan
Director of Government Relations
National Education Association

Senate Judiciary Committee
Hearing: Book Bans: Examining How Censorship Limits Liberty and Literature
September 12, 2023

Testimony of People For the American Way

People For the American Way works to inspire and mobilize community and cultural leaders to advance Truth, Justice and the American Way. We're convening courageous Americans, producing compelling media and organizing campaigns to defend our democracy from authoritarian threats and advance America's promise that everyone will enjoy freedom, safety and a vote that counts. Since our founding in the 1980s, we have advocated for the freedom to learn and to read and against censorship.

People For the American Way is pleased that the Senate Judiciary Committee is holding this hearing on how book bans and censorship limit liberty and literature. Although censorship efforts have never gone away, the number of such attempts over the past several years has "skyrocketed, going from sporadic individual attempts to organized campaigns" around the country. The American Library Association (ALA) reported more than 720 challenges targeting almost 1600 books in 2021, the most in twenty years of ALA record-keeping, with "nearly double" that number, over 1,200, in 2022.

Our research shows that right-wing activity, both by organized groups and politicians, is largely responsible for the recent increase in censorship, at both the state and local level. For right-wing groups and leaders promoting them, aggressive attacks on the freedom to learn have become both an end in themselves and a strategy for achieving larger political and electoral goals. This issue may thus play an important role in the 2023-24 election cycle. Multiple right-wing groups are recruiting activists to run for office and take over school boards, hoping that the energy generated by these fights will also translate into higher turnout that will boost right-wing candidates at all levels. National right-wing think tanks and political operatives moved to exploit parents' frustrations over uncertainties, school closings, and masking requirements during the spread of the COVID-19 pandemic. As we move into the post-pandemic period, in the name of defending students and protecting "parental rights," right-wing groups have fomented fear and anger among conservative parents and activists—and directed that anger against teachers and school board officials.

Seeking to maximize distrust of teachers and other public school officials, and thus further their long-term agenda of undermining support for public education, right-wing political operatives have generated a series of manufactured controversies to promote the false narrative that public school students are being "indoctrinated" by leftist educators promoting critical race theory, "cultural Marxism," "gender ideology," and general "wokeness."

Right-wing legislators and governors have used the manufactured moral panics to justify passage of legislation restricting the content of curricula, classroom discussion, and the availability in classrooms and libraries of books that grapple with questions of race, gender, sexuality, civil

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rights, American history, and more. In 2021, the supposed threat of critical race theory was used to justify legislation that restricts teaching about race and racism in American history—even banning specific books from classrooms. While public schools have long been culture-war battlegrounds for right-wing activists, new state legislation has given would-be censors far more power to disrupt schools and classrooms and put educators on the defensive.

These new censorship campaigns disproportionately target books by writers of color and LGBTQ+ authors on those topics. While restricting the freedom to read hurts all students, the harm falls most heavily on students who are denied opportunities to see themselves represented in the books they read. As Jonathan Friedman, director of PEN America's Free Expression and Education program, has said, "This is an orchestrated attack on books whose subjects only recently gained a foothold on school library shelves and in classrooms. We are witnessing the erase of topics that only recently represented progress toward inclusion." As PEN noted, targeted books include novels by prominent authors like Toni Morrison and biographies of Rosa Parks, Martin Luther King, Jr., Nelson Mandela, Sonia Sotomayor, and Neil deGrasse Tyson, and Malala Yousafzai. Censorship today, therefore, clearly aims to limit both liberty and literature.

People For and its members are actively working to combat censorship and book banning, and to promote the freedom to learn and to read, in communities across the country. Much of our work is being carried out through a project we formed earlier this year – Grandparents for Truth.

Grandparents For Truth is a voice against censorship and for the freedom to learn, mobilizing members who are grandparents, have grandparents, or know grandparents to join up and oppose book banning and censorship. Through on-the-ground rallies and petitions, as well as online organizing and activist trainings, Grandparents For Truth advocates for inclusive education reflecting the lived experiences of people with diverse identities, while helping members fight for truth at their local schools, school boards, and more. In just a few months, Grandparents for Truth has been active across the country, from Philadelphia and New Jersey to Temecula, California, and more such work is expected.

Grandparents are the perfect people to push back against the tide of censorship we're facing today. They've seen how censorship and book banning have played out as tools of authoritarianism in the past, and they have a stake in building the world their grandchildren will inherit. But it will take everyone to stand up to authoritarian assaults on education.

We welcome and support action by this Committee to investigate and report on the problem of censorship and book-banning and attacks on the freedom to learn. This hearing is an important start to that effort in the Senate this year. We urge the Committee to continue its work in this area, and pledge to cooperate with that work as it goes forward.

Mandy Wang

"你需要剪刀吗?" (Do you need scissors?)

During my first week of Kindergarten, I already felt comfortable speaking Mandarin with the other children. However, I was in a small American town called York. Here, nobody understood my first language and only spoke one called English.

Not long after, I was placed in an ESL class where I mastered my second language. I spent long afternoons constantly rewriting the alphabet until I could see them behind my eyelids when I closed my eyes. Every week over the summers, I would beg my parents to take me to the library for an hour to pick out 8 books, which I would spend the following week reading.

When I mastered English, I realized that I had not only mastered the language, but also adopted an alternative version of myself to fit in better. Rather than wearing my grandma's red knit sweaters which brought good luck, I dressed up in the trendiest clothes from Justice.

Once my new mask was stuck on, it took a lot of courage to eventually reveal my true self without the need of fitting in.

I joined the Panther Anti-Racist Union (PARU) to immerse myself in a supportive community and to find my true identity. I was mainly involved in fighting against this previous year's book ban, which included removing the book *Push* by Sapphire off the library shelves as it was deemed as pornographic and violent.

Mr. Hodge, our club advisor, immediately arranged a plan for us to take action; we implemented non-violent practices: peaceful protests, civil meetings with the school board, and attending workshops at Dr. Bernice King's King Center. I posted nearly daily on PARU's Instagram account and attended nearly every school board meeting. Every morning before the school day, I would be holding protest signs in front of the school. After four months, PARU was able to overturn the book ban while asking for the Board to create a more equitable policy. This new policy made it so that parents would only be able to prevent their child from reading selected books, which would not affect other students' reading opportunities. This was a celebratory moment, one that also defined the importance of student voices.

My senior year of high school has begun, and I am now co-president of PARU. While our club is well-known for its effective activism, we also pride ourselves in collaboration and education. I personally have been involved in a documentary with another group of students from South Carolina, called DAYLO, who have fought their own battle against book bans. Recently I spoke at a panel hosted by PEN America to assist authors in bringing more awareness to banned books.

With education, our club has organized book drives, which have been highly successful; within 30 minutes of our first book drive, all the books we received were already given back to the community.

While I have highlighted the successes PARU has had, it is not to say that there are still many battles against book bans raging across the country. PARU's success is only a small piece of the overall picture–the overall goal. At a state level and a federal level, more effective change and immediate action can be taken.

As a Kindergartener, I was just starting to learn English and did not comprehend the cruciality of exposing my classmates to my Chinese culture. Now, I know that exposure to worldwide cultures, different foods, languages, and important histories is what will reduce the injustices we face. It has been America's hope since its beginning to instill equality. This is a step in that direction. I have used my voice, and spoken my truth; it is my hope you will act upon it. Thank you for your time.

Statement for the Record

of

Neal McCluskey

Director, Center for Educational Freedom

Cato Institute

for the

U.S. Senate Committee on the Judiciary

Hearing on Book Bans: Examining How Censorship Limits Liberty and Literature

September 12, 2023

Government banning books is an assault on the freedom of speech and, hence, liberty. But so is government forcing people to pay for someone else's speech, including speech that they find abhorrent. Even worse is government imposing that speech on essentially captive audiences of children.

If the topic of this hearing is book banning as commonly understood—government forcibly prohibiting the publication or reading of books—it is addressing an existential threat to liberty. But if it is addressing what is often called "banning" —public schools or libraries removing books from shelves, or public schools removing titles from recommended or required class readings—this is a very different topic. The violation of liberty occurs with the existence of public libraries and schools, institutions for which all, diverse people must pay, but unless librarians or other authorities select books at random, or purchase every book ever published, *must* elevate the speech and values of some over that of others.

The fundamental liberty violation of government picking and choosing "winning" and "losing" books is more acute in public schools than public libraries. Both, to be sure, involve compelled support of speech by government, but schools are tasked with directly shaping children, in a system of compelled attendance, whereas no one is required to obtain what public libraries offer. Public libraries tend to offer more choice for users than public school libraries, and certainly than public school readings lists and assignments.[1]

For these reasons, and because my area of expertise is education, my comments focus on public schools.

Neutrality in Education is Impossible

There is no question that public schooling—education in government-funded and run schools—requires that government decide what ideas are taught and made available in schools. This can be done in different ways—state education officials, school boards, librarians, or teachers making final decisions—but all are government entities or employees. This inherently empowers one

group to impose on others, whether it is a state government or school board majority, or employees such as librarians. It also inherently involves elevating some deeply held values over others, whether that is deciding to remove an LGBTQ-themed book from a library because it violates the religious beliefs of some district families, or keeping it with the goal of promoting an accepting society. Indeed, the very idea of "neutral" education—education that favors no idea or worldview—is not itself neutral. Elevating "neutrality" over worldviews that believe that some things are inherently good and others inherently bad, and that children should be taught what those are, is a values-driven decision, concluding that neutrality more valuable than teaching some things are right and others wrong.

Public Schooling Forces Conflict and Government Bias

Conflicts over what books are stocked or taught in public schools are a consequence of the impossibility of neutrality in education, and public schooling requires government to decide what books are or are not assigned to students or stocked in libraries. These have ballooned over the last few years. The Cato Institute's Public Schooling Battle Map, which I maintain, has tracked values- and identity-based conflicts in public schools consistently since 2012, including a specific "reading material" category. That category involves conflicts about library books and assigned or recommended readings. In 2012 we recorded 27 battles under that heading. In 2022, we recorded 131.[2]

There has clearly been a spike in such conflicts. But they are also not new, testifying to the inherent problem of public schooling requiring government to come down for or against specific books.

Public schooling has fostered reading battles since essentially its earliest days in the late-1830s. Indeed, two waves of violence shook neighborhoods around Philadelphia in 1844 over whose version of the Bible—Protestant or Roman Catholic—students would read in public schools. By the time the Philadelphia Bible Riots had ended, tens of people were dead, hundreds injured, and millions of dollars in property damages inflicted, including the destruction of several churches.[3]

Fast forward to the 1970s and Kanawha County, West Virginia, where the "textbook wars" also resulted in bloodshed. There, conservative and progressive communities in the district battled over the appropriateness of hundreds of texts proposed for adoption by the district, including *The Autobiography of Malcolm X* and George Orwell's *Animal Farm*. It pitted residents with conflicting political and moral views against each other to determine what every student would or would not be exposed to in the public schools for which all had to pay. The conflict included significant violence, including shootings and bombings of the board of education office and several school buildings.[4]

Book "banning" efforts in public schools are, of course, not restricted to conservatives, though conservatives have driven more challenges to books over the last few years than liberals. *To Kill a Mockingbird*, for instance, has been a repeated target for removal from readings lists. In 2022, it was removed from the ninth grade required reading list in the Mukilteo School District in Washington State. Some people found its repeated use of the N-word unacceptable, and it has been accused of having a "white savior" theme.[5] In 2020, the Burbank Unified School District in

California prohibited teachers from using *To Kill a Mockingbird*, *The Adventures of Huckleberry Finn*, and other books for those and other reasons.[6]

There is no clear line between educational and enlightening, offensive and degrading. But public schooling requires that government draw one anyway.

Can Neutrality in Readings be Achieved?

Though neutrality is not actually neutral, is it possible for public schools to have unbiased reading assignments and library collections? Should they?

The latter question is crucial and contested. In *Island Trees v. Pico* (1982), the U.S. Supreme Court grappled—unsuccessfully—with public schooling and library holdings.[7] "Unsuccessfully," because the Court was unable to attain majority agreement on the function of public school libraries vis-à-vis the First Amendment, and issued a ruling that presented a muddle concerning democratic control of education. The Court plurality argued that school boards can generally enforce "community values," but maybe not in libraries, which serve a special First Amendment function of enabling students to freely choose among diverse perspectives. But a majority did not support that view, and the only concrete decision was to return the case, in which the Island Trees school board had removed several books from district libraries, to a lower court for trial rather than the summary judgement in favor of the board issued in District Court.

Research by professor Kirsten Slungaard Mumma suggests that district library book acquisitions are influenced by community political majorities, with greater voting margins for Republicans correlating with less likelihood to stock liberal titles and greater likelihood to stock conservative..[8] Which should be expected: School board members, superintendents, and librarians are human beings, and almost certainly would prefer to satisfy members of the public rather than spark disputes. This is supported by a 2022 *School Library Journal* poll that found 33 percent of librarians reporting that "possible reaction from parents" caused them to not purchase a book, and 22 percent worrying about "possible reaction from administrators/school board" and "from the community."[9]

Of course, this is not neutral. But it is consistent with basic democracy as long as it reflects the majority will, and public schooling is often lionized as a quintessentially democratic institution.[10] If it is intended to be truly democratic, it should reflect majority will.

Of course, that is a problem for the political minority. They might well have to pay taxes, and de facto attend, schools which exclude their views. But were librarians or superintendents to override decisions supported by the political majority, a district would move from democratic control to rule by expert—an inherently undemocratic system and no less a threat to liberty and equality than majority rule. And experts, like all people, have biases of their own, and may well act on them unconsciously if not consciously. This is especially problematic when vetting what books are "worthy" of inclusion in libraries with finite space, especially if the experts tend to have a bias in a particular direction. Such a bias seems to be the case for librarians, at least based on limited data. A 2023 analysis of partisan political contributions found that 91 percent of

"library directors" gave to Democrats, versus 9 percent to Republicans, and 88 percent of "library technicians" gave to Democrats, versus 12 percent to Republicans.[11]

Public Schooling Is the Problem, Choice the Solution

Government truly banning books—forcibly prohibiting the publication or reading of books—would be a clear and existential threat to liberty. But removing books—or not purchasing them to begin with—from public schools is not the same thing. Public schools are inherently about shaping young minds, and both their mission and the inescapable reality of finite space demand that public school employees or officials make decisions about what books enter and are used in the schools. Of course, public schools are government schools, rendering public schooling itself the root violation of liberty because it necessitates government deciding what books to "ban."

To solve the problem, government must get out of the funding and running schools and move toward allowing funds to follow students to schools that families choose. Immediately, that would remove it from the position of having to decide what books children will read or have access to in school libraries. This is what we are seeing in states across the country, with numerous universal school choice programs enacted in just the last year, including in Iowa, Oklahoma, Utah, and Florida.

Constitutionally, the federal government has no authority to promote choice in the states, but it can fund choice in three instances: in Washington, D.C., for military families, and on Native American reservations. Congress would do well to examine the possibility of expanding choice in those areas. Otherwise, its role is to leave states and the people alone to determine what their education policies will be.

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[1] According to the most recent federal data, the average public school library schools 2,188 books, while the average public library contains 75,839 books and serial volumes. National Center for Education Statistics, *Digest of Education Statistics*, Tables 701.30 and 701.60.
[2] Public Schooling Battle Map, https://www.cato.org/public-schooling-battle-map.
[3] Vincent P. Lannie and Bernard C. Diethorn, "For the Honor and the Glory of God: The Philadelphia Bible riots of 1840," *History of Education Quarterly*, Vol. 8, No. 1, Spring 1968. Note that the date in the title was corrected to "1844" in the subsequent issue, Vol. 8. No. 2, Summer 1968.
[4] "Books and Beliefs: the Kanawha County Textbook Textbook Wars," American Public Media, https://americanradioworks.publicradio.org/features/textbooks/books_and_beliefs.html.
[5] David Gutman, "Mukilteo School District removes 'To Kill a Mockingbird' from required reading list," The Seattle Times, January 25, 2022, https://www.seattletimes.com/seattle-news/education/mukilteo-school-district-removes-to-kill-a-mockingbird-from-required-reading-list/#:~:text=The%20Mukilteo%20School%20Board%20voted,the%20classic%20novel%20to%20students.
[6] Dorany Pineda, "In Burbank schools, a book-banning debate over how to teach antiracism," Los Angeles Times, November 12, 2020, https://www.latimes.com/entertainment-arts/books/story/2020-11-12/burbank-unified-challenges-books-including-to-kill-a-mockingbird.
[7] Board of Education, Island Trees Union Free School District No. 26 v. Pico, 457 U.S. 853 (1982).
[8] Kristen Slungaard Mumma, "Politics and Children's Books: Evidence from School Library Collections," *EdWorkingPaper No. 22-693*, Annenberg, Brown University, December 2022, pp. 12–13.
[9]. Kara Yorio, "Censorship Attempts Will Have a Long-Lasting Impact on School Library Collections, SLJ Survey Shows," *School Library Journal*, September 8, 2022.

[10] See, for instance, Diane Ravitch, *The Death and Life of the Great American School System: How Testing and Choice are Undermining Education*, (New York, NY: Basic Books, 2010); and Benjamin R. Barber, "Public Schooling: Education for Democracy," in *The Public Purpose of Education and Schooling*, John I. Goodlad and Timothy J. McMannon, eds., (San Francisco, CA: Jossey-Bass, 1997).

[11]. Kathy Morris, "Democratic versus Republican Jobs: Is Your Job Red or Blue?" Zippia.com, February 2, 2023.

Libraries face increased attempts to ban books

As right-wing organizations mobilize to restrict access to titles they consider offensive, librarians in Rhode Island and around the country are finding themselves on the front lines of First Amendment freedoms

By Amanda Milkovits Boston Globe Staff,
Updated September 23, 2022, 5:49 p.m.



Amanda Darrow, director of youth, family and education programs at the Utah Pride Center, poses with books that have been the subject of complaints from parents in recent weeks on Thursday, Dec. 16, 2021.RICK BOWMER/ASSOCIATED PRESS

WESTERLY, R.I. -- Like many school librarians, Marianne Mirando could see the wave rolling across the US last year. It was only a matter of time before it hit Westerly High School.

So when a man who didn't have children in the school demanded the removal of "Gender Queer: A Memoir" from the high school library late last year, Mirando and the school administration were ready. They met with Robert J. Chiaradio Jr., a right-wing activist who alleged the book depicted pornography and pedophilia, and stood firm on the book's merits as a comic-book style novel detailing the author's experience exploring gender and sexuality.

Chiaradio complained to the school committee -- the chairwoman was his sister -- and the committee sided with the school. He later filed a criminal complaint with the Westerly Police, arguing unsuccessfully that "Gender Queer" and two other books violated federal and state obscenity laws.

In her 24 years as a librarian, Mirando said she hasn't experienced a time like this. "I believe very strongly in a student's right to read and freedom to access information," she told the Globe.

But recently, right-wing groups have mobilized to challenge books more often than ever, urging parents to push to have books removed from school and public libraries. The books targeted are often award-winning titles written by or featuring stories about people of color, which the activists claim are about "Critical Race Theory" or "divisive," or they have LGBTQ characters and themes, which activists call "pornographic" or "obscene."

According to the First Amendment Encyclopedia by the Free Speech Center at Middle Tennessee University, "Book banning, a form of censorship, occurs when private individuals, government officials, or organizations remove books from libraries, school reading lists, or bookstore shelves because they object to their content, ideas, or themes."

"The unprecedented number of challenges we're seeing already this year reflects coordinated, national efforts to silence marginalized or historically underrepresented voices and deprive all of us – young people, in particular – of the chance to explore a world beyond the confines of personal experience," ALA President Lessa Kanani'opua Pelayo-Lozada said in a statement.

"Efforts to censor entire categories of books reflecting certain voices and views shows that the moral panic isn't about kids: it's about politics," she said.

“Organizations with a political agenda are spreading lists of books they don’t like.”

According to data released this month by the American Library Association, in 2021 the number of attempts to ban or restrict library resources in schools, universities and public libraries was the highest the ALA has recorded in its 20 years of data-gathering. And this year it is expected to be as high -- or higher.

From January to August of this year, the ALA documented 681 attempts to ban or restrict library resources, targeting 1,651 titles. Last year, there were 729 attempts to censor library resources, targeting 1,597 books.

The most-banned authors include winners of the Nobel Prize in Literature, the National Book Award for Young People’s Literature, the Booker Prize, the Newbery Award, the Caldecott Medal, the Eisner Award, the PEN/Faulkner Award for Fiction, the NAACP Image Award, and the GLAAD Award for Media Representation. “Gender Queer: A Memoir,” written and illustrated by Maia Kobabe, which won an Alex Award from the American Library Association for having “special appeal to young adults, ages 12 through 18,” among other awards, is the most challenged and banned book.

While those seeking to ban books are vocal, they are a minority, according to polling by the ALA. The majority of voters across party lines oppose efforts to remove books from public libraries.

Three-quarters of parents of public-school children express a high degree of confidence in school librarians to make good decisions about which books to make available to children, according to the ALA, and when asked about specific types of books that have been a focus of local debates, large majorities say for each that they should be available in school libraries on an age-appropriate basis.

The rise in battles over books has led school librarians across Rhode Island to develop policies on how to deal with challenges, said Joan Eldridge Mouradjian, president of School Librarians of Rhode Island and a librarian at Narragansett Pier Middle School.

In Westerly, for example, a person requesting to remove a book from a school library must fill out a five-page form that requires them to explain in detail their concerns, why they believe the material is inappropriate, whether they’ve read the entire book, and cite sources that agree with their opinion, among other questions. A committee that includes a teacher, parent of a student in

school, certified library specialist, and principal or designee will read the book, evaluate the information, and render a decision.

Other libraries have similar policies, all intended to lay out careful procedures that evaluate whether books should be considered for removal. Pen America, a nonprofit that advocates for freedom of expression, has a tip sheet for librarians facing harassment.

"Of course, if a parent doesn't want their children to read a book, that's their right," Mouradjian said, "but they can't take it off the shelves for other children."

PEN America has identified at least 50 groups involved in pushing for book bans at the national, state, or local levels. Of the national groups, Moms for Liberty, formed in 2021, has spread most broadly, with over 200 local chapters identified on their website.

According to PEN America, the groups share lists of books to challenge and employ tactics such as swarming school board meetings, using inflammatory language about "grooming" and "pornography," and file criminal complaints against school officials, teachers, and librarians.

Mirando worries for new librarians, who may hesitate to purchase a book because they don't want backlash and fear they won't be supported by their school community. That "soft censorship" could just as easily keep books off shelves as the more-formal challenges.

In Rhode Island, Pawtucket school officials removed "Fun Home," by Alison Bechdel, in January after the parent of a freshman at the Jacqueline M. Walsh School for the Performing and Visual Arts said he found the book, a National Book Critics Circle Award finalist, objectionable.

A recent challenge in North Kingstown came from the tiny Rhode Island chapter of the Independent Women's Forum. The IWF, with its associates Independent Women's Network and political advocacy arm, the Independent Women's Voice, are right-wing nonprofits that describe themselves as women's organizations advancing policies that "enhance people's freedom, opportunities, and well-being."

However, the Center for Media and Democracy calls the IWF "an anti-feminist organization predominantly funded by right-wing foundations," including the Koch brothers. An investigation by The Intercept found the

IWF received millions of dollars from dark-money groups advancing conservative control of the courts.

Nicole Solas of South Kingstown, the Rhode Island chapter leader and a senior fellow at the IWF's Education Freedom Center, led a small, vocal, and ultimately unsuccessful effort to have "Gender Queer" removed from the North Kingstown High School Library, though she does not have a child at the school. When she failed, she went to the State Police to file a complaint against the high school librarian, principal, and school committee chairman for having a book with "pornography."

"I don't want 18+ books with pornography in school libraries. It's very simple," Solas said in a text message to the Globe Monday, after hosting an IWF forum on "Gender Ideology in Schools," where she claimed that educators were indoctrinating children. "There's a big difference between thinking it shouldn't be shown to children in public school and calling for it to be banned. That difference is sensationalization [sic] that misleads the public."

But the executive director for the Rhode Island chapter of the American Civil Liberties Union says that's exactly what book banning is.

"A book ban very simply is removing a book from a library based on its content so it cannot be obtained by members of the public," said Steven Brown. "I think its very unfortunate that librarians have to bear the brunt of these cultural wars."

"It's one thing for an individual to control what their own children read, but unconscionable for people to try to dictate what other people's children read. It runs directly counter to what an educational system should be," he added

According to Brian Hodge, spokesman for Attorney General Peter F. Neronha, child pornography would have to depict "a real, actual child," as opposed to an illustration, as is the case in "Gender Queer." And in order to be considered obscene, prosecutors would have to determine "that there is absolutely no serious artistic or literary merit to the material." A book's availability in legitimate book stores and recognition in literary circles strongly undercuts arguments about obscenity, he noted.

For the complaint against "Gender Queer," the state police and attorney general's office concluded that state criminal child pornography and obscenity laws "plainly did not apply," said Hodge.

The attorney general believes that it is up to parents, school administrators, and school committees to determine whether a book should remain on the shelves of a school library and who should be able to access it, Hodge said in a statement.

“And certainly, it is not a priority of this office to bring criminal charges against school librarians based on a disagreement regarding what should appear on high school library shelves,” Hodge added.

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Fifth Circuit
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No. 23-30445

STATE OF MISSOURI; STATE OF LOUISIANA; AARON KHERIATY; MARTIN KULLDORFF; JIM HOFT; JAYANTA BHATTACHARYA; JILL HINES,

Plaintiffs—Appellees,

versus

JOSEPH R. BIDEN, JR.; VIVEK H. MURTHY; XAVIER BECERRA; DEPARTMENT OF HEALTH & HUMAN SERVICES; ANTHONY FAUCI; ET AL.,

Defendants—Appellants.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:22-CV-1213

Before CLEMENT, ELROD, and WILLETT, *Circuit Judges*.

PER CURIAM:

A group of social-media users and two states allege that numerous federal officials coerced social-media platforms into censoring certain social-media content, in violation of the First Amendment. We agree, but only as to some of those officials. So, we AFFIRM in part, REVERSE in part, VACATE the injunction in part, and MODIFY the injunction in part.

I.

For the last few years—at least since the 2020 presidential transition—a group of federal officials has been in regular contact with nearly every major American social-media company about the spread of "misinformation" on their platforms. In their concern, those officials—hailing from the White House, the CDC, the FBI, and a few other agencies—urged the platforms to remove disfavored content and accounts from their sites. And, the platforms seemingly complied. They gave the officials access to an expedited reporting system, downgraded or removed flagged posts, and deplatformed users. The platforms also changed their internal policies to capture more flagged content and sent steady reports on their moderation activities to the officials. That went on through the COVID-19 pandemic, the 2022 congressional election, and continues to this day.

Enter this lawsuit. The Plaintiffs—three doctors, a news website, a healthcare activist, and two states[1]—had posts and stories removed or downgraded by the platforms. Their content touched on a host of divisive topics like the COVID-19 lab-leak theory, pandemic lockdowns, vaccine side-effects, election fraud, and the Hunter Biden laptop story. The Plaintiffs maintain that although the platforms stifled their speech, the government officials were the ones pulling the strings—they "coerced, threatened, and pressured [the] social-media platforms to censor [them]" through private

[1] Specifically, the Plaintiffs are (1) Jayanta Bhattacharya and Martin Kulldorff, two epidemiologists who co-wrote the Great Barrington Declaration, an article criticizing COVID-19 lockdowns; (2) Jill Hines, an activist who spearheaded "Reopen Louisiana"; (3) Aaron Kheriaty, a psychiatrist who opposed lockdowns and vaccine mandates; (4) Jim Hoft, the owner of the Gateway Pundit, a once-deplatformed news site; and (5) Missouri and Louisiana, who assert their sovereign and quasi-sovereign interests in protecting their citizens and the free flow of information. Bhattacharya, Kulldorff, Hines, Kheriaty, and Hoft, collectively, are referred to herein as the "Individual Plaintiffs." Missouri and Louisiana, together, are referred to as the "State Plaintiffs."

communications and legal threats. So, they sued the officials[2] for First Amendment violations and asked the district court to enjoin the officials' conduct. In response, the officials argued that they only "sought to mitigate the hazards of online misinformation" by "calling attention to content" that violated the "platforms' policies," a form of permissible government speech.

The district court agreed with the Plaintiffs and granted preliminary injunctive relief. In reaching that decision, it reviewed the conduct of several federal offices, but only enjoined the White House, the Surgeon General, the CDC, the FBI, the National Institute of Allergy and Infectious Diseases (NIAID), the Cybersecurity and Infrastructure Security Agency (CISA), and the Department of State. We briefly review—per the district court's order and the record—those officials' conduct.

A.

Considering their close cooperation and the ministerial ecosystem, we take the White House and the Surgeon General's office together. Officials from both offices began communicating with social media companies—

[2] The defendant-officials include (1) the President; (2) his Press Secretary; (3) the Surgeon General; (4) the Department of Health and Human Services; (5) the HHS's Director; (6) Anthony Fauci in his capacity as the Director of the National Institute of Allergy and Infectious Diseases; (7) the NIAID; (8) the Centers for Disease Control; (9) the CDC's Digital Media Chief; (10) the Census Bureau; (11) the Senior Advisor for Communications at the Census Bureau; (12) the Department of Commerce; (13) the Secretary of the Department of Homeland Security; (14) the Senior Counselor to the Secretary of the DHS; (15) the DHS; (16) the Cybersecurity and Infrastructure Security Agency; (17) the Director of CISA; (18) the Department of Justice; (19) the Federal Bureau of Investigation; (20) a special agent of the FBI; (21) a section chief of the FBI; (22) the Food and Drug Administration; (23) the Director of Social Media at the FDA; (24) the Department of State; (25) the Department of Treasury; (26) the Department of Commerce; and (27) the Election Assistance Commission. The Plaintiffs also sued a host of various advisors, officials, and deputies in the White House, the FDA, the CDC, the Census Bureau, the HHS, and CISA. Note that some of these officials were not enjoined and, therefore, are not mentioned again in this opinion.

including Facebook, Twitter (now known as "X"), YouTube, and Google—in early 2021. From the outset, that came with requests to take down flagged content. In one email, a White House official told a platform to take a post down "ASAP," and instructed it to "keep an eye out for tweets that fall in this same [] genre" so that they could be removed, too. In another, an official told a platform to "remove [an] account immediately"—he could not "stress the degree to which this needs to be resolved immediately." Often, those requests for removal were met.

But, the White House officials did not only flag content. Later that year, they started monitoring the platforms' moderation activities, too. In that vein, the officials asked for—and received—frequent updates from the platforms. Those updates revealed, however, that the platforms' policies were not clear-cut and did not always lead to content being demoted. So, the White House pressed the platforms. For example, one White House official demanded more details and data on Facebook's internal policies at least twelve times, including to ask what was being done to curtail "dubious" or "sensational" content, what "interventions" were being taken, what "measurable impact" the platforms' moderation policies had, "how much content [was] being demoted," and what "misinformation" was not being downgraded. In one instance, that official lamented that flagging did not "historically mean[] that [a post] was removed." In another, the same official told a platform that they had "been asking [] pretty directly, over a series of conversations" for "what actions [the platform has] been taking to mitigate" vaccine hesitancy, to end the platform's "shell game," and that they were "gravely concerned" the platform was "one of the top drivers of vaccine hesitancy." Another time, an official asked why a flagged post was "still up" as it had "gotten pretty far." The official queried "how does something like that happen," and maintained that "I don't think our position is that you should remove vaccine hesitant stuff," but "slowing it down seems

reasonable." Always, the officials asked for more data and stronger "intervention[s]."

From the beginning, the platforms cooperated with the White House. One company made an employee "available on a regular basis," and another gave the officials access to special tools like a "Partner Support Portal" which "ensure[d]" that their requests were "prioritized automatically." They all attended regular meetings. But, once White House officials began to demand more from the platforms, they seemingly stepped-up their efforts to appease the officials. When there was confusion, the platforms would call to "clear up" any "misunderstanding[s]" and provide data detailing their moderation activities. When there was doubt, they met with the officials, tried to "partner" with them, and assured them that they were actively trying to "remove the most harmful COVID-19 misleading information." At times, their responses bordered on capitulation. One platform employee, when pressed about not "level[ing]" with the White House, told an official that he would "continue to do it to the best of [his] ability, and [he will] expect [the official] to hold [him] accountable." Similarly, that platform told the Surgeon General that "[w]e're [] committed to addressing the [] misinformation that you've called on us to address." The platforms were apparently eager to stay in the officials' good graces. For example, in an effort to get ahead of a negative news story, Facebook preemptively reached out to the White House officials to tell them that the story "doesn't accurately represent the problem or the solutions we have put in place."

The officials were often unsatisfied. They continued to press the platforms on the topic of misinformation throughout 2021, especially when they seemingly veered from the officials' preferred course. When Facebook did not take a prominent pundit's "popular post[]" down, a White House official asked "what good is" the reporting system, and signed off with "last time we did this dance, it ended in an insurrection." In another message, an

official sent Facebook a Washington Post article detailing the platform's alleged failures to limit misinformation with the statement "[y]ou are hiding the ball." A day later, a second official replied that they felt Facebook was not "trying to solve the problem" and the White House was "[i]nternally . . . considering our options on what to do about it." In another instance, an official—demanding "assurances" that a platform was taking action—likened the platform's alleged inaction to the 2020 election, which it "helped increase skepticism in, and an insurrection which was plotted, in large part, on your platform."

To ensure that problematic content was being taken down, the officials—via meetings and emails—pressed the platforms to change their moderation policies. For example, one official emailed Facebook a document recommending changes to the platform's internal policies, including to its deplatforming and downgrading systems, with the note that "this is circulating around the building and informing thinking." In another instance, the Surgeon General asked the platforms to take part in an "all-of-society" approach to COVID by implementing stronger misinformation "monitoring" programs, redesigning their algorithms to "avoid amplifying misinformation," targeting "repeat offenders," "[a]mplify[ing] communications from trusted . . . experts," and "[e]valuat[ing] the effectiveness of internal policies."

The platforms apparently yielded. They not only continued to take down content the officials flagged, and provided requested data to the White House, but they also changed their moderation policies expressly in accordance with the officials' wishes. For example, one platform said it knew its "position on [misinformation] continues to be a particular concern" for the White House, and said it was "making a number of changes" to capture and downgrade a "broader set" of flagged content. The platform noted that, in line with the officials' requests, it would "make sure that these additional

[changes] show results—the stronger demotions in particular should deliver real impact." Another time, a platform represented that it was going to change its moderation policies and activities to fit with express guidance from the CDC and other federal officials. Similarly, one platform noted that it was taking down flagged content which seemingly was not barred under previous iterations of its moderation policy.

Relatedly, the platforms enacted several changes that coincided with the officials' aims shortly after meeting with them. For example, one platform sent out a post-meeting list of "commitments" including a policy "change[]" "focused on reducing the virality" of anti-vaccine content even when it "does not contain actionable misinformation." On another occasion, one platform listed "policy updates . . . regarding repeat misinformation" after meeting with the Surgeon General's office and signed off that "[w]e think there's considerably more we can do in partnership with you and your teams to drive behavior."

Even when the platforms did not expressly adopt changes, though, they removed flagged content that did not run afoul of their policies. For example, one email from Facebook stated that although a group of posts did not "violate our community standards," it "should have demoted them before they went viral." In another instance, Facebook recognized that a popular video did not qualify for removal under its policies but promised that it was being "labeled" and "demoted" anyway after the officials flagged it.

At the same time, the platforms often boosted the officials' activities at their request. For example, for a vaccine "roll out," the officials shared "what [t]he admin's plans are" and "what we're seeing as the biggest headwinds" that the platforms could help with. The platforms "welcome[d] the opportunity" to lend a hand. Similarly, when a COVID vaccine was halted, the White House asked a platform to—through

"hard . . . intervention[s]" and "algorithmic amplification"—"make sure that a favorable review reaches as many people" as possible to stem the spread of alleged misinformation. The officials also asked for labeling of posts and a 24-hour "report-back" period to monitor the public's response. Again, the platforms obliged—they were "keen to amplify any messaging you want us to project," *i.e.*, "the right messages." Another time, a platform told the White House it was "eager" to help with vaccine efforts, including by "amplify[ing]" content. Similarly, a few months later, after the White House shared some of the "administration's plans" for vaccines in an industry meeting, Facebook reiterated that it was "committed to the effort of amplifying the rollout of [those] vaccines."

Still, White House officials felt the platforms were not doing enough. One told a platform that it "remain[ed] concerned" that the platform was encouraging vaccine hesitancy, which was a "concern that is shared at the highest (and I mean highest) levels of the [White House]." So, the official asked for the platform's "road map to improvement" and said it would be "good to have from you all . . . a deeper dive on [misinformation] reduction." Another time, the official responded to a moderation report by flagging a user's account and saying it is "[h]ard to take any of this seriously when you're actively promoting anti-vaccine pages." The platform subsequently "removed" the account "entirely" from its site, detailed new changes to the company's moderation policies, and told the official that "[w]e clearly still have work to do." The official responded that "removing bad information" is "one of the easy, low-bar things you guys [can] do to make people like me think you're taking action." The official emphasized that other platforms had "done pretty well" at demoting non-sanctioned information, and said "I don't know why you guys can't figure this out."

The officials' frustrations reached a boiling point in July of 2021. That month, in a joint press conference with the Surgeon General's office, the

White House Press Secretary said that the White House "expect[s] more" from the platforms, including that they "consistently take action against misinformation" and "operate with greater transparency and accountability." Specifically, the White House called on platforms to adopt "proposed changes," including limiting the reach of "misinformation," creating a "robust enforcement strategy," taking "faster action" because they were taking "too long," and amplifying "quality information." The Press Secretary said that the White House "engag[es] with [the platforms] regularly and they certainly understand what our asks are." She also expressly noted that several accounts, despite being flagged by the White House, "remain active" on a few platforms.

The Surgeon General also spoke at the press conference. He said the platforms were "one of the biggest obstacles" to controlling the COVID pandemic because they had "enabled misinformation to poison" public discourse and "have extraordinary reach." He labeled social-media-based misinformation an "urgent public health threat[]" that was "literally costing . . . lives." He asked social-media companies to "operate with greater transparency and accountability," "monitor misinformation more closely," and "consistently take action against misinformation super-spreaders on their platforms." The Surgeon General contemporaneously issued a public advisory "calling out social media platforms" and saying they "have a role to play to improve [] health outcomes." The next day, President Biden said that the platforms were "killing people" by not acting on misinformation. Then, a few days later, a White House official said they were "reviewing" the legal liability of platforms—noting "the president speak[s] very aggressively about" that—because "they should be held accountable."

The platforms responded with total compliance. Their answer was four-fold. First, they capitulated to the officials' allegations. The day after the President spoke, Facebook asked what it could do to "get back to a good

place" with the White House. It sought to "better understand . . . what the White House expects from us on misinformation going forward." Second, the platforms changed their internal policies. Facebook reached out to see "how we can be more transparent," comply with the officials' requests, and "deescalate" any tension. Others fell in line, too—YouTube and Google told an official that they were "working on [it]" and relayed the "steps they are currently taking" to do better. A few days later, Facebook told the Surgeon General that "[w]e hear your call for us to do more," and wanted to "make sure [he] saw the steps [it took]" to "adjust policies on what we are removing with respect to misinformation," including "expand[ing] the group of false claims" that it removes. That included the officials' "specific recommendations for improvement," and the platform "want[ed] to make sure to keep [the Surgeon General] informed of [its] work on each."

Third, the platforms began taking down content and deplatforming users they had not previously targeted. For example, Facebook started removing information posted by the "disinfo dozen"—a group of influencers identified as problematic by the White House—despite earlier representations that those users were not in violation of their policies. In general, the platforms had pushed back against deplatforming users in the past, but that changed. Facebook also made other pages that "had not yet met their removal thresholds[] more difficult to find on our platform," and promised to send updates and take more action. A month later, members of the disinfo dozen were deplatformed across several sites. Fourth, the platforms continued to amplify or assist the officials' activities, such as a vaccine "booster" campaign.

Still, the White House kept the pressure up. Officials continuously expressed that they would keep pushing the platforms to act. And, in the following year, the White House Press Secretary stressed that, in regard to problematic users on the platforms, the "President has long been concerned

about the power of large" social media companies and that they "must be held accountable for the harms they cause." She continued that the President "has been a strong supporter of fundamental reforms to achieve that goal, including reforms to [S]ection 230, enacting antitrust reforms, requiring more transparency, and more." Per the officials, their back-and-forth with the platforms continues to this day.

B.

Next, we turn to the CDC. Much like the White House officials, the CDC tried to "engage on a [] regular basis" with the platforms. They also received reports on the platforms' moderation activities and policy updates. And, like the other officials, the CDC also flagged content for removal that was subsequently taken down. In one email, an official mentioned sixteen posts and stated, "[W]e are seeing a great deal of misinfo [] that we wanted to flag for you all." In another email, CDC officials noted that flagged content had been removed. And, the CDC actively sought to promote its officials' views over others. For example, they asked "what [was] being done on the amplification-side" of things.

Unlike the other officials, though, the CDC officials also provided direct guidance to the platforms on the application of the platforms' internal policies and moderation activities. They did so in three ways. First, CDC officials authoritatively told the platforms what was (and was not) misinformation. For example, in meetings—styled as "Be On the Lookout" alerts—officials educated the platforms on "misinformation[] hot topics." Second, CDC officials asked for, or at least encouraged, harmonious changes to the platforms' moderation policies. One platform noted that "[a]s soon as the CDC updates [us]," it would change information on its website to comply with the officials' views. In that same email, the platform said it was expanding its "misinfo policies" and it was "able to make this change based

on the conversation we had last week with the CDC." In another email, a platform noted "several updates to our COVID-19 Misinformation and Harm policy based on your inputs." Third, through its guidance, the CDC outright directed the platforms to take certain actions. In one post-meeting email, an official said that "as mentioned on the call, any contextual information that can be added to posts" on some alleged "disinformation" "could be very effective."

Ultimately, the CDC's guidance informed, if not directly affected, the platforms' moderation decisions. The platforms sought answers from the officials as to whether certain controversial claims were "true or false" and whether related posts should be taken down as misleading. The CDC officials obliged, directing the platforms as to what was or was not misinformation. Such designations directly controlled the platforms' decision-making process for the removal of content. One platform noted that "[t]here are several claims that we will be able to remove as soon as the CDC debunks them; until then, we are unable to remove them."

C.

Next, we consider the conduct of the FBI officials. The agency's officials regularly met with the platforms at least since the 2020 election. In these meetings, the FBI shared "strategic information with [] social-media companies" to alert them to misinformation trends in the lead-up to federal elections. For example, right before the 2022 congressional election, the FBI tipped the platforms off to "hack and dump" operations from "state-sponsored actors" that would spread misinformation through their sites. In another instance, they alerted the platforms to the activities and locations of "Russian troll farms." The FBI apparently acquired this information from ongoing investigations.

Per their operations, the FBI monitored the platforms' moderation policies, and asked for detailed assessments during their regular meetings. The platforms apparently changed their moderation policies in response to the FBI's debriefs. For example, some platforms changed their "terms of service" to be able to tackle content that was tied to hacking operations.

But, the FBI's activities were not limited to purely foreign threats. In the build up to federal elections, the FBI set up "command" posts that would flag concerning content and relay developments to the platforms. In those operations, the officials also targeted domestically sourced "disinformation" like posts that stated incorrect poll hours or mail-in voting procedures. Apparently, the FBI's flagging operations across-the-board led to posts being taken down 50% of the time.

D.

Finally, we briefly discuss the remaining offices, namely the NIAID, CISA, and the State Department. Generally speaking, the NIAID did not have regular contact with the platforms or flag content. Instead, NIAID officials were—as evidenced by internal emails—concerned with "tak[ing] down" (*i.e.*, discrediting) opposing scientific or policy views. On that front, Director Anthony Fauci publicly spoke in favor of certain ideas (*e.g.*, COVID lockdowns) and against others (*e.g.*, the lab-leak theory). In doing so, NIAID officials appeared on podcasts and livestreams on some of the platforms. Apparently, the platforms subsequently demoted posts that echoed or supported the discredited views.

CISA and the State Department, on the other hand, both communicated directly with the platforms. The State Department hosted meetings that were meant to "facilitate [] communication" with the platforms. In those meetings, they educated the platforms on the "tools and techniques" that "malign" or "foreign propaganda actors" (*e.g.*, terrorist

groups, China) were using to spread misinformation. Generally, the State Department officials did not flag content, suggest policy changes, or reciprocally receive data during those meetings.

CISA, however, did flag content. Beyond holding regular industry meetings with the platforms, CISA officials engaged in "switchboarding" operations, meaning they acted as an intermediary for a third-party group by forwarding flagged content from them to the platforms. For example, during a federal election, CISA officials would receive "something on social media that [local election officials] deemed to be disinformation aimed at their jurisdiction" and, in turn, CISA would "share [that] with the appropriate social media compan[y]." In switchboarding, CISA officials worked alongside the Center for Internet Security and the Election Integrity Project, two private organizations. The officials' actions apparently led to content being removed or demoted by the recipient platforms.

* * *

Relying on the above record, the district court concluded that the officials, via both private and public channels, asked the platforms to remove content, pressed them to change their moderation policies, and threatened them—directly and indirectly—with legal consequences if they did not comply. And, it worked—that "unrelenting pressure" forced the platforms to act and take down users' content. Notably, though, those actions were not limited to private actors. Accounts run by state officials were often subject to censorship, too. For example, one platform removed a post by the Louisiana Department of Justice—which depicted citizens testifying against public policies regarding COVID—for violating its "medical misinformation policy" by "spread[ing] medical misinformation." In another instance, a platform took down a Louisiana state legislator's post discussing COVID vaccines. Similarly, one platform removed several videos, namely

testimonials regarding COVID, posted by St. Louis County. So, the district court reasoned, the Plaintiffs were "likely to succeed" on their claim because when the platforms moderated content, they were acting under the coercion (or significant encouragement) of government officials, in violation of the First Amendment, at the expense of both private and governmental actors.

In addition, the court found that considerations of equity weighed in favor of an injunction because of the clear need to safeguard the Plaintiffs' First Amendment rights. Finally, the court ruled that the Plaintiffs had standing to bring suit under several different theories, including direct First Amendment censorship and, for the State Plaintiffs, quasi-sovereign interests as well. Consequently, the district court entered an injunction against the officials barring them from an assortment of activities, including "meeting with," "communicat[ing]" with, or "flagging content" for social-media companies "for the purpose of urging, encouraging, pressuring, or inducing in any manner the removal, deletion, suppression, or reduction of content containing protected free speech." The officials appeal.

II.

We review the district court's standing determination *de novo*. *Freedom Path, Inc. v. Internal Revenue Serv.*, 913 F.3d 503, 507 (5th Cir. 2019). "We review a preliminary injunction for abuse of discretion, reviewing findings of fact for clear error and conclusions of law *de novo*. Whether an injunction fulfills the mandates of Fed. R. Civ. P. 65(d) is a question of law we review *de novo*." *Louisiana v. Biden*, 45 F.4th 841, 845 (5th Cir. 2022) (internal quotation marks and citation omitted).

III.

We begin with standing. To establish Article III standing, the Plaintiffs bear the burden to show "[1] an injury in fact [2] that is fairly traceable to the challenged action of the defendant and [3] likely to be redressed by [their]

requested relief." *Stringer v. Whitley*, 942 F.3d 715, 720 (5th Cir. 2019) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). Because the Plaintiffs seek injunctive relief, the injury-in-fact and redressability requirements "intersect[]" and therefore the Plaintiffs must "demonstrat[e] a continuing injury or threatened future injury," not a past one. *Id.* "At the preliminary injunction stage, the movant must clearly show only that each element of standing is likely to obtain in the case at hand." *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020) (citations omitted). The presence of any *one* plaintiff with standing to pursue injunctive relief as to the Plaintiffs' First-Amendment claim satisfies Article III's case-or-controversy requirement. *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 52 n.2 (2006).

A.

An injury-in-fact is "'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quoting *Lujan*, 504 U.S. at 560). "For a threatened future injury to satisfy the imminence requirement, there must be at least a 'substantial risk' that the injury will occur." *Crawford v. Hinds Cnty. Bd. of Supervisors*, 1 F.4th 371, 375 (5th Cir. 2021) (quoting *Stringer*, 942 F.3d at 721). Past harm can constitute an injury-in-fact for purposes of pursuing injunctive relief if it causes "continuing, present adverse effects." *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495–96 (1974)). Otherwise, "'[p]ast wrongs are evidence' of the likelihood of a future injury but 'do not in themselves amount to that real and immediate threat of injury necessary to make out a case or controversy.'" *Crawford*, 1 F.4th at 375 (quoting *Lyons*, 461 U.S. at 102–03) (alteration adopted).

Each of the Individual Plaintiffs has shown *past* injury-in-fact. Bhattacharya's and Kulldorff's sworn declarations allege that their article,

the Great Barrington Declaration, which was critical of the government's COVID-related policies such as lockdowns, was "deboosted" in Google search results and removed from Facebook and Reddit, and that their roundtable discussion with Florida Governor Ron DeSantis concerning mask requirements in schools was removed from YouTube. Kulldorff also claimed censorship of his personal Twitter and LinkedIn accounts due to his opinions concerning vaccine and mask mandates; both accounts were suspended (although ultimately restored). Kheriaty, in his sworn declaration, attested to the fact that his Twitter following was "artificially suppressed" and his posts "shadow bann[ed]" so that they did not appear in his followers' feeds due to his views on vaccine mandates and lockdowns, and that a video of one of his interviews concerning vaccine mandates was removed from YouTube (but ultimately re-posted). Hoft—founder, owner, and operator of news website The Gateway Pundit—submitted a sworn declaration averring that The Gateway Pundit's Twitter account was suspended and then banned for its tweets about vaccine mandates and election fraud, its Facebook posts concerning COVID-19 and election security were either banned or flagged as false or misinformation, and a YouTube video concerning voter fraud was removed. Hoft's declaration included photographic proof of the Twitter and Facebook censorship he had suffered. And Hines's declaration swears that her personal Facebook account was suspended and the Facebook posts of her organization, Health Freedom Louisiana, were censored and removed for their views on vaccine and mask mandates.

The officials do not contest that these past injuries occurred. Instead, they argue that the Individual Plaintiffs have failed to demonstrate that the harm from these past injuries is ongoing or that similar injury is likely to reoccur in the future, as required for standing to pursue injunctive relief. We disagree with both assertions.

All five Individual Plaintiffs have stated in sworn declarations that their prior censorship has caused them to self-censor and carefully word social-media posts moving forward in hopes of avoiding suspensions, bans, and censorship in the future. Kulldorff, for example, explained that he now "restrict[s] what [he] say[s] on social-media platforms to avoid suspension and other penalties." Kheriaty described how he now must be "extremely careful when posting any information on Twitter related to the vaccines, to avoid getting banned" and that he intentionally "limit[s] what [he] say[s] publicly," even "on topics where [he] ha[s] specific scientific and ethical expertise and professional experience." And Hoft notes that, "[t]o avoid suspension and other forms of censorship, [his website] frequently avoid[s] posting content that [it] would otherwise post on social-media platforms, and [] frequently alter[s] content to make it less likely to trigger censorship policies." These lingering effects of past censorship must be factored into the standing calculus. *See Lyons*, 461 U.S. at 102.

As the Supreme Court has recognized, this chilling of the Individual Plaintiffs' exercise of their First Amendment rights is, itself, a constitutionally sufficient injury. *See Laird v. Tatum*, 408 U.S. 1, 11 (1972). True, "to confer standing, allegations of chilled speech or self-censorship must arise from a fear of [future harm] that is not imaginary or wholly speculative." *Zimmerman v. City of Austin, Tex.*, 881 F.3d 378, 390 (5th Cir. 2018) (internal quotation marks and citation omitted); *see also Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013) (Plaintiffs "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm"). But the fears motivating the Individual Plaintiffs' self-censorship, here, are far from hypothetical. Rather, they are grounded in the very real censorship injuries they have previously suffered to their speech on social media, which are "evidence of the likelihood of a future injury." *Crawford*, 1 F.4th at 375 (internal quotation marks and citation

omitted). Supported by this evidence, the Individual Plaintiffs' self-censorship is a cognizable, ongoing harm resulting from their past censorship injuries, and therefore constitutes injury-in-fact upon which those Plaintiffs may pursue injunctive relief. *Lyons*, 461 U.S. at 102.

Separate from their ongoing harms, the Individual Plaintiffs have shown a substantial risk that the injuries they suffered in the past will reoccur. The officials suggest that there is no threat of future injury because "Twitter has stopped enforcing its COVID-related misinformation policy." But this does nothing to mitigate the risk of future harm to the Individual Plaintiffs. Twitter continues to enforce a robust general misinformation policy, and the Individual Plaintiffs seek to express views—and have been censored for their views—on topics well beyond COVID-19, including allegations of election fraud and the Hunter Biden laptop story.[3] Plaintiffs use social-media platforms other than Twitter—such as Facebook and YouTube—which still enforce COVID- or health-specific misinformation policies.[4] And most fundamentally, the Individual Plaintiffs are not seeking to enjoin Twitter's content moderation policies (or those of any other social-media platform, for that matter). Rather, as Plaintiffs' counsel made clear at oral argument, what the Individual Plaintiffs are challenging is the government's *interference with*

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[3] Notably, Twitter maintains a separate "crisis misinformation policy" which applies to "public health emergencies." *Crisis misinformation policy*, TWITTER (August 2022), https://help.twitter.com/en/rules-and-policies/crisis-misinformation. This policy would presumably apply to COVID-related misinformation if COVID-19 were again classified as a Public Health Emergency, as it was until May 11, 2023. *See End of the Federal COVID-19 Public Health Emergency (PHE) Declaration*, CTRS. FOR DISEASE CONTROL & PREVENTION (May 5, 2023), https://www.cdc.gov/coronavirus/2019-ncov/your-health/end-of-phe.html.

[4] *Facebook Community Standards: Misinformation*, META, https://transparency.fb.com/policies/community-standards/misinformation/ (last visited August 11, 2023); *Misinformation policies*, YOUTUBE, https://support.google.com/youtube/topic/10833358 (last visited August 11, 2023).

those social-media companies' independent application of their policies. And there is no evidence to suggest that the government's meddling has ceased. To the contrary, the officials' attorney conceded at oral argument that they continue to be in regular contact with social-media platforms concerning content-moderation issues today.

The officials also contend that future harm is unlikely because "all three plaintiffs who suggested that their social-media accounts had been permanently suspended in the past now appear to have active accounts." But as the Ninth Circuit recently recognized, this fact weighs in *Plaintiffs'* favor. In *O'Handley v. Weber*, considering this issue in the context of redressability,[5] the Ninth Circuit explained:

> Until recently, it was doubtful whether [injunctive] relief would remedy [the plaintiff]'s alleged injuries because Twitter had permanently suspended his account, and the requested injunction [against government-imposed social-media censorship] would not change that fact. Those doubts disappeared in December 2022 when Twitter restored his account.

62 F.4th 1145, 1162 (9th Cir. 2023). The same logic applies here. If the Individual Plaintiffs did not currently have active social-media accounts, then there would be no risk of future government-coerced censorship of their speech on those accounts. But since the Individual Plaintiffs continue to be active speakers on social media, they continue to face the very real and imminent threat of government-coerced social-media censorship.

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[5] When plaintiffs seek injunctive relief, the injury-in-fact and redressability requirements intersect. *Stringer*, 942 F.3d at 720. So, it makes no difference that the Ninth Circuit addressed the issue of reinstated social-media accounts in its redressability analysis while we address it as part of injury-in-fact. The ultimate question is whether there was a sufficient threat of future injury to warrant injunctive relief.

Because the Individual Plaintiffs have demonstrated ongoing harm from their past censorship as well as a substantial risk of future harm, they have established an injury-in-fact sufficient to support their request for injunctive relief.

B.

Turning to the second element of Article III standing, the Individual Plaintiffs were also required to show that their injuries were "fairly traceable" to the challenged conduct of the officials. *Stringer*, 942 F.3d at 720. When, as is alleged here, the "causal relation between [the claimed] injury and [the] challenged action depends upon the decision of an independent third party . . . standing is not precluded, but it is ordinarily substantially more difficult to establish." *California v. Texas*, 141 S. Ct. 2104, 2117 (2021) (internal quotation marks and citation omitted). "To satisfy that burden, the plaintiff[s] must show at the least 'that third parties will likely react in predictable ways.'" *Id.* (quoting *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2566 (2019)).

The officials contend that traceability is lacking because the Individual Plaintiffs' censorship was a result of "independent decisions of social-media companies." This conclusion, they say, is a matter of timing: social-media platforms implemented content-moderation policies in early 2020 and therefore the Biden Administration—which took office in January 2021—"could not be responsible for [any resulting] content moderation." But as we just explained, the Individual Plaintiffs do not challenge the social-media platforms' content-moderation policies. So, the fact that the Individual Plaintiffs' censorship can be traced back, at least in part, to third-party policies that pre-date the current presidential administration is irrelevant. The dispositive question is whether the Individual Plaintiffs' censorship can

also be traced to government-coerced *enforcement* of those policies. We agree with the district court that it can be.

On this issue, *Department of Commerce* is instructive. There, a group of plaintiffs brought a constitutional challenge against the federal government's decision to reinstate a citizenship question on the 2020 census. 139 S. Ct. at 2561. Their theory of harm was that, as a result of this added question, noncitizen households would respond to the census at lower rates than citizen households due to fear of immigration-related consequences, which would, in turn, lead to undercounting of population in certain states and a concomitant diminishment in political representation and loss of federal funds. *Id.* at 2565–66. In response, the government presented many of the same causation arguments raised here, contending that any harm to the plaintiffs was "not fairly traceable to the [government]'s decision" but rather "depend[ed] on the independent action of third parties" (*there*, noncitizens refusing to respond to the census; *here*, social-media companies censoring posts) which "would be motivated by unfounded fears that the Federal Government will itself break the law" (*there*, "using noncitizens' answers against them for law enforcement purposes"; *here*, retaliatory enforcement actions or regulatory reform). *Id.* But a unanimous Supreme Court disagreed. As the Court explained, the plaintiffs had "met their burden of showing that third parties will likely react in predictable ways to the citizenship question" because evidence "established that noncitizen households have historically responded to the census at lower rates than other groups" and the district court had "not clearly err[ed] in crediting the . . . theory that the discrepancy [was] likely attributable at least in part to noncitizens' reluctance to answer a citizenship question." *Id.* at 2566.

That logic is directly applicable here. The Individual Plaintiffs adduced extensive evidence that social-media platforms have engaged in censorship of certain viewpoints on key issues and that the government has

engaged in a years-long pressure campaign designed to ensure that the censorship aligned with the government's preferred viewpoints. The district court did not clearly err in crediting the Individual Plaintiffs' theory that the social-media platforms' censorship decisions were likely attributable at least in part to the platforms' reluctance to risk the adverse legal or regulatory consequences that could result from a refusal to adhere to the government's directives. The Individual Plaintiffs therefore met their burden of showing that the social-media platforms will likely react in a predictable way—*i.e.*, censoring speech—in response to the government's actions.

To be sure, there were instances where the social-media platforms *declined* to remove content that the officials had identified for censorship. But predictability does not require certainty, only likelihood. *See Dep't of Com.*, 139 S. Ct. at 2566 (requiring that third parties "will *likely* react in predictable ways"). Here, the Individual Plaintiffs presented extensive evidence of escalating threats—both public and private—by government officials aimed at social-media companies concerning their content-moderation decisions. The district court thus had a sound basis upon which to find a *likelihood* that, faced with unrelenting pressure from the most powerful office in the world, social-media platforms did, and would continue to, bend to the government's will. This determination was not, as the officials contend, based on "unadorned speculation." Rather, it was a logical conclusion based directly on the evidence adduced during preliminary discovery.

C.

The final element of Article III standing—redressability—required the Individual Plaintiffs to demonstrate that it was "likely, as opposed to merely speculative, that the [alleged] injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561 (internal quotation marks and citation omitted). The redressability analysis focuses on "the relationship between

the judicial relief requested and the injury" alleged. *California*, 141 S. Ct. at 2115 (internal quotation marks and citation omitted).

Beginning first with the injury alleged, we have noted multiple times now an important distinction between censorship as a result of social-media platforms' *independent* application of their content-moderation policies, on the one hand, and censorship as a result of social-media platforms' *government-coerced* application of those policies, on the other. As Plaintiffs' counsel made clear at oral argument, the Individual Plaintiffs seek to redress the latter injury, not the former.

The Individual Plaintiffs have not sought to invalidate social-media companies' censorship policies. Rather, they asked the district court to restrain the officials from unlawfully interfering with the social-media companies' independent application of their content-moderation policies. As the Ninth Circuit has also recognized, there is a direct relationship between this requested relief and the injury alleged such that redressability is satisfied. *See O'Handley*, 62 F.4th at 1162.

D.

We also conclude that the State Plaintiffs are likely to establish direct standing.[6] First, state officials have suffered, and will likely continue to suffer, direct censorship on social media. For example, the Louisiana Department of Justice posted a video showing Louisiana citizens testifying at the State Capitol and questioning the efficacy of COVID-19 vaccines and mask mandates. But one platform removed the video for spreading alleged "medical misinformation" and warned that any subsequent violations would

[6] The State Plaintiffs also contend that they have *parens patriae* standing. We do not consider this alternative argument.

result in suspension of the state's account. The state thereafter modified its practices for posting on social media for fear of future censorship injury.

Similarly, another platform took down a Louisiana state legislator's post discussing COVID vaccines. And several videos posted by St. Louis County showing residents discussing COVID policies were removed, too. Acts of this nature continue to this day. In fact, at oral argument, counsel for the State of Louisiana explained that YouTube recently removed a video of counsel, speaking in his official capacity, criticizing the federal government's alleged unconstitutional censorship in this case.[7]

These acts of censorship confer standing for substantially the same reasons as those discussed for the Individual Plaintiffs. That is, they constitute an ongoing injury, and demonstrate a likelihood of future injury, traceable to the conduct of the federal officials and redressable by an injunction against them.

The federal officials admit that these instances of censorship occurred but deny that the State Plaintiffs have standing based on the assertion that "the First Amendment does not confer rights on States." But the Supreme Court has made clear that the government (state and otherwise) has a "right" to speak on its own behalf. *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229 (2000); *see also Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 207–08 (2015). Perhaps that right derives from a state's sovereign nature, rather than from the First Amendment itself. But regardless of the source of the right, the State

[7] These actions are not limited to the State Plaintiffs. On the contrary, other states' officials have offered evidence of numerous other instances where their posts were removed, restricted, or otherwise censored.

Plaintiffs sustain a direct injury when the social-media accounts of state officials are censored due to federal coercion.

Federally coerced censorship harms the State Plaintiffs' ability to listen to their citizens as well. This right to listen is "reciprocal" to the State Plaintiffs' right to speak and constitutes an independent basis for the State Plaintiffs' standing here. *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council*, 425 U.S. 748, 757 (1976).

Officials from the States of Missouri and Louisiana testified that they regularly use social media to monitor their citizens' concerns. As explained by one Louisiana official:

> [M]ask and vaccine mandates for students have been a very important source of concern and public discussion by Louisiana citizens over the last year. It is very important for me to have access to free public discourse on social media on these issues so I can understand what our constituents are actually thinking, feeling, and expressing about such issues, and so I can communicate properly with them.

And a Missouri official testified to several examples of critical speech on an important topic that he was not able to review because it was censored:

> [O]ne parent who posted on nextdoor.com (a neighborhood networking site operated by Facebook) an online petition to encourage his school to remain mask-optional found that his posts were quietly removed without notifying him, and his online friends never saw them. Another parent in the same school district who objected to mask mandates for schoolchildren responded to Dr. Fauci on Twitter, and promptly received a warning from Twitter that his account would be banned if he did not delete the tweets criticizing Dr. Fauci's approach to mask mandates. These examples are just the sort of online speech by Missourians that it is important for me and the Missouri Attorney General's Office to be aware of.

The Government does not dispute that the State Plaintiffs have a crucial interest in listening to their citizens. Indeed, the CDC's own witness explained that if content were censored and removed from social-media platforms, government communicators would not "have the full picture" of what their citizens' true concerns are. So, when the federal government coerces or substantially encourages third parties to censor certain viewpoints, it hampers the states' right to hear their constituents and, in turn, reduces their ability to respond to the concerns of their constituents. This injury, too, means the states likely have standing. *See Va. State Bd. of Pharm.*, 425 U.S. at 757.

* * *

The Plaintiffs have standing because they have demonstrated ongoing harm from past social-media censorship and a likelihood of future censorship, both of which are injuries traceable to government-coerced enforcement of social-media platforms' content-moderation policies and redressable by an injunction against the government officials. We therefore proceed to the merits of Plaintiffs' claim for injunctive relief.[8]

IV.

A party seeking a preliminary injunction must establish that (1) they are likely to succeed on the merits, (2) there is a "substantial threat" they will suffer an "irreparable injury" otherwise, (3) the potential injury "outweighs any harm that will result" to the other side, and (4) an injunction will not "disserve the public interest." *Atchafalaya Basinkeeper* v. *U.S. Army*

[8] The Individual Plaintiffs' standing and the State Plaintiffs' standing provide independent bases upon which the Plaintiffs' injunctive-relief claim may proceed since there need be only one plaintiff with standing to satisfy the requirements of Article III. *Rumsfeld*, 547 U.S. at 52 n.2.

Corps of Eng'rs, 894 F.3d 692, 696 (5th Cir. 2018) (citing *La Union Del Pueblo Entero v. FEMA*, 608 F.3d 217, 219 (5th Cir. 2010)). Of course, a "preliminary injunction is an extraordinary remedy," meaning it should not be entered lightly. *Id.*

We start with likelihood of success. The Plaintiffs allege that federal officials ran afoul of the First Amendment by coercing and significantly encouraging "social-media platforms to censor disfavored [speech]," including by "threats of adverse government action" like antitrust enforcement and legal reforms. We agree.

A.

The government cannot abridge free speech. U.S. CONST. amend. I. A private party, on the other hand, bears no such burden—it is "not ordinarily constrained by the First Amendment." *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1930 (2019). That changes, though, when a private party is coerced or significantly encouraged by the government to such a degree that its "choice"—which if made by the government would be unconstitutional, *Norwood v. Harrison*, 413 U.S. 455, 465 (1973)—"must in law be deemed to be that of the State." *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982); *Barnes v. Lehman*, 861 F.2d 1383, 1385–36 (5th Cir. 1988).[9] This is known as the close nexus test.[10]

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[9] That makes sense: First Amendment rights "are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference." *Bates v. City of Little Rock*, 361 U.S. 516, 523 (1960).

[10] Note that, at times, we have called this test by a few other names. *See, e.g.*, *Frazier v. Bd. of Trustees of Nw. Miss. Reg'l Med. Ctr.*, 765 F.2d 1278, 1284 (5th Cir. 1985) ("the fair attribution test"); *Bass v. Parkwood Hosp.*, 180 F.3d 234, 242 (5th Cir. 1999) ("The state compulsion (or coercion) test"). We settle that dispute now—it is the close nexus test. *Am. Mfrs.*, 526 U.S. at 52 (a "close nexus" is required). In addition, some of our past decisions

Under that test, we "begin[] by identifying 'the specific conduct of which the plaintiff complains.'" *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 51 (1999) (quoting *Blum*, 457 U.S. at 1004 ("Faithful adherence to the 'state action' requirement . . . requires careful attention to the gravamen of the plaintiff's complaint.")). Then, we ask whether the government sufficiently induced that act. Not just any coaxing will do, though. After all, "the government can speak for itself," which includes the right to "advocate and defend its own policies." *Southworth*, 529 U.S. at 229; *see also Walker*, 576 U.S. at 207. But, on one hand there is persuasion, and on the other there is coercion and significant encouragement—two distinct means of satisfying the close nexus test. *See Louisiana Div. Sons of Confederate Veterans v. City of Natchitoches*, 821 F. App'x 317, 320 (5th Cir. 2020) (per curiam) ("Responding agreeably to a request and being all but forced by the coercive power of a governmental official are different categories of responses . . ."). Where we draw that line, though, is the question before us today.

1.

We start with encouragement. To constitute "significant encouragement," there must be such a "close nexus" between the parties that the government is practically "*responsible*" for the challenged decision. *Blum*, 457 U.S. at 1004 (emphasis in original). What, then, is a close nexus? We know that "the mere fact that a business is subject to state regulation" is not sufficient. *Id.* (alteration adopted) (citation omitted); *Halleck*, 139 S. Ct. at 1932 ("Put simply, being regulated by the State does not make one a state actor."). And, it is well established that the government's "[m]ere approval of or acquiescence in" a private party's actions is not enough either. *Blum*,

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have confused this test with the joint action test, *see Bass*, 180 F.3d at 242, but the two are separate tests with separate considerations.

457 U.S. at 1004–05. Instead, for encouragement, we find that the government must exercise some active, meaningful control over the private party's decision.

Take *Blum v. Yaretsky*. There, the Supreme Court found there was no state action because a decision to discharge a patient—even if it followed from the "requir[ed] completion of a form" under New York law—was made by private physicians, not the government. *Id.* at 1006–08. The plaintiff argued that, by regulating and overseeing the facility, the government had "affirmatively command[ed]" the decision. *Id.* at 1005. The Court was not convinced—it emphasized that "physicians, [] not the forms, make the decision" and they do so under "professional standards that are not established by the State." *Id.* Similarly, in *Rendell-Baker v. Kohn* the Court found that a private school—which the government funded and placed students at—was not engaged in state action because the conduct at issue, namely the decision to fire someone, "[was] not . . . influenced by any state regulation." 457 U.S. 830, 841 (1982).

Compare that, though, to *Roberts v. Louisiana Downs, Inc.*, 742 F.2d 221 (5th Cir. 1984). There, we held that a horseracing club's action was attributable to the state because the Louisiana government—through legal and informal supervision—was overly involved in the decision to deny a racer a stall. *Id.* at 224. "Something more [was] present [] than simply extensive regulation of an industry, or passive approval by a state regulatory entity of a decision by a regulated business." *Id.* at 228. Instead, the stalling decision was made partly by the "racing secretary," a legislatively created position accompanied by expansive supervision from on-site state officials who had the "power to override decisions" made by the club's management. *Id.* So, even though the secretary was plainly a "private employee" paid by the club, the state's extensive oversight—coupled with *some* level of authority on the part of the state—meant that the club's choice was not fully independent or

made wholly subject to its own policies. *Id.* at 227–28. So, this case is on the opposite end of the state-involvement spectrum to *Blum*.

Per *Blum* and *Roberts*, then, significant encouragement requires "[s]omething more" than uninvolved oversight from the government. *Id.* at 228. After all, there must be a "close nexus" that renders the government practically "*responsible*" for the decision. *Blum*, 457 U.S. at 1004. Taking that in context, we find that the clear throughline for encouragement in our caselaw is that there must be *some* exercise of *active* (not passive), *meaningful* (impactful enough to render them responsible) *control* on the part of the government over the private party's challenged decision. Whether that is (1) entanglement in a party's independent decision-making or (2) direct involvement in carrying out the decision itself, the government must encourage the decision to such a degree that we can fairly say it was the state's choice, not the private actor's. *See id.*; *Roberts*, 742 F.2d at 224; *Rendell-Baker*, 457 U.S. at 841 (close nexus test is met if action is "compelled or [] *influenced*" by the state (emphasis added)); *Frazier*, 765 F.2d at 1286 (significant encouragement is met when "the state has had some affirmative role, albeit one of encouragement short of compulsion," in the decision).[11]

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[11] This differs from the "joint action" test that we have considered in other cases. Under that doctrine, a private party may be considered a state actor when it "operates as a 'willful participant in joint activity with the State or its agents.'" *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 296 (2001) (quoting *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 941 (1982)). The difference between the two lies primarily in the degree of the state's involvement.

Under the joint action test, the level of integration is *very high*—there must be "pervasive entwinement" between the parties. *Id.* at 298. That is integration to such a degree that "will support a conclusion that an ostensibly private organization ought to be charged with a *public character*." *Id.* at 302 (emphasis added) (finding state action by athletic association when public officials served on the association's board, public institutions provided most of the association's funding, and the association's employees received public benefits); *see also Rendell-Baker*, 457 U.S. at 842 (requiring a "symbiotic

Take *Howard Gault Co. v. Texas Rural Legal Aid, Inc.*, 848 F.2d 544 (5th Cir. 1988). There, a group of onion growers—by way of state picketing laws and local officials—shut down a workers' strike. *Id.* at 548–49. We concluded that the growers' "activity"—axing the strike—"while not compelled by the state, was so *significantly encouraged*, both overtly and covertly, that the choice must in law be deemed to be that of the state." *Id.* at 555 (alterations adopted) (citation and quotation marks omitted)

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relationship"); *Frazier*, 765 F.2d at 1288 & n.22 (explaining that although the joint action test involves the government playing a "meaningful role" in the private actor's decision, that role must be part of a "functionally symbiotic" relationship that is so extensive that "*any act* of the private entity will be fairly attributable to the state even if it cannot be shown that the government played a direct role in the *particular* action challenged." (emphases added)).

Under the close nexus test, however, the government is not deeply intertwined with the private actor as a whole. Instead, the state is involved in only one facet of the private actor's operations—its decision-making process regarding the *challenged* conduct. *Roberts*, 742 F.2d at 224; *Howard Gault*, 848 F.2d at 555. That is a much narrower level of integration. *See Roberts*, 742 F.2d at 228 ("We do not today hold that the state and Louisiana Downs are in such a relationship that all acts of the track constitute state action, nor that all acts of the racing secretary constitute state action," but instead that "[i]n the area of stalling, . . . state regulation and involvement is so specific and so pervasive that [such] decisions may be considered to bear the imprimatur of the state."). Consequently, the showings required by a plaintiff differ. Under the joint action test, the plaintiff must prove substantial integration between the two entities *in toto*. For the close nexus test, the plaintiff instead must only show significant involvement from the state in the *particular* challenged action.

Still, there is admittedly *some* overlap between the tests. *See Brentwood*, 531 U.S. at 303 ("'Coercion' and 'encouragement' are like 'entwinement' in referring to kinds of facts that can justify characterizing an ostensibly private action as public instead. Facts that address any of these criteria are significant, but no one criterion must necessarily be applied. When, therefore, the relevant facts show pervasive entwinement to the point of largely overlapping identity, the implication of state action is not affected by pointing out that the facts might not loom large under a different test."). But, that is to be expected—these tests are not "mechanical[ly]" applied. *Roberts*, 742 F.2d at 224.

(emphasis added).[12] Specifically, "[i]t was the heavy participation of state and state officials," including local prosecutors and police officers, "that [brought] [the conduct] under color of state law." *Id.* In other words, the officials were directly involved in carrying out the challenged decision. That satisfied the requirement that, to encourage a decision, the government must exert some meaningful, active control over the private party's decision.

Our reading of what encouragement means under the close nexus test tracks with other federal courts, too. For example, the Ninth Circuit reads the close nexus test to be satisfied when, through encouragement, the government "overwhelm[s] the private party['s]" choice in the matter, forcing it to "act in a certain way." *O'Handley*, 62 F.4th at 1158; *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 751 (9th Cir. 2020) ("A finding that individual state actors or other state requirements literally 'overrode' a nominally private defendant's independent judgment might very well provide relevant information."). That analysis, much like meaningful control, asks whether a decision "was the result of [a party's] own independent judgment." *O'Handley*, 62 F.4th at 1159.

2.

Next, we take coercion—a separate and distinct means of satisfying the close nexus test. Generally speaking, if the government compels the

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[12] We note that although state-action caselaw seems to deal most often with § 1983 (*i.e.*, the under-color-of-law prong) and the Fourteenth Amendment, there is no clear directive from the Supreme Court that any variation in the law or government at issue changes the state-action analysis. *See Blum*, 457 U.S. at 1004. In fact, we have expressly rejected such ideas. *See Miller v. Hartwood Apartments, Ltd.*, 689 F.2d 1239, 1243 (5th Cir. 1982) ("Although the *Blum* decision turned on § 1983, we find the determination of federal action to rest on the same general principles as determinations of state action."); *Barnes*, 861 F.2d at 1385 ("The analysis of state action under the Fourteenth Amendment and the analysis of action under color of state law may coincide for purposes of § 1983.").

private party's decision, the result will be considered a state action. *Blum*, 457 U.S. at 1004. So, what is coercion? We know that simply "being regulated by the State does not make one a state actor." *Halleck*, 139 S. Ct. at 1932. Coercion, too, must be something more. But, distinguishing coercion from persuasion is a more nuanced task than doing the same for encouragement. Encouragement is evidenced by an exercise of active, meaningful control, whether by entanglement in the party's decision-making process or direct involvement in carrying out the decision itself. Therefore, it may be more noticeable and, consequently, more distinguishable from persuasion. Coercion, on the other hand, may be more subtle. After all, the state may advocate—even forcefully—on behalf of its positions. *Southworth*, 529 U.S. at 229.

Consider a Second Circuit case, *National Rifle Ass'n v. Vullo*, 49 F.4th 700 (2d Cir. 2022). There, a New York state official "urged" insurers and banks via strongly worded letters to drop the NRA as a client. *Id.* at 706. In those letters, the official alluded to reputational harms that the companies would suffer if they continued to support a group that has allegedly caused or encouraged "devastation" and "tragedies" across the country. *Id.* at 709. Also, the official personally told a few of the companies in a closed-door meeting that she "was less interested in pursuing the [insurers' regulatory] infractions . . . so long as [they] ceased" working with the NRA. *Id.* at 718. Ultimately, the Second Circuit found that both the letters and the statement did not amount to coercion, but instead "permissible government speech." *Id.* at 717, 719. In reaching that decision, the court emphasized that "[a]lthough she did have regulatory authority over the target audience," the official's letters were written in a "nonthreatening tone" and used persuasive, non-intimidating language. *Id.* at 717. Relatedly, while she referenced "adverse consequences" if the companies did not comply, they were only "reputational risks"—there was no intimation that "punishment

or adverse regulatory action would follow the failure to accede to the request." *Id.* (alterations adopted). As for the "so long as" statement, the Second Circuit found that—when viewed in "context"—the official was merely "negotiating[] and resolving [legal] violations," a legitimate power of her office.[13] *Id.* at 718–19. Because she was only "carrying out her regulatory responsibilities" and "engaging in legitimate enforcement action," the official's references to infractions were not coercive. *Id.* Thus, the Second Circuit found that *seemingly* threatening language was actually permissible government advocacy.

That is not to say that coercion is *always* difficult to identify. Sometimes, coercion is obvious. Take *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963). There, the Rhode Island Commission to Encourage Morality—a state-created entity—sought to stop the distribution of obscene books to kids. *Id.* at 59. So, it sent a letter to a book distributor with a list of verboten books and requested that they be taken off the shelves. *Id.* at 61–64. That request conveniently noted that compliance would "eliminate the necessity of our recommending prosecution to the Attorney General's department." *Id.* at 62 n.5. Per the Commission's request, police officers followed up to make sure the books were removed. *Id.* at 68. The Court concluded that this "system of informal censorship," which was "clearly [meant] to intimidate" the recipients through "threat of [] legal sanctions and other means of coercion" rendered the distributors' decision to remove the books a state action. *Id.* at 64, 67, 71–72. Given *Bantam Books*, not-so

[13] Apparently, the companies had previously issued "illegal insurance policies—programs created and endorsed by the NRA"—that covered litigation defense costs resulting from any firearm-related injury or death, in violation of New York law. *Vullo*, 49 F.4th at 718. The court reasoned that the official had the power to bring those issues to a close.

subtle asks accompanied by a "system" of pressure (*e.g.*, threats and follow-ups) are clearly coercive.

Still, it is rare that coercion is so black and white. More often, the facts are complex and sprawling as was the case in *Vullo*. That means it can be quite difficult to parse out coercion from persuasion. We, of course, are not the first to recognize this. In that vein, the Second Circuit has crafted a four-factor test that distills the considerations of *Bantam Books* into a workable standard. We, lacking such a device, adopt the Second Circuit's approach as a helpful, non-exclusive tool for completing the task before us, namely identifying when the state's messages cross into impermissible coercion.

The Second Circuit starts with the premise that a government message is coercive—as opposed to persuasive—if it "can reasonably be interpreted as intimating that some form of punishment or adverse regulatory action will follow the failure to accede to the official's request." *Vullo*, 49 F.4th at 715 (quotation marks and citation omitted). To distinguish such "attempts to coerce" from "attempts to convince," courts look to four factors, namely (1) the speaker's "word choice and tone"; (2) "whether the speech was perceived as a threat"; (3) "the existence of regulatory authority"; and, "perhaps most importantly, (4) whether the speech refers to adverse consequences." *Id.* (citations omitted). Still, "[n]o one factor is dispositive." *Id.* (citing *Bantam Books*, 372 U.S. at 67). For example, the Second Circuit found in *Vullo* that the state officials' communications were not coercive because, in part, they were not phrased in an intimidating manner and only referenced reputational harms—an otherwise acceptable consequence for a governmental actor to threaten. *Id.* at 717, 719.

The Ninth Circuit has also adopted the four-factor approach and, in doing so, has cogently spelled out the nuances of each factor. Consider *Kennedy v. Warren*, 66 F.4th 1199 (9th Cir. 2023). There, Senator Elizabeth

Warren penned a letter to Amazon asking it to stop selling a "false or misleading" book on COVID. *Id.* at 1204. The senator stressed that, by selling the book, Amazon was "providing consumers with false and misleading information" and, in doing so, was pursuing what she described as "an unethical, unacceptable, and potentially unlawful course of action." *Id.* So, she asked it to do better, including by providing a "public report" on the effects of its related sales algorithms and a "plan to modify these algorithms so that they no longer" push products peddling "COVID-19 misinformation." *Id.* at 1205. The authors sued, but the Ninth Circuit found no state action.

The court, lamenting that it can "be difficult to distinguish" between persuasion and coercion, turned to the Second Circuit's "useful non-exclusive" four-factor test. *Id.* at 1207. First, the court reasoned that the senator's letter, although made up of "strong rhetoric," was framed merely as a "request rather than a command." *Id.* at 1208. Considering both the text and the "tenor" of the parties' relationship, the court concluded that the letter was not unrelenting, nor did it "suggest[] that compliance was the only realistic option." *Id.* at 1208–09.

Second, and relatedly, even if she had said as much, the senator lacked regulatory authority—she "ha[d] no unilateral power to penalize Amazon." *Id.* at 1210. Still, the sum of the second prong is more than just power. Given that the overarching purpose of the four-factor test is to ask if the speaker's message can "reasonably be construed" as a "threat of adverse consequences," the lack of power is "certainly relevant." *Id.* at 1209–10. After all, the "absence of authority influences how a reasonable person would read" an official's message. *Id.* at 1210; *see also Hammerhead Enters., Inc. v. Brezenoff*, 707 F.2d 33, 39 (2d Cir. 1983) (finding no government coercion where city official lacked "the power to impose sanctions on merchants who did not respond to [his] requests") (citing *Bantam Books*, 372 U.S. at 71). For

example, in *Warren*, it would have been "unreasonable" to believe, given Senator Warren's position "as a single Senator" who was "removed from the relevant levers of power," that she could exercise any authority over Amazon. 66 F.4th at 1210.

Still, the "lack of direct authority" is not entirely dispositive. *Id.* Because—per the Second and Ninth Circuits—the key question is whether a message can "reasonably be construed as coercive," *id.* at 1209,[14] a speaker's power over the recipient need not be clearly defined or readily apparent, so long as it can be reasonably said that there is *some* tangible power lurking in the background. *See Okwedy v. Molinari*, 333 F.3d 339, 344 (2d Cir. 2003) (finding a private party "could reasonably have believed" it would face retaliation if it ignored a borough president's request because "[e]ven though [he] lacked direct regulatory control," there was an "implicit threat" that he would "use whatever authority he does have . . . to interfere" with the party's cashflow). That, of course, was not present in *Warren*. So, the second prong was easily resolved against state action.

Third, the senator's letter "contain[ed] no explicit reference" to "adverse consequences."[15] 66 F.4th at 1211. And, beyond that, no "threat

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[14] According to the Ninth Circuit, that tracks with its precedent. "[I]n *Carlin Communications, Inc. v. Mountain States Telephone & Telegraph Co.*, 827 F.2d 1291 (9th Cir. 1987), [they] held that a deputy county attorney violated the First Amendment by threatening to prosecute a telephone company if it continued to carry a salacious dial-a-message service." *Warren*, 66 F.4th at 1207. But, "in *American Family Association, Inc. v. City & County of San Francisco*, 277 F.3d 1114 (9th Cir. 2002), [they] held that San Francisco officials did not violate the First Amendment when they criticized religious groups' anti-gay advertisements and urged television stations not to broadcast the ads." *Id.* The rub, per the court, was that "public officials may criticize practices that they would have no constitutional ability to regulate, so long as there is no actual or threatened imposition of government power or sanction." *Id.*

[15] The Ninth Circuit emphasized that officials may advocate for positions, including by "[g]enerating public pressure to motivate others to change their behavior."

[was] clear from the context." *Id.* To be sure, an "official does not need to say 'or else,'" but there must be some message—even if "unspoken"—that can be reasonably construed as intimating a threat. *Id.* at 1211–12. There, when read "holistically," the senator only implied that Amazon was "morally complicit" in bad behavior, nothing more. *Id.* at 1212.

Fourth, there was no indication that Amazon perceived the message as a threat. There was "no evidence" it "changed its algorithms"—"let alone that it felt compelled to do so"—as a result of the senator's urgings. *Id.* at 1211. Admittedly, it is not required that the recipient "bow[] to government pressure," but courts are more likely to find coercion if there is "some indication" that the message was "understood" as a threat, such as evidence of actual change. *Id.* at 1210–11. In *Warren*, it was apparent (and there was no sense to the contrary) that the minor policy change the company did make stemmed from reputational concerns, not "fears of liability in a court of law." *Id.* at 1211. Considering the above, the court found that the senator's message amounted to an attempt at persuasion, not coercion.

3.

To sum up, under the close nexus test, a private party's conduct may be state action if the government coerced *or* significantly encouraged it. *Blum*, 457 U.S. at 1004. Although this test is not mechanical, *see Roberts*, 742 F.2d at 224 (noting that state action is "essentially [a] factual determination" made by "sifting facts and weighing circumstances case by case to determine if there is a sufficient nexus between the state and the particular aspect of the

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Warren, 66 F.4th at 1208. In that vein, it dismissed any references to "potential legal liability" because those statements do not necessarily "morph an effort to persuade into an attempt to coerce." *Id.* at 1209 (citing *VDARE Found. v. City of Colo. Springs*, 11 F.4th 1151, 1165 (10th Cir. 2021)). Instead, there must be "clear allegation[s] of legal violations or threat[s] of specific enforcement actions." *Id.*

private individual's conduct which is complained of" (citation and quotation marks omitted)), there are clear, although not exclusive, ways to satisfy either prong.

For encouragement, we read the law to require that a governmental actor exercise active, meaningful control over the private party's decision in order to constitute a state action. That reveals itself in (1) entanglement in a party's independent decision-making or (2) direct involvement in carrying out the decision itself. *Compare Roberts*, 742 F.2d at 224 (state had such "continuous and intimate involvement" and supervision over horseracing decision that, when coupled with its authority over the actor, it was considered a state action) *and Howard Gault*, 848 F.2d at 555 (state eagerly, and effectively, assisted a private party in shutting down a protest), *with Blum*, 457 U.S. at 1008 (state did not sufficiently influence the decision as it was made subject to independent standards). In any of those scenarios, the state has such a "close nexus" with the private party that the government actor is practically "*responsible*" for the decision, *Blum*, 457 U.S. at 1004, because it has necessarily encouraged the private party to act and, in turn, commandeered its independent judgment, *O'Handley*, 62 F.4th at 1158–59.

For coercion, we ask if the government compelled the decision by, through threats or otherwise, intimating that some form of punishment will follow a failure to comply. *Vullo*, 49 F.4th at 715. Sometimes, that is obvious from the facts. *See, e.g.*, *Bantam Books*, 372 U.S. at 62–63 (a mafiosi-style threat of referral to the Attorney General accompanied with persistent pressure and follow-ups). But, more often, it is not. So, to help distinguish permissible persuasion from impermissible coercion, we turn to the Second (and Ninth) Circuit's four-factor test. Again, honing in on whether the government "intimat[ed] that some form of punishment" will follow a "failure to accede," we parse the speaker's messages to assess the (1) word choice and tone, including the overall "tenor" of the parties' relationship;

(2) the recipient's perception; (3) the presence of authority, which includes whether it is reasonable to fear retaliation; and (4) whether the speaker refers to adverse consequences. *Vullo*, 49 F.4th at 715; *see also Warren*, 66 F.4th at 1207.

Each factor, though, has important considerations to keep in mind. For word choice and tone, "[a]n interaction will tend to be more threatening if the official refuses to take 'no' for an answer and pesters the recipient until it succumbs." *Warren*, 66 F.4th at 1209 (citing *Bantam Books*, 372 U.S. at 62–63). That is so because we consider the overall "tenor" of the parties' relationship. *Id.* For authority, there is coercion even if the speaker lacks present ability to act so long as it can "reasonably be construed" as a threat worth heeding. *Compare id.* at 1210 (single senator had no worthwhile power over recipient, practical or otherwise), *with Okwedy*, 333 F.3d at 344 (although local official lacked direct power over the recipient, company "could reasonably have believed" from the letter that there was "an implicit threat" and that he "would use whatever authority he does have" against it).

As for perception, it is not necessary that the recipient "admit that it bowed to government pressure," nor is it even "necessary for the recipient to have complied with the official's request"—"a credible threat may violate the First Amendment even if 'the victim ignores it, and the threatener folds his tent.'" *Warren*, 66 F.4th at 1210 (quoting *Backpage.com, LLC v. Dart*, 807 F.3d 229, 231 (7th Cir. 2015)). Still, a message is more likely to be coercive if there is *some* indication that the party's decision resulted from the threat. *Id.* at 1210–11. Finally, as for adverse consequences, the government need not speak its threat aloud if, given the circumstances, it is fair to say that the message intimates *some* form of punishment. *Id.* at 1209. If these factors weigh in favor of finding the government's message coercive, the coercion test is met, and the private party's resulting decision is a state action.

B.

With that in mind, we turn to the case at hand. We start with "the specific conduct of which the plaintiff complains." *Am. Mfrs.*, 526 U.S. at 51. Here, that is "censor[ing] disfavored speakers and viewpoints" on social media. The Plaintiffs allege that the "Defendants [] coerced, threatened, and pressured social-media platforms"—via "threats of adverse government action" like increased regulation, antitrust enforcement, and changes to Section 230—to make those censorship decisions. That campaign, per the Plaintiffs, was multi-faceted—the officials "publicly threaten[ed] [the] companies" while they privately piled on "unrelenting pressure" via "demands for greater censorship." And they succeeded—the platforms censored disfavored content.

The officials do not deny that they worked alongside the platforms. Instead, they argue that their conduct—asking or trying to persuade the platforms to act—was permissible government speech. So, we are left with the task of sifting out any coercion and significant encouragement from their attempts at persuasion. Here, there were multiple speakers and messages. Taking that in context, we apply the law to one set of officials at a time, starting with the White House and Office of the Surgeon General.

1.

We find that the White House, acting in concert with the Surgeon General's office, likely (1) coerced the platforms to make their moderation decisions by way of intimidating messages and threats of adverse consequences, and (2) significantly encouraged the platforms' decisions by commandeering their decision-making processes, both in violation of the First Amendment.

Generally speaking, officials from the White House and the Surgeon General's office had extensive, organized communications with platforms.

They met regularly, traded information and reports, and worked together on a wide range of efforts. That working relationship was, at times, sweeping. Still, those facts alone likely are not problematic from a First-Amendment perspective. But, the relationship between the officials and the platforms went beyond that. In their communications with the platforms, the officials went beyond advocating for policies, *Southworth,* 529 U.S. at 229, or making no-strings-attached requests to moderate content, *Warren*, 66 F.4th at 1209. Their interaction was "something more." *Roberts*, 742 F.2d at 228.

We start with coercion. On multiple occasions, the officials coerced the platforms into direct action via urgent, uncompromising demands to moderate content. Privately, the officials were not shy in their requests—they asked the platforms to remove posts "ASAP" and accounts "immediately," and to "slow[] down" or "demote[]" content. In doing so, the officials were persistent and angry. *Cf. Bantam Books*, 372 U.S. at 62–63. When the platforms did not comply, officials followed up by asking why posts were "still up," stating (1) "how does something like [this] happen," (2) "what good is" flagging if it did not result in content moderation, (3) "I don't know why you guys can't figure this out," and (4) "you are hiding the ball," while demanding "assurances" that posts were being taken down. And, more importantly, the officials threatened—both expressly and implicitly—to retaliate against inaction. Officials threw out the prospect of legal reforms and enforcement actions while subtly insinuating it would be in the platforms' best interests to comply. As one official put it, "removing bad information" is "one of the easy, low-bar things you guys [can] do to make people like me"—that is, White House officials—"think you're taking action."

That alone may be enough for us to find coercion. Like in *Bantam Books*, the officials here set about to force the platforms to remove metaphorical books from their shelves. It is uncontested that, between the White House and the Surgeon General's office, government officials asked

the platforms to remove undesirable posts and users from their platforms, sent follow-up messages of condemnation when they did not, and publicly called on the platforms to act. When the officials' demands were not met, the platforms received promises of legal regime changes, enforcement actions, and other unspoken threats. That was likely coercive. *See Warren*, 66 F.4th at 1211–12.

That being said, even though coercion may have been readily apparent here, we find it fitting to consult the Second Circuit's four-factor test for distinguishing coercion from persuasion. In asking whether the officials' messages can "reasonably be construed" as threats of adverse consequences, we look to (1) the officials' word choice and tone; (2) the recipient's perception; (3) the presence of authority; and (4) whether the speaker refers to adverse consequences. *Vullo*, 49 F.4th at 715; *see also Warren*, 66 F.4th at 1207.

First, the officials' demeanor. We find, like the district court, that the officials' communications—reading them in "context, not in isolation"—were on-the-whole intimidating. *Warren*, 66 F.4th at 1208. In private messages, the officials demanded "assurances" from the platforms that they were moderating content in compliance with the officials' requests, and used foreboding, inflammatory, and hyper-critical phraseology when they seemingly did not, like "you are hiding the ball," you are not "trying to solve the problem," and we are "gravely concerned" that you are "one of the top drivers of vaccine hesitancy." In public, they said that the platforms were irresponsible, let "misinformation [] poison" America, were "literally costing . . . lives," and were "killing people." While officials are entitled to "express their views and rally support for their positions," the "word choice and tone" applied here reveals something more than mere requests. *Id.* at 1207–08.

Like *Bantam Books*—and unlike the requests in *Warren*—many of the officials' asks were "phrased virtually as orders," 372 U.S. at 68, like requests to remove content "ASAP" or "immediately." The threatening "tone" of the officials' commands, as well as of their "overall interaction" with the platforms, is made all the more evident when we consider the persistent nature of their messages. Generally speaking, "[a]n interaction will tend to be more threatening if the official refuses to take 'no' for an answer and pesters the recipient until it succumbs." *Warren*, 66 F.4th at 1209 (citing *Bantam Books*, 372 U.S. at 62–63). Urgency can have the same effect. *See Backpage.com*, 807 F.3d at 237 (finding the "urgency" of a sheriff's letter, including a follow-up, "imposed another layer of coercion due to its strong suggestion that the companies could not simply ignore" the sheriff), *cert. denied*, 137 S. Ct. 46 (2016). Here, the officials' correspondences were both persistent and urgent. They sent repeated follow-up emails, whether to ask why a post or account was "still up" despite being flagged or to probe deeper into the platforms' internal policies. On the latter point, for example, one official asked at least *twelve* times for detailed information on Facebook's moderation practices and activities. Admittedly, many of the officials' communications are not by themselves coercive. But, we do not take a speaker's communications "in isolation." *Warren*, 66 F.4th at 1208. Instead, we look to the "tenor" of the parties' relationship and the conduct of the government in context. *Id.* at 1209. Given their treatment of the platforms as a whole, we find the officials' tone and demeanor was coercive, not merely persuasive.

Second, we ask how the platforms perceived the communications. Notably, "a credible threat may violate the First Amendment even if 'the victim ignores it, and the threatener folds his tent.'" *Id.* at 1210 (quoting *Backpage.com*, 807 F.3d at 231). Still, it is more likely to be coercive if there is some evidence that the recipient's subsequent conduct is *linked* to the

official's message. For example, in *Warren*, the Ninth Circuit court concluded that Amazon's decision to stop advertising a specific book was "more likely . . . a response to widespread concerns about the spread of COVID-19," as there was "no evidence that the company changed [course] in response to Senator Warren's letter." *Id.* at 1211. Here, there is plenty of evidence—both direct and circumstantial, considering the platforms' contemporaneous actions—that the platforms were influenced by the officials' demands. When officials asked for content to be removed, the platforms took it down. And, when they asked for the platforms to be more aggressive, "interven[e]" more often, take quicker actions, and modify their "internal policies," the platforms did—and they sent emails and assurances confirming as much. For example, as was common after public critiques, one platform assured the officials they were "committed to addressing the [] misinformation that you've called on us to address" after the White House issued a public statement. Another time, one company promised to make an employee "available on a regular basis" so that the platform could "automatically prioritize" the officials' requests after criticism of the platform's response time. Yet another time, a platform said it was going to "adjust [its] policies" to include "specific recommendations for improvement" from the officials, and emailed as much because they "want[ed] to make sure to keep you informed of our work on each" change. Those are just a few of many examples of the platforms changing—and acknowledging as much—their course as a direct result of the officials' messages.

Third, we turn to whether the speaker has "authority over the recipient." 66 F.4th at 1210. Here, that is clearly the case. As an initial matter, the White House wields significant power in this Nation's constitutional landscape. It enforces the laws of our country, U.S. CONST. art. II, and—as the head of the executive branch—directs an army of federal

agencies that create, modify, and enforce federal regulations. We can hardly say that, like the senator in *Warren*, the White House is "removed from the relevant levers of power." 66 F.4th at 1210. At the very least, as agents of the executive branch, the officials' powers track somewhere closer to those of the commission in *Bantam Books*—they were legislatively given the power to "investigate violations[] and recommend prosecutions." *Id.* (citing *Bantam Books*, 372 U.S. at 66).

But, authority over the recipient does not have to be a clearly-defined ability to act under the close nexus test. Instead, a generalized, non-descript means to punish the recipient may suffice depending on the circumstances. As the Ninth Circuit explained in *Warren*, a message may be "*inherently coercive*" if, for example, it was conveyed by a "law enforcement officer" or "penned by an executive official with unilateral power." *Id.* (emphasis added). In other words, a speaker's power may stem from an inherent authority over the recipient. *See, e.g.*, *Backpage.com*, 807 F.3d 229. That reasoning is likely applicable here, too, given the officials' executive status.

It is not even necessary that an official have direct power over the recipient. Even if the officials "lack[ed] direct authority" over the platforms, the cloak of authority may still satisfy the authority prong. *See Warren*, 66 F.4th at 1210. After all, we ask whether a "reasonable person" would be threatened by an official's statements. *Id.* Take, for example, *Okwedy*. There, a borough president penned a letter to a company—which, per the official, owned a "number of billboards on Staten Island and derive[d] substantial economic benefits from them"—and "call[ed] on [them] as a responsible member of the business community to please contact" his "legal counsel." 333 F.3d at 342. The Second Circuit found that, even though the official "lacked direct regulatory authority" or control over the company, an "implicit threat" flowed from his letter because he had *some* innate authority to affect the company. *Id.* at 344. The Second Circuit noted that "[a]lthough

the existence of regulatory or other direct decisionmaking authority is certainly relevant to the question of whether a government official's comments were unconstitutionally threatening or coercive, a defendant without such direct regulatory or decisionmaking authority can also exert an impermissible type or degree of pressure." *Id.* at 343.

Consider another example, *Backpage.com*. There, a sheriff sent a cease-and-desist letter to credit card companies—which he admittedly "had no authority to take any official action" against—to stop doing business with a website. 807 F.3d at 230, 236. "[E]ven if the companies understood the jurisdictional constraints on [the sheriff]'s ability to proceed against them directly," the sheriff's letter was still coercive because, among other reasons, it "invok[ed] the legal obligations of [the recipients] to cooperate with law enforcement," and the sheriff could easily "refer the credit card companies to the appropriate authority to investigate" their dealings,[16] much like a White House official could contact the Department of Justice. *Id.* at 236–37.

True, the government can "appeal[]" to a private party's "interest in avoiding liability" so long as that reference is not meant to intimidate or compel. *Id.* at 237; *see also Vullo*, 49 F.4th at 717–19 (statements were non-coercive because they referenced legitimate use of powers in a

[16] This was true even though the financial institutions were large, sophisticated, and presumably understood the federal authorities were unlikely to prosecute the companies. *Backpage.com*, 807 F.3d at 234. As the Seventh Circuit explained, it was still in the credit card companies' financial interests to comply. Backpage's measly $135 million in annual revenue was a drop in the bucket of the financial service companies' combined net revenue of $22 billion. *Id.* at 236. Unlike credit card processors that at least made money servicing Backpage, social-media platforms typically depend on advertisers, not their users, for revenue. *Cf. Wash. Post v. McManus*, 944 F.3d 506, 516 (4th Cir. 2019) (holding campaign finance regulations on online ads unconstitutional where they "ma[de] it financially irrational, generally speaking, for platforms to carry political speech when other, more profitable options are available").

nonthreatening manner). But here, the officials' demands that the platforms remove content and change their practices were backed by the officials' unilateral power to act or, at the very least, their ability to inflict "*some form of punishment*" against the platforms.[17] *Okwedy*, 333 F.3d at 342 (citation omitted) (emphasis added). Therefore, the authority factor weighs in favor of finding the officials' messages coercive.

Finally, and "perhaps most important[ly]," we ask whether the speaker "refers to adverse consequences that will follow if the recipient does not accede to the request." *Warren*, 66 F.4th at 1211 (citing *Vullo*, 49 F.4th at 715). Explicit and subtle threats both work— "an official does not need to say 'or else' if a threat is clear from the context." *Id.* (citing *Backpage.com*, 807 F.3d at 234). Again, this factor is met.

Here, the officials made express threats and, at the very least, leaned into the inherent authority of the President's office. The officials made inflammatory accusations, such as saying that the platforms were "poison[ing]" the public, and "killing people." The platforms were told they needed to take greater responsibility and action. Then, they followed their statements with threats of "fundamental reforms" like regulatory changes and increased enforcement actions that would ensure the platforms were "held accountable." But, beyond express threats, there was *always* an "unspoken 'or else.'" *Warren*, 66 F.4th at 1212. After all, as the executive of the Nation, the President wields awesome power. The officials were not shy to allude to that understanding native to every American—when the platforms faltered, the officials warned them that they were

[17] Or, as the Ninth Circuit put it, "public officials may criticize practices that they would have no constitutional ability to regulate, so long as there is no actual or *threatened* imposition of *government power or sanction*." *Warren*, 66 F.4th at 1207 (citation omitted) (emphasis added).

"[i]nternally . . . considering our options on what to do," their "concern[s] [were] shared at the highest (and I mean highest) levels of the [White House]," and the "President has long been concerned about the power of large social media platforms." Unlike the letter in *Warren*, the language deployed in the officials' campaign reveals clear "plan[s] to punish" the platforms if they did not surrender. *Warren*, 66 F.4th at 1209. *Compare id.*, *with Backpage.com*, 807 F.3d at 237. Consequently, the four-factor test weighs heavily in favor of finding the officials' messages were coercive, not persuasive.

Notably, the Ninth Circuit recently reviewed a case that is strikingly similar to ours. In *O'Handley*, officials from the California Secretary of State's office allegedly "act[ed] in concert" with Twitter to censor speech on the platform. 62 F.4th at 1153. Specifically, the parties had a "collaborative relationship" where officials flagged tweets and Twitter "almost invariably" took them down. *Id.* Therefore, the plaintiff contended, when his election-fraud-based post was removed, California "abridged his freedom of speech" because it had "pressured Twitter to remove disfavored content." *Id.* at 1163. But, the Ninth Circuit disagreed, finding the close nexus test was not satisfied. The court reasoned that there was no clear indication that Twitter "would suffer adverse consequences if it refused" to comply with California's request. *Id.* at 1158. Instead, it was a "purely optional," "no strings attached" request. *Id.* Consequently, "Twitter complied with the request under the terms of its own content-moderation policy and using its own independent judgment." *Id.*[18] To the Ninth Circuit,

[18] The Ninth Circuit insightfully noted the difficult task of applying the coercion test in the First Amendment context:

> [W]e have drawn a sharp distinction between attempts to convince and attempts to coerce. Particularly relevant here, we have held that government officials do not violate the First Amendment when they

there was no indication—whether via tone, content, or otherwise—that the state would retaliate against inaction given the insubstantial relationship. Ultimately, the officials conduct was "far from the type of coercion" seen in cases like *Bantam Books*. *Id.* In contrast, here, the officials made clear that the platforms *would* suffer adverse consequences if they failed to comply, through express or implied threats, and thus the requests were not optional.

Given all of the above, we are left only with the conclusion that the officials' statements were coercive. That conclusion tracks with the decisions of other courts. After reviewing the four-factor test, it is apparent that the officials' messages could "reasonably be construed" as threats. *Warren*, 66 F.4th at 1208; *Vullo*, 49 F.4th at 716. Here, unlike in *Warren*, the officials' "call[s] to action"—given the context and officials' tone, the presence of *some* authority, the platforms' yielding responses, and the officials' express and implied references to adverse consequences—"directly suggest[ed] that compliance was the only realistic option to avoid government sanction." 66 F.4th at 1208. And, unlike *O'Handley*, the officials were not simply flagging posts with "no strings attached," 62 F.4th at 1158—they did much, much more.

> request that a private intermediary not carry a third party's speech so long as the officials do not threaten adverse consequences if the intermediary refuses to comply. This distinction tracks core First Amendment principles. A private party can find the government's stated reasons for making a request persuasive, just as it can be moved by any other speaker's message. The First Amendment does not interfere with this communication so long as the intermediary is free to disagree with the government and to make its own independent judgment about whether to comply with the government's request.

O'Handley, 62 F.4th at 1158. After all, consistent with their constitutional and statutory authority, state "[a]gencies are permitted to communicate in a non-threatening manner with the entities they oversee without creating a constitutional violation." *Id.* at 1163 (citing *Vullo*, 49 F.4th at 714–19).

Now, we turn to encouragement. We find that the officials also significantly encouraged the platforms to moderate content by exercising active, meaningful control over those decisions. Specifically, the officials entangled themselves in the platforms' decision-making processes, namely their moderation policies. *See Blum*, 457 U.S. at 1008. That active, meaningful control is evidenced plainly by a view of the record. The officials had consistent and consequential interaction with the platforms and constantly monitored their moderation activities. In doing so, they repeatedly communicated their concerns, thoughts, and desires to the platforms. The platforms responded with cooperation—they invited the officials to meetings, roundups, and policy discussions. And, more importantly, they complied with the officials' requests, including making changes to their policies.

The officials began with simple enough asks of the platforms—"can you share more about your framework here" or "do you have data on the actual number" of removed posts? But, the tenor later changed. When the platforms' policies were not performing to the officials' liking, they pressed for more, persistently asking what "interventions" were being taken, "how much content [was] being demoted," and why certain posts were not being removed. Eventually, the officials pressed for outright change to the platforms' moderation policies. They did so privately and publicly. One official emailed a list of proposed changes and said, "this is circulating around the building and informing thinking." The White House Press Secretary called on the platforms to adopt "proposed changes" that would create a more "robust enforcement strategy." And the Surgeon General published an advisory calling on the platforms to "[e]valuate the effectiveness of [their] internal policies" and implement changes. Beyond that, they relentlessly asked the platforms to remove content, even giving reasons as to why such

content should be taken down. They also followed up to ensure compliance and, when met with a response, asked how the internal decision was made.

And, the officials' campaign succeeded. The platforms, in capitulation to state-sponsored pressure, changed their moderation policies. The platforms explicitly recognized that. For example, one platform told the White House it was "making a number of changes"—which aligned with the officials' demands—as it knew its "position on [misinformation] continues to be a particular concern" for the White House. The platform noted that, in line with the officials' requests, it would "make sure that these additional [changes] show results—the stronger demotions in particular should deliver real impact." Similarly, one platform emailed a list of "commitments" after a meeting with the White House which included policy "changes" "focused on reducing the virality" of anti-vaccine content even when it "does not contain actionable misinformation." Relatedly, one platform told the Surgeon General that it was "committed to addressing the [] misinformation that you've called on us to address," including by implementing a set of jointly proposed policy changes from the White House and the Surgeon General.

Consequently, it is apparent that the officials exercised meaningful control—via changes to the platforms' independent processes—over the platforms' moderation decisions. By pushing changes to the platforms' policies through their expansive relationship with and informal oversight over the platforms, the officials imparted a lasting influence on the platforms' moderation decisions without the need for any further input. In doing so, the officials ensured that any moderation decisions were not made in accordance with independent judgments guided by independent standards. *See id.*; *see also Am. Mfrs.*, 526 U.S. at 52 ("The decision to withhold payment, like the decision to transfer Medicaid patients to a lower level of care in *Blum*, is made by concededly private parties, and 'turns on . . . judgments made by private

parties' without 'standards . . . established by the State.'"). Instead, they were encouraged by the officials' imposed standards.

In sum, we find that the White House officials, in conjunction with the Surgeon General's office, coerced and significantly encouraged the platforms to moderate content. As a result, the platforms' actions "must in law be deemed to be that of the State." *Blum*, 457 U.S. at 1004.

2.

Next, we consider the FBI. We find that the FBI, too, likely (1) coerced the platforms into moderating content, and (2) encouraged them to do so by effecting changes to their moderation policies, both in violation of the First Amendment.

We start with coercion. Similar to the White House, Surgeon General, and CDC officials, the FBI regularly met with the platforms, shared "strategic information," frequently alerted the social media companies to misinformation spreading on their platforms, and monitored their content moderation policies. But, the FBI went beyond that—they urged the platforms to take down content. Turning to the Second Circuit's four-factor test, we find that those requests were coercive. *Vullo*, 49 F.4th at 715.

First, given the record before us, we cannot say that the FBI's messages were plainly threatening in tone or manner. *Id.* But, second, we do find the FBI's requests came with the backing of clear authority over the platforms. After all, content moderation requests "might be inherently coercive if sent by . . . [a] law enforcement officer." *Warren*, 66 F.4th at 1210 (citations omitted); *see also Zieper v. Metzinger*, 392 F. Supp. 2d 516, 531 (S.D.N.Y. 2005) (holding that a reasonable jury could find an FBI agent's request coercive when he asked an internet service provider to take down a controversial video that could be "inciting a riot" because he was "an FBI agent charged with investigating the video"); *Backpage*, 807 F.3d at 234

("[C]redit card companies don't like being threatened by a law-enforcement official that he will sic the feds on them, even if the threat may be empty."). This is especially true of the lead law enforcement, investigatory, and domestic security agency for the executive branch. Consequently, because the FBI wielded *some* authority over the platforms, *see Okwedy*, 333 F.3d at 344, the FBI's takedown requests can "reasonably be construed" as coercive in nature, *Warren*, 66 F.4th at 1210.

Third, although the FBI's communications did not plainly reference adverse consequences, an actor need not express a threat aloud so long as, given the circumstances, the message *intimates* that some form of punishment will follow noncompliance. *Id.* at 1209. Here, beyond its inherent authority, the FBI—unlike most federal actors—also has tools at its disposal to force a platform to take down content. For instance, in *Zieper*, an FBI agent asked a web-hosting platform to take down a video portraying an imaginary documentary showing preparations for a military takeover of Times Square on the eve of the new millennium. 392 F. Supp. 2d at 520–21. In appealing to the platform, the FBI agent said that he was concerned that the video could be "inciting a riot" and testified that he was trying to appeal to the platform's "'good citizenship' by pointing out a public safety concern." *Id.* at 531. And these appeals to the platform's "good citizenship" worked—the platform took down the video. *Id.* at 519. The Southern District of New York concluded that a reasonable jury could find that statement coercive, "particularly when said by an FBI agent charged with investigating the video." *Id.* at 531. Indeed, the question is whether a message intimates that *some* form of punishment that may be used against the recipient, an analysis that includes means of retaliation that are not readily apparent. *See Warren*, 66 F.4th at 1210.

Fourth, the platforms clearly perceived the FBI's messages as threats. For example, right before the 2022 congressional election, the FBI warned

the platforms of "hack and dump" operations from "state-sponsored actors" that would spread misinformation through their sites. In doing so, the FBI officials leaned into their inherent authority. So, the platforms reacted as expected—by taking down content, including posts and accounts that originated from the United States, in direct compliance with the request. Considering the above, we conclude that the FBI coerced the platforms into moderating content. But, the FBI's endeavors did not stop there.

We also find that the FBI likely significantly encouraged the platforms to moderate content by entangling themselves in the platforms' decision-making processes. *Blum*, 457 U.S. at 1008. Beyond taking down posts, the platforms also changed their terms of service in concert with recommendations from the FBI. For example, several platforms "adjusted" their moderation policies to capture "hack-and-leak" content after the FBI asked them to do so (and followed up on that request). Consequently, when the platforms subsequently moderated content that violated their newly modified terms of service (*e.g.*, the results of hack-and-leaks), they did not do so via independent standards. *See Blum*, 457 U.S. at 1008. Instead, those decisions were made subject to commandeered moderation policies.

In short, when the platforms acted, they did so in response to the FBI's inherent authority *and* based on internal policies influenced by FBI officials. Taking those facts together, we find the platforms' decisions were significantly encouraged and coerced by the FBI.[19]

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[19] Plaintiffs and several *amici* assert that the FBI and other federal actors coerced or significantly encouraged the social-media companies into disseminating information that was favorable to the administration—information the federal officials knew was false or misleading. We express no opinion on those assertions because they are not necessary to our holding here.

3.

Next, we turn to the CDC. We find that, although not plainly coercive, the CDC officials likely significantly encouraged the platforms' moderation decisions, meaning they violated the First Amendment.

We start with coercion. Here, like the other officials, the CDC regularly met with the platforms and frequently flagged content for removal. But, unlike the others, the CDC's requests for removal were not coercive—they did not ask the platforms in an intimidating or threatening manner, do not possess any clear authority over the platforms, and did not allude to any adverse consequences. Consequently, we cannot say the platforms' moderation decisions were coerced by CDC officials.

The same, however, cannot be said for significant encouragement. Ultimately, the CDC was entangled in the platforms' decision-making processes, *Blum*, 457 U.S. at 1008.

The CDC's relationship with the platforms began by defining—in "Be On the Lookout" meetings—what was (and was not) "misinformation" for the platforms. Specifically, CDC officials issued "advisories" to the platforms warning them about misinformation "hot topics" to be wary of. From there, CDC officials instructed the platforms to label disfavored posts with "contextual information," and asked for "amplification" of approved content. That led to CDC officials becoming intimately involved in the various platforms' day-to-day moderation decisions. For example, they communicated about how a platform's "moderation team" reached a certain decision, how it was "approach[ing] adding labels" to particular content, and how it was deploying manpower. Consequently, the CDC garnered an extensive relationship with the platforms.

From that relationship, the CDC, through authoritative guidance, directed changes to the platforms' moderation policies. At first, the

platforms asked CDC officials to decide whether certain claims were misinformation. In response, CDC officials told the platforms whether such claims were true or false, and whether information was "misleading" or needed to be addressed via CDC-backed labels. That back-and-forth then led to "[s]omething more." *Roberts*, 742 F.2d at 228.

Specifically, CDC officials directly impacted the platforms' moderation policies. For example, in meetings with the CDC, the platforms actively sought to "get into [] policy stuff" and run their moderation policies by the CDC to determine whether the platforms' standards were "in the right place." Ultimately, the platforms came to *heavily rely* on the CDC. They adopted rule changes meant to implement the CDC's guidance. As one platform said, they "were able to make [changes to the 'misinfo policies'] based on the conversation [they] had last week with the CDC," and they "immediately updated [their] policies globally" following another meeting. And, those adoptions led the platforms to make moderation decisions based entirely on the CDC's say-so—"[t]here are several claims that we will be able to remove as soon as the CDC debunks them; until then, we are unable to remove them." That dependence, at times, was total. For example, one platform asked the CDC how it should approach certain content and even asked the CDC to double check and proofread its proposed labels.

Viewing these facts, we are left with no choice but to conclude that the CDC significantly encouraged the platforms' moderation decisions. Unlike in *Blum*, the platforms' decisions were not made by independent standards, 457 U.S. at 1008, but instead were marred by modification from CDC officials. Thus, the resulting content moderation, "while not compelled by the state, was so significantly encouraged, both overtly and covertly" by CDC officials that those decisions "must in law be deemed to be that of the state." *Howard Gault*, 848 F.2d at 555 (alterations adopted) (internal quotation marks and citation omitted).

4.

Finally, we address the remaining officials—the NIAID, the State Department, and CISA. Having reviewed the record, we find the district court erred in enjoining these other officials. Put simply, there was not, at this stage, sufficient evidence to find that it was likely these groups coerced or significantly encouragement the platforms.

For the NIAID officials, it is not apparent that they ever communicated with the social-media platforms. Instead, the record shows, at most, that public statements by Director Anthony Fauci and other NIAID officials promoted the government's scientific and policy views and attempted to discredit opposing ones—quintessential examples of government speech that do not run afoul of the First Amendment. *See Pleasant Grove City v. Summum*, 555 U.S. 460, 467–68 (2009) ("[The government] is entitled to say what it wishes, and to select the views that it wants to express." (quotation marks and citations omitted)); *Nat'l Endowment for Arts v. Finley*, 524 U.S. 569, 598 (1998) (Scalia, J., concurring) ("It is the very business of government to favor and disfavor points of view . . . ."). Consequently, with only insignificant (if any) communication (direct or indirect) with the platforms, we cannot say that the NIAID officials likely coerced or encouraged the platforms to act.

As for the State Department, while it did communicate directly with the platforms, so far there is no evidence these communications went beyond educating the platforms on "tools and techniques" used by foreign actors. There is no indication that State Department officials flagged specific content for censorship, suggested policy changes to the platforms, or engaged in any similar actions that would reasonably bring their conduct within the scope of the First Amendment's prohibitions. After all, their messages do not appear coercive in tone, did not refer to adverse consequences, and were not

backed by any apparent authority. And, per this record, those officials were not involved to any meaningful extent with the platforms' moderation decisions or standards.

Finally, although CISA flagged content for social-media platforms as part of its switchboarding operations, based on this record, its conduct falls on the "attempts to convince," not "attempts to coerce," side of the line. *See Okwedy*, 333 F.3d at 344; *O'Handley*, 62 F.4th at 1158. There is not sufficient evidence that CISA made threats of adverse consequences—explicit or implicit—to the platforms for refusing to act on the content it flagged. *See Warren*, 66 F.4th at 1208–11 (finding that senator's communication was a "request rather than a command" where it did not "suggest[] that compliance was the only realistic option" or reference potential "adverse consequences"). Nor is there any indication CISA had power over the platforms in any capacity, or that their requests were threatening in tone or manner. Similarly, on this record, their requests—although certainly amounting to a non-trivial level of involvement—do not equate to meaningful control. There is no plain evidence that content was actually moderated per CISA's requests or that any such moderation was done subject to non-independent standards.

* * *

Ultimately, we find the district court did not err in determining that several officials—namely the White House, the Surgeon General, the CDC, and the FBI—likely coerced or significantly encouraged social-media

platforms to moderate content, rendering those decisions state actions.[20] In doing so, the officials likely violated the First Amendment.[21]

But, we emphasize the limited reach of our decision today. We do not uphold the injunction against all the officials named in the complaint. Indeed, many of those officials were permissibly exercising government speech, "carrying out [their] responsibilities," or merely "engaging in [a] legitimate [] action." *Vullo*, 49 F.4th at 718–19. That distinction is important because the state-action doctrine is vitally important to our Nation's operation—by distinguishing between the state and the People, it promotes "a robust sphere of individual liberty." *Halleck*, 139 S. Ct. at 1928. That is why the Supreme Court has been reluctant to expand the scope of the doctrine. *See Matal v. Tan*, 582 U.S. 218, 235 (2017) ("[W]e must exercise great caution before extending our government-speech precedents."). If just any relationship with the government "sufficed to transform a private entity into a state actor, a large swath of private entities in America would suddenly be turned into state actors and be subject to a variety of constitutional constraints on their activities." *Halleck*, 139 S. Ct. at 1932. So, we do not take our decision today lightly. But, the Supreme Court has rarely been faced with a coordinated campaign of this magnitude orchestrated by federal officials that jeopardized a fundamental aspect of American life. Therefore, the district court was correct in its assessment—"unrelenting pressure" from certain government

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[20] Here, in holding that some of the officials likely coerced or sufficiently encouraged the platforms to censor content, we pass no judgment on any joint actor or conspiracy-based state action theory.

[21] "With very limited exceptions, none applicable to this case, censorship—'an effort by administrative methods to prevent the dissemination of ideas or opinions thought dangerous or offensive,' as distinct from punishing such dissemination (if it falls into one of the categories of punishable speech, such as defamation or threats) after it has occurred—is prohibited by the First Amendment as it has been understood by the courts." *Backpage.com*, 807 F.3d at 235 (citation omitted).

officials likely "had the intended result of suppressing millions of protected free speech postings by American citizens." We see no error or abuse of discretion in that finding.[22]

V.

Next, we address the equities. Plaintiffs seeking a preliminary injunction must show that irreparable injury is "likely" absent an injunction, the balance of the equities weighs in their favor, and an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (collecting cases).

While "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury," *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)), "invocation of the First Amendment cannot substitute for the presence of an imminent, non-speculative irreparable injury," *Google, Inc. v. Hood*, 822 F.3d 212, 228 (5th Cir. 2016).

Here, the district court found that the Plaintiffs submitted enough evidence to show that irreparable injury is likely to occur during the pendency of the litigation. In so doing, the district court rejected the officials' arguments that the challenged conduct had ceased and that future harm was speculative, drawing on mootness and standing doctrines. Applying the standard for mootness, the district court concluded that a defendant must

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[22] Our holding today, as is appropriate under the state-action doctrine, is limited. Like in *Roberts*, we narrowly construe today's finding of state action to apply only to the challenged decisions. *See* 742 F.2d at 228 ("We do not doubt that many of the actions of the racetrack and its employees are no more than private business decisions," but "[i]n the area of stalling, [] state regulation and involvement is so specific and so pervasive that [such] decisions may be considered to bear the imprimatur of the state.").

show that "it is absolutely clear the alleged wrongful behavior could not reasonably be expected to recur" and that the officials had failed to make such showing here. In assessing whether Plaintiffs' claims of future harm were speculative and dependent on the actions of social-media companies, the district court applied a quasi-standing analysis and found that the Plaintiffs had alleged a "substantial risk" of future harm that is not "imaginary or wholly speculative," pointing to the officials' ongoing coordination with social-media companies and willingness to suppress free speech on a myriad of hot-button issues.

We agree that the Plaintiffs have shown that they are likely to suffer an irreparable injury. Deprivation of First Amendment rights, even for a short period, is sufficient to establish irreparable injury. *Elrod*, 427 U.S. at 373; *Cuomo*, 141 S. Ct. at 67; *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012).

The district court was right to be skeptical of the officials' claims that they had stopped all challenged conduct. *Cf. Speech First, Inc. v. Fenves*, 979 F.3d 319, 328 (5th Cir. 2020) ("[A] defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice, even in cases in which injunctive relief is sought."). But, the district court's use of a "not imaginary or speculative" standard in the irreparable harm context is inconsistent with binding case law. *See Winter*, 555 U.S. at 22 ("Issuing a preliminary injunction based only on *a possibility* of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." (citation omitted) (emphasis added)). The correct standard is whether a future injury is "likely." *Id.* But, because the Plaintiffs sufficiently demonstrated that their First Amendment interests are either threatened or impaired, they have met this standard. *See Opulent Life Church*, 697 F.3d at 295 (citing 11A Charles

Alan Wright et al., Federal Practice and Procedure § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.")). Indeed, the record shows, and counsel confirmed at oral argument, that the officials' challenged conduct has not stopped.

Next, we turn to whether the balance of the equities warrants an injunction and whether such relief is in the public interest. Where the government is the opposing party, harm to the opposing party and the public interest "merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

The district court concluded that the equities weighed in favor of granting the injunction because the injunction maintains the "constitutional structure" and Plaintiffs' free speech rights. The officials argue that the district court gave short shrift to their assertions that the injunction could limit the Executive Branch's ability to "persuade" the American public, which raises separation-of-powers issues.

Although both Plaintiffs and the officials assert that their ability to speak is affected by the injunction, the government is not permitted to use the government-speech doctrine to "silence or muffle the expression of disfavored viewpoints." *Matal*, 582 U.S. at 235.

It is true that the officials have an interest in engaging with social-media companies, including on issues such as misinformation and election interference. But the government is not permitted to advance these interests to the extent that it engages in viewpoint suppression. Because "[i]njunctions protecting First Amendment freedoms are always in the public interest," the equities weigh in Plaintiffs' favor. *Opulent Life Church*, 697 F.3d at 298 (quotation marks and citations omitted).

While the officials raise legitimate concerns that the injunction could sweep in lawful speech, we have addressed those concerns by modifying the scope of the injunction.

VI.

Finally, we turn to the language of the injunction itself. An injunction "is overbroad if it is not 'narrowly tailored to remedy the specific action which gives rise to the order' as determined by the substantive law at issue." *Scott v. Schedler*, 826 F.3d 207, 211 (5th Cir. 2016) (alterations adopted) (quoting *John Doe #1 v. Veneman*, 380 F.3d 807, 818 (5th Cir. 2004)). This requirement that a "plaintiff's remedy must be tailored to redress the plaintiff's particular injury" is in recognition of a federal court's "constitutionally prescribed role . . . to vindicate the individual rights of the people appearing before it," not "generalized partisan preferences." *Gill v. Whitford*, 138 S. Ct. 1916, 1933–34 (2018).

In addition, injunctions cannot be vague. "Every order granting an injunction . . . must: (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required." FED. R. CIV. P. 65(d)(1). The Supreme Court has explained:

> [T]he specificity provisions of Rule 65(d) are no mere technical requirements. The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood. Since an injunctive order prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed.

Schmidt v. Lessard, 414 U.S. 473, 476 (1974) (citations omitted).

To be sure, "[t]he specificity requirement is not unwieldy," *Meyer v. Brown & Root Construction Co.*, 661 F.2d 369, 373 (5th Cir. 1981), and "elaborate detail is unnecessary," *Islander E. Rental Program v. Barfield*, No. 96-41275, 1998 WL 307564, at *4 (5th Cir. Mar. 24, 1998). But still, "an ordinary person reading the court's order should be able to ascertain from the document itself exactly what conduct is proscribed." *Louisiana v. Biden*, 45 F.4th at 846 (citation omitted).

The preliminary injunction here is both vague and broader than necessary to remedy the Plaintiffs' injuries, as shown at this preliminary juncture. As an initial matter, it is axiomatic that an injunction is overbroad if it enjoins a defendant from engaging in legal conduct. Nine of the preliminary injunction's ten prohibitions risk doing just that. Moreover, many of the provisions are duplicative of each other and thus unnecessary.

Prohibitions one, two, three, four, five, and seven prohibit the officials from engaging in, essentially, any action "for the purpose of urging, encouraging, pressuring, or inducing" content moderation. But "urging, encouraging, pressuring" or even "inducing" action does not violate the Constitution unless and until such conduct crosses the line into coercion or *significant* encouragement. *Compare Walker*, 576 U.S. at 208 ("[A]s a general matter, when the government speaks it is entitled to promote a program, to espouse a policy, or to take a position."), *Finley*, 524 U.S. at 598 (Scalia, J., concurring in judgment) ("It is the very business of government to favor and disfavor points of view . . . ."), *and Vullo*, 49 F.4th at 717 (holding statements "encouraging" companies to evaluate risk of doing business with the plaintiff did not violate the Constitution where the statements did not "intimate that some form of punishment or adverse regulatory action would follow the failure to accede to the request"), *with Blum*, 457 U.S. at 1004, *and*

O'Handley, 62 F.4th at 1158 ("In deciding whether the government may urge a private party to remove (or refrain from engaging in) protected speech, we have drawn a sharp distinction between attempts to convince and attempts to coerce."). These provisions also tend to overlap with each other, barring various actions that may cross the line into coercion. There is no need to try to spell out every activity that the government could possibly engage in that may run afoul of the Plaintiffs' First Amendment rights as long the unlawful conduct is prohibited.

The eighth, ninth, and tenth provisions likewise may be unnecessary to ensure Plaintiffs' relief. A government actor generally does not violate the First Amendment by simply "following up with social-media companies" about content-moderation, "requesting content reports from social-media companies" concerning their content-moderation, or asking social media companies to "Be on The Lookout" for certain posts.[23] Plaintiffs have not carried their burden to show that these activities must be enjoined to afford Plaintiffs full relief.

These provisions are vague as well. There would be no way for a federal official to know exactly when his or her actions cross the line from permissibly communicating with a social-media company to impermissibly "urging, encouraging, pressuring, or inducing" them "*in any way*." *See Scott*, 826 F.3d at 209, 213 ("[a]n injunction should not contain broad generalities"); *Islander East*, 1998 WL 307564, at *4 (finding injunction against "interfering in any way" too vague). Nor does the injunction define

[23] While these activities, standing alone, are not violative of the First Amendment and therefore must be removed from the preliminary injunction, we note that these activities *may* violate the First Amendment when they are part of a larger scheme of government coercion or significant encouragement, and neither our opinion nor the modified injunction should be read to hold otherwise.

"Be on The Lookout" or "BOLO." That, too, renders it vague. *See Louisiana v. Biden*, 45 F.4th at 846 (holding injunction prohibiting the federal government from "implementing the Pause of new oil and natural gas leases on public lands or in offshore waters as set forth in [the challenged Executive Order]" was vague because the injunction did not define the term "Pause" and the parties had each proffered different yet reasonable interpretations of the Pause's breadth).

While helpful to some extent, the injunction's carveouts do not solve its clarity and scope problems. Although they seem to greenlight legal speech, the carveouts, too, include vague terms and appear to authorize activities that the injunction otherwise prohibits on its face. For instance, it is not clear whether the Surgeon General could publicly urge social media companies to ensure that cigarette ads do not target children. While such a statement could meet the injunction's exception for "exercising permissible public government speech promoting government policy or views on matters of public concern," it also "urg[es] . . . in any manner[] social-media companies to change their guidelines for removing, deleting, suppressing, or reducing content containing protected speech." This example illustrates both the injunction's overbreadth, as such public statements constitute lawful speech, *see Walker*, 576 U.S. at 208, and vagueness, because the government-speech exception is ill-defined, *see Scott*, 826 F.3d at 209, 213 (vacating injunction requiring the Louisiana Secretary of State to maintain in force his "policies, procedures, and directives" related to the enforcement of the National Voter Registration Act, where "policies, procedures, and directives" were not defined). At the same time, given the legal framework at play, these carveouts are likely duplicative and, as a result, unnecessary.

Finally, the fifth prohibition—which bars the officials from "collaborating, coordinating, partnering, switchboarding, and/or jointly working with the Election Integrity Partnership, the Virality Project, the

Stanford Internet Observatory, or any like project or group" to engage in the same activities the officials are proscribed from doing on their own— may implicate private, third-party actors that are not parties in this case and that may be entitled to their own First Amendment protections. Because the provision fails to identify the specific parties that are subject to the prohibitions, *see Scott*, 826 F.3d at 209, 213, and "exceeds the scope of the parties' presentation," *OCA-Greater Houston v. Texas*, 867 F.3d 604, 616 (5th Cir. 2017), Plaintiffs have not shown that the inclusion of these third parties is necessary to remedy their injury. So, this provision cannot stand at this juncture. *See also Alexander v. United States*, 509 U.S. 544, 550 (1993) ("[C]ourt orders that actually [] forbid speech activities are classic examples of prior restraints."). For the same reasons, the injunction's application to "all acting in concert with [the officials]" is overbroad.

We therefore VACATE prohibitions one, two, three, four, five, seven, eight, nine, and ten of the injunction.

That leaves provision six, which bars the officials from "threatening, pressuring, or coercing social-media companies in any manner to remove, delete, suppress, or reduce posted content of postings containing protected free speech." But, those terms could also capture otherwise legal speech. So, the injunction's language must be further tailored to exclusively target illegal conduct and provide the officials with additional guidance or instruction on what behavior is prohibited. To be sure, our standard practice is to remand to the district court to tailor such a provision in the first instance. *See Scott*, 826 F.3d at 214. But this is far from a standard case. In light of the expedited nature of this appeal, we modify the injunction's remaining provision ourselves.

In doing so, we look to the Seventh Circuit's approach in *Backpage.com*, 807 F.3d at 239. There, the Seventh Circuit held that a county

sheriff violated Backpage's First Amendment rights by demanding that financial service companies cut ties with Backpage in an effort to "crush" the platform (an online forum for "adult" classified ads). *Id.* at 230. To remedy the constitutional violation, the court issued the following injunction:

> Sheriff Dart, his office, and all employees, agents, or others who are acting or have acted for or on behalf of him, shall take no actions, formal or informal, to coerce or threaten credit card companies, processors, financial institutions, or other third parties with sanctions intended to ban credit card or other financial services from being provided to Backpage.com.

Id. at 239.

Like the Seventh Circuit's preliminary injunction in *Backpage.com*, we endeavor to modify the preliminary injunction here to target the coercive government behavior with sufficient clarity to provide the officials notice of what activities are proscribed. Specifically, prohibition six of the injunction is MODIFIED to state:

> Defendants, and their employees and agents, shall take no actions, formal or informal, directly or indirectly, to coerce or significantly encourage social-media companies to remove, delete, suppress, or reduce, including through altering their algorithms, posted social-media content containing protected free speech. That includes, but is not limited to, compelling the platforms to act, such as by intimating that some form of punishment will follow a failure to comply with any request, or supervising, directing, or otherwise meaningfully controlling the social-media companies' decision-making processes.

Under the modified injunction, the enjoined Defendants cannot coerce or significantly encourage a platform's content-moderation decisions. Such conduct includes threats of adverse consequences—even if those threats are not verbalized and never materialize—so long as a reasonable person would construe a government's message as alluding to some form of punishment. That, of course, is informed by context (*e.g.*, persistent pressure, perceived or actual ability to make good on a threat). The government cannot subject the platforms to legal, regulatory, or economic consequences (beyond reputational harms) if they do not comply with a given request. *See Bantam Books*, 372 U.S. at 68; *Okwedy*, 333 F.3d at 344. The enjoined Defendants also cannot supervise a platform's content moderation decisions or directly involve themselves in the decision itself. Social-media platforms' content-moderation decisions must be theirs and theirs alone. *See Blum*, 457 U.S. at 1008. This approach captures illicit conduct, regardless of its form.

Because the modified injunction does not proscribe Defendants from activities that could include legal conduct, no carveouts are needed. There are two guiding inquiries for Defendants. First, is whether their action could be reasonably interpreted as a threat to take, or cause to be taken, an official action against the social-media companies if the companies decline Defendants' request to remove, delete, suppress, or reduce protected free speech on their platforms. Second, is whether Defendants have exercised active, meaningful control over the platforms' content-moderation decisions to such a degree that it inhibits the platforms' independent decision-making.

To be sure, this modified injunction still "restricts government communications not specifically targeted to particular content *posted by plaintiffs themselves*," as the officials protest. But that does not mean it is still overbroad. To the contrary, an injunction "is not necessarily made overbroad by extending benefit or protection to persons other than prevailing parties in

the lawsuit—even if it is not a class action—if such breadth is necessary to give prevailing parties the relief to which they are entitled." *Pro. Ass'n of Coll. Educators, TSTA/NEA v. El Paso Cnty. Cmty. Coll. Dist.*, 730 F.2d 258, 274 (5th Cir. 1984) (citations omitted); *see also Bresgal v. Brock*, 843 F.2d 1163, 1170–71 (9th Cir. 1987). Such breadth is plainly necessary, if not inevitable, here. The officials have engaged in a broad pressure campaign designed to coerce social-media companies into suppressing speakers, viewpoints, and content disfavored by the government. The harms that radiate from such conduct extend far beyond just the Plaintiffs; it impacts every social-media user. Naturally, then, an injunction against such conduct will afford protections that extend beyond just Plaintiffs, too. *Cf. Feds for Med. Freedom v. Biden*, 63 F.4th 366, 387 (5th Cir. 2023) ("[A]n injunction [can] benefit non-parties as long as that benefit [is] merely incidental." (internal quotation marks and citation omitted)).

As explained in Part IV above, the district court erred in finding that the NIAID Officials, CISA Officials, and State Department Officials likely violated Plaintiffs' First Amendment rights. So, we exclude those parties from the injunction. Accordingly, the term "Defendants" as used in this modified provision is defined to mean only the following entities and officials included in the original injunction:

> The following members of the Executive Office of the President of the United States: White House Press Secretary, Karine Jean-Pierre; Counsel to the President, Stuart F. Delery; White House Partnerships Manager, Aisha Shah; Special Assistant to the President, Sarah Beran; Administrator of the United States Digital Service within the Office of Management and Budget, Mina Hsiang; White House National Climate Advisor, Ali Zaidi; White House Senior COVID-19 Advisor, formerly Andrew Slavitt; Deputy Assistant to the President

and Director of Digital Strategy, formerly Rob Flaherty; White House COVID-19 Director of Strategic Communications and Engagement, Dori Salcido; White House Digital Director for the COVID-19 Response Team, formerly Clarke Humphrey; Deputy Director of Strategic Communications and Engagement of the White House COVID-19 Response Team, formerly Benjamin Wakana; Deputy Director for Strategic Communications and External Engagement for the White House COVID-19 Response Team, formerly Subhan Cheema; White House COVID-19 Supply Coordinator, formerly Timothy W. Manning; and Chief Medical Advisor to the President, Dr. Hugh Auchincloss, along with their directors, administrators and employees. Surgeon General Vivek H. Murthy; and Chief Engagement Officer for the Surgeon General, Katharine Dealy, along with their directors, administrators and employees. The Centers for Disease Control and Prevention ("CDC"), and specifically the following employees: Carol Y. Crawford, Chief of the Digital Media Branch of the CDC Division of Public Affairs; Jay Dempsey, Social-media Team Leader, Digital Media Branch, CDC Division of Public Affairs; and Kate Galatas, CDC Deputy Communications Director. And the Federal Bureau of Investigation ("FBI"), and specifically the following employees: Laura Dehmlow, Section Chief, FBI Foreign Influence Task Force; and Elvis M. Chan, Supervisory Special Agent of Squad CY-1 in the FBI San Francisco Division.

VII.

The district court's judgment is AFFIRMED with respect to the White House, the Surgeon General, the CDC, and the FBI, and REVERSED as to all other officials. The preliminary injunction is VACATED except for prohibition number six, which is MODIFIED as set forth herein. The Appellants' motion for a stay pending appeal is DENIED as moot. The Appellants' request to extend the administrative stay for ten days following the date hereof pending an application to the Supreme Court of the United States is GRANTED, and the matter is STAYED.

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