

CENSORSHIP IN NEWS

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New Pressures on Press Freedom

As a candidate for president, Donald Trump made headlines for his scathing attacks on the press. They were not limited to labeling the media as dishonest, referring to unfavorable coverage as “fake news,” and threatening to change libel laws to make it easier to sue news organizations. Mr. Trump’s media hostility went well beyond anything seen in recent history. From banning reporters from The Washington Post and Politico from his rallies to ejecting photographers filming Black Lives Matter protestors, Mr. Trump seemed intent on trying to intimidate and control the press.

Not much has changed since Donald Trump took office. If anything, his contempt for the fourth estate, displayed in attempts to undermine the legitimacy of the press and reporters’ ability to do their jobs, has only become more apparent. In February, Press Secretary Sean Spicer barred several prominent news outlets, including The New York Times, Los Angeles Times, and BBC, from attending an off-camera “gaggle” in his office, while “friendlier” outlets like the Washington Times and Breitbart News were invited to attend. The president’s top strategist, Steve Bannon, accused the media of acting like the “opposition party.”

Mr. Trump went a step further, declaring the press to be “the enemy of the American people!”

In a forceful rebuke, NCAC and the American Society of News Editors mobilized nearly 100 free speech and press organizations to “condemn in the strongest possible terms all efforts by elected and appointed officials to penalize, delegitimize, or intimidate members of the press.” As the joint statement noted, the main function of a free press as enshrined in the Constitution is “to monitor and report on the actions of public officials so that the public can hold them accountable.”

Thomas Jefferson stated that “Our liberty depends on the freedom of the press, and that cannot be limited without being lost.” Democracies survive only when the people have access to information and the ability to hold their elected

officials accountable. This can’t happen when “unfriendly” reporters are banned from briefings or bullied from the presidential pulpit. It’s classic gaslighting – controlling the message through intimidation and misinformation (i.e. lies). Tensions between presidents and the press are familiar – Nixon famously chafed at press criticism and Obama openly lambasted Fox News – but President Trump has taken the conflict to a new level.

If anything, the country needs more reminders, not fewer, about the importance of press freedom. In Virginia, NCAC criticized school officials for engaging in “prior review” and censoring student newspaper articles on issues of importance to students, like abstinence-only sex education and chronic absenteeism. NCAC recently co-sponsored a report with the American

Association of University Professors, College Media Association, and Student Press Law Center, *Threats to the Independence of Student Media*, documenting efforts to undermine student press on college campuses. In these and other similar situations, we see the damage done when public officials use their power to control speech and access to information. A free and independent press is necessary for an informed

public and is the best bulwark against abuse of official power.

As Justice Brandeis wrote, the framers believed that “public discussion is a political duty,” and that the right to free speech would prevent “the occasional tyrannies of governing majorities.” The Washington Post observes this with its new, somewhat angst-filled slogan, “Democracy Dies in Darkness.” Whether in the highest levels of government or in local school boards, the impulse to silence the press comes from the same impulse to limit other freedoms by controlling what people know and think. NCAC has its work cut out for it.

Free Speech Now: NCAC is monitoring developments in Washington and around the country to identify new threats to First Amendment rights. Visit ncac.org/free-speech-now and find out how you can get involved with our regularly updated list of action initiatives from NCAC partner organizations.



NCAC PARTICIPATING ORGANIZATIONS

Actors' Equity Association
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
American Literary Translators Association
American Orthopsychiatric Association
American Society of Journalists & Authors
Americans United for Separation of Church & State
Association of American Publishers
Authors Guild
Catholics for Choice
Children's Literature Association
College Art Association
Comic Book Legal Defense Fund
The Creative Coalition
Directors Guild of America
The Dramatists Guild of America
Dramatists Legal Defense Fund
Educational Book & Media Association
Free Speech Coalition
First Amendment Lawyers Association
International Literacy Association
Lambda Legal
Modern Language Association
National Center for Science Education
National Communication Association
National Council for the Social Studies
National Council of the Churches
National Council of Jewish Women
National Council of Teachers of English
National Education Association
National Youth Rights Association
The Newspaper Guild/CWA
PEN American Center
People For the American Way
Planned Parenthood Federation of America
Project Censored
SAG-AFTRA
Sexuality Information & Education Council of the U.S.
Society of Children's Book Writers & Illustrators
Speech Communication Association
Student Press Law Center
Union for Reform Judaism
Union of Democratic Intellectuals
Unitarian Universalist Association
United Church of Christ, Office of Communication
United Methodist Church, United Methodist Communications
Women's American ORT
Woodhull Sexual Freedom Alliance
Writers Guild of America, East
Writers Guild of America, West

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In the Supreme Court

“Disparaging” trademarks

The controversy behind *Lee v. Tam* began in 2011 when musician Simon Tam, an Asian-American, attempted to trademark his band's name, The Slants. The Patent and Trademark Office rejected the trademark based on a provision of the 1946 Lanham Act that prohibits trademarks that “may disparage” people, institutions, beliefs, or national symbols. Tam subsequently sued on First Amendment grounds and won in a federal appeals court. At oral arguments in the Supreme Court, Justice Kagan likened the trademark regime to “a fairly classic case of viewpoint discrimination,” noting that it permits trademarks that “say good things about something” but not those that “say bad things about something.” Justice Alito similarly hinted the Patent and Trademark Office was stretching “the concept of a government program past the breaking point.” The outcome in *Lee* will almost certainly determine the fate of the Washington Redskins' trademark, which

was also revoked under the “disparaging” standard.

Sex offenders on social media

Packingham v. North Carolina concerns a state law enacted in 2008 that makes it a felony for a registered sex offender to access a wide variety of websites which are accessible to minors, including countless sites like Facebook and Yelp. In 2002, Lester Packingham, a 21 year old college student, pleaded guilty to taking “indecent liberties with a minor”; he received a suspended sentence and supervised probation, but was required to register as a sex offender. He was arrested in 2010 for violating the 2008 law after he posted a message on Facebook celebrating the dismissal of a traffic ticket. Packingham argues that North Carolina's law sweeps too broadly, in violation of his First Amendment rights. At oral arguments in February, a number of justices expressed skepticism about the law. A decision is expected by the end of June.

Legislating Education

Science denial

Using spurious First Amendment arguments, state legislators around the country are attacking science education, particularly the teaching of evolution and climate change. Supporters of SB 55 in South Dakota claimed the bill was necessary to protect the academic freedom and free speech rights of teachers. NCAC explained that while teachers have the right to their own opinions, they don't have a First Amendment right to “deviate from, and possibly contradict, professionally developed science standards adopted by state educators.” The bill was defeated.

Similarly, the Indiana Senate recently passed a resolution expressing support for a “diverse curriculum” about topics like evolution “that may generate controversy”; legislators in Florida are proposing bills to allow “any resident of a county” to challenge curricular materials that they think don't provide a “balanced viewpoint”; and in Oklahoma, an anti-evolution legislator proposed a bill that would allow teachers to promote alternative theories, such as creationism. Approximately 70 such bills have been introduced since 2004, according to the National Center for Science Education, but the pace has recently increased. NCAC is working with NCSE to

protect science education from attempts to undermine it using the First Amendment as a ruse.

Sex denial

Lawmakers in two states do not want students to learn about sex in school. In New Hampshire, HB 103 would require schools to provide two weeks advance parental notification prior to the use of materials “for instruction of human sexuality or human sexual education.” Not only does the bill stigmatize education about sexual health, NCAC argued to the legislators and governor that it also invites challenges to literature.

In Virginia, legislators are not giving up their crusade to pass the so-called *Beloved* bill. The bill, originating from one parent's desire to remove the Toni Morrison novel from classrooms, would require teachers to notify parents whenever “sexually explicit” materials are to be taught in class. Since November, NCAC wrote three times to urge policymakers to reject the bill, arguing that it wrongly labels valuable educational material and prioritizes the views of certain parents over others. Governor McAuliffe vetoed the bill last year. He vetoed it again this year, after legislators ignored the decision of the state board of education, which rejected the proposal.

Weaponized Protest

It was the “winter of our discontent,” to judge by the number and intensity of protests around the country. Most of these protests, like the Women’s March and the March for Life, displayed the strengths of our constitutional system. But not all. Some protesters and public officials apparently don’t know or don’t care about what the Constitution actually says about the right to protest.

The First Amendment explicitly protects “the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” While protesters can say almost anything – they can even advocate violence as long as they don’t incite it – they may not engage in or threaten actual violence. The crucial distinction is between speech and conduct. The First Amendment protects only the former.

Some protestors ignore this critical distinction. Violence erupted on Inauguration Day in Washington, D.C. and elsewhere. Violence also disrupted a planned appearance by former Breitbart editor Milo Yiannopoulos at the University of California at Berkeley and other campuses. At Middlebury College in Vermont, protests against an appearance by Charles Murray, author of a controversial 1994 book on race and intelligence, erupted in violence in which a professor was injured. (Several students commented that they wanted to hear the talk and were prepared to ask Murray questions, but felt pressured into participating in the demonstration, showing that groupthink can be as dangerous to freedom of thought and speech as outright repression.)

At the same time, some officials wrongly cite the behavior of a few to suppress speech by law-abiding protesters. Law enforcement officials swept up non-violent protesters, journalists, and legal observers in Washington on Inauguration Day. (A similar over-reaction resulting in the unlawful arrests of thousands of protesters

at the Republican National Convention in 2004 cost New York City \$18 million.) In at least 19 states, some legislators want to suppress peaceful dissent through intimidation. Some proposals would impose serious penalties on peaceful protesters for minor infractions of traffic laws, others would insulate drivers from liability for hitting protesters, or would authorize the seizure of assets from the organizers of a protest that turns violent, even if they did not engage in or incite violence.

Both sides misapprehend some of the fundamentals about the right to protest and the role it plays in our constitutional system. Violent protesters ignore the fact that their own right to free speech depends on tolerance for ideas they revile. Protesters who successfully shut down someone else’s speech set a precedent for others to silence them. It’s a zero-sum game. The right to free speech exists for all, or for none; it rests on the premise that worthy ideas will gain acceptance and flawed ideas will be rejected. History supports this notion. Not so long ago, advocates for racial equality were subject to intimidation and even imprisonment for engaging in peaceful protests. Yet, thanks to the strength of their arguments and the protections offered by the First Amendment, the civil rights movement succeeded.

For public officials, the stakes are different, but equally compelling. The right to protest is critical to democracy and to the rule of law. The First Amendment protects speech, assembly, and petition precisely so that social change can occur as a result of persuasion, and without resort to “riot or revolution.” The alternative can be seen in places where speech is repressed and violent resistance is perceived as the only avenue to express opposition or remedy injustice.

They ignore that lesson at their peril, and ours.

SHORT TAKES**Islamophobia and censorship**

In Tennessee, the leader of a Facebook group, Sullivan County Parents Against Islam Indoctrination, filed an official complaint seeking the removal of a Pearson textbook, *My World History*. She claims it promotes Islamic indoctrination and violates her daughter’s religious beliefs. NCAC explained the difference between religious education and indoctrination to the school district and urged officials to promote religious tolerance and historical awareness, both of which “are vital to the flourishing of our democracy.”

Pro-diversity = anti-Trump?

Diversity and tolerance are American values, but when a group of Maryland teachers displayed posters created by Shepherd Fairey that portray a diverse group of women, school administrators ordered them removed, claiming they

“expressed a negative view of Donald Trump.” NCAC supported the students who protested the district’s decision.

Fordham denies SJP club status

Fordham University administrators refused students’ request to form a chapter of Students for Justice in Palestine, the national pro-Palestinian student advocacy organization, accusing the group of trying to “stir up controversy.” NCAC joined the Foundation for Individual Rights in Education in criticizing a decision that betrays the university’s “explicit promises of free expression that it makes to its students.”

Perilous publishing precedent

Soon after word got out that Threshold Editions, an imprint of Simon & Schuster, planned to publish a book by professional troll Milo Yiannopoulos, his critics called for a boycott of Simon & Schuster. NCAC supported the publisher’s right to publish the book, arguing that “vigorous disagreement

is the only counter to toxic speech.” But when Yiannopoulos appeared to condone hebephilia, the publisher changed its mind. NCAC warned about the risks of withdrawing controversial material in response to protests, and urged publishers to defend the importance of idea and viewpoint diversity.

Censorpedia is crowdsourcing

NCAC’s wiki on censorship incidents has gone live, and we want your contributions. Do you know of a censorship controversy that we have yet to document? Currently containing more than 1,200 individual cases, Censorpedia needs your help to make it the go-to source for every global censorship case dating back to ancient Greece. Visit wiki.ncac.org.

Stay informed, now more than ever

Keep up to date on the latest controversies and what’s happening right now in free speech with NCAC’s biweekly E-newsletter. Sign up at ncac.org.

Talking About Race

From Manet's *Olympia* to William Styron's *The Confessions of Nat Turner*, works of the imagination have long catalyzed heated conversations around representations of race. In today's polarized sociopolitical environment, emotionally charged responses to art and literature that address race and racism create challenging situations for cultural and educational institutions. Both are torn between their commitment to intellectual and artistic freedom and the multiple pressures to suppress work that may cause discomfort or pain.

Museums, schools, and performance spaces have thus become battlegrounds where conflicts over race play out. Emblematic of these conflicts is the recent high-profile controversy at the Whitney Biennial in New York City, where protesters called for the removal and even destruction of a painting based on the photograph of Emmett Till lying disfigured in his casket. In arguments that are familiar and variously leveled at exhibitions, books, and art projects, critics questioned the moral right of a white artist, Dana Schutz, to use such a potent symbol of racial violence. They accused her of cultural appropriation, slammed her for exploitation and racial insensitivity, and generally condemned what they see as a white supremacist art world. Questions ranged from the right of a white artist to represent black historical trauma to the very capacity of white people to empathize with the black experience.

Debates about representing the history of racism extend to works in the American literary canon. The historically accurate use of racial slurs often disturbs contemporary sensibilities and creates tension in schools and communities. Last winter, for instance, a Virginia school district removed *To Kill a Mockingbird* and *The Adventures of Huckleberry Finn* from its classrooms and libraries in response to a parent's complaint about the books' racist language. Shortly after, a school district in New Jersey considered redacting racial slurs from *Ragtime*, a Tony Award-winning musical based on E. L. Doctorow's novel, set in Harlem in the early 1900s. NCAC reminded school officials that purging the production of the language would distort historical realities.

While debates rage over the moral right and ability of white artists and writers to deal with racially charged material, works

by black artists alluding to police violence today, and racial violence historically, have met similarly heated opposition: in the nation's Capitol, a high school student's allegorical painting of a protest against police violence was taken down by Republican legislators, sparking a partisan battle and an ongoing legal case. In San Jose, California, a school district exhibition celebrating Black History Month that featured paintings of historical incidents of violence against black people was removed in response to complaints that it was too political. The censored African-American artist, Mark Harris, explained, "For centuries, we have been told not to speak out about [racial violence]. You don't have to like it. It's not only my history. This is American history."



"Proverbs 22 v.6" 2016, mixed media on birch wood panel, 16 x 20 inches.
Courtesy of the artist (© Mark Harris)

In a further twist, artists of color risk censorship when their work confronts racial taboos, as satire often does. Last summer, California State University Long Beach canceled the widely acclaimed comedy *N*GGER WETB*CK CH*NK*, which tackles offensive racial stereotypes through a musical routine peppered with racial slurs – a humorous critique of the bigotry lurking in the American psyche.

Suppressing art and literature that engage the difficult and often very uncomfortable subject of race in America does nothing to confront the realities of racial discrimination, police violence, inner city

poverty, or rates of incarceration. Discussions generated by cultural works are not going to resolve these problems either, but the conversations may help us speak to each other more effectively, understand our historically determined reactions, as well as imagine better alternatives.

Such conversations are not easy. Cultural institutions and school boards, faced with funding pressures and community demands, often prefer to avoid the inevitable conflicts that race related works provoke, which is all the more reason to support those who take the risk. As the artist behind the controversial painting of Emmett Till said, "it is better to try to engage something extremely uncomfortable, maybe impossible, and fail, than to not respond at all."