



“Free Speech Under Attack: Book Bans and Academic Censorship”

**The Campus Free Speech Crisis in the Context of K-12 “Book Bans”**

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It is an honor to address the Subcommittee on Civil Rights and Civil Liberties of the House Committee on Oversight and Reform. Thank you, Chairman Raskin, Ranking Member Mace, and members of the subcommittee.

For the last 26 years, the American Council of Trustees and Alumni (ACTA) has been working to protect academic freedom and free expression in American higher education. We are grateful for the opportunity to address the critical issues of censorship and free speech in an academic context.

The data show, conclusively I think, that the problem of academic censorship has reached crisis levels—not so much in K-12 education but on our college and university campuses. We have all heard about the violent disruptions and disinvitation campaigns designed to prevent speakers from voicing disfavored (generally, conservative) viewpoints. The violent attack at Middlebury College in 2017 that successfully disrupted Charles Murray’s lecture and left one faculty member with a concussion,<sup>1</sup> and the banging and chanting at Yale University Law School last month<sup>2</sup>—described as a “persistent cacophony” that disrupted a Federalist Society debate, faculty meeting, and nearby courses—are not rare or isolated examples. Instances of speaker disinvitations,<sup>3</sup> intimidating shout downs, and academic cancelations<sup>4</sup> are a routine feature of campus life today, with documented examples running well into the hundreds.

Empirical evidence, established by mountains of survey research, demonstrates that the current campus climate chills free and open discourse.<sup>5</sup> At American colleges and universities today, self-

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<sup>1</sup> Allison Stanger, “Understanding the Angry Mob at Middlebury That Gave Me a Concussion,” *New York Times*, March 13, 2017, <https://www.nytimes.com/2017/03/13/opinion/understanding-the-angry-mob-that-gave-me-a-concussion.html>.

<sup>2</sup> Zach Greenberg, “New audio shows severe disruption of Yale Federalist Society panel—which the university did little to prevent,” Foundation for Individual Rights in Education (FIRE), March 29, 2022, <https://www.thefire.org/new-audio-shows-severe-disruption-of-yale-federalist-society-panel-which-the-university-did-little-to-prevent/>.

<sup>3</sup> FIRE, “Disinvitation Database,” last accessed April 5, 2022, <https://www.thefire.org/research/disinvitation-database/>.

<sup>4</sup> David Acevedo, “Tracking Cancel Culture in Higher Education,” National Association of Scholars, updated February 18, 2022, <https://www.nas.org/blogs/article/tracking-cancel-culture-in-higher-education#caseslist>.

<sup>5</sup> Knight Foundation-Ipsos, *College Student Views on Free Expression and Campus Speech 2022: A Look at Key Trends in Student Speech Views Since 2016* (Miami, FL: Knight Foundation, 2022), [https://knightfoundation.org/wp-content/uploads/2022/01/KFX\\_College\\_2022.pdf](https://knightfoundation.org/wp-content/uploads/2022/01/KFX_College_2022.pdf); and College Pulse, FIRE, and RealClearEducation, “2021 College Free Speech Rankings,” last accessed April 5, 2022, <https://rankings.thefire.org/rank>.

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ensorship is endemic, students do not perceive their administrations to be committed to protecting speech rights, large numbers of students are intolerant of views they disagree with, and majorities agree that important issues of public policy are off-limits for debate.

One such survey, commissioned by ACTA and undertaken by College Pulse in 2021, focused on students at 12 elite liberal arts colleges. According to the forthcoming report, 59% of students report that they are “somewhat” or “very” uncomfortable publicly disagreeing with a professor. Fewer than one-third (32%) of students answered that their administration has made it “extremely” or “very” clear that free speech is protected. Fifty-four percent said that they self-censor, at least occasionally. And 41% said that it is “always” or “sometimes” acceptable to shout down a speaker to “prevent them from speaking on campus.”<sup>6</sup>

The largest project of its kind to date, a 2021 Foundation for Individual Rights in Education (FIRE) survey of 37,000 students on 159 campuses found that fully 24% think that using violence to “stop a campus speech” is acceptable under certain circumstances. No wonder that a majority of students (51%) said it is “difficult to have an open and honest conversation about” race on their campus.<sup>7</sup>

There is good reason to suspect that student self-censorship is linked to low levels of ideological diversity among professors and university leaders. Among those who reported having to self-censor “very often” in the ACTA survey, 67% said that increasing the viewpoint diversity of the faculty would improve the climate for free expression; the same proportion (67%) answered that senior administrators should do “more to encourage a free speech culture.”<sup>8</sup> Other studies of political and ideological diversity among faculty have demonstrated that political conservatives are severely underrepresented. For example, the Higher Education Research Institute at UCLA found that 60% of faculty across disciplines self-identify as “liberal” or “far left,” compared to 12% who identify as “conservative” or “far right.”<sup>9</sup> A separate study of faculty voter registration at 40 top schools found Democrat to Republican ratios reaching as high as 60 to 1.<sup>10</sup> And a survey of university administrators, those responsible for everything from student life programming to the communications department, found that only 6% identify as conservative compared to 71% who

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<sup>6</sup> College Pulse Insights, “Campus Climate Study,” Question 3, Question 19, Question 21, and Question 16, last accessed April 5, 2022, [https://internal-insights.collegepulse.com/vault/question/602c0e0b91b24f000ec26b06?token=eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJpc3MiOiI2MGNhYjExZDU0ZjdiYzAwMTIyZTdhNmYiLCJleHAiOiI0ODc0OTYzNDk1OTN9.usy-MOBTtDUjqoWIgOWhCUD-HFK\\_E6jXGUhrHiFL\\_eU](https://internal-insights.collegepulse.com/vault/question/602c0e0b91b24f000ec26b06?token=eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJpc3MiOiI2MGNhYjExZDU0ZjdiYzAwMTIyZTdhNmYiLCJleHAiOiI0ODc0OTYzNDk1OTN9.usy-MOBTtDUjqoWIgOWhCUD-HFK_E6jXGUhrHiFL_eU).

<sup>7</sup> We also know that students on the right are more likely to self-censor: 61% of strong Democrats answered that they “rarely” or “never” stop themselves from expressing their opinions from concerns of how others will react compared to 31% of strong Republicans. College Pulse/ FIRE, “2021 College Free Speech Rankings Data,” Question 18, Question 21, and Question 25, last accessed April 5, 2020, <https://public.tableau.com/app/profile/college.pulse/viz/2021CollegeFreeSpeechRankingsData/2021CollegeFreeSpeechRankingsData>.

<sup>8</sup> College Pulse Insights, “Campus Climate Study,” Question 33, last accessed April 5, 2022.

<sup>9</sup> Ellen Bara Stolzenberg, et al., *Undergraduate Teaching Faculty: The HERI Faculty Survey 2016–2017* (Los Angeles, CA: Higher Education Research Institute, UCLA, 2019), <https://heri.ucla.edu/monographs/HERI-FAC2017-monograph.pdf>.

<sup>10</sup> Mitchell Langbert, Anthony J. Quain, and Daniel B. Klein, “Faculty Voter Registration in Economics, History, Journalism, Law, and Psychology,” *Econ Journal Watch* 13, no. 3 (2016): 422–451, <https://econjwatch.org/File+download/944/LangbertQuainKleinSept2016.pdf?mimetype=pdf>.

self-classify as liberal or very liberal.<sup>11</sup> Available evidence suggests that these disparities are not accidental. Discipline-specific survey research of faculty has found that 55% of academic philosophers<sup>12</sup> and 38% of social psychologists<sup>13</sup> admit to at least some willingness to discriminate against conservatives in the faculty hiring process.

On many campuses, the problem goes well beyond the establishment of a viewpoint monoculture. Hundreds of universities, including public institutions, have deployed “bias response teams” and “bias incident reporting systems” to investigate student and faculty speech.<sup>14</sup> Their purpose, as the Orwellian name suggests, is to swoop in where a member of the campus alleges offense, both to comfort the aggrieved and to punish (or re-educate) offending speakers. Campuses organize their bias teams in different ways, but many include police officers and senior administrators. Most bias response teams have the power to investigate claims, initiate attempts at reconciliation, create a record of the event, and condemn behavior or speech.<sup>15</sup> They aim to build a more inclusive community by changing the kinds of ideas that are expressed on campus. Academic research has shown that bias teams—even those without formal disciplinary power—generally adopt a criminal justice framework, often employing processes and language drawn from the criminal justice system (“victim,” “offender,” “investigation”).<sup>16</sup>

It is impossible to know for sure what conversations are safe in such an environment because offensive speech is completely subjective. Students have used bias teams to target protected speech simply because they dislike the viewpoint expressed. At Colby College, a student reported a peer for using the phrase “on the other hand” (the charge: ableism!);<sup>17</sup> at Michigan State University, a student informed on his roommate for watching Ben Shapiro on YouTube;<sup>18</sup> at the University of Oregon, a professor was turned in for expressing skepticism of Christine Blasey Ford’s sexual assault accusations during Brett Kavanaugh’s confirmation hearing;<sup>19</sup> and at the University of Indiana, a self-identifying “trans feminine” student launched a bias investigation over a faculty member’s “rude look.”<sup>20</sup>

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<sup>11</sup> Samuel J. Abrams, “Think Professors Are Liberal? Try School Administrators,” *New York Times*, October 16, 2018, <https://www.nytimes.com/2018/10/16/opinion/liberal-college-administrators.html>.

<sup>12</sup> Uwe Peters, et al., “Ideological diversity, hostility, and discrimination in philosophy,” *Philosophical Psychology* 33, no. 4 (2020): 511, 523, <https://doi.org/10.1080/09515089.2020.1743257>.

<sup>13</sup> Yoel Inbar and Joris Lammers, “Political Diversity in Social and Personality Psychology,” *Perspectives on Psychology Science* 7, no. 5 (2012): 496, 500.

[https://pure.uvt.nl/ws/portalfiles/portal/1464195/SocPsy\\_Lammers\\_political\\_PoPS\\_2012.pdf](https://pure.uvt.nl/ws/portalfiles/portal/1464195/SocPsy_Lammers_political_PoPS_2012.pdf).

<sup>14</sup> FIRE, *2017 Report on Bias Reporting Systems – Final – Corrected* (Philadelphia, PA: FIRE, 2017), <https://www.thefire.org/presentation/wp-content/uploads/2017/03/01012623/2017-brt-report-corrected.pdf>.

<sup>15</sup> FIRE, *2017 Report on Bias Reporting Systems – Final – Corrected*.

<sup>16</sup> Ryan A. Miller, et al., “A Balancing Act: Whose Interests Do Bias Response Teams Serve?,” *Review of Higher Education* 42, no. 1 (2018): 313, 326–327 (2018).

<sup>17</sup> Evan Lips, “Maine college’s website offers glimpse at which ‘biases’ spark investigations,” *NewBostonPost*, June 28, 2016, <https://newbostonpost.com/2016/06/28/maine-colleges-website-offers-glimpse-at-which-biases-spark-investigations/>.

<sup>18</sup> Robby Soave, “Michigan State Students Filed Bias Incident Reports Over Some Really Petty Things,” *Reason*, April 5, 2019, <https://reason.com/2019/04/05/michigan-state-students-filed-bias-incident/>.

<sup>19</sup> Christian Schneider, “Bias Teams Welcome the Class of 1984,” *Wall Street Journal*, August 5, 2019, <https://www.wsj.com/articles/bias-teams-welcome-the-class-of-1984-11565045215>.

<sup>20</sup> *Ibid.*

Universities that encourage students to inform on their peers and professors create an anti-intellectual dynamic reminiscent of an East European Soviet police state. Even where speech is protected in theory—by the First Amendment and/or academic freedom policies—students who fear that the wrong word could set off a reputation-damaging investigation have every reason to stay silent or conform the views they express to the campus orthodoxy. The process itself is punitive, especially given the risk that allegations could be memorialized on social media. No wonder appeals courts in the Fifth and Sixth Circuits have ruled that bias teams have an unconstitutional chilling effect on speech.<sup>21</sup> The lawsuits, brought by Speech First, a group dedicated to protecting students’ First Amendment rights, forced the University of Texas—Austin<sup>22</sup> and University of Michigan—Ann Arbor<sup>23</sup> to settle by disbanding their bias teams (among other policy reforms).<sup>24</sup>

The free expression crisis in American higher education is already affecting American society in profound and lasting ways. Consider three.

First, free and open deliberation on college campuses helps students to develop viewpoint tolerance and intellectual humility. Exposure to people who hold different views on consequential matters of justice and right, good and evil, teaches us to appreciate that people of good will and character will disagree—even vehemently. In other words, norms of free expression teach habits of civil discourse. On the contrary, students who are exposed to one set of viewpoints in their formative college years graduate expecting the world to bend to the perspective they know best. The result is a shallower and angrier public discourse. That is why rebuilding norms of civil and reasoned debate begins on college campuses.

Second, liberal education—no less than the pursuit of truth and advancement of learning—requires the freedom to explore a true diversity of opinions. Young people must have opportunities to test their own opinions by bringing them into dialogue with others. This forces learners to explore underexamined contours of their opinions—assumptions, premises taken for granted, and potential consequences they had not imagined. Sometimes, this helps an individual to refine and strengthen his or her own views. Other times, it leads to a change of viewpoint. A campus that chills discussion robs students of their best chance to learn about the world and themselves.

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<sup>21</sup> For example, in the Fifth Circuit case involving the University of Texas, Judge Edith Jones wrote, “The chilling effect of allegedly vague regulations, coupled with a range of potential penalties for violating the regulations, was, as other courts have held, sufficient ‘injury’ to ensure that Speech First ‘has a “personal stake in the outcome of the controversy,”” Speech First, Incorporated v. Gregory L. Fenves, Case No. 19-50529 (2020), <https://speechfirst.org/wp-content/uploads/2020/10/Speech%20First%20v%20UTA%20decision.pdf?t=1603923802>.

<sup>22</sup> Asher Price, “UT disbands bias reporting team as part of free speech settlement,” *Austin American-Statesman*, December 28, 2020, <https://www.statesman.com/story/news/2020/12/28/university-texas-ends-bias-reporting-group-free-speech-deal/4063827001/>.

<sup>23</sup> Lauren Fisher, “U. of Michigan Settles With Free-Speech Group in Suit About Bias-Response Team,” *Chronicle of Higher Education*, October 29, 2019, <https://www.chronicle.com/article/u-of-michigan-settles-with-free-speech-group-in-suit-about-bias-response-team/>.

<sup>24</sup> Unfortunately, a forthcoming report from Speech First on Bias Reporting Systems on college campuses has found that there has been a significant increase in their adoption since 2017, when FIRE documented 231.

Third, our campuses can provide a venue for improving public policy. Where else in American society does one find political scientists, economists, historians, ethicists, molecular biologists, and academics from dozens of other disciplines—all paid to learn, teach, and contribute to human understanding? Encourage them to wrestle with society’s urgent questions in a free and open intellectual environment and new solutions will spring forth. Students, including future public leaders, can learn from that. When entire questions are off-limits on campus, however, learning gives way to reciting orthodoxy, and graduates take the rigid adherence to creed learned on campus into their professional and civic lives. All too often, they become speech police themselves, whether on social media or by punishing dissent in the workplace. Cancel culture, its roots planted deep in campus soil, is desiccating our public discourse. One academic review of the existing survey research found that the proportion of Americans who are afraid to speak their minds today is three times higher than it was during the McCarthy era.<sup>25</sup>

Since this hearing is also concerned with free speech and censorship in public primary and secondary schools, I would like to make four points specific to K-12 education.

First, K-12 schools are funded by taxpayers because their mission is to advance the public interest or common good. They do this in many ways, but core responsibilities include preparing graduates for success in the workforce and preparing students to discharge their civic responsibilities. Curricular standards should be set with these objectives in mind, balancing the concerns of families, policymakers, school board officials, and business leaders while also leveraging the expertise of educators, curriculum developers, and academic content experts. What some are calling “censorship” and “book banning” in K-12 today is, in actuality, overblown criticism of efforts to align what schools are teaching with the concerns and priorities of the constituencies they serve.

It is healthy for a community to have these discussions—even when the issues raise passionate disagreement. Whatever conclusions are ultimately reached, the curriculum will necessarily include some materials and exclude others. Debates about what to teach are probably as old as public education. Not long ago, school districts around the country were removing *To Kill a Mockingbird* and *The Adventures of Huckleberry Finn* from required reading lists (often in response to complaints from parents and educators). Proponents of the change argued that the same learning objectives can be achieved using novels that do not make liberal use of the n-word.<sup>26</sup> Opponents made powerful arguments, too: about the pedagogic value of teaching classic works, even though they are likely to cause offense, and about the power of such raw language to convey lessons about racism in the country’s social history. That reading lists dropped the books does not mean Mark Twain and Harper Lee have been censored and their books banned. Rather, communities made a judgment

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<sup>25</sup> James L. Gibson and Joseph L. Sutherland, “Keeping Your Mouth Shut: Spiraling Self-Censorship in the United States,” Version 90, May 18, 2021, SSRN: <https://deliverypdf.ssrn.com/delivery.php?ID=272102114078119019109015017126093105123053024093062045123075090065100080111003094100034017099032020059038030126114072079064075029027003086049105107004104019088079047040060105115070084027070088027088029064030006103007025023084102076074095066072111021&EXT=pdf&INDEX=TRUE>.

<sup>26</sup> Kristine Phillips, “A school district drops ‘To Kill a Mockingbird’ and ‘Huckleberry Finn’ over use of the n-word,” *Washington Post*, February 7, 2018, <https://www.washingtonpost.com/news/education/wp/2018/02/07/a-school-district-drops-to-kill-a-mockingbird-and-huckleberry-finn-over-use-of-the-n-word/>.

about the curricular value of those materials however much some intelligent people may disagree with the decision.

Second and related, today, communities around the country are having conversations about how best to teach American history in their public schools. It is a timely discussion given abysmal levels of civic literacy. (A 2019 ACTA-commissioned survey found that only 12% of Americans could identify the Thirteenth Amendment as the government action that freed the slaves; 51% of *college graduates* could not identify the term lengths of U.S. senators and representatives—on a multiple-choice question).<sup>27</sup>

The curricular debates that have received the most attention in recent months and years have tended to focus on materials connected to the *New York Times's* 1619 Project. Despite its well-attested and significant historical flaws and its dour vision of the American story, the 1619 Project has performed a service in focusing attention on the contributions and experiences of African Americans in this country and the lingering stains of racism. We must work to overcome its legacy to realize the vision of a more perfect union. By 2020, 4,500 schools had adopted materials based on the project.<sup>28</sup> And yet, when a school district or state opts not to adopt the 1619 curriculum, we hear criticism that the decision amounts to censorship—as though it would be possible for a statehouse or school board to ban materials available on the world wide web at the click of a smartphone.

Many of those who oppose incorporating 1619 Project materials into history and social studies curricula have good reasons. For example, the project has an acknowledged political agenda. In a Tweet, author Nikole Hannah-Jones admitted that “the *1619 Project* is not a history. It is a work of journalism that explicitly seeks to challenge the national narrative and, therefore, the national memory. The project has always been as much about the present as it is the past.”<sup>29</sup>

In the book version of the project, Ms. Hannah-Jones admits that her project is designed to advance policy reforms including “economic justice.”<sup>30</sup> That is why the book closes with a new essay that “look[s] to future solutions.” In the essay, entitled “Justice,” she makes an urgent call for reparations.<sup>31</sup> That is to say, the admitted purpose of the 1619 Project is to shift the conversation on a range of political issues, from policing reform to wealth inequality, by “refram[ing] our understanding of U.S. history by considering 1619 as our country’s origin point.”<sup>32</sup>

Not everyone agrees that public schools should be used to advance narrowly partisan political agendas. Is it really “censorship” to exclude such materials from the public school classroom?

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<sup>27</sup> American Council of Trustees and Alumni (ACTA), *America’s Knowledge Crisis: A Survey of Civic Literacy* (Washington, DC: ACTA, 2019), <https://www.goacta.org/2019/09/americas-knowledge-crisis-a-survey-on-civic-literacy/>.

<sup>28</sup> Jeff Barrus, “Nikole Hannah-Jones Wins Pulitzer Prize for 1619 Project,” Pulitzer Center, May 4, 2020, <https://pulitzercenter.org/blog/nikole-hannah-jones-wins-pulitzer-prize-1619-project>.

<sup>29</sup> Becket Adams, “1619 Project founder claims her project is simply an ‘origin story,’ not history,” *Washington Examiner*, July 28, 2020, <https://www.washingtonexaminer.com/opinion/1619-project-founder-claims-her-project-is-simply-an-origin-story-not-history>.

<sup>30</sup> Nikole Hannah-Jones, ed., “Preface” in *The 1619 Project: A New Origin Story* (New York, NY: One World, 2021), xxviii.

<sup>31</sup> Nikole Hannah-Jones, ed., “Justice” in *The 1619 Project: A New Origin Story*, 472–473.

<sup>32</sup> Nikole Hannah-Jones, ed., “Preface” in *The 1619 Project: A New Origin Story*, xxii.

Hardly. Legislation in several states advocates pursuing similar learning objectives by study of primary documents and key moments in history—for example, the Declaration of Independence and the U.S. Constitution, along with “the rich diversity of American people as a nation of immigrants” and “the abolitionist movement, including the emancipation proclamation and the women’s suffrage movement.”<sup>33</sup> This alternative approach provides the necessary context for exactly the policy discussions that Ms. Hannah-Jones is advocating, but without the political prescriptions or social justice activism.

Third, conversations about public school curriculum *should be* occurring at the state and local levels. In a country as large and diverse as the United States, there will always be questions that admit of no national consensus. That is why the Constitution establishes a federal republic that delegates relatively limited power to the national government. The Framers understood that educating children is a paramount parental responsibility.<sup>34</sup> It can be delegated to others, but when that happens, it is precisely the kind of function best kept close to the people. In a representative democracy, local communities will settle on different policy approaches, and they will teach different curricula to their children. That is a good thing—for many reasons. Not least: by entrusting these matters to the states and local communities, a robust federalism can minimize the kind of polarizing strife caused by efforts to impose a national standard on issues that communities are fully competent to manage for themselves.

Fourth, it is the responsibility of public school systems to teach materials, and to teach in ways, that are age appropriate. You do not have to be a developmental psychiatrist to understand that certain kinds of content are likely to harm young children. We do not call parental controls on an internet browser “censorship”—even if they are imposed to *restrict* a six-year-old’s online activity. Nor would we call the removal of the Marquis de Sade from a Kindergarten bookshelf a “book ban.” Families should be able to expect that schools will be places where children are exposed to lessons and resources responsibly tailored to the audience’s maturity level. The needs and abilities of first graders and eleventh graders are not the same. That is why librarians and curriculum designers have a professional responsibility to curate materials that are appropriate for the audience.

Allegations that books are being banned en masse is a serious charge. The American Library Association’s (ALA) list of the “Top 10 Most Challenged Books of 2021” is illuminating—but not for the reasons the ALA thinks.<sup>35</sup> The first and second entries on the list, *Gender Queer: A Memoir* and *Lawn Boy*, were discussed in a March 2022 local school board meeting in Jefferson County, KY. A

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<sup>33</sup> General Assembly of the State of Tennessee, Public Chapter No. 279, Senate Bill No. 1152, Passed April 27, 2017, <https://publications.tnsosfiles.com/acts/110/pub/pc0279.pdf>.

<sup>34</sup> As James Wilson explained, “It is the duty of parents to maintain their children decently, and according to their circumstances; to protect them according to the dictates of prudence; and to educate them according to the suggestions of a judicious and zealous regard for their usefulness, their respectability, and their happiness... Part of his authority he may delegate to the person intrusted with his child’s education: that person acts then in the place, and he ought to act with the disposition, of a parent.” James Wilson, “Of the Natural Rights of Individuals,” 1790–1791, FOUNDING.COM: A Project of the Claremont Institute, <https://founding.com/founders-library/american-political-figures/james-wilson/of-the-natural-rights-of-individuals/>.

<sup>35</sup> American Library Association (ALA), *State of America’s Libraries: Special Report: Pandemic Year Two* (Washington, DC: ALA, 2022), 10, <https://www.ala.org/news/sites/ala.org.news/files/content/state-of-americas-libraries-special-report-pandemic-year-two.pdf>.

parent simply read from the text until she was stopped by a school board member for graphic and “obscene” language.<sup>36</sup> Of course, that is exactly the point she was trying to make. When, in October 2021, a man read passages from *Gender Queer: A Memoir* to Orange County, FL, board members, he was told he was “out of order” and removed from the meeting.<sup>37</sup> The story repeats (with those and other books) in Fairfax County, VA,<sup>38</sup> Lake Travis, TX,<sup>39</sup> Cherokee County, GA,<sup>40</sup> and elsewhere, where graphic sexual content contained in public school library books is judged by school board members to be too hot for adults to handle. All but one of the books on the ALA’s list of the “Top 10 Most Challenged Books of 2021” are noted as containing “sexually explicit” content (7), “sexual references” (1), or “sexual . . . content” (1).<sup>41</sup>

If public schools were systemically removing the biographies of Democratic presidents or the writings of civil rights leaders from libraries in response to parental or political pressure, I would not be here testifying today. As Justice Harry Blackmun has written, “school officials may not remove books for the *purpose* of restricting access to the political ideas or social perspectives discussed in them.”<sup>42</sup> That is not what is happening in these cases. The books being challenged contain age-inappropriate sexual content, graphic content that is neither necessary to create an inclusive and tolerant learning environment nor uniquely well-suited to promote diversity of thought.<sup>43</sup> As Justice William Brennan has explained, there is no constitutional problem when books are removed from public school libraries because they are “pervasively vulgar” and “the removal decision was based solely upon the ‘educational suitability’ of the books in question.”<sup>44</sup>

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<sup>36</sup> Libs of TikTok (@libsoftiktok), Tweet posted on March 11, 2022, Twitter, [https://twitter.com/libsoftiktok/status/1502422010068029441?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etwembed%7Ctwterm%5E1502422010068029441%7Ctwgr%5E%7Ctwcon%5Es1\\_&ref\\_url=https%3A%2F%2Fiotwreport.com%2Fparent-reads-from-school-library-book-and-board-member-shuts-her-down-saying-thats-obscene-which-is-her-point%2F](https://twitter.com/libsoftiktok/status/1502422010068029441?ref_src=twsrc%5Etfw%7Ctwcamp%5Etwembed%7Ctwterm%5E1502422010068029441%7Ctwgr%5E%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fiotwreport.com%2Fparent-reads-from-school-library-book-and-board-member-shuts-her-down-saying-thats-obscene-which-is-her-point%2F); and Olivia Russell, “Parents call for removal of ‘graphic’ books in some JCPS libraries,” *WAVE*, March 15, 2022, <https://www.wave3.com/2022/03/15/parents-call-removal-graphic-books-some-jcps-libraries/>.

<sup>37</sup> Michael Eng, “Speaker removed from Orange County School Board meeting for reading from a book found at school library,” *OrangeObserver.com*, October 21, 2021, <https://www.orangeobserver.com/article/watch-speaker-removed-from-orange-county-school-board-meeting-for-reading-from-a-book-found-at-school-library>.

<sup>38</sup> Luke Rosiak, “WATCH: School Board Squirms As Mom Reads Them The Gay Porn In Books Available To Students,” *Daily Wire*, September 23, 2021, <https://www.dailywire.com/news/watch-mom-reads-graphic-gay-porn-found-in-school-library-to-school-board>.

<sup>39</sup> Jack Morphet, “Texas mother interrupts school board meeting to discuss anal sex,” *New York Post*, September 19, 2021, <https://nypost.com/2021/09/19/texas-mother-disrupts-austin-school-board-meeting-to-discuss-anal-sex/>.

<sup>40</sup> Deborah Bunting, “‘The Irony’: GA School Board Shut Down This Mom for Reading Dirty Book Aloud - They Said Kids Might Hear It,” *CBNNews*, April 1, 2022, <https://www1.cbn.com/cbnnews/us/2022/april/the-irony-ga-school-board-shut-down-this-mom-for-reading-dirty-book-aloud-they-said-kids-might-hear-it>.

<sup>41</sup> American Library Association, *State of America’s Libraries: Special Report: Pandemic Year Two*, 10.

<sup>42</sup> Board of Education, Island Trees Union Free School District No. 26 et al. v. Steven A. Pico, by his next friend Frances Pico et al., 457 U.S. 853 (1982), Legal Information Institute, Cornell Law School, <https://www.law.cornell.edu/supremecourt/text/457/853>, 65.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*, 49. And as Justice Blackmun writes in his concurring opinion, “First Amendment principles would allow a school board to refuse to make a book available to students because it contains offensive language, or

There is no epidemic of censorship, book banning, or viewpoint discrimination in K-12 education today. Parents, school board members, and state legislators are simply making good faith efforts to align public school curricula with the suitability concerns and priorities of the constituents served by local schools. This contrasts sharply with what is occurring in higher education, where self-censorship is endemic, viewpoint discrimination is the norm, and students and faculty are routinely targeted for investigation, including by school-sponsored bias response teams, for the political content of their speech.

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because it is psychologically or intellectually inappropriate for the age group, or even, perhaps, because the ideas it advances are ‘manifestly inimical to the public welfare.’”