

CENSORSHIP

NEWS

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The First Amendment at the Schoolhouse Gate

Seventy-five years after the Supreme Court first explicitly addressed the First Amendment rights of public school students, administrators still struggle with student political expression. In 1943's *West Virginia State Board of Education v. Barnette*, Justice Robert Jackson wrote in the majority opinion that students' individual freedoms must be protected "if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." The case held that students could not be required to salute the flag should they object on the grounds of conscience.

After the announcement of the March 14th national school walkout in honor of the Parkland shooting victims, a significant number of school officials threatened serious sanctions against protestors.

Why is the first reaction to preemptively cut off student speech before it occurs? Why is this coalescing of political engagement from students across the racial, economic and geographic spectrum not seen by all as a positive—and highly teachable—development? Whatever the political leanings of educators, surely students learning the power of political organizing, peaceful protest and claiming their own right to speak is a social good.

At NCAC, we cheer this chance to engage with young people on the value of free speech to social activism, and we recognize the need to clarify just what the First Amendment protects in schools.

In *Tinker v. Des Moines* (1969), the Supreme Court ruled that a school district had violated students' rights by punishing them for wearing black armbands to protest the Vietnam War. The ruling held that students have a constitutional right to participate in non-disruptive protests during the school day. This means that public school officials cannot retaliate against or discipline students who choose to participate in these forms of protest unless the protests cause, or are reasonably expected to cause, the disruption of school events.

Justice Abe Fortas wrote that neither students nor teachers "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

Great, right? A cautious yes. Since *Tinker*, the courts have repeatedly carved out exceptions to First Amendment protections in schools. Student speech cannot "materially and substantially interfere" with educational activities and "vulgar, offensive or rude" language has been legally accepted as a reason to shut down student speech.

Behavior that is usually punishable in school—missing class, for a timely example—remains punishable when done for political reasons. However, that punishment cannot be based on the content or ideas contained in student speech. Missing class to attend a protest cannot be sanctioned more severely than missing class to go to the movies. The US has a long and honored tradition of activists accepting the price of their civil disobedience to advance their cause. Should students choose to engage in punishable behavior in service of their political message, that is certainly their right. But it's important that both students and administrators know just how far First Amendment protections extend beyond that schoolhouse gate.

BE HEARD! PROTECTING YOUR PROTEST RIGHTS BY KAI TEXEL, CBLDF & NCAC



We must support and encourage active citizenship. Educators should embrace this opportunity for experiential learning. If a student speaks provocatively, they should be met with dialogue, not dismissive silencing. Students are using the peaceful, constitutional tools available to them. This is not new. Students of color have been advocating for safer schools for years, LGBT+ students have fought for their right to form clubs, and politically engaged students have battled school administrators to wear T-shirts criticizing warmongering presidents and kneel during sporting events. But this national political awakening has shown a wider audience the passion and thoughtfulness of this generation. This is what democracy looks like.

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
 First Amendment Lawyers Association
 Free Speech Coalition
 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
 Student Press Law Center
 Union for Reform Judaism
 Union of Democratic Intellectuals
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Students Be Heard: 5 Steps to Activism



In November 2017, Katy Independent School District banned Angie Thomas's *The Hate U Give* from its libraries. 15-year-old Ny'Shira Lundy collected over 4,000 signatures for a petition to restore the book. Here's Ny'Shira's story:

1. First I fell in love with a book.

I knew instantly after reading the synopsis on the book jacket of *The Hate U Give* that I would have an instant connection with the protagonist, Starr. We both attended a predominantly white prep school, we're both emotionally sensitive and we both struggled to find our voice. Starr is a 16-year-old who witnesses her best friend's murder by a white police officer. Though overwhelmed with emotion, she soon finds her voice and the courage to speak up against police brutality. I was inspired by her passion. After reading the book, I was inspired to follow my own passion for writing and write a novel that could change real world problems, the way Starr did. One that speaks on real issues in overlooked communities.

2. Then my school district banned it.

I'll admit that when I first found out the book had been banned, I was enraged. You would be upset too, if you found out that a piece of art that has helped shape you into the person that you are had been restricted from other people.

3. So I decided to speak out...

I started a petition online asking the superintendent to return *THUG* to the library. Within three days, I had 800 supporters! I also was featured on my local news and Angie Thomas tweeted my petition! **faint** But for weeks, the superintendent did not reply. So, I planned to attend the next school board meeting.

4. And my voice made a difference!

Shortly before the school board meeting, NCAC called to say our petition had worked! The book can now be checked out, though only with parental consent. I was ecstatic! I decided to attend the meeting and thank the superintendent. I was the only teenager there! Two other adults spoke on why *THUG* shouldn't have been pulled in the first place. The superintendent gave a long speech about how much explicit language was in the book. He also said that the book was racially insensitive. He said the school community elected him to keep the district "wholesome" and to make the final decisions for the district. My blood began to boil. I thought about how not all students have "wholesome" lives. I felt he was missing the whole message of the book. Finally, it was MY turn to speak. Though I didn't particularly want to, I thanked the superintendent for placing this book back on the shelves.

"So just to be clear, you're ok with the book being placed on the shelves with parental consent to read it?" he asked.

"Yes sir," I replied. "But I also believe in intellectual freedom, and ONE parent who only read 13 pages should not be allowed to make a decision on what we ALL read."

5. I shared the lessons I learned with others – and started a book club!

After the meeting, I received a lot of praise from my community and other literary advocates. I felt very accomplished. Even Angie Thomas called me "the real Starr Carter!" I wanted other young readers to feel like real-life Starr Carters, too. So, I started a virtual book club! I had an unbelievable amount of support! People were willingly donating copies of *THUG*. Even though my book club is new, I already have six regular members and special guests can join virtually. Even Angie Thomas herself attended!

ON THE DOCKET

Testing The Limits of Political and Professional Speech

This term, the Supreme Court considers four cases that could significantly impact speech protections at the polls and in professional spaces:

- [1] Do collective bargaining and contract negotiation by unions constitute inherently political speech? If so, should non-union members be compelled to pay union fees, even if they claim, "the union's fight is not my fight?" Watch *Janus v. American Federation of State, County, and Municipal Employees*.
- [2] *National Institute of Family*

and Life Advocates v. Becerra will test the limits of restrictions on professional speech in requiring California reproductive care providers to inform women of state-funded abortion programs. Does the government's interest in providing reliable healthcare information outweigh a private healthcare provider's right to promote their agenda?

[3] In *Minnesota Voters Alliance v. Mansky*, a law that prohibits wearing political badges, buttons or insignia at polling sites is being contested for the breadth of discretion it affords

the government to limit political speech in voting spaces.

[4] The second partisan gerrymandering case of the year will examine whether actual injury from gerrymandering (absent proof that it dictated the election outcome) constitutes political retaliation under the First Amendment. *Benisek v. Lamone* asks: Are depressed Republican political engagement and a diminished opportunity for success sufficient to claim that Democrats unconstitutionally retaliated against supporters of Roscoe Bartlett by re-mapping along partisan lines?

My First Demonstration

Like so many others, I have been deeply moved by the sight of students walking out of school to demand an end to gun violence.

It isn't just that I agree with them. They remind me of my first demonstration, which occurred during the national protest against the Vietnam War on Oct. 15, 1969.

I was a high school junior in Denver. With my friends, John and Suzie, I decided to announce my opposition to the war at school and then attend a rally downtown.

Colorado was still a pretty conservative place. But Denver was being flooded by thousands of people from the Midwest, many of whom were more liberal than native Coloradans.

My parents were outspoken. My dad was a radio talk show host who loudly criticized the war. My mom was active in Democratic politics and served on the board of the state ACLU.

But it isn't easy to speak up when you're a kid. We were like most of our peers—nervous for approval. We were also worried about possible confrontations with school administrators and reactionary members of the football team.

So we laid our plans carefully. We drafted a statement about the importance of the national day of protest that featured a hand-

drawn peace sign on the top and used a mimeograph machine to make copies. We nervously put on our black armbands.

Almost no one noticed our little demonstration. We had expected a problem from the vice principal, a hulking man with a bullet-shaped head who was always telling some kid to get a haircut. But he couldn't have been nicer when we presented notes from our parents giving us permission to leave school.

A little deflated, we headed downtown for the rally. I don't remember a big crowd, certainly nothing like the number that gathered in New York and Washington. But I was excited to be standing in front of the state capitol with its gold dome.

I was no longer a student. I was part of a crowd, participating in an event that was attracting tens of thousands of people in cities across the country.

I was participating in our democracy.

I know today's student protesters are feeling excitement and pride over their role in forcing a crucial debate. They have also reminded the nation about the importance of free speech.

Chris Finan is the Executive Director of the National Coalition Against Censorship.

SHORT TAKES

KALAMAZOO VOTES TO REMOVE PUBLIC ARTWORK

Following protests by local activist groups, Kalamazoo City Commission (Michigan) voted to dismantle *Fountain of the Pioneers*, a large sculpture that has stood since 1930. Protestors feel the artwork embodies white supremacist oppression, while others say it symbolizes Native American resistance. Prior to the vote, NCAC advised the city to move slowly, since such determinations should not be made before careful consideration of all factors and opinions, and argued that the artwork could provide opportunities to counter racist attitudes rather than confirm them.

FLORIDA COLLEGE EXCLUDES ART PROF

An adjunct faculty member has been excluded from a faculty exhibition at Polk State College in Lakeland, Florida, due to his "controversial" work. The Turkish-born artist, known for his political art, uses humor, satire, absurdity and parody to provoke a response. The rejected work includes sexual imagery as well as images of President Donald Trump. NCAC joined with the Foundation for Individual Rights in Education (FIRE) to express concern about the state of freedom of expression at the college.

A ROGUE BOOK CHALLENGER

According to the parent of a high school student in Cody, WY, YA author Tanya Lee Stone's *A Bad Boy Can Be Good For A Girl* is not good for the library. After a committee of parents and educators accepted NCAC's recommendation to keep *Bad Boy* in the school library, the school board sided with the challenger and abolished the library review policy altogether. Since then, the board – which plans to revise the policy over the summer – has placed a moratorium on all library book challenges, just as the same parent prepares to challenge 67 more titles on her hit list.

ANTI-LGBT CENSORSHIP IN LIBRARIES

NCAC is alarmed by the rise in anti-LGBTQ book censorship attempts over recent years. On a national level, ALA reports that 50% of all banned books are LGBTQ-themed. Last summer, state legislators in West Fargo, Indiana, publicly decried a trans-themed library book display. Early this year, a right-wing advocacy group's attempts to ban similar displays at the Temple Public Library in Texas prompted NCAC to respond. This March, over 300 people in Orange City, Iowa, petitioned to ban or label library books with LGBTQ content that they claim conflicts with their Christian values.

NUDES CENSORED IN MINNESOTA

Artspace Jackson Flats, part of a national program that creates affordable live-work spaces for artists, demanded the removal of nudes from an exhibition curated by one of its residents. The stated goal of the show was to encourage positive attitudes towards gender, self-image and sexuality. Artspace must develop transparent and reasonable exhibition policies, as it seems that, without them, administrators have free rein to censor works by the very people Artspace is supposed to support.

VIRGINIA EXHIBITION CANCELLED

An artist in Norfolk, Virginia, had her exhibition abruptly canceled by its host, Hampton Roads Transit (HRT), after several employees complained about nudes in the show. As a government agency, HRT cannot arbitrarily reject work because some individuals dislike it. NCAC urged HRT to establish guidelines with the city's public art program, Norfolk Arts, in order to avoid First Amendment violations. But citing the "vitriolic" backlash over the exhibition's cancellation, HRT ended its partnership with Norfolk Arts entirely, announcing it would not host any future exhibitions. It is particularly concerning to see seemingly art-positive spaces so determined to control the content of that art.

Of Monuments and Power: Public Art Debates Are More Than Just Free Speech Vs. Censorship

The fall of socialism came unexpectedly for all of us who grew up in what appeared as a regime built to last forever, its permanence embodied in the weight of Stalinist architecture and the monumental roughly-hewn statues of communist leaders. The removal of those statues and of the giant red star shining above the towering structure of the Central Committee of the Communist Party in Sofia symbolized for me and my friends the demise of a repressive regime. We cheered.

Public monuments are symbols of power. They convey a strong official message about the values and principles to which a nation subscribes. With revolution – whether a political revolution or a fundamental change of values – the monuments to past leaders come down together with the ideas they enshrine.

Confederate monuments were erected in the 1890s, as the Jim Crow system was established in the South, and in the 1920s, at the height of black disenfranchisement, segregation and lynching. They had a purpose: to counter the growing civil rights movement. They also had a message: white supremacy remains at the heart of the nation. Those who commissioned the monuments spoke for state power. By honoring confederate heroes they reminded civil rights fighters that the Confederacy may have lost the war, but its values remained.

Public monuments are not the free products of an artist's vision: the artist's hand expresses the values of the state. There is no multiplicity of competing ideas where monuments are concerned. When the state speaks, it speaks with an authority no artist or art institution has: The state speaks for power. Removing such monuments does not violate the First Amendment. Under the Constitution, while government cannot suppress the ideas of its citizenry, no matter how obnoxious, when it speaks on its own behalf, it is free to promote a single viewpoint; in this case, the view that racism, segregation and slavery are all bad ideas.

Those who stand on pedestals are not there just because they played a role in history, but because they stand for the values a nation holds dear. To keep them in their places of honor is to perpetuate those ideas, often ideas that a nation has come to detest, even as they may linger on the fringes.

Removing monuments from prominence need not lead to their destruction. The statues of Bulgarian communist leaders, idealized revolutionary workers, and Lenins are now in the Museum of Socialist Art in Sofia. It is very popular with tourists. There are ways to preserve history without insisting that, as a nation, the United

States should continue celebrating the bankrupt values of the past.

Yet, while the time may have come for monuments intended to perpetuate white supremacy to be retired to a museum, the post-Charlottesville upheaval in transforming public space threatens to dispose of a much wider range of historical artworks and to do so in the heat of the moment: under pressure and without the necessary deliberation.

Around 1AM one morning in early March, under the thundering drumbeat of indigenous demonstrators, Kalamazoo, MI commissioners voted to dismantle a 1940 Art Deco sculpture of the stylized figures of a settler and a Native American in headdress facing each other above a reflecting pool.

Contrary to Jim Crow-era monuments, Fountain of the Pioneers has no clear political message. It commemorates a fact: the displacement of Native Americans from the land. Some opposed having a reminder of a history that caused them emotional pain; others (including Native groups) advocated for the monument as offering an occasion to remember and learn about the past. Without reaching community

consensus, the commissioners made an irreversible decision.

Cities across the country are reconsidering public art: a New York City task force added plaques with historical context next to the statues of polarizing figures such as Christopher Columbus, after months of debate; the San Francisco arts commission decided that a plaque was not enough and voted to remove a statue showing a Native American man at the feet of a Catholic missionary and a Spanish cowboy; Pittsburgh is taking down a statue of local composer Stephen Foster with a black slave sitting at his feet playing the banjo.

There are ongoing campaigns against many other public works that reflect historical power relationships and against monuments that celebrate figures with complex involvement in the nation's historical sins. The conversations started by such campaigns are necessary: public art has a special role in our shared living space. However, making often irreversible decisions to remove or destroy work in the heat of this politically polarized moment puts us in danger of losing artistically important work and purging public space of valuable (if sometimes painful) historical reminders.

Svetlana Mintcheva is Director of Programs at the National Coalition Against Censorship. She grew up in Bulgaria in the 1970s and 80s before moving to the United States in 1992.

