

CENSORSHIP

IN NEWS

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The Show Must Go On! (But Not As Planned)

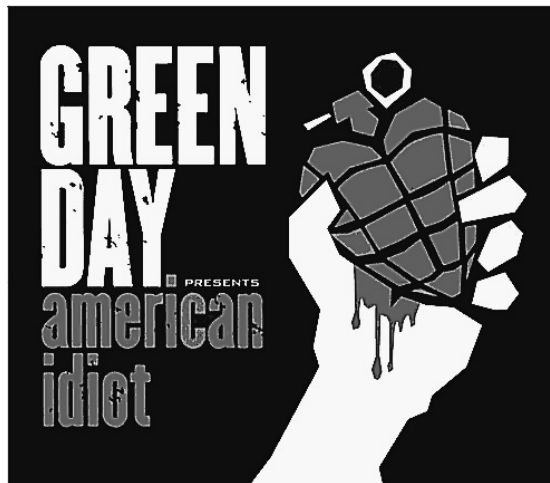
Theater can serve to entertain, to share ideas, to create empathy, to make us laugh, to agitate, and to open new perspectives. It is often a source of pleasure, but sometimes the source of discomfort. In the best of cases it can transform how we see the conflicts of our times. That's exactly why theater has been feared and banned for centuries.

This fear is still with us today, and some of the causes of conflict remain familiar: sex and politics. The latest outbreaks have affected private and public universities, high school students and a Jewish community center. At St. Mary's University, a Catholic school in Minnesota, theater instructor David Hillman lost his job in a dispute over phallic props that were to be used in a student production of *Medea*. While the use of the props was defended as being historically accurate – such props were widely used in ancient Greek rituals as well as satirical plays – administrators objected. The show went on, with the offending props replaced with what Hillman called “big bananas.” And he was no longer teaching there.

Sexual content was also the reason why “The Politics of Dancing,” a student production at Oklahoma State University, was banned from the main stage. Faculty advisors feared that its exploration of gender roles and LGBT issues might alienate supporters of the theater program, especially older, more conservative donors. Students were told that “when you're running a business, this is the #1 rule: You must create work that has your audience in mind.” The students decided to go forward with the show. But it was a bare bones workshop performance, since the theater department declined to provide the expected advertising or technical support.

No sex, drugs or rock and roll in high school either: In mid-January the director of the Enfield Lamplighters, the student theater group at a high school in Connecticut, sent an email to parents and students informing them that the group

would not be performing Green Day's rock opera *American Idiot* as they had originally planned. Some parents were alarmed by the show's profanity and “adult scenarios” – sexuality and allusions to drug use in particular – even though the director said he was intending to present a modified version appropriate for a high school audience. The controversy made its way to Green Day frontman Billie Joe Armstrong, who released a statement saying that while *American Idiot* “may be challenging for some.... the bigger issue is censorship.” His show of support made a dispute over a high school theatrical production an international news story. It did not, unfortunately, affect the outcome.



But while school administrators can rationalize censorship as an effort to protect students from “adult scenarios,” there is evidence that fear of offense also “trickles up,” chilling speech in non-academic institutions. This February, the North Miami Jewish Community Center (JCC), which runs the Cultural Arts Theater, cut short the run of *Crossing Jerusalem*, a family drama set during the 2002 intifada. The Israeli-Palestinian debate is one of the thorniest political topics in the world, and for that very reason, a Jewish community center is an ideal venue

for debate. The JCC had scheduled “talk back” sessions to allow for discussion of the political context of the show. But calls for the show's cancellation, even though they came from only a few critics, prevailed. The JCC's president said he acted to “avoid any further pain and to engage in rigorous, vibrant conversation.” But it is difficult to see how shutting down the play can possibly promote “vibrant conversation.”

What is clear in all of these cases is that theater can still challenge and provoke on a range of profound, pressing questions of our time. But it can only do so when those with power allow these productions to go forward. In the meantime, we are given a valuable lesson in free speech; as Hillman, the St. Mary's instructor, said of the *Medea* censorship: “A group of students was stopped, was censored, and... for a brief moment, those students were able to see the value of free speech and, really, what free speech is all about.”

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 American Association of School Administrators
 American Association of University Professors
 American Association of University Women
 American Booksellers for Free Expression
 American Civil Liberties Union
 American Ethical Union
 American Federation of Teachers
 American Jewish Committee
 American Library Association
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In the Courts

Not in the Courts: Transit Ads, Student Speech
American Freedom Defense Initiative v. King County concerned a decision by Seattle public transit authorities to decline advertisements from the group, which has tangled with public agencies in several cities over its messages connecting Islam and terrorism. The county rejected the group's ads, citing policies prohibiting "demeaning or disparaging" messages. Justices Clarence Thomas and Samuel Alito issued a rare dissent from the Court's summary order denying review, with Thomas writing, "I see no sound reason to shy away from this First Amendment case." The Ninth Circuit decision in favor of the county stands; other courts have reached the opposite conclusion, and the issue remains contentious. Weeks after the Court declined to hear the case, New Jersey Transit announced a proposal to modify its advertising policies to prohibit a range of messages. Anything that might "disparage" the agency's services would be forbidden, along with messages that "promote or oppose a political party" or "express or advocate an opinion, position or viewpoint on matters of public debate about economic, political, moral, religious or social issues." If the policy is enacted, riders can look forward to a diet restricted to commercial advertisements.

The other contentious free speech issue the court won't address this term questions the authority of public school administrators to sanction off-campus student speech on social media outlets like Facebook and Twitter. In one especially high profile case, *Bell v. Itawamba County School Board*, Mississippi student Tyler Bell posted a video of a rap song about allegations that teachers at his school had engaged in sexual misconduct. Bell's post included violent imagery that school officials deemed threatening and disruptive, and he was assigned to an alternative school

for several weeks. After the Fifth Circuit Court ruled in favor of the school district, Bell appealed to the Supreme Court. The Court declined to hear his appeal in late February, and the issue remains unsettled and uncertain.

Can Carrying a Campaign Sign Get You Demoted at Work?

Does the First Amendment prohibit the government from taking action against a public employee for expressing political views? Generally, the Constitution protects political speech and association. But what if the employee wasn't actually doing that? That question is at the heart of *Heffernan v. City of Paterson*. At oral arguments before the Supreme Court on January 19, Justice Samuel Alito likened the case to a "law school hypothetical," and it's easy to see why. In 2006, Jeffrey Heffernan, a police detective in Paterson, NJ, was spotted carrying a campaign sign for a candidate running against the incumbent mayor. Heffernan was demoted as a result of his apparent political activity. But Heffernan was merely picking up the sign, off hours, for his mother. He sued the city for retaliation, and some of the justices sounded skeptical of his First Amendment claim; as Justice Antonin Scalia quipped, "There's no constitutional right not to be fired for the wrong reason." If he had been picking up the sign and posting on his own front lawn, maybe he would have had a stronger case.

As We Go To Press...

The 4-4 Supreme Court decision in *Friedrichs v. California Teachers Association* lets stand a precedent requiring public workers to pay "fair share" fees to unions they decline to join, a requirement the plaintiffs claim is a violation of their First Amendment rights. We can expect other split decisions until the Court is restored to nine sitting justices.

SHORT TAKES

• **Silenced by the President: College Speech Controversies**

We're used to hearing stories of students protesting and even demanding the cancellation of appearances by speakers they find disagreeable. While these students are exercising their free speech rights, when college presidents use their institutional power to actually ban a speaker from campus, they are violating both academic freedom and First Amendment principles. At Cal State University of Los Angeles, there were intense arguments between student groups over a scheduled appearance by conservative writer Ben Shapiro. But

then president William Covino stepped in to announce the February 25 talk wouldn't happen. Shapiro responded by saying he'd be showing up anyway – which he did, amidst heavy protests. The president's attempt to block the event not only failed, it arguably contributed to making a tense situation worse. Meanwhile at Williams College in February, president Adam Falk overruled a student group's invitation to conservative writer John Derbyshire. The event was, ironically enough,

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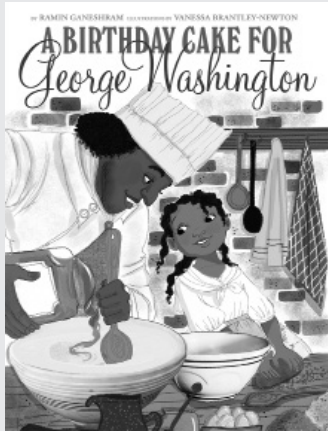
When Books Are Disappeared

It's almost unheard of for a book to be withdrawn as soon as it is published. But that's precisely what happened this January, creating a challenge for advocates of intellectual freedom.

The children's picture book, *A Birthday Cake for George Washington*, written by Ramin Ganeshram and illustrated by Vanessa Brantley-Newton, tells the story of Washington's slave cook Hercules and includes images of him, his daughter, and other slaves smiling while they worked in the kitchen. Critics pounced, charging that the book obscured the horrors of slavery. The publisher, Scholastic Press, stood by the book – for two days. Then it changed course, announcing that it was withdrawing the book because it “may give a false impression of the reality of the lives of slaves.”

To its critics, pulling a children's book depicting ‘smiling slaves’ was an easy call. And while some saw the book as the inevitable product of a predominantly white publishing industry, this case actually provided a notable exception: The creative team behind the book was composed of women of color who did not intend to “whitewash” history. They say they wanted to show “the joy in what [the characters] have created through their intelligence and culinary talent,” even while acknowledging the “vast injustice” of slavery. For critics, however, good intentions are not good enough.

No one questions the right to raise pointed criticisms about literature or artistic works, or to question the accuracy of historical accounts. Publishers then have to decide whether to yield to critics and withdraw or modify a work, or to allow readers to decide for themselves what to think. Scholastic decided to withdraw *A Birthday Cake* but claimed the decision had nothing to do with the controversy, saying that the book “did not meet



the standards which support our publishing mission.” Even if this is true, the sequence of events is troubling. Worse, it has already opened the door for more calls to banish books: critics of *Birthday Cake* immediately targeted eight other books they want withdrawn because they “do not accurately portray Native peoples.”

This should come as no surprise. The withdrawal of a book after objections about its content or message inevitably invites demands to remove other books considered “objectionable.” This is the proverbial slippery slope – and the reason free speech advocates defend books as a matter of principle, not because of the merits of a particular work.

Publishers, of course, have the legal right to pull any book. But when the decision is, or appears to be, in response to objections to specific ideas or views, it raises serious questions. We rely on publishers and the media in general to provide access to a wide range of ideas, even those that are controversial and possibly wrong-headed. What we do with those ideas is up to us, the readers. But new ideas, good and bad, are essential to a vibrant society that allows the expression of different views and values discussion and debate as the best way to address them.

Withdrawing a book from circulation – which makes it disappear as effectively as burning – precludes this kind of give and take, by enshrining conventional wisdom as orthodoxy. Inevitably, this works against those who challenge established ideas, often the most marginalized segments of society – historically, women, minorities, and dissidents.

Maybe *A Birthday Cake for George Washington* would, as its critics claim, encourage readers to downplay the evils of slavery. Alternatively, perhaps readers would take pride in its characters' accomplishments. Would the book have generated additional debate, or spurred interest in the history of slavery or in Washington's role as a slave owner? Perhaps, but unfortunately we'll never know.

SHORT TAKES

part of the Massachusetts school's “Uncomfortable Learning” series. And in another twist, the student who invited Derbyshire explained that he did so precisely because he didn't agree with the writer's politics: “I was looking forward to exposing the flaws in his arguments. If every student does not desire the intellectual challenge of defending their own ideas against those they find objectionable, that is perfectly fine (anyone can choose not to attend the talk).”

• *This One Summer* Returns to Florida Shelves

An elementary school parent in Florida was alarmed to find a copy of the acclaimed graphic novel *This One*

Summer in the school library. The book, in fact, is intended for older students. Spurred by alarmist local TV news coverage, the district not only removed the book from the elementary school library – they pulled the book from open shelves at three high school libraries as well. Restricting access to a book for high school students in order to protect elementary school kids is, to say the least, nonsensical. We're glad to report that after NCAC called it to their attention, the school district reversed its decision, making the book available once again to high schoolers.

• ‘Indoctrination’ Panic Shuts Down Virginia Schools

At the end of 2015, NCAC noticed an increase in parental complaints about

Islamic “indoctrination” in schools. Most complaints concerned textbooks about world history that critics accused of either “whitewashing” the truth about Islamic violence or promoting Islam in the school. As we pointed out, these complaints often confuse basic First Amendment principles which permit teaching about religion, but draw the line at endorsing religion.

This anti-indoctrination campaign took an extreme turn in December over, of all things, a calligraphy lesson. Parents in Augusta County, Virginia were outraged to learn that ninth graders were asked to copy an example of Arabic calligraphy – which happened to be the shahada, or profession of faith. The protests grew so intense that the district decided to close every school for one day.

Free Speech: “The Engine Oil of Democracy”

George Washington University Law School professor Catherine Ross recently published a powerful and troubling new book, *Lessons in Censorship: How Schools and Courts Subvert Students’ First Amendment Rights*. We spoke with Ross about what students, administrators and parents can do to promote free speech values.

How would you characterize the state of students’ First Amendment freedoms today? What is most worrisome?

There are many reasons for concern about the state of students’ freedom of expression. Schools too often censor student speech that the Constitution fully protects even in elementary, middle and high school. They silence and punish students who express their own opinions on important issues, including national and local politics, the rights of LGBT persons, guns, abortion, and more. Students are especially likely to get in trouble for speaking up if someone else’s parent finds their speech controversial or “offensive,” meaning the adult disagrees with it. But controversial and disagreeable speech is exactly what the Speech Clause is designed to protect.

The heart of the problem is that too many principals and school board members don’t know or understand the limits the Constitution places on their ability to control what students say, while others simply disregard the law. Shutting down student expression has what lawyers call a “chilling” effect on the exchange of ideas moving forward – that is, other speakers remain silent out of fear that they will get in trouble if they express their views. Schools should be places where the robust exchange of ideas flourishes, not citadels of conformity and what Justice Brennan called impermissible “thought control.”

Why should Americans care about how schools treat student speech?

Freedom of speech is the engine oil of democracy. Nearly 90% of young people in the United States attend public schools – the schools that are bound by the Constitution and that must honor freedom of speech. (Private schools are not the government, and can forge their own policies about how they treat student speech, privacy and other issues). Public schools that violate the speech rights of students harm the individual students whose rights are violated, and as the courts explain, the loss of speech rights can never be compensated. Violations of student speech rights also harm our whole society. Violating rights sends a message that the government doesn’t mean what it says about the importance of constitutional rights and liberty. It teaches students that rights

are theoretical – not for them. And it misses an unmatched opportunity for our society to transmit the fundamental values of pluralist democratic practices to the next generation of citizens. Few things could be more important.

What could be done to improve the situation for student speech in schools?

Educators need help understanding what is a very complicated area of law – and I hope my book will help school officials better understand what the First Amendment requires. But there are many things parents and other citizens can do too.

In many communities across the country the adults who would like to censor student expression are much louder and more influential than the adults who hope that schools will allow students to learn how to exercise their rights. Elected school board members at the local level have a lot of discretion in setting the tone of a school district’s culture. The school board can let principals know that it expects the school to respect student expression, or even to encourage it to flourish. And even where the law allows schools to restrict students speech (for example, in official school publications), schools do not have to assert all the powers the law gives them – they can, for instance, refrain from controlling the content of a student newspaper although the law permits them to censor it. I urge citizens to raise these issues about how a district will use its powers before the school district confronts a controversy over student expression – at that point, all the participants too frequently dig in their heels and refuse to reconsider. It’s much better to work toward a positive commitment to develop a school system

in which students learn liberty by experiencing it – that is, a system expressly committed to respecting student rights.

States are always free to enact more stringent protections for civil liberties than the U.S. Constitution requires, and student speech provides a good example. After the Supreme Court ruled that schools could control the content of student publications, like newspapers, literary magazines, and more, some states passed laws that provide greater protection to student publications (and their advisors) than the federal law. Concerned citizens in states that don’t have such statutes might lobby for laws that hold school officials to a higher standard when they limit student expression than is in place under federal law. The difference in statutes – along with the different rulings by appellate courts on questions the Supreme Court has not answered – means that student speech rights may vary depending on where the student lives, and on the exact question. My book has a map that helps students and parents figure out which of the decisions I discuss apply where they live.

