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Cancel Culture Attacks on Books and Authors

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Cancel Culture Attacks on Books and Authors *
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Abstract

While librarians are accustomed to fighting traditional forms of censorship, they must also recognize and resist cancel culture, by which social media efforts can derail works even before publication. The author analyzes contemporary examples (Dr. Seuss, JK Rowling, Woody Allen, and presidential tweets) through legal, historical, and philosophical lenses.

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I. Introduction

Sometimes just reading the headlines of an article or story contrary to their views, particularly involving morals or politics, makes people lash out. Ron Charles’s *Washington Post* article struck a nerve with many conservatives.¹ Ron Charles stated written words, “may be frozen, but we’re not.”² He suggests mindful word selection and civility “to reap a better understanding of who we were and are.”³ Charles proposes that we not be quick to cancel out literature. American sensibilities toward matters shift through time. One of the examples he offers is *Huckleberry Finn*. The Concord Public Library, after publication, labeled the book as “absolutely immoral.”⁴ Soon after, the Brooklyn Public Library was appalled by Twain’s language using “sweat,” for example, instead of “perspiration.”⁵ The issues with the book moved from criticism of the backward colloquial dialogue to the Civil Rights movement and increased sensitivity to the “N” word in the 1950s and 1960s.⁶ The discernment led to many schools and libraries taking *Huckleberry Finn* out of American schools and public libraries.⁷

¹ Ron Charles, *While Offensive TV Shows get pulled, problematic books are still inspiring debate and conversation*, WASH. POST (July 3, 2020, 6:00 AM), https://www.washingtonpost.com/entertainment/books/while-offensive-tv-shows-get-pulled-problematic-books-are-still-inspiring-debate-and-conversation/2020/07/02/171fd55e-bad0-11ea-80b9-40ece9a701dc_story.html [<https://perma.cc/M99A-WA7R?type=image>] [hereinafter Charles, *Problematic Books*]. **NOTE TO EDITOR: Two works by Ron Charles are cited in this article.**

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *The N-Word: A Discussion*, VETERANS OF THE CIVIL RIGHTS MOVEMENT (March 2015), <https://www.crmvet.org/disc/15n-word.htm> [<https://perma.cc/35C3-4Z4G>].

⁷ Charles, *Problematic Books*, *supra* note 2.

Charles offers *Uncle Tom's Cabin* as another example of the winding path of America through time.⁸ “Northern abolitionists wielded the novel as a sword for their causes.”⁹ Frederick Douglass stated the novel’s “effect was amazing, instantaneous, and universal.”¹⁰ However, Marcus Garvey, the leader of the Black movement after the turn of the century, proclaimed Uncle Tom dead.¹¹ “Marcus Garvey was the first public figure to use “Uncle Tom” as a pejorative term, and his speeches and other Universal Negro Improvement Association (UNIA) publications and public events gave wide circulation to the term as a way to stigmatize blacks who betrayed the cause of their race. “‘Uncle Tom's dead and buried,’ proclaimed protest signs at the parade that opened the UNIA's first convention in 1920.”¹²

Since 1920, the book was criticized for using “subservient racial stereotypes.”¹³ In 1955, James Baldwin called *Uncle Tom's Cabin* a “very bad novel,” based on its “self-righteous[ness]” and “virtuous sentimentality.”¹⁴ The status of *Uncle Tom's Cabin* has fallen over several decades. Still, in a new edition published in 2006, Henry Louis Gates and Hollis Robbins do not ignore the book's flaws, but through their annotations, made “a serious attempt to resurrect it as both a central document in American race relations and a significant moral and political exploration of the character of those relations.”¹⁵

The great English philosopher of the 19th century, John Stuart Mill, saw cancellation as having a chilling effect on a potentially thriving intellectual society.¹⁶ According to Mill, there needs to be wide latitude for things that can be said to allow freedom of expression.¹⁷ A book addressing the harm created from canceling words that make us feel the most uncomfortable is Jonathon Rauch’s book called *Kindly Inquisitors*.¹⁸ According to Rauch, a kindly inquisitor “is a well-meaning person who wants to shut down speech or debate or criticism because it’s offensive and hurts somebody’s feelings.”¹⁹

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* (citing FREDERICK DOUGLASS, *THE LIFE AND TIMES OF FREDERICK DOUGLASS; LIFE AS A SLAVE* 351 (electronic ed. 2001) (1892), <https://docsouth.unc.edu/neh/doug192/doug192.html> [https://perma.cc/P5C7-ZJUU].

¹¹ Adena Sprinarn, *When “Uncle Tom” Became an Insult*, *THE ROOT* (May 17, 2010), <https://www.theroot.com/when-uncle-tom-became-an-insult-1790879561> [https://perma.cc/QA88-LNKJ].

¹² “*Uncle Tom*” in *the 20th Century*, UNIV. VA.: UNCLE TOM’S CABIN & AMERICAN CULTURE, <http://utc.iath.virginia.edu/african/afin20c.html> [https://perma.cc/H44R-VJUT] (last visited Oct. 3, 2022).

¹³ Charles, *Problematic Books*, *supra* note 2.

¹⁴ James Baldwin, *Everybody's Protest Novel (1955)*, in *WITHIN THE CIRCLE: AN ANTHOLOGY OF AFRICAN AMERICAN LITERARY CRITICISM FROM THE HARLEM RENAISSANCE TO THE PRESENT* 150 (Angelyn Mitchell ed. 1994), <https://www.jstor.org/stable/j.ctv1134fjj> (subscription required).

¹⁵ *Id.*

¹⁶ Nathan Alexander, *Reading John Stuart Mill's On Liberty in the Age of “Cancel Culture” and “Fake News,”* *LIBERALCURRENTS* (Mar. 1, 2021), <https://www.liberalcurrents.com/reading-john-stuart-mills-on-liberty-in-the-age-of-cancel-culture-and-fake-news/> [https://perma.cc/CQ5W-WMCZ].

¹⁷ JOHN STUART MILL, *ON LIBERTY* 87 (David Bromwich & George Kateb eds., Yale Univ. Press 2003) (1859), https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip.shib&db=nlebk&AN=188087&site=ehost-live&custid=s8481523&ebv=EB&ppid=pp_69 (subscription required).

¹⁸ Jonathon Rauch, *KINDLY INQUISITORS: THE NEW ATTACKS ON FREE THOUGHT* (1993) [hereinafter *Rauch, Kindly Inquisitors*].

¹⁹ Nick Perrino, *So to Speak Transcript: Jonathan Rauch*, *FIRE* (June 21, 2016), <https://www.thefire.org/so-to-speak-transcript-jonathan-rauch/> [https://perma.cc/2GTZ-XTWU].

Mill stated that what is accepted today, may in the future, be considered absurd and vice versa.²⁰ Charles notes, “if cancel culture has a weakness, it’s that it risks short-circuiting the process of critical engagement that leads to our enlightenment.”²¹ Many great works of literature contain hosts of complexities to be explored and debated.²²

Fox News reported on Charles’s article.²³ Fox correctly points out that Charles’s piece opposes cancel culture regarding books, but when posted on Facebook, many conservatives did not seem to get past the term “problematic books.”²⁴ The moral grandstanding began. Donald Trump Jr. tweeted, “I imagine the Libs will also be the arbiters” of what books to burn.²⁵ Steven Miller, a conservative commentator, tweeted, “They’re not going to stop.”²⁶ Dan McLaughlin, senior writer for the *National Review*, tweeted, “They were inevitably going to burn books.”²⁷ Conservative radio host Dana Loesch wrote, “Book burners have never been on the right side of history.”²⁸

A noted historical book addressing free thought is John Stuart Mill’s *On Liberty*, published in 1859.²⁹ Mill believed Unitarianism could provide strong protection of individual rights. A significant part of *On Liberty* dealt with freedom of speech. Mill thought prohibiting speech was harmful to the one silenced and to the greater society without the benefit of hearing the speaker’s opinions.³⁰ Mill thought it essential to hear all views, including those in opposition, for three main reasons.

First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility. Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied. Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice,

²⁰ MILL, *supra* note 14, at 88-89.

²¹ Charles, *Problematic Books*, *supra* note 2.

²² *Id.*

²³ Joseph Wulfsohn, *Critics predict ‘book burnings’ after Washington Post takes aim at ‘problematic books’*, FOX NEWS (July 6, 2020), <https://www.foxnews.com/media/washington-post-problematic-books-book-burnings> [<https://perma.cc/78X5-UDER>].

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ MILL, *supra* note 14, at 69.

³⁰ *Id.* at 118; Nathan Alexander, *Reading John Stuart Mill’s On Liberty in the Age of “Cancel Culture” and “Fake News,”* LIBERALCURRENTS (Mar. 1, 2021), <https://www.liberalcurrents.com/reading-john-stuart-mills-on-liberty-in-the-age-of-cancel-culture-and-fake-news/> [<https://perma.cc/WQ4L-QC9H>].

with little comprehension or feeling of its rational grounds.³¹

Mill also spoke of the dangers of following a dangerous leader so confident in his views that they transcend any other opinions, even those based on generally accepted knowledge and history. The fake news coming from the leader is trumpeted as an echo chamber through the land through an Echo Chamber of various sycophant mediums, helping eradicate truthful knowledge by pushing rumors and conspiracies offered as truths.³²

In the late 1980s and early 1990s, a movement started on university campuses to limit free speech that permitted hostile environments.³³ According to Rauch, the effort to caretake society from wounding words had consequences.³⁴ It led to an inquisition and the cancellation of people for what they said or thought.³⁵ Rauch finds the principle of thou shalt not hurt others with words to be a menace and stands in the way of liberal inquiry.³⁶ Rauch states that canceling kills ideas.

Suppressing offensiveness...comes at a high cost, since offensiveness is not the same thing as wrongness – often just the contrary. Sometimes patently “offensive” verbiage turns out to be telling the unpopular truth. As I am hardly the first to point out, practically all knowledge of any importance began as a statement which offended someone...Many people were appalled by the notion that the earth was not at the center of the Universe (to say so was hate speech – hateful of God.)³⁷

Rauch came up with something he labels the "science game." Everybody in the game has the right to submit ideas, regardless of objectionable content.³⁸ Additionally, there needs to be criticism of all ideas.³⁹ Rauch examines the U.S. Supreme Court decision *Edwards v. Aguillard*,⁴⁰ as an example of using the science game. The Supreme Court found that Louisiana's Creation Act requires the teaching of evolution and creationism if one is taught violative of the Constitution's Establishment Clause.⁴¹ The Court stated that “while the Court is normally deferential to a State’s articulation of a secular purpose, it is required that the statement of such purpose be sincere and not a sham.”⁴²

³¹ MILL, *supra* note 14, at 118.

³² Mark Pearson, *John Stuart Mills predicted the likes of Trump and the echo chamber*, JOURNALAW (Oct. 25, 2018) <https://journalaw.com/2018/10/25/john-stuart-mill-predicted-the-likes-of-trump-and-the-echo-chamber-mlgriff/> [https://perma.cc/K66A-SGHV]

³³ John Leo, *Free Inquiry? Not on Campus: And the College Speech Police Threaten the Liberty of us all*, CITY J. (Winter 2007), <https://www.city-journal.org/html/free-inquiry-not-campus-12989.html> [https://perma.cc/QS2N-PHB4].

³⁴ RAUCH, KINDLY INQUISITORS, *supra* note 15, at 25-26.

³⁵ *Id.* at 143-45.

³⁶ *Id.* at 26-29.

³⁷ *Id.* at 123.

³⁸ *Id.* at 112-114.

³⁹ *Id.*

⁴⁰ *Edwards v. Aguillard*, 482 U.S. 578 (1987).

⁴¹ *Id.* at 596-97.

⁴² *Id.* at 586-87.

Rehnquist and Scalia dissented. Scalia said the law was secular rather than religious intent. The state legislature was furthering academic freedom by teaching all beliefs, and there should be equal time for all.

If one adopts the obviously intended meaning of the statutory term “academic freedom,” there is no basis whatever for concluding that the purpose they express is a “sham.” To the contrary, the Act pursues that purpose plainly and consistently. It requires that, whenever the subject of origins is covered, evolution be “taught as a theory, rather than as proven scientific fact” and that scientific evidence inconsistent with the theory of evolution be taught as well.⁴³

John Stuart Mill recognized the difference between expressing a belief and the opportunity to publish the belief.⁴⁴ According to Mill, publishing beliefs takes an individual’s conduct to the public, which is “almost of as much importance as the liberty of thought itself, and resting in great part on the same reasons, is practically inseparable from it.”⁴⁵

If the manifestation of freedom of expression is in a human being’s self-expression, what happens to the individual who cannot find a medium for expression? Were canceled writers afforded the freedom of expression?⁴⁶ Publisher's staff have expressed anger and opposition to certain books their employers intend to publish.⁴⁷

The cancel culture vocabulary consists of several phrases: “Canceling, calling out, calling in, and boycotting are all distinct actions, but they do share a commonality. Their overarching goal is to reduce perceived harm to an individual or demographic, thereby creating social change. In other words, all four distinct terms draw attention to actions or opinions that may be hurting people in order to ultimately phase those behaviors or opinions out of the culture.”⁴⁸ Cancel culture is distinct from censorship. Cancel culture is a form of propaganda currently operating at a high level due to social media. To cancel is not new.

Jonathan Rauch paraphrases Mill, stating, “the problem is that in America, if you get on the wrong side of approved opinion, your livelihood could be wiped out. People won’t talk to you anymore. And so you’ll just hunker down and stay silent.”⁴⁹

Censorship, on the other hand, is mainly government-led. In *Free Speech on Campus*, Erwin Chemerinsky and Howard Gilliam state, “[c]ensorship has always been on the side of

⁴³ *Id.* at 629-630.

⁴⁴ Alexander, *supra* note 26.

⁴⁵ MILL, *supra* note 14, at 22.

⁴⁶ Alexander, *supra* note 26.

⁴⁷ Allison Flood, ‘If Publishers Become Afraid, We’re In Trouble’: Publishing’s Cancel Cultures Debate Boils Over, THE GUARDIAN (June 3, 2021), <https://www.theguardian.com/books/2021/jun/03/if-publishers-become-afraid-were-in-trouble-publishings-cancel-culture-debate-boils-over> [https://perma.cc/MDZ6-FV9U].

⁴⁸ Erin Bunch, *The Cancel Culture Glossary for Canceling, Boycotting, Calling Out and Calling In*, WELL + GOOD (July 23, 2020), <https://www.wellandgood.com/cancel-culture-examples/> [https://perma.cc/6FT2-ARQD].

⁴⁹ *Id.*

authoritarianism, conformity, ignorance, and the status quo.”⁵⁰ Rauch states that censorship does not make thoughts or harmful ideas go away. Rather than figuratively killing a resource, the modus operandi of canceling—censorship magnifies what is banned.⁵¹ Rauch states, “[o]ld-fashioned censorship is expensive, inefficient, and leaky, especially in an open society like modern America. Suppose, instead of banning unwelcome ideas, you swamp and swarm them?”⁵²

An additional definition of cancel culture from Dictionary.com is helpful. It “refers to the popular practice of withdrawing support for (*canceling*) public figures and companies after they have done or said something considered objectionable or offensive. *Cancel culture* is generally discussed as being performed on social media in the form of group shaming.”⁵³

Law review articles have been written on cancel culture in the past two years.⁵⁴ In addition, several law reviews and journals have examined free expression and the works of John Stuart Mills.⁵⁵ The paper explores cancel culture through the theoretical lens of John Stuart Mill and a

⁵⁰ JONATHAN RAUCH, *THE CONSTITUTION OF KNOWLEDGE: A DEFENSE OF TRUTH* 252 (2021) (citing ERWIN CHEMERINSKY & HOWARD GILLIAM, *FREE SPEECH ON CAMPUS*, 27 (2017)), <https://www.jstor.org/stable/10.7864/j.ctv13qfw2t> (subscription required) (hereinafter “Rauch, Constitution of Knowledge”).

⁵¹ *Id.* at 204-205.

⁵² *Id.* at 167-168.

⁵³ *Cancel Culture*, DICTIONARY.COM (July 31, 2020), <https://www.dictionary.com/e/pop-culture/cancel-culture/> [<https://perma.cc/L7CT-M79T>].

⁵⁴ Pippa Norris, *Closed Minds? Is a ‘Cancel Culture’ Stifling Academic Freedom and Intellectual Debate in Political Science?* (HKS Working Paper, No. RWP20-025, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3671026; Renee Nicole Allen, *From Academic Freedom to Cancel Culture: Silencing Black Women in the Legal Academy*, 68 UCLA L. REV. 364 (2021); G.S. Hans, *Changing Counterspeech*, 69 CLVSLR 749 (2021); Nanci K. Carr, *How Can We End #CancelCulture—Tort Liability or Thumper’s Rule?*, 28 CATH. U. J. L. & TECH 133, 141 (2020), <https://scholarship.law.edu/jlt/vol28/iss2/6>; Eugene Scalia, *John Adams, Legal Representation, and The “Cancel Culture,”* 44 HARV. J.L. & PUB. POL’Y 333 (2021), <https://www.harvard-jlpp.com/wp-content/uploads/sites/21/2021/01/Scalia-Cancel-Culture.pdf> [<https://perma.cc/3UET-TSMF>]; Distinguished Panelists, *Law, Social Justice, Wokeness and the Protests: Where do we go from here?* 33 REGENT U. L. REV. 315 (2021), <https://static1.squarespace.com/static/58ebcb941b10e3a416521b1f/t/61d7d286923f053d4be7aa29/1641534087420/3.2.pdf> (“This panel was held on Nov. 12, 2000, during the 2020 National Lawyers Convention that was held virtually”).

⁵⁵ See generally, Harry H. Wellington, *On Freedom of Expression*, 88 YALE L.J. 1105, (1979); Steven J. Heyman, *Righting the Balance: An Inquiry into the foundations and Limits of Freedom of Expression*, 78 B.U. L. REV. 1275 (1998); Mark Spottswood, *Falsity, Insincerity, and the Freedom of Expression*, 16 WM. & MARY BILL RTS. J. 1203 (2008), <https://scholarship.law.wm.edu/wmbrj/vol16/iss4/10>; Heidi Kitrosser, *From Marshall McLuhan to Anthropomorphic Cows: Communicative Manner and the First Amendment*, 96 NW. U. L. REV. 1339 (2002); John H.F. Shattack & Fritz Byers, *An Egalitarian Interpretation of the First Amendment*, 16 HARV. C.R.-C.L. REV. 159 (2003); Clay Calvert & Robert D. Richards, *Lighting a Fire on College Campuses: An Inside Perspective on Free Speech, Public Policy & Higher Education*, 31 GEO. J. L. & PUB. POL’Y 2015 (2005); *Symposium on Problems of Censorship in a New Technological Age*, 31 N.Y.U. REV. L. & SOC. CHANGE 899 (2007); John A. Powell, *As Justice Requires/Permits: The Delimitation of Harmful Speech in a Democratic Society*, 16 LAW & INEQ. 97 (1998); Gregory P. Magarian, *When Audiences Object: Free Speech and Campus Speaker Protests*, 90 U. COLO. L. REV. 551 (2019); R. George Wright, *The Lying and Freedom of Speech*, 2011 UTAH L. REV. 1131 (2011); Brittany Finnegan, *The Cost of Free Speech: Combating Fake News or Upholding the First Amendment*, 75 U. MIAMI L. REV. 572 (2021); John C. Knechtle, *When to Regulate Hate Speech*, 110 PENN ST. L. REV. 539 (2006); Deborah R. Wright, *A First Amendment Justification for Regulating Racist Speech on Campus*, 40 CASE W. RES. L. REV. 733 (1989/1990); Steven Alan Child, *A First Amendment Model of Censorial Discretion*, 70 TULANE L. REV. 1229

more contemporary advocate of free expression, Jonathan Rauch. This paper will be the first law review article to examine cancel culture and books, focusing on Dr. Seuss Enterprises' decision not to publish six children's books due to racist content. Next, the paper addresses the canceling of many authors such as J.K. Rowling and Woody Allen.

II. Theodore Geisel, A.K.A. Dr. Seuss and Six Books

In 2019, Katie Ishizuka of The Conscious Kid's Library with Ramon Stephens from the University of California-San Diego conducted a study called "The Cat is Out of the Bag: Orientalism, Anti-Blackness, and White Supremacy in Dr. Seuss's Children's Books."⁵⁶ The study focused on the occurrence of explicit racism.⁵⁷ The primary research question was, "How and to what extent are non-White characters depicted in Dr. Seuss' children's books?"⁵⁸ The researchers found significant evidence of Dr. Seuss's degradation and dehumanization of Afro-Americans, Indigenous, Asians, and other people of color.⁵⁹

(1996); Robert Corn-Revere, *The Anti-Free Speech Movement*, 78 BROOKLYN L. REV. 531 (2003); R. Greene Wright, *What Counts as "Speech" in the First Place?: Determining the Scope of the Free Speech Clause*, 37 PEPPERDINE L. REV. 1217 (2010); Frederick Schauer, *It is Better to be Safe than Sorry?: Free Speech and the Precautionary Principle*, 36 PEPPERDINE L. REV. 301 (2009); David T. Tubbs, *Conflicting Images of Children in First Amendment Jurisprudence*, 30 PEPPERDINE L. REV. 1 (2002); James Winston, *What Lies Ahead?: Alvarez v. United States, and First Amendment Protections of Knowing Falsehoods*, 51 SETON HALL L. REV. 135 (2020); Patrick M. Garry, *When Legislatures Been the Ally of Academic Freedom: The First State Intellectual Diversity Statute and Its Effect on Academic Freedom*, 71 S.C. L. REV. 175 (2019); Craig B. Anderson, *Political Correctness on College Campuses: Freedom of Speech v. Doing the Politically Correct Thing*, 46 SMU L. REV. 171 (1992) Nat Stern, *The Subordinate Status of Negative Speech Rights*, 59 BUFFALO L. REV. 847 (2011); Jon K. Lauch, "A Long and Winding Road": *The South Dakota Intellectual Diversity Bill of 2019*, 98 NEB. L. REV. 674 (2020); R. George Wright, *The Emergence of First Amendment Academic Freedom*, 85 NEB. L. REV. 793 (2007); Marc Jonathan Blitz, *Constitutional Safeguards for Silent Experiments in Living: Libraries, The Right to Read, And a First Amendment Theory for an Unaccompanied Right to Receive Information*, 74 UMKC L. REV. 799 (2006); Stephen M. Feldman, *Postmodern Free Expression: A Philosophical Rationale for the Digital Age*, 100 MARQUETTE L. REV. 1123 (2017); Steven R. Glasser, *Sticks and Stone May Break my Bones, But Words Can Never Hurt Me: Regulating Speech on University Campuses*, 76 MARQUETTE L. REV. 265 (1992); Sara Howard Jenkins, *God Talk by Professors within the Classrooms of Public Institutions of Higher Education: What is Constitutionally Permissible?* 25 AKRON L. REV. 289 (1991); Nat Stern, *Private Concerns of Private Plaintiffs Revisiting a Problematic Defamation Category*, 65 MO. L. REV. 597 (2000); John A. Powell, *Fake Worlds Apart: Reconciling Freedom of Speech and Equality*, 85 KY. L.J. 9 (1997); Jason Shepard and Kathleen Culver, *Culture Wars on Campus: Academic Freedom, The First Amendment, and Parties Outrage in Polarized Times*, 55 SAN DIEGO L. REV. 87 (2018); R. George Wright, *The Constitutional Status of Speech About Oneself*, 59 CLEVE. ST. L. REV. 489 (2011); R. George Wright, *Constitutional Cases and the Four Cardinal Virtues*, 60 CLEVE. ST. L. REV. 195 (2012); G.S. Harris, *Changing Counterspeech*, 69 CLEVE. ST. L. REV. 749 (2021); Steven L. Heyman, *Ideological Conflict and the First Amendment*, 78 CHI.-KENT L. REV. 531 (2003); Christopher R. Green, *Originalism and the Sense-Reference Distinction*, 50 ST. LOUIS. U. L.J. 555 (2006); Clay Calvert, Stephanie McNeff, Austin Vining, & Sebastian Zarate, *News and the First Amendment: Reconciling a Disconnect Between Theory and Doctrine*, 86 U. CIN. L. REV. 99 (2018); Mary Anne Franks, *When Bad Speech Does Good*, 43 LOY. U. CHI. L.J. 395 (2012).

⁵⁶ Libby Emmons, *Study that led to canceling of Dr. Seuss also called Cat in the Hat, Horton the Elephant 'white supremacists'*, PM (May 10, 2021), <https://thepostmillennial.com/study-that-led-to-canceling-of-dr-seuss-also-called-cat-in-the-hat-horton-the-elephant-white-supremacist/> [https://perma.cc/DH2T-CUXE].

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

Geisel started as a cartoonist on a Dartmouth humor magazine, *Jack-O-Lantern*, drawing racist cartoons.⁶⁰ In *Judge* (magazine), a weekly satirical published from 1881 until 1947,⁶¹ and *College Humor* (magazine),⁶² published by Collegiate World Publishing from 1920 to 1943, Geisel continued drawing racist cartoons.⁶³ In 1933, Dr. Seuss drew a knife-wielding Mexican in a vast sombrero lighting a bomb for *Vanity Fair*.⁶⁴ Dr. Seuss was an in-demand cartoonist for advertisers in the 1930s and early 1940s, when racist drawings were not considered offensive to most.⁶⁵

Dr. Seuss labeled Japanese “Japs” during WWII and drew them with pig snouts, snakes, monkeys, or cats.⁶⁶ After WWII, Dr. Seuss returned to children’s books.⁶⁷ Before the war, he had published four children’s books: *And to Think That I Saw It on Mulberry Street* (1937), *The 500 Hats of Bartholomew Cubbins* (1938), *The King’s Stilts* (1939), and *Horton Hatches the Egg* (1940). *And to Think That I Saw It on Mulberry Street* is one of the six books that Dr. Seuss

⁶⁰ Ted Geisel, “*Nice Cohen*” (cartoon of a Jewish couple with oversized noses), in 15 DARTMOUTH JACK-O-LANTERN 26 (May 1923); Ted Geisel, *Highball Thompson wins from Kid Sambo by a shade* (cartoon depicting Afro-American boxers as gorillas), in 15 DARTMOUTH JACK-O-LANTERN 30 (May 1923) (reprinted in CHARLES D. COHEN, THE SEUSS, THE WHOLE SEUSS, AND NOTHING BUT THE SEUSS: A VISUAL BIOGRAPHY OF THEODOR SEUSS GEISEL 207 (2004)). **NOTE TO EDITOR: Rule 18.8 for illustrations.**

⁶¹ COHEN, *supra* note 63 (includes reproduction of Geisel’s cartoon from *Judge* depicting two Jewish football players with prominent noses on the football field. The center refuses to kike the ball to the quarterback until the quarterback calls out a first-rate bargain).

⁶² *College Humor* (magazine), WIKIPEDIA, [https://en.wikipedia.org/wiki/College_Humor_\(magazine\)](https://en.wikipedia.org/wiki/College_Humor_(magazine)) [https://perma.cc/2TH5-TYNX] (last visited July 8, 2021).

⁶³ Dr. Seuss depicted Afro-Americans as monkeys and frequently identified them as “n*ggers.” Ishizuka & Stephens, *supra* note 59. In one depiction for *Judge*, Dr. Seuss places a sign above a “thick-lipped” group of Afro-American men up for sale stating, “Take Home A High-Grade N*gger For Your Wood Pile.” Theodor Seuss Geisel first signed as Dr. Seuss in a 1928 racist cartoon depicting Japanese women and children. The caption reads “childen” instead of “children” mocking Japanese people that cannot pronounce “R’s” well.⁶³ Through the 1930’s Dr. Seuss’s racist depictions of Afro-Americans and Asians continued. He also depicted sexist characterizations of women and drew Indigenous people with exaggerated headdresses, long pipes, and practically naked in the snow.⁶³ Ishizuka & Stephens, *supra* note 59.

⁶⁴ Ishizuka & Stephens, *supra* note 59.

⁶⁵ He did a series of ads for Essomarine Oils & Greases between 1934 and 1936, depicting Afro-Americans as monkeys, cannibals, and topless “Negro Mermaids” with ape faces. Ishizuka & Stephens, *supra* note 59, at 5. From 1940 to 1942, Dr. Seuss did a series of racist drawings for Narragansett Beer. The beer company’s name derives from a tribal nation in the northeast. In one advertisement, he drew a “cigar-store Indian,” naming him “Chief Gansett, “who would roll around on wheel serving beer for white men.” Ishizuka & Stephens, *supra* note 59, at 5 (citing RICHARD H. MINEAR, DR. SEUSS GOES TO WAR: THE WORLD WAR II EDITORIAL CARTOONS OF THEODOR SEUSS GEISEL 184 (1999)).

⁶⁶ Six days before President Roosevelt signed Executive Order 9600, incarcerating 120,000 Japanese Americans, Dr. Seuss published a cartoon representing Japanese Americans as saboteurs carrying explosives. Another cartoon showed the NAACP and Civil Liberties Union co-founder pacifist John Haynes Holmes, beheaded by a Japanese man. Upon receiving criticism for the cartoon, Geisel responded:

Right now, when the Japs are planting their hatchets in our
Skulls, it seems like a hell of a time for us to smile and warble:
“Brothers!” It is a rather flabby battle cry. If we want to win,
we’ve got to kill Japs, whether it depresses John Haynes Holmes
or not. We can get palsy-walsy afterward with those that are left.

Richard Minear & Sopan Deb, *The Dr. Seuss Museum and His Wartime Cartoons about Japan and Japanese Americans*, 15 ASIA-PACIFIC J. iss.15, no.3 (Aug 15, 2017), <https://apjif.org/-Richard-Minear--Sopan-Deb/5063/article.pdf> [https://perma.cc/F38D-5JVH].

⁶⁷ Ishizuka & Stephens *supra* note 59, at 6.

Enterprises decided to discontinue publishing.⁶⁸ The other five discontinued books include *If I Ran the Zoo*, *McElligot's Pond*, *On Beyond Zebra!*, *Scrambled Eggs Super!*, and *The Cat's Quizzer*.⁶⁹

And to Think That I Saw It on Mulberry Street feeds stereotypes of the Chinese. Geisel drew a man called a Chinaman “who eats with sticks.” The man had bright yellow skin and a ponytail.⁷⁰ In *If I Ran the Zoo*, another of the pulled six, “a white boy holds a large gun while standing on the heads of three Asian men. ‘If I Ran the Zoo’ also features two men from Africa who are shirtless, shoeless and wearing grass skirts while holding an exotic animal.”⁷¹

White people's superiority is a running theme in Dr. Seuss's books, often depicted as leaders in professional jobs, such as teachers, doctors, police officers, and mayors.⁷² In *McElligot's Pond*, Dr. Seuss mentions “Eskimo” in describing a fantastical group of imagined fish in igloos wearing fur parkas as they trek from the North Pole to McElligot's Pool. A smiling white man dressed in fur holds a spear as he eyes the fish, depicted as Eskimos wearing fur parkas, swimming along.⁷³ *On Beyond Zebra!* appears to be the most bias-free of the six discontinued books. “The book catalogues a whimsical set of new letters in the alphabet, and briefly features the ‘Nazzim of Bazzim,’ a figure of unspecified nationality riding a camel-like creature called a ‘Spazzim.’”⁷⁴

In *Scrambled Eggs Super!*, a young white male had the title role, and he boasts throughout his travels in a fictional Arctic nation named Fa-Zoal of finding increasingly rare eggs that he eats for breakfast.⁷⁵ Fa-Zoal residents dress in furs and paddle boats of skin.⁷⁶ Generalizations of

⁶⁸ Jenny Gross, *Dr. Seuss Books Will No Longer Be Published Over Offensive Images*, N.Y. TIMES (Mar. 2, 2021), <https://www.nytimes.com/2021/03/02/books/dr-seuss-mulberry-street.html> [<https://perma.cc/KY3C-2XT6>].

⁶⁹ *Id.*

⁷⁰ Ishizuka & Stephens, *supra* note 59, at 15. In an updated bowdlerized 1978 edition, “Chinese Man” replaced “Chinaman” and the edition removed the bright yellow skin and ponytail. Ishizuka & Stephens, *supra* note 59, at 17. The story also depicted a turban-wearing man dragging two white people on a horse. One man, riding a smiling elephant, whipped the turban-wearing man. Ishizuka & Stephens, *supra* note 59, at 33. Feminists complained about one of Dr. Seuss's lines in the book, “Even Jane could think of that,” but Seuss did not change it. Geisel stated, “It remains in my book because that's what the boy said.” Ishizuka & Stephens, *supra* note 59, at 33 (citing JUDITH MORGAN & NEIL MORGAN, DR. SEUSS & MR. GEISEL: A BIOGRAPHY 276 (1995)).

⁷¹ Scott Reader, *Column: Dr. Seuss and ‘Cancel Culture*, QUAD-CITY TIMES (July 19, 2022), https://qctimes.com/opinion/columnists/column-dr-seuss-and-cancel-culture/article_99cbf599-b16b-50e7-ae09-87c00b4385cd.html (subscription required).

⁷² Ishizuka & Stephens, *supra* note 59, at 25.

⁷³ Benjamin Wallace-Wells, *Cancel Culture is not a Movement*, THE NEW YORKER (Mar. 11, 2021), <https://www.newyorker.com/news/annals-of-populism/who-is-in-charge-of-cancel-culture> [<https://perma.cc/RQ9G-WUYM>]. Also see Debbie Reese, *American Indians in Children's Literature, 2006-2021*, AMERICAN INDIANS IN CHILDREN'S LITERATURE (Mar. 6, 2021), <https://americanindiansinchildrensliterature.blogspot.com/2021/03/eskimo-in-seuss-books-that-will-no.html> [<https://perma.cc/D2ET-4UFT>].

⁷⁴ Tristin Hooper, *Here are the “Wrong” Illustrations That Got Six Dr. Seuss Books Canceled*, NATIONAL POST (Mar. 2, 2021), <https://nationalpost.com/entertainment/books/here-are-the-wrong-illustrations-that-got-six-dr-seuss-books-cancelled> [<https://perma.cc/NU7P-NZRJ?type=image>].

⁷⁵ *Id.*

⁷⁶ *Id.*

Inuits are also depicted.⁷⁷ *The Cat's Quizzer* shows a yellow figure in a coolie hat, or rice paddy hat, with the caption "how old do you have to be to be a Japanese?"⁷⁸ All fourteen Asian characters displayed in *And to Think That I Saw It on Mulberry Street*, *If I Ran the Zoo*, and *The Cat's Quizzer* exist in subservient roles. Eleven are wearing the stereotypical rice paddy hats.⁷⁹

The extent of white supremacy in Seuss's children's books is significant. "White supremacy is seen through the centering of Whiteness and White characters, who comprise 98% (2,195 characters) of all characters".⁸⁰ White characters provide all the narratives and speaking roles. Characters of color are all silent.⁸¹ As with contemporary white supremacists, dominant white males live with subservient white women.⁸² "The more startling finding is that women and girls of color are completely absent across his children's book collection."⁸³ Like current white-supremacy culture, the potential use of violence with guns and weapons is pervasive.⁸⁴

III. Dr. Seuss Enterprises

Since its inception in 1998 by the National Education Association (NEA), National Read Across America Day "is recognized as the nation's largest celebration of reading."⁸⁵ NEA spokesperson Steven Grant stated, "One of the reasons we partnered with Seuss 20 years ago in 1997 was to kick-start this program. That was the strategy upfront, so kids would see Dr. Seuss's *Cat in the Hat* and spark some attention."⁸⁶ The program has been an enormous success, with "An estimated 45 million people" predicted to partake in March 2022.⁸⁷

⁷⁷ Michael Hein, *These 6 Dr. Seuss Books Are Being Taken out of Print Due to Racists Imagery*, POPCULTURE (Oct. 23, 2021) <https://popculture.com/trending/news/these-6-dr-seuss-books-taken-out-print-racist-imagery/> [https://perma.cc/ZA35-4TD6].

⁷⁸ Hooper, *supra* note 75.

⁷⁹ *Id.*; Ishizuka & Stephens, *supra* note 59, at 15.

⁸⁰ *Id.* at 14.

⁸¹ *Id.* at 25.

⁸² Katherine M. Blee, *Becoming a Racist: Women in Contemporary Ku Klux Klan and Neo-Nazi Groups*, 10 GENDER & SOC'Y 680 (1996), <https://www.jstor.org/stable/190195>.

⁸³ *Id.* at 30.

⁸⁴ Ryu Spaeth, *Gun Culture Has Always Been About White Supremacy*, THE NEW REPUBLIC (Aug. 4, 2019), <https://newrepublic.com/article/154652/gun-culture-always-white-supremacy> [https://perma.cc/9CBN-ZXFL?type=image].

⁸⁵ Carly O'Neill, *National Read Across America Day celebrated across Central PA*, FOX43 (Mar 2, 2022 12:08 P.M. EST), <https://www.fox43.com/article/news/education/national-read-across-america-day-celebrated-across-central-pa/521-08a68993-2793-4042-aab6-7a8979be3ab3> [https://perma.cc/8RWF-AQTF].

⁸⁶ Grace Hwang Lynch, *Is the Cat in the Hat Racist? Read Across America Shifts Away from Dr. Seuss and Toward Diverse Books*, SCH. LIBR. J. (Sep. 11, 2017), <https://www.slj.com/?detailStory=cat-hat-racist-read-across-america-shifts-away-dr-seuss-toward-diverse-books> [https://perma.cc/Y8U6-Z4LJ].

⁸⁷ Miguel A. Gonzalez, *Press Release: NEA Read Across America Celebrates Reading – and Books*, NAT'L EDUC. ASS'N (March 2, 2022), <https://www.nea.org/about-nea/media-center/press-releases/neas-read-across-america-celebrates-reading-and-books> [https://perma.cc/CF82-Q3LE].

The NEA, in fall 2017, decided to switch “its focus toward a year-round promotion of diverse children’s books.”⁸⁸ “In 2018, the NEA removed all of Geisel's books from its Read Across America resource calendar, replacing them with diverse books and authors.”⁸⁹

Katie Ishizuki-Stephens stated.

It’s not about reading or not reading certain books, it’s about awareness around the social and systematic bias that such books promote. Dr. Seuss and whiteness is a reflection of the overwhelming silence in literacy regarding matters of race, especially with both young people and white people.⁹⁰

The NEA announced on August 31, 2019, they “will no longer have a licensing agreement with Dr. Seuss Enterprises. After August 31, NEA Affiliates and members may no longer use the old Read Across America logo with the Cat in the Hat leaning over the U.S. map.”⁹¹ According to NEA News:

Of course, children still love Dr. Seuss, and his birthday on March 2, also Read Across America Day is still an ideal time for a school-wide reading event when you can serve green eggs with ham, but with the broadened scope of NEA’s Read Across America, there are activities, resources, and ideas to keep students reading all year long.⁹²

Phillip Nel, a leading Dr. Seuss scholar and Professor of English at Kansas State University, said,

Dr Seuss Enterprises has made a moral decision of choosing not to profit from work with racist caricature in it and they have taken responsibility for the art they are putting into the world and I would support that.”⁹³

⁸⁸ *Id.*

⁸⁹ Julia Barajas, *How Teachers in L.A. And Beyond Turned Away From Dr. Seuss*, LOS ANGELES TIMES (March 5, 2021 10:55 AM PT), <https://www.latimes.com/entertainment-arts/books/story/2021-03-05/dr-seuss-read-across-america-los-angeles-county-schools> [https://perma.cc/G86D-FHKX].

⁹⁰ Lynch, *supra* note 91.

⁹¹ *NEA’s Read Across America: Approved Logos*, NAT’L EDUC. ASS’N (Jan. 1, 2021), <https://www.nea.org/resource-library/neas-read-across-america-approved-logos> [https://perma.cc/RRR6-MCDV].

⁹² Cindy Long, *NEA’s Read Across America Rebrands with New Mission*, NAT’L EDUC. ASS’N (Sept. 16, 2019), <https://www.nea.org/advocating-for-change/new-from-nea/neas-read-across-america-rebrands-new-mission> [https://perma.cc/NM53-RA98].

⁹³ Edward Helmore, “*It’s a Moral Decision*”: *Dr. Seuss Books Are Being “Recalled” Not Cancelled, Expert Says*, THE GUARDIAN (Mar. 7, 2021), <https://www.theguardian.com/books/2021/mar/07/dr-seuss-books-product-recall-cancel-culture> [https://perma.cc/6T6H-YJJM].

“When you suppress an opinion, you suppress a debate; you steal an opportunity for existing and future generations to learn and be corrected.”⁹⁴ Mill would likely view Dr. Seuss Enterprises' decision to stop publishing the six books as taking away an opportunity for generations to discuss both sides of the issue to help create new knowledge.

IV. Scholarly Reaction to Geisel's Work

Some intellectuals recognize the racism of Geisel's cartoons but argue that rather than canceling his work, educators should take John Stuart Mill's approach and not cancel but take the opportunity to provide an excellent teaching opportunity. “Children need to be exposed to different viewpoints as early and often including many more works than just “Green Eggs and Ham,” but also in a tasteful way so as they get older in life, they are prepared for all types of situations. To simply ban problematic books rids generations of the opportunity to learn from them.”⁹⁵

Michelle Martin, faculty at the University of Washington Information School, states, “Seuss, like any other author, was a product of his time. Fortunately, some authors grow and figure out that maybe some of the things they wrote early on were harmful and they try to make amends. Seuss did that.”⁹⁶ Phillip Nel, likewise, believes Geisel was a product of the time.⁹⁷

Seuss's Cat is racially complicated. Like a lot of 20th century popular culture (i.e. Bugs Bunny and Mickey Mouse), the Cat is partially inspired by blackface minstrelsy, a popular theatrical entertainment in the 19th century and first half of the 20th century, in which performers blackened their faces to impersonate and mock Blackness. The Cat in the Hat's outrageous fashion sense (white gloves, brightly colored hat and bow tie), exaggerated styles of movement, breaking rules that he pretends to follow, and his confidence-man behavior all derive from a common minstrel character.⁹⁸

⁹⁴ Editorial, *Care Required With Books That Do Not Age Well*, SYDNEY MORNING HERALD (Mar. 7, 2021), <https://www.smh.com.au/culture/books/care-required-with-books-that-do-not-age-well-20210305-p578bd.html> [<https://perma.cc/E9J4-ZNWS>].

⁹⁵ Editorial, *Examining Perceived Racism In Dr. Seuss Demands Deeper Consideration*, DAILY COLLEGIAN (Feb. 28, 2019), https://www.collegian.psu.edu/opinion/editorials/editorial-examining-perceived-racism-in-dr-seuss-demands-deeper-consideration/article_95255152-3b62-11e9-9a81-bb74abf071c2.html [<https://perma.cc/L3RS-5LZT>]. See generally, Tiara Jenkins & Jessica Yarmosky, *Dr. Seuss Books Can Be Racist, But Students Keep Reading Them*, NPR (Feb. 26, 2019), <https://www.npr.org/sections/codeswitch/2019/02/26/695966537/classic-books-are-full-of-problems-why-cant-we-put-them-down> [<https://perma.cc/9DD7-W7HD>]; Alexandra Alter & Elizabeth A. Harris, *Dr. Seuss Books Pulled, and a 'Cancel Culture' Controversy Erupts*, N.Y. TIMES (Oct. 20, 2001), <https://www.nytimes.com/2021/03/04/books/dr-seuss-books.html> [<https://perma.cc/CMW9-4RFF>].

⁹⁶ John Wilkens, *Dr. Seuss' Racial History Draws Controversy*, SAN DIEGO UNION TRIBUNE (Oct. 8, 2017), <https://www.sandiegouniontribune.com/entertainment/books/sd-me-seuss-racism-20171005-story.html> [<https://perma.cc/J8QS-LJA8>].

⁹⁷ Phillip Nel, *The Cat, Seuss, and Race*, PHILIP NEL (March 2, 2020), <https://philnel.com/2020/03/02/cat-seuss-race/> [<https://perma.cc/FD5V-CTZ9>].

⁹⁸ *Id.*

Nel states racial imagery was “all too common” from the early 20th Century.⁹⁹ Nel posits, “The popular culture of the early 20th Century embedded racist caricature in Geisel’s unconscious, as an ordinary part of his visual imagination.”¹⁰⁰

Professor Ann Neely, at Vanderbilt University in Nashville, who teaches “Literature of Social Transformation: The Civil Rights Movement as Depicted in Children’s and Young Adult Literature,” cautions:

We should not judge Theodor Geisel by today’s standards, but we must evaluate his books that we decide to share with children using today’s standards. We cannot wallow in our own nostalgia when we make choices for the books we share with young children. There are simply too many outstanding books available.¹⁰¹

Outside the academy, there was a compelling reaction to Geisel never apologizing to Asians or Japanese for his racist depictions or repeated call to “Kill Japs” in his WWII cartoons.¹⁰² However, History Professor Richard H. Minear at UMASS Amherst thinks *Horton Hears a Who*, involving an elephant who discovered a microscopic universe with the message that “a person’s a person no matter how small,” was his unspoken apology to Japanese people.¹⁰³ “The people of Whoville are Japan, Vlad Vladikoff is Russia, Horton is us/democracy, etc.”¹⁰⁴

Of course, children still love Dr. Seuss, and his birthday on March 2, also Read Across America Day is still an ideal time for a school-wide reading event when you can serve green eggs with ham, but with the broadened scope of NEA’s Read Across America, there are activities, resources, and ideas to keep students reading all year long.¹⁰⁵

Ishizuka and Stephens would disagree with the scholars:

However, when his racist published works are documented on a timeline, it is clear that they weren’t isolated to a specific time frame in his early life or career. On the contrary, they spanned seven decades from the 1920s to the 1990s—from the minstrel show he wrote in high school (1921) to the last

⁹⁹ Wilkens, *supra* note 97.

¹⁰⁰ *Id.*

¹⁰¹ Jocelyn McClurg & Maria Puente, *Are Dr. Seuss’ Books Racist? Experts Weigh In On Controversy*, USA TODAY (Oct. 6, 2017), <https://www.usatoday.com/story/life/books/2017/10/06/dr-seuss-books-racist-experts-weigh-controversy/740978001/> [https://perma.cc/2ZT8-TQSD].

¹⁰² Ishizuka & Stephens, *supra* note 59, at 32.

¹⁰³ Sophie Gilbert, *The Complicated Relevance of Dr. Seuss’s Political Cartoons*, THE ATLANTIC (Jan. 31, 2017), <https://www.theatlantic.com/entertainment/archive/2017/01/dr-seuss-protest-icon/515031/> [https://perma.cc/RUQ6-SUWT?type=image].

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

children’s book he published before he died in 1991, and every children’s book he published featuring people of color in between.¹⁰⁶

V. U.S. Public Libraries Response to Dr. Seuss

A 2019 Gallop poll showed the significance of libraries.¹⁰⁷ The poll reported that Americans visited the library 10.5 times from December 2 to December 15, 2019.¹⁰⁸ The number more than doubles the second most favored activity, going to a movie theater.¹⁰⁹

*Americans’ Reports of Leisure and Activities*¹¹⁰

Leisure and Activity	2019 Dec 2 – 15 Average
Go to a library	10.5
Go to a movie at a movie theater	5.3
Attend a live sporting event	4.7
Attend a live music, theatrical event	3.8
Visit a museum	2.5
Visit a gambling casino	2.5
Go to an amusement or theme park	1.5
Visit a zoo	0.9

Principle 1 of the American Library Association’s Freedom to Read Statement¹¹¹ states: “It is in the public interest for publishers and librarians to make available the widest diversity of views

¹⁰⁶ Ishizuka & Stephens, *supra* note 59, at 32.

¹⁰⁷ Justin McCarthy, *In the U.S., Library Visits Outpaced Trips to Movies in 2019*, GALLUP (Jan. 24, 2020), <https://news.gallup.com/poll/284009/library-visits-outpaced-trips-movies-2019.aspx> [https://perma.cc/3GHF-PFBA].

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* (“These data -- collected in a Dec. 2-15, 2019 Gallup poll -- are an update from a December 2001 survey. Though the overall rankings at the beginning of the millennium remain the same today, a small decrease has occurred in reported trips to the movie theater (down 1.3 average visits). Meanwhile, small increases have taken place in average reports of visiting a museum (up 0.7 average visits), attending a live music or theatrical event (up 1.1 average visits) and visits to a national or historical park (up 1.3 average visits)”).

¹¹¹ The *Freedom to Read Statement* was amended four times since 1953. The current version states:

- “1. It is in the public interest for publishers and librarians to make available the widest diversity of views and expressions, including those that are unorthodox, unpopular, or considered dangerous by the majority.
2. Publishers, librarians, and booksellers do not need to endorse every idea or presentation they make available. It would conflict with the public interest for them to establish their own political, moral, or aesthetic views as a standard for determining what should be published or circulated.
3. It is contrary to the public interest for publishers or librarians to bar access to writings on the basis of the personal history or political affiliations of the author.
4. There is no place in our society for efforts to coerce the taste of others, to confine adults to the reading matter deemed suitable for adolescents, or to inhibit the efforts of writers to achieve artistic expression.
5. It is not in the public interest to force a reader to accept the prejudgment of a label characterizing any expression or its author as subversive or dangerous.

and expressions, including those that are unorthodox, unpopular, or considered dangerous by the majority.”¹¹²

The American Library Association quotes John Stuart Mill:

If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind. Were an opinion a personal possession of no value except to the owner; if to be obstructed in the enjoyment of it were simply a private injury, it would make some difference whether the injury was inflicted only on a few persons or on many. But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.¹¹³

The Denver Public Library (DPL) did not plan to remove any Dr. Seuss books from its collection.¹¹⁴ In following the Freedom to Read principles, the statement quoted principle 3: “It is contrary to the public interest for publishers or librarians to bar access to writing on the basis of the personal history or political affiliations of the author.”¹¹⁵

Two other principles the DPL identified regarding their decision not to pull the Dr. Seuss books are principle 2: “Publishers, librarians, and booksellers do not need to endorse every idea or presentation they make available.”¹¹⁶ The other is principle 7: “It is the responsibility of

6. It is the responsibility of publishers and librarians, as guardians of the people’s freedom to read, to contest encroachments upon that freedom by individuals or groups seeking to impose their own standards or tastes upon the community at large; and by the government whenever it seeks to reduce or deny public access to public information.
7. It is the responsibility of publishers and librarians to give full meaning to the freedom to read by providing books that enrich the quality and diversity of thought and expression. By the exercise of this affirmative responsibility, they can demonstrate that the answer to a ‘bad’ book is a good one, the answer to a ‘bad’ idea is a good one.”

The Freedom to Read Statement, ALA (June 30, 2004), <http://www.ala.org/advocacy/intfreedom/freedomreadstatement> [https://perma.cc/6QD3-YEZP?type=image]

(Commentary following each proposition omitted).

¹¹² *Id.*

¹¹³ *Id.* (citing MILL, *supra* note 14).

¹¹⁴ Caitlin O’Kane, *New York and Denver Public Libraries Aren’t Removing Dr. Seuss Books Over Racist Imagery*, CBS News (Mar. 4, 2021), <https://www.cbsnews.com/news/dr-seuss-books-public-libraries-removal/>

[https://perma.cc/8XN3-5HLB],

¹¹⁵ *Id.*

¹¹⁶ *Id.*

librarians and publishers to give full meaning to the freedom to read by providing books that enrich the quality and diversity of thought and expression.”¹¹⁷

DPL’s statement to CBS News continued:

Libraries across the country are having conversations around how to balance our core values of intellectual freedom, with the harmful stereotypes depicted in many children’s classics. We will continue to purchase and promote diverse collections, while finding ways to help parents read and discuss books with their children with a critical eye as part of our efforts to challenge inequity.¹¹⁸

The New York City Public library will keep the Seuss books in circulation.

As public libraries do not censor material, the very few copies we have of the 6 Dr. Seuss titles in question will remain in circulation until they are longer in acceptable condition. At that point, we will not be able to replace them, as the books are out of print. So eventually they will no longer be available to borrow.

Alternatively, the Chicago Public Library (CPL), on Saturday, March 6, 2021, removed the six Dr. Seuss books while deciding what to do with its Seuss collection going forward.¹¹⁹ The CPL did not make the decision lightly.¹²⁰ Patrick Molloy, Chicago Public Library government and public affairs director, said, “Materials that become dated or that foster inaccurate, culturally harmful stereotypes are removed to make space for more more-current, comprehensive materials.”¹²¹

Deborah Caldwell-Stone, Director of the American Library Association’s Office for Intellectual Freedom, stated that the Dr. Seuss “estate has made the evaluation that some of the work that he wrote in the ‘40s and ‘50s reflect outdated cultural attitudes and outright racist ideas that they’d rather not have out there anymore.”¹²²

Caldwell-Stone noted that libraries and publishers are grappling with diversifying the content they make available. “There needs to be a change, and libraries are very aware of the need to add diverse books to their collections. That doesn’t necessarily mean removing books that are

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Dean Narcisco, *Dr. Seuss’s Racial Depictions in Six Books Test Library Convictions in Central Ohio*, COLUMBUS DISPATCH (Mar. 12, 2021), <https://www.dispatch.com/story/news/local/2021/03/12/librarians-assessing-six-dr-seuss-books-not-published/4630603001/> [https://perma.cc/2FPP-LTH2].

¹²¹ *Id.*

¹²² Paul Caine, *Dr. Seuss’ Literary Estate Embroiled in ‘Cancel Culture’ Controversy*, WTTW (Mar. 8, 2021), <https://news.wttw.com/2021/03/08/dr-seuss-literary-estate-embroiled-cancel-culture-controversy> [https://perma.cc/7BZ2-WDBY].

outdated, but you might do different things with them. Some might move them to an archive, or to an adult collection meant for research.”¹²³

Samuel Karnick, of the Heartland Institute, stated:

You’ll find that some people are very sensitive to exaggerations that hit home to them ... Obviously, you shouldn’t hurt people’s feelings. That said, you shouldn’t aggrandize their feelings either. Make their feelings somehow dispositive for everything that happens in the world. Sometimes it’s good to let some things roll off your back.¹²⁴

“Caldwell-Stone said the decision to stop publishing the six books should not mean that all libraries pull them from their collections, but it should prompt them ‘to think critically about the books’ and how and to whom they are made available.”¹²⁵

The core values of librarianship include both intellectual freedom and social justice. There are many paths to achieving both those core values. You can leave the books on the shelf and make it a matter of personal choice, but make sure that there’s information about the books available to parents and families.¹²⁶

Director Karnick “expects libraries and publishers to get criticism whatever they choose.”¹²⁷ “I suspect they will get criticism, probably along partisan lines, on the grounds of cancel culture. I do believe there will be pushback because that’s the nature of our discourse these days.”¹²⁸

VI. Political Reaction to Stopping the Publication of the Six Books

The National Education Association established “Read Across America Day” on Geisel’s birthday in 1997, making the project synonymous with Dr. Seuss. “Read Across America” proclamations started with the Obama administration. The far-right immediately manufactured the Dr. Seuss decision as a wedge issue to label Democrats as the ones calling out the Dr. Seuss books. For months Fox News strategically depicted “cancel culture” as a liberal movement of over-sensitive “snowflakes” attempting to cancel material as offensive.¹²⁹

Jonathan Rauch states, “when Trump came along, mainstream media were part of the reality-based community, but conservative media had one foot – sometimes both feet – out the door.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Dana Schwartz, Why Trump Supporters Love Calling People “Snowflakes.”, GQ (Feb. 1, 2017), <https://www.gq.com/story/why-trump-supporters-love-calling-people-snowflakes> [https://perma.cc/DHD3-Q2XA].

Traditional and right-wing media outlets occupied diverging universes, not just in terms of what they believed, but in terms of how they believed.”¹³⁰

Many Republican politicians spoke out, directly or indirectly targeting the Democrats for canceling Dr. Seuss. As Jonathan Rauch states, any successful disinformation campaign comes through repetition and amplification through various mediums, primarily through social media with modern cancel culture.¹³¹ Rauch also says that establishing disinformation comes from a deliberate, systematic, and sophisticated attack.¹³² Donald Trump, his congressional allies, and others in his orbit operate in this high-level attack to deliberately cast society from reality for political gain.¹³³

Dr. Seuss Enterprises chose to release their decision to discontinue the publication of six of their children’s books on March 2, 2021, with the following statement:

Dr. Seuss Enterprises, working with a panel of experts, including educators, reviewed our catalog of titles and made the decision last year to cease publication and licensing of the following titles: *And to Think That I Saw It on Mulberry Street*, *If I Ran the Zoo*, *McElligot’s Pool*, *On Beyond Zebra!*, *Scrambled Eggs Super!*, and *The Cat’s Quizzer*. These books portray people in ways that are hurtful and wrong.¹³⁴

The conservative news outlet, Fox News, had reported the day before, on March 1, 2021, that President Biden had “erased” Dr. Seuss.¹³⁵ The President had “bucked” Presidential tradition by not mentioning Dr. Seuss in his “Read Across America” proclamation.¹³⁶ Fox News stated that President Trump and Obama had noted Dr. Seuss in their previous “Read Across America” proclamations.¹³⁷

According to Fox News, Dr. Seuss “got blacklisted.”¹³⁸ The Fox opinion piece continues, “Should President Biden himself be canceled because he won’t say why he canceled Dr. Seuss from his proclamation?”¹³⁹

¹³⁰ RAUCH, CONSTITUTION OF KNOWLEDGE, *supra* note 53, at 179-180.

¹³¹ *Id.*

¹³² *Id.* at 169-173.

¹³³ *Id.*

¹³⁴ Statement from Dr. Seuss Enterprises, SEUSSVILLE (Mar. 2, 2021) <https://www.seussville.com/statement-from-dr-seuss-enterprises/> [https://perma.cc/TJ2E-RMHV].

¹³⁵ Peter Hasson, *Biden Erases Dr. Seuss From “Read Across America” Proclamation as Progressives Seek to Cancel Beloved Author*, FOX NEWS (Mar. 1, 2021), <https://www.foxnews.com/politics/biden-erases-dr-seuss-read-across-america-proclamation> [https://perma.cc/AZ75-KH6A].

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Lauren DeBellis Appell, *Dr. Seuss Silences – Sobering Lessons as Cancel Culture Strikes Beloved Author*, FOX NEWS (Mar. 3, 2021), <https://www.foxnews.com/opinion/dr-seuss-silenced-lessons-cancel-culture-author-lauren-appell> [https://perma.cc/B4MV-TY2S].

¹³⁹ *Id.*

Dr. Omekingo Dibinga, Professor at American University, stated on the Sean Hannity Show that it was problematic to quickly label the Dr. Seuss Enterprises decision as “cancel culture.”¹⁴⁰ There is a lack of analysis or critical thinking about the Enterprise’s decision and its discussion in right-wing media.¹⁴¹

The problem we have today is that “cancel culture” has become for some, particularly on the political right, a catch phrase for anyone who wants to hold on to their antiquated views and not be challenged to think critically. A critical thinking mind would see, for example, that no one “came for” Dr. Seuss. Dr. Seuss Enterprises decided on their own to review and remove 6 books from publication. This is called accountability.¹⁴²

Dr. Dibinga continued, “I support the decisions of a company making a decision on its own that it didn’t want to offend a group of people, so I’m all about supporting this.”¹⁴³ The company was “making the right decision to respect how these people are viewed.”¹⁴⁴

Leo Terrell, a regular Fox News contributor and a Donald Trump supporter, was on the same Sean Hannity segment.¹⁴⁵ Terrell grew apoplectic over Dr. Dibinga’s stance on “cancel culture.” Terrell ended the segment with the words, “Show me the systemic discrimination! You’ve got nothing to say!”¹⁴⁶ Terrell does not appear to understand that Seuss Enterprises decided to pull back six of its publications after accessing the racial content of its books. No one has canceled anything in this case.

The R Madison Cawthorn, a Republican representative from North Carolina, appeared on *Fox and Friends* on March 2, 2021.¹⁴⁷ *USA Today* reported more sexual allegations against the 25-year-old congressman on the same day.¹⁴⁸ Cawthorn was ready to talk about anything else, and *Fox and Friends* complied. Cawthorn said, “I’m so fired up, the actual priorities of the

¹⁴⁰ Omekongo Dibinga, *Dr. Seuss and False “Cancel Culture” Claims*, DR. OMÉKONGO (Mar. 9, 2021), <https://www.upstanderinternational.com/dr-seuss-and-false-cancel-culture-claims/> [https://perma.cc/6DBF-5XF2]

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Sarah Taylor, *Leo Terrell Says Cancel Culture Will Backfire ‘Because It Denies History,’ Explodes on Liberal Professor Over Dr. Seuss Books: ‘You Do Not Represent The Black Community,’* BLAZEMEDIA (Mar. 3, 2021), <https://www.theblaze.com/news/civil-rights-attorney-leo-terrell-says-cancel-culture-will-ultimately-backfire-because-it-denies-history> [https://perma.cc/85VC-3W5L].

¹⁴⁴ *Id.*

¹⁴⁵ Leo Terrell, WIKIPEDIA, https://en.wikipedia.org/wiki/Leo_Terrell [https://perma.cc/SX6Y-64SS] (Last visited July 8, 2021)

¹⁴⁶ Taylor, *supra* note 156.

¹⁴⁷ Ryan Bort, *Fox News Pivots to Dr. Seuss in Desperate Hunt for Post-Trump Content*, ROLLING STONE (Mar. 2, 2021), <https://www.rollingstone.com/politics/politics-news/fox-news-dr-seuss-cancel-culture-1135389/> [https://perma.cc/8MRU-CEBU].

¹⁴⁸ Jeanine Santucci, *What We Know About The Allegations of Sexual Harassment Against Rep. Madison Cawthorn*, USA TODAY (Mar. 2, 2021), <https://www.usatoday.com/story/news/politics/2021/03/02/what-we-know-sexual-harassment-allegations-rep-madison-cawthorn/6890294002/> [https://perma.cc/FKR6-BQYH].

Democrats are renaming a post office and now cancelling Dr. Seuss. Americans are actually struggling and this cancel culture does not help us.”¹⁴⁹

Kevin McCarthy confused many when he tweeted a video of himself reading “*Green Eggs and Ham*,” not one of the controversial six Seuss books.¹⁵⁰ McCarthy prefaced his video, “I still like Dr. Seuss, so I decided to read *Green Eggs and Ham*. RT if you still like him too!”¹⁵¹ The night the video appeared on *Don Lemon Tonight*.¹⁵² Don Lemon slammed McCarthy for stoking fake outrage:

While Americans are desperate to get vaccinated and desperate for COVID relief, here is what Kevin McCarthy is doing right now. That really happened. Those are your Republican leaders. It has nothing to do with Democrats, nothing at all. And that particular one by Dr. Seuss, is still in distribution, so none of it makes any sense. They are playing you. Are you going to fall for it?¹⁵³

Representative Marjorie Taylor Greene, Republican from Georgia, joined the fray with a Dr. Seuss poetic effort:

If I published books, I wouldn’t succumb to leftists’ dirty looks.
I would never cancel the author of *Cat in the Hat*.
Nope, I would never do that.
If I ran the House, I would fire Pelosi. It would make the place
a lot more cozy.
I would impeach Joe Biden, and send him back to hidin’.
Woke progressives want cancel culture, they’re just a bunch of
nasty vultures.¹⁵⁴

Republican Senator Marco Rubio from Florida joined the crush of critical Republicans, tweeting, “Now 6 Dr. Seuss books are cancelled too? When history looks back at this time it will be held up as an example of a depraved sociopolitical purge driven by hysteria and lunacy.”¹⁵⁵ In debating the election-law reforms being put forward, House Minority Leader McCarthy spoke in

¹⁴⁹ Bort, *supra* note 160.

¹⁵⁰ Lee Moran, *Kevin McCarthy’s Dr. Seuss Stunt Leaves People Very, Very Puzzled*, HUFFPOST (Mar. 8, 2021), https://www.huffpost.com/entry/kevin-mccarthy-dr-seuss-reading_n_60433b1cc5b6429d083388e8 [https://perma.cc/V6FA-4APQ].

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Alexander Nazaryan, *Dr. Seuss Goes To Washington: How The GOP Plans to Use The Culture Wars to Win Elections*, YAHOO NEWS (Mar. 12, 2021), <https://www.yahoo.com/now/dr-seuss-goes-to-washington-how-the-gop-plans-to-use-the-culture-wars-to-win-elections-100005046.html> [https://perma.cc/LZ7J-4BFL].

¹⁵⁵ Marco Rubio (@marcorubio), TWITTER (Mar. 2, 2021, 12:50 PM), <https://twitter.com/marcorubio/status/1366808242861576192> [https://perma.cc/EPH2-EQ6Z].

a false non sequitur stating “First, they outlaw Dr. Seuss and now they want to tell us what to say.”¹⁵⁶

Senator Ted Cruz, a Republican from Texas, suggested that Biden was somehow responsible for the Dr; Seuss Enterprise decision not to publish six books. His tweets, blaming Biden, were more confusing than clear. On one tweet, he showed several of the author’s books on an online bestseller list, stating, “Who knew Joe Biden was such a great bookseller.”¹⁵⁷ A second tweet, read “Could Biden try to ban my book next? *One Vote Away* was the #1 Bestseller on Amazon a couple of months ago...maybe Joe can get it back there?”¹⁵⁸

Republican Kimberly Klacik, a former Maryland congressional nominee, tweeted, “So my daughter is dressing up as #DrSeuss for ‘Dress Up Like Your Favorite Book Character Day’ for school. Now he’s being cancelled for being racist? These people will stop at nothing. Can’t wait to share her pic to trigger a few idiots.”¹⁵⁹

The echo chamber is working well in social and conservative media. A poll of Republican voters from March 6 to 8, 2021, by Morning Consult/Politico found that almost half of the Republican voter respondents, 48%, had heard “a lot” about the Dr. Seuss decision compared to 44% of Republican voter respondents who heard “a lot” about the House passage of the \$1.9 trillion COVID-19 relief bill.¹⁶⁰

Mill would not condone the lack of conservative media’s diversity of view or opinion.¹⁶¹ On March 2, 2021, F.B.I. Director Christopher Wray testified before the Senate Judicial Committee on the January 6, 2021 riot and the right-wing extremism role in the riot.¹⁶² Rather than show and discuss the Wray hearings, the conservative network Fox News hyper-focused on Dr. Seuss Enterprises’ decision to stop publishing six books from Geisel’s¹⁶³ over sixty children’s book collection.¹⁶⁴

¹⁵⁶ 167 CONG. REC. H990 (daily ed. Mar. 2, 2021) (statement of Rep. McCarthy),

<https://www.congress.gov/117/crec/2021/03/02/167/39/CREC-2021-03-02-pt1-PgH886-5.pdf>

¹⁵⁷ Oliver O’Connell, *People Baffled by Ted Cruz Seuss Tweet, As Seinfeld-Themed CPAC Clip Goes Viral*, INDEPENDENT (Mar. 4, 2021), <https://www.independent.co.uk/news/world/americas/us-politics/ted-cruz-dr-seuss-biden-seinfeld-b1812650.html> [https://perma.cc/FC53-Q7XR].

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Cameron Easley, *More GOP Voters Heard “a lot” About Move to Pull Dr. Seuss Books than COVID-19 Relief Bill Vote*, MORNING CONSULT (Mar. 10, 2021), <https://morningconsult.com/2021/03/10/dr-seuss-polling/> [https://perma.cc/U7SZ-VWAY].

¹⁶¹ RAUCH, CONSTITUTION OF KNOWLEDGE, *supra* note 53, at 193.

¹⁶² Brian Naylor & Ryan Lucas, *Wray Stresses Role of Right-Wing Extremism in Hearing About Jan. 6 Riot*, NPR (Mar. 2, 2021), <https://www.npr.org/2021/03/02/972539274/fbi-director-wray-testifies-before-congress-for-1st-time-since-capitol-attack> [https://perma.cc/4663-ZSDJ].

¹⁶³ “Dr. Seuss” is Theodor Geisel’s pseudonym. THEODOR SEUSS GEISEL, *THE BEGINNINGS OF DR. SEUSS: AN INFORMAL REMINISCENCE* (Electronic ed. 2010),

<https://www.dartmouth.edu/library/digital/collections/books/ocm58916242/ocm58916242.html>

[https://perma.cc/4HRY-98Y6].

¹⁶⁴ *Dr. Seuss Bibliography*, WIKIPEDIA, https://en.wikipedia.org/wiki/Dr._Seuss_bibliography [https://perma.cc/77TA-GJHD] (last visited July 8, 2021).

Fox News did not carry Wray’s testimony on March 2, 2021, but mentioned Dr. Seuss sixty times compared to mentioning the hearings nine times from 9 am Tuesday, March 2 to 9 am Wednesday, March 3, 2021.¹⁶⁵ During the same period, CNN brought up the Wray hearings 102 times.¹⁶⁶ Fox effectively canceled the hearings for millions of viewers while wrongfully claiming Democrats’ cancel culture efforts eliminated Dr. Seuss’s books. The Fox News show, *The Five*, on the same day, March 2, discussed Ohio Congressman Jim Jordan’s intention to hold hearings on cancel culture.¹⁶⁷

John Stuart Mill, in a passage in *On Liberty*, speaks of fake news in a “post-truth era.”¹⁶⁸ The current “Emperor with no clothes” phenomena in which no one in the White House (or the vast majority of the broader Republican Party) feels safe in calling out the President.¹⁶⁹

Mill’s excerpt below provides insight into his views on freedom of thought and expression,¹⁷⁰

Absolute princes, or others who are accustomed to unlimited deference, usually feel this complete confidence in their own opinions on nearly all subjects. People more happily situated... place the same unbounded reliance only on such of their opinions as are shared by all who surround them, or to whom they habitually defer: for in proportion to a man's want of confidence in his own solitary judgment, does he usually repose, with implicit trust, on the infallibility of "the world" in general. And the world, to each individual, means the part of it with which he comes in contact; his party, his sect, his church, his class of society... Nor is his faith in this collective authority at all shaken by his being aware that other ages, countries, sects, churches, classes, and parties have thought, and even now think, the exact reverse. He devolves upon his own world the responsibility of being in the right against the dissentient worlds of other people... Yet it is as evident in itself as any amount of argument can make it, that ages are no more infallible than individuals; every age having held many opinions which subsequent ages have deemed not only false but absurd; and it is as certain that many opinions, now general, will be rejected by future ages, as it is that many, once general, are rejected by the present.¹⁷¹

¹⁶⁵ Philip Bump, *Of Course Fox News Would Rather Talk about Dr. Seuss and Mr. Potato Head*, WASH. POST (Mar. 4, 2021), <https://www.washingtonpost.com/politics/2021/03/03/course-fox-news-would-rather-talk-about-dr-seuss-mr-potato-head/> [https://perma.cc/4L9K-FZ5T?type=image].

¹⁶⁶ *Id.*

¹⁶⁷ Parker Molloy, *Fox News’ Dr. Seuss Obsession Reveals The Dishonest Desperation of The Right-Wing War on “Cancel Culture,”* MEDIAMATTERS (Mar. 4, 2021), <https://www.mediamatters.org/fox-news/fox-news-dr-seuss-obsession-reveals-dishonest-desperation-right-wing-war-cancel-culture> [https://perma.cc/N24V-Q7GS].

¹⁶⁸ Pearson, *supra* note 28.

¹⁶⁹ *Id.*

¹⁷⁰ JOHN STUART MILL, ON LIBERTY 87 (David Bromwich & George Kateb eds., Yale Univ. Press 2003) (1859), https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip.shib&db=nlebk&AN=188087&site=ehost-live&custid=s8481523&ebv=EB&ppid=pp_69 (subscription required).

¹⁷¹ *Id.*

VII. Authors Called Out and Acting Out

One of the most notable authors called out recently is J.K. Rowling, the famed author of the Harry Potter series.¹⁷² Rowling has repeatedly expressed views hostile to transgender women. She tweeted that transgender women are men in dresses.¹⁷³ A spokesperson for Rowling dismissed it as a “clumsy and middle-aged moment.”¹⁷⁴

People started to notice that Rowling was following anti-trans propagandists on Twitter.¹⁷⁵ Rowling, a member of the Labour Party, liked the following Twitter post:

I was shouted at by men at my first Labour Party meeting aged 18 because I asked them to remove a Page 3 calendar. I've been told to be louder, stronger, independent. I've often not felt supported. Men in dresses get brocialist solidarity I never had. That's misogyny!¹⁷⁶

Rowling was criticized for supporting British researcher Maya Forstater.¹⁷⁷ In addressing complaints regarding her views on transgender people, Forstater stated, “I have been told that it is offensive to say “transwomen are men” or that women means “adult human female.” However, since these statements are true I will continue to say them.”¹⁷⁸ Forstater lost her job and took her employer to court.¹⁷⁹ Judge James Tayler, an employment judge, ruled that Forstater’s views did “not have the protected characteristic of philosophical belief,” but rather “the Claimant's view, in its absolutist nature, is incompatible with human dignity and fundamental rights of others.”¹⁸⁰

¹⁷² Katie Law, *The War on Words: How Cancel Culture Is Taking Over The Literary World*, EVENING STANDARD (Jan 19, 2021), <https://www.standard.co.uk/culture/books/cancel-culture-authors-books-jk-rowling-b900277.html> [https://perma.cc/JW3B-PETZ].

¹⁷³ *Id.*

¹⁷⁴ Nick Duffy, *JK Rowling Reps Blame “Middle-Aged Moment” for Liking Tweet Calling Trans Women “Men in Dresses,”* PINKNEWS (Mar. 22, 2018), <https://www.pinknews.co.uk/2018/03/22/jk-rowling-reps-blame-middle-aged-moment-for-liking-tweet-calling-trans-women-men-in-dresses/> [https://perma.cc/2TUY-M7JN].

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ Liam Stack, *J.K. Rowling Criticized After Tweeting Support for Anti-Transgender Researcher*, New York Times, Dec. 19, 2019, Updated May 26, 2020, at <https://www.nytimes.com/2019/12/19/world/europe/jk-rowling-maya-forstater-transgender.html>.

¹⁷⁸ *Maya Forstater v CGD Europe and others: 2200909/2019 (2019)*, HM CT. & TRIB. SERV. & EMP. TRIB., at 9, no.30, <https://www.gov.uk/employment-tribunal-decisions/maya-forstater-v-cgd-europe-and-others-2200909-2019>. NOTE TO EDITOR: T2.43.1 (“after 1865”); T.7 for abbreviations of name of court; T.6 for abbreviation of “service” and “employment”; pinpoint using point number is extrapolated from 10.8.1 examples with star pagination including additional information about footnote number.

¹⁷⁹ Maya Forstater, *I Lost My Job for Saying Males Aren’t Women. So I Sued My Employer*, NEWSWEEK (July 10, 2022, 11:33 AM EDT), <https://www.newsweek.com/i-lost-job-saying-males-arent-women-so-sued-employer-1723217> [https://perma.cc/W4CV-VV78].

¹⁸⁰ Owen Bowcott, *Judge Rules Against Researcher Who Lost Job Over Transgender Tweets*, THE GUARDIAN (Dec. 18, 2019), <https://www.theguardian.com/society/2019/dec/18/judge-rules-against-charity-worker-who-lost-job-over-transgender-tweets> [https://perma.cc/3Q3W-W984].

Three experts on health, menstrual, and gender justice, Marni Sommer,¹⁸¹ Virginia Kamowa,¹⁸² and Therese Mahon,¹⁸³ in May of 2020, wrote an op-ed piece to highlight the most vulnerable to COVID-19. The article showed that those in depressed crowded conditions globally face extraordinary challenges, especially girls, women, and non-binary people who require access to clean and private spaces with water, soap, and sanitary materials.¹⁸⁴

Rowling did not comment on the lack of necessary public health measures to contain the spread of infection but responded to the article mentioning menstruating people.¹⁸⁵ She tweeted, “‘People who menstruate.’ I’m sure there used to be a word for those people. Someone help me out. Wumben? Wimpund? Woomud?”¹⁸⁶

Journalist and author Julie Burchill tweeted Novara Media journalist Ash Sarkar was “an Islamist and a paedophile worshipper” for comments she had tweeted criticizing journalist Rod Liddle.¹⁸⁷ Liddle, associate editor of *The Spectator*,¹⁸⁸ stated the one thing keeping him from being a teacher was he “could not remotely conceive of not trying to shag the kids.”¹⁸⁹ Sarkar tweeted, “I checked and it turns out that yes, Rod Liddle really did write an article 8 years ago saying that he didn’t become a teacher because he ‘could not remotely conceive of not trying to shag the kids.’”¹⁹⁰

Burchill responded, “But Ash...I don’t WORSHIP a paedophile. If Aisha was 9. YOU do. Lecturer, lecture thyself!”¹⁹¹ In follow-up, Burchill encouraged others on her Facebook page to Twitter against Islamists. Burchill told people to send messages to “the nonces” [child molesters]

¹⁸¹ Marni Sommer is a practicing academic at Columbia Mailman School of Public Health. Dr. Sommer is a member of the Menstrual Health and Gender Justice Working Group and has taught and written substantially on the subject. Marni Sommer Faculty Profile, COLUMBIA MAILMAN SCH. OF PUB. HEALTH (May 24, 2021, 3:05 PM) <https://www.publichealth.columbia.edu/people/our-faculty/ms2778> [<https://perma.cc/G37E-YM5D>]. **Editor note: This is a descriptive title per, Rule 18.b.iv. Dr. Sommer’s profile does not use pronouns, so there are none in this FN.**

¹⁸² Virginia Kamowa is a menstrual health and hygiene specialist at the Water Supply & Sanitation Collaborative Council [(WSSCC)].” Virginia Kamowa Profile, DEVEX, <https://www.devex.com/news/authors/virginia-k-1541535> [<https://perma.cc/93TS-TUJE>] (Last visited July 9, 2021). **Editor note: This is a descriptive title per, Rule 18.b.iv, and the website is undated.**

¹⁸³ “Therese Mahon is WaterAid’s regional programs manager for South Asia and global lead for menstrual health.” Therese Mahon Profile, DEVEX, <https://www.devex.com/news/authors/therese-m-1541538> [<https://perma.cc/QB2E-NRZ8>] (Last visited July 9, 2021).

¹⁸⁴ Marni Sommer, Virginia Kamowa, & Therese Mahon, *Opinion: Creating a More Equal Post-COVID-19 World for People Who Menstruate*, DEVEX (May 28, 2020), <https://www.devex.com/news/sponsored/opinion-creating-a-more-equal-post-covid-19-world-for-people-who-menstruate-97312> [<https://perma.cc/F4TT-MA6D>].

¹⁸⁵ Jenny Gross, *Daniel Radcliffe Criticizes J.K. Rowling’s Anti-Transgender Tweets*, N.Y. TIMES (June 9, 2020), <https://www.nytimes.com/2020/06/07/arts/Jk-Rowling-controversy.html> [<https://perma.cc/V9CB-9C87>].

¹⁸⁶ *Id.* (Rowling was responding to Sommer, et.al., *supra* note 213.)

¹⁸⁷ Ash Sarker, *Julie Burchill Abused Me for Being Muslim – Yet She Was Cast as the Victim*, THE GUARDIAN (March 16, 2021) <https://www.theguardian.com/commentisfree/2021/mar/16/julie-burchill-muslim-islamophobic> [<https://perma.cc/547A-ZLTW>].

¹⁸⁸ Charlotte Tobitt, *Columnist Julie Burchill Pays Novara’s Ash Sarkar Substantial Damages Over Defamatory Islamophobic Tweets*, PRESS GAZETTE (Mar. 16, 2021), <https://www.pressgazette.co.uk/julie-burchill-novara-ash-sarkar-libel-twitter-abuse/> [<https://perma.cc/33QA-3HK5>].

¹⁸⁹ Sarkar, *supra* note 188.

¹⁹⁰ Tobitt, *supra* note 189.

¹⁹¹ *Id.* Aisha was Muhammed’s wife.

on Twitter the next day.¹⁹² Burchill did apologize to Sarkar and had to pay substantial damages to Sarkar for the Islamophobic tweets.¹⁹³

Little Brown canceled Julie Burchill's book *Welcome the Woke Trails* in the fallout.¹⁹⁴ Little Brown released the following statement.

We will no longer be publishing Julie Burchill's book. This is not a decision we have taken lightly. We believe passionately in freedom of speech at Little, Brown and we have always published authors with controversial or challenging perspectives — and we will continue to do so. While there is no legal definition of hate speech in the UK, we believe that Julie's comments on Islam are not defensible from a moral or intellectual standpoint, that they crossed a line with regard to race and religion, and that her book has now become inextricably linked with those views.¹⁹⁵

Julie Burchill did find another publisher. On Monday, March 15, 2021, a small publisher out of Edinburgh called Stirling Publishing agreed to publish her book.¹⁹⁶ The owner of Stirling was a woman named Tabatha Stirling, who describes herself as “very anti-Islam.”¹⁹⁷ Stirling is also a Tommy Robinson¹⁹⁸ supporter, a far-right British anti-Islam activist.¹⁹⁹ In 2018, Stirling Publishing published *The Colour of Madness*,²⁰⁰ in which publisher Tabatha Stirling said, “I wish I’d never done it because I’ve only had awful anti-white sentiment from all of them.”²⁰¹

On Wednesday, March 17, Publishing Scotland²⁰² addressed Stirling Publishing.²⁰³ Their released statement was extensive, but a portion of it reads as follows:

Following on from recent reports in the media that a

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Julie Burchill's Book About Cancel Culture Cancelled Over Twitter Row*, BBC NEWS (Dec. 16, 2020), <https://www.bbc.com/news/entertainment-arts-55331063> [https://perma.cc/Q6WN-S5WX].

¹⁹⁵ *Id.*

¹⁹⁶ Mark Chandler, *Burchill cancels new contract after publisher linked to far-right group*, THE BOOKSELLER (Mar. 17, 2021), <https://www.thebookseller.com/news/burchill-cancels-contract-after-publisher-linked-white-nationalists-1249109> [https://perma.cc/YJD6-EYR5].

¹⁹⁷ *Id.*

¹⁹⁸ *Tommy Robinson*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Tommy_Robinson_\(activist\)](https://en.wikipedia.org/wiki/Tommy_Robinson_(activist)) [https://perma.cc/CWT5-6LSC] (last viewed July 9, 2021).

¹⁹⁹ Chandler, *supra* note 226.

²⁰⁰ *Id.* *The Colour of Madness* is an anthology written by Afro-American, Asian and Minority Ethnic (BAME) authors on mental health. *The Colour of Madness: One Year On*, THE COLOUR OF MADNESS, <https://medium.com/@MadnessColourOf/the-colour-of-madness-one-year-on-ead1a17e36cd> [https://perma.cc/A6YW-KCN5] (last visited July 12, 2021).

²⁰¹ Chandler, *supra* note 226.

²⁰² “Publishing Scotland is the network, trade and development body for the book publishing sector in Scotland.” *Overview: Our Vision*, PUBLISHING SCOTLAND, <https://www.publishingscotland.org/about-us/overview/> [https://perma.cc/5TJ4-SC5B] (last visited Feb. 9, 2022 9:38 a.m.).

²⁰³ *Statement on Stirling Publishing*, PUBLISHING SCOTLAND (Mar. 17, 2021), <https://www.publishingscotland.org/news/statement-on-stirling-publishing/> [https://perma.cc/96W6-WBM3].

Publishing Scotland publisher, Stirling Publishing, had taken on a particular book rejected by another publishing company, there were concerns expressed about the publishing ethos and values. There are also issues relating to another Stirling Publishing title which are under legal review; we cannot comment any further on that matter but we are in contact with the Society of Authors and are ready to offer support. The Publishing Scotland board and staff have taken the view that the values of that particular publishing company have no place within our organization. We contacted the company and they have agreed to tender their resignation with immediate effect.²⁰⁴

Burchill canceled her contract with the publisher on the same day Publishing Scotland released the statement with the writing on the wall.²⁰⁵ On Wednesday, March 17, 2021, the Sterling Publishing website was gone.²⁰⁶ Julie Burchill's book *Welcome the Woke Trails* did prevail and got published by Constable.²⁰⁷

Hachette Book Group walked out on the company in protest when learning of the publisher's decision to publish Woody Allen's autobiography, *Apropos of Nothing*.²⁰⁸ Hachette sent the following statement. "This afternoon, the staff of Little, Brown and Company will be walking out of the Hachette New York offices in protest of Woody Allen's forthcoming memoir: We stand with Ronan and Dylan Farrow and survivors of sexual assault."²⁰⁹

In a statement, Suzanne Nossel, chief executive of PEN America, a free-speech nonprofit organization, defended Hachette's decision to publish the book.

We believe everyone – including authors and publishing employees – has the right to express their opinions and raise their voices in protest. That said, we also are concerned about the trend of pressuring the withdrawal of books from publication and circulation, depriving readers of the chance to make their judgments and disincentivizing publishers from taking on contentious topics. While we don't take the position on the editorial judgments in question, we think that once a book is

²⁰⁴ *Id.*

²⁰⁵ Lee Harpin, *Julie Burchill drops publisher of new book after white nationalist links revealed*, THE JC (Mar. 17, 2021), <https://www.thejc.com/news/uk/julie-burchill-drops-publisher-of-new-book-after-white-nationalist-links-revealed-1.513152> [https://perma.cc/KA4G-C7MM].

²⁰⁶ Chandler, *supra* note 226. (Sterling Publishing has since been restored. STERLING PUBLISHING, <https://www.sterlingpublishing.com/> [https://perma.cc/HVK7-WMEQ] (last visited July 12, 2021).)

²⁰⁷ Ruth Comerford, *Burchill's Book Picked Up by A Third Publisher*, THE BOOKSELLER (Aug. 13, 2021) <https://www.thebookseller.com/news/burchills-book-picked-academica-press-1275807> [https://perma.cc/BYV8-FQUD].

²⁰⁸ John Williams, *Workers Protest Woody Allen Book with a Walkout*, N.Y. TIMES (Mar. 5, 2020), <https://www.nytimes.com/2020/03/05/books/hachette-woody-allen.html> [https://perma.cc/26WQ-BNRS].

²⁰⁹ *Id.*

slated for publication, it should not be withdrawn just because it's controversial or gives rise to vociferous objections.²¹⁰

Hachette reversed its earlier decision two days later, just one day after the protests.²¹¹ A spokesperson for the publisher released a statement from the Hachette executives “after listening, we came to the conclusion that moving forward with publication would not be feasible for HBG.”²¹² In a statement, Suzanne Nossel, chief executive of PEN America, called the state of affairs “something of a perfect storm.”²¹³ Her released statement read the incident:

Involved not just a controversial book, but a publisher that was working with individuals on both sides of a longstanding and traumatic familial rupture. This presented unique circumstances that clearly colored the positions staked out and decisions taken. If the end result here is that this book, regardless of its merits, disappears without a trace, readers will be denied the opportunity to read it and render their own judgements.²¹⁴

Variety editor, Tim Gray, stated, “Personally, I don’t foresee any work in his future. However, it’s possible that history will be kinder to Woody Allen than the current moment seems to be.”²¹⁵ Arcade Publishing decided to publish *Apropos of Nothing* on March 23, 2020.²¹⁶

On Wednesday, January 6, 2021, the night of the Capitol insurrection, Josh Hawley raised his fist in support of the waiting pro-Trump demonstrators ready to storm the Capitol.²¹⁷ The next night, Simon & Schuster announced its decision not to publish Hawley’s book, *The Tyranny of Big Tech*.²¹⁸ The publishing company issued the following announcement:

After witnessing the disturbing, deadly insurrection that took place on Wednesday in Washington, D.C., Simon & Schuster has decided to cancel publication of Senator Josh Hawley’s forthcoming book. We did not come to this decision lightly. As a publisher it will always be our mission to amplify a variety

²¹⁰ *Id.*

²¹¹ John Williams, *Hachette Says It Won’t Publish Woody Allen’s Book*, N.Y. TIMES (Mar. 9, 2020 at <https://www.nytimes.com/2020/03/06/books/hachette-woody-allen-apropos-nothing.html> [https://perma.cc/QT6U-N48N]).

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ Alexandra Alter & Cara Buckley, *Woody Allen Pitched a Memoir. Publishers Weren’t Interested*, N.Y. TIMES (May 2, 2019), <https://www.nytimes.com/2019/05/02/movies/woody-allen-memoir.html> [https://perma.cc/ALN3-PPPV].

²¹⁶ Alexandra Alter & John Williams, *Woody Allen’s Memoir Is Published*, N.Y. TIMES (Mar. 23, 2020), <https://www.nytimes.com/2020/03/23/books/woody-allen-apropos-of-nothing-autobiography-arcade.html> [https://perma.cc/8EYH-8C5E].

²¹⁷ Constance Grady, *Josh Hawley’s Book Deal Cancellation Comes After a Year Of Social Debates In Publishing*, VOX (Jan. 11, 2021), <https://www.vox.com/culture/22218971/josh-hawley-tyranny-of-big-tech-simon-schuster-publishing-controversy> [https://perma.cc/BJ9F-7T7B].

²¹⁸ *Id.*

of voices and viewpoints: at the same time we take seriously our larger public responsibility as citizens, and cannot support Senator Hawley after his role in what became a dangerous threat to our democracy and freedom.²¹⁹

Senator Josh Hawley's book was accepted and published by a conservative publishing house, Regnery Publishing.²²⁰

The *New Orleans Advocate* reported that Blake Bailey, whose previous biography of John Cheever was a finalist for the Pulitzer Prize in 2009, groomed former students for sexual encounters when he was an eighth-grade teacher in the 1990s in New Orleans.²²¹ One of the students accused him of rape, and a more recent allegation reported by the *New York Times* accused Bailey of rape involving a publishing executive.²²² On Tuesday afternoon, April 27, 2021, W.W. Norton announced it was permanently canceling Blake Bailey's acclaimed new book, *Philip Roth: The Biography* and his 2014 memoir, *The Splendid Things We Planned*.²²³

American Dirt, by Jeannine Cummins, is a work of fiction that received much attention.²²⁴ The novel received the distinction of a Oprah Book Club award. A prominent group of authors offered praise, including John Grisham, Ann Patchett, Julia Alvarez, Kristin Hannah, Sandra Cisneros and Don Winslow.²²⁵ Winslow called the book the *Grapes of Wrath* of our time.²²⁶ Flatiron, a division of Macmillan, had paid more than a million dollars for the book stating it "would be the defining novel of the immigrant experience – an emotional story powerful enough to galvanize the sympathy of a nation."²²⁷

Cummins' bona fides, or lack thereof, were exposed even before the book release on January 21, 2020.²²⁸ Cummins stated that her grandmother was Puerto Rican in the book's release.²²⁹ The

²¹⁹ *Id.*

²²⁰ Jenny Gross, *Regnery Publishing Picks Up Senator Hawley's Book After It Was Dropped by Simon & Schuster*, N.Y. TIMES (Jan 18, 2021), <https://www.nytimes.com/2021/01/18/us/politics/hawley-book-regnery.html> [https://perma.cc/G6ZM-96XG].

²²¹ Ron Charles, *The Phillip Roth Biography Is Canceled, Mike Pence's Book Could Be Next – And Publishing May Never Be The Same*, WASH. POST (Apr. 28, 2021), https://www.washingtonpost.com/entertainment/books/blake-bailey-books-canceled/2021/04/27/60586230-a7a2-11eb-bca5-048b2759a489_story.html [https://perma.cc/579P-UAYG].

²²² *Id.*

²²³ *Id.*

²²⁴ JEANNINE CUMMINS, *AMERICAN DIRT* (2020).

²²⁵ Yasmin Nair, *The Politics of Publishing*, CURRENT AFFAIRS (July 16, 2020), <https://www.currentaffairs.org/2020/07/the-politics-of-publishing> [https://perma.cc/9QCM-4BF4].

²²⁶ Ron Charles, *Threats Against The Author Of 'American Dirt' Threatens Us All*, WASH. POST (Jan. 30, 2020), https://www.washingtonpost.com/entertainment/books/death-threats-against-the-author-of-american-dirt-threaten-us-all/2020/01/30/ec5070e8-430d-11ea-aa6a-083d01b3ed18_story.html [https://perma.cc/GQZ3-7897?type=image] [hereinafter Charles, *American Dirt*]

²²⁷ *Id.*

²²⁸ Rebecca Alter, *Why Is Everyone Arguing About the Novel 'American Dirt'?*, VULTURE (Feb. 7, 2020), <https://www.vulture.com/article/american-dirt-book-controversy-explained.html> [https://perma.cc/JDU3-FC7A].

²²⁹ *Id.*

book was hailed at first by Oprah Winfrey, becoming a Book Club pick. “It’s a heart-wrenching page-turner, and you won’t be able to put it down.”²³⁰

Twitter was quick to react. Early readers with advanced copies had been criticizing the book since 2019.²³¹ A common criticism of the book was that it engages in “brownface,” with a woman writing it who identified as “white” as recently as 2016, integrating minimal Mexican perspectives.²³² Twitter has called the book stereotypical, appropriative, opportunistic, selfish, and parasitic.²³³

Chicana writer Myriam Gurba laid bare on *American Dirt*.²³⁴

Tengo chisme.²³⁵ Are you ready?

A self-professed gabacha,²³⁶ Jeanine Cummins, wrote a book that sucks. Big time.

Her obra de caca²³⁷ belongs to the great American tradition of doing the following:

- A. Appropriating genius works by people of color
- B. Slapping a coat of mayonesa on them to make palatable to taste buds estados-unidenses²³⁸ and
- C. Repackaging them for mass racially “colorblind” consumption.²³⁹

Gurba listed the many Mexican stereotypes that filled the novel. She said, “*Dirt* is a Frankenstein of a book, a clumsy and distorted spectacle and while some white critics have compared Cummins to Steinbeck, I think a more apt comparison is to Vanilla Ice.”²⁴⁰ The book represents the United States as a haven for women fleeing violence. “Instead, four women a day are shot by

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ Myriam Gurba, *Pendeja, You Ain’t Steinbeck: My Bronco with Fake-Ass Social Justice Literature*, TROPICS OF META (Dec. 12, 2019), <https://tropicsofmeta.com/2019/12/12/pendeja-you-aint-steinbeck-my-bronca-with-fake-ass-social-justice-literature/> [https://perma.cc/YRN6-9F6D] [hereinafter *Gurba, Tropics of Meta*]

²³⁵ “Tengo chisme” means “I have gossip.” *Chisme*, WEBSTER’S NEW WORLD CONCISE SPANISH DICTIONARY (2d ed 2006); *Tener*, WEBSTER’S NEW WORLD CONCISE SPANISH DICTIONARY (2d ed 2006).

²³⁶ “In the United States [gabacho] is a pejorative term used by Chicanos for white Americans.” *Gabacho*, DEFINITIONS.NET, <https://www.definitions.net/definition/gabacho> [https://perma.cc/T3UX-F6M6] (last visited July 9, 2021) (“Gabacha” is the feminine form of “gabacho”).

²³⁷ “Obra de caca” is literally translated “Work of poop.” *Obra*, WEBSTER’S NEW WORLD CONCISE SPANISH DICTIONARY (2d ed 2006); *Caca*, WEBSTER’S NEW WORLD CONCISE SPANISH DICTIONARY (2d ed 2006).

²³⁸ “Estados-unidenses” means “Americans.” *United*, WEBSTER’S NEW WORLD CONCISE SPANISH DICTIONARY (2d ed 2006) (In Spanish, “United States” is “Estados Unidos”).

²³⁹ Gurba, *Tropics of Meta*, *supra* note 267.

²⁴⁰ *Id.*

their partners in this country. Femicide. Is a public health crisis on both sides of the US-Mexico border.”²⁴¹

In referencing a petition signed by 142 authors asking Oprah Winfrey to cancel her book club selection of *American Dirt*,²⁴² Ron Charles, Washington Post Critic for Book World, said it was “heartening to see people so engaged in a work of fiction.”²⁴³ Charles idolizes many of the authors who signed the petition.²⁴⁴ The petition read, “In the informed opinions of many, many Mexican Americans and Latinx immigrant writers, *American Dirt* has not been imagined well nor responsibly, nor has it been effectively researched.”²⁴⁵

Furthermore, the petition read:

This is not a letter calling for silencing, nor censoring. But in a time of widespread misinformation, fearmongering, and white-supremacist propaganda related to immigration and to our border, in a time when adults and children are dying in US immigration cages, we believe that a novel blundering so badly in its depiction of marginalized, oppressed people should not be lifted up.²⁴⁶

Oprah declined to remove *American Dirt* from her book-club selections.²⁴⁷ Instead, Oprah stated that she would hold a special event bringing in three Latino authors and Jeanine Cummins to discuss differing perspectives.²⁴⁸ Members of the DignidadLiteraria movement attended the event,²⁴⁹ scholars and volunteers working with migrant trauma, migrant mothers, publishers, DACA survivors, and others directly affected by the migrant experience were in attendance.²⁵⁰

Oprah asked Cummins to explain the rationale behind her author’s note acknowledging her privilege and stating she wished someone “slightly browner” had written the book.²⁵¹ Cummins

²⁴¹ Myriam Gurba, *I Called Out American Dirt’s Racism. I Won’t Be Silenced*, VOX (Mar. 12, 2020), <https://www.vox.com/first-person/2020/3/12/21168012/racism-american-dirt-myriam-gurba-jeanine-cummins> [https://perma.cc/PB4Z-NXD5] [hereinafter *Gurba, Vox*].

²⁴² *Id.* (citing *Dear Oprah Winfrey: 142 Writers Ask you to Reconsider ‘American Dirt,’* LITERARY HUB (Jan. 29, 2020), <https://lithub.com/dear-oprah-winfrey-82-writers-ask-you-to-reconsider-american-dirt/> [https://perma.cc/FZ39-HZ5M]).

²⁴³ Charles, *American Dirt*, *supra* note 259.

²⁴⁴ *Id.*

²⁴⁵ *Dear Oprah Winfrey*, *supra* note 275.

²⁴⁶ *Id.*

²⁴⁷ Melissa Gouty, *Why the Backlash from American Dirt*, LITERATURE LUST (Apr. 28, 2020), <https://medium.com/literature-lust/why-the-backlash-from-american-dirt-270738dccb57> [https://perma.cc/EL5Q-FBJF].

²⁴⁸ *Id.*

²⁴⁹ “DignidadLiteraria is a network of committed Latinx authors formed to combat the invisibility of Latinx authors, editors and executives in the U.S. publishing industry and the dearth of Latinx literature on the shelves of America’s bookstores and libraries.” *DignidadLiteraria Press Conference*, DIGNIDADLITERARIA, <http://dignidadliteraria.com/> [https://perma.cc/9JNH-6U2U] (last visited July 9, 2021) (Announcement for February 20, 2020 press conference).

²⁵⁰ Rebecca Alter, *7 Key Moments from ‘Oprah’s Book Club’ on ‘American Dirt,’* VULTURE (Mar. 6, 2020), <https://www.vulture.com/2020/03/oprah-book-club-american-dirt-apple-tv.html> [https://perma.cc/E2N6-5QAS].

²⁵¹ *Id.*

said that she suffered from her identity as she wrote the book and wished she had not made the statement in her note. Cummins remained stoic as the Latin authors criticized her, the book, and the publisher.²⁵² Author Reyna Grande noted the double standard, fanfare, resources, and budget given to Cummin’s white perspective in contrast to her fellow Latin writers.²⁵³

When we approach a publisher with our stories, what we are told is our stories don’t matter, our stories don’t sell well, because readers are not interested in these kind of stories, and they make us feel ashamed about our immigrant experiences.²⁵⁴

Another Latin author, Esther Cepeda, called out Don Weisberg, the president of MacMillan, and Amy Einhorn, Flatiron publisher, who were in the audience. The women on the panel stated their disappointment at Flatiron framing angry Latino violence as the cause for canceling Cummin’s book tour.²⁵⁵

Cummins stated that the ad hominin comments “flying around the web have been brutal.”²⁵⁶ Too much of the discussion has centered on identity politics. This poison tendency was encouraged by Cummins with her note that she wished that someone browner than her had written the book.²⁵⁷ One outcome from all the notoriety and negative criticisms of Cummins and *American Dirt* may be that readers will be more discerning and move on to better books?²⁵⁸ Flatiron stated it was holding more book fairs, and they are open to serious debate regarding the book with planned town halls with Cummins.²⁵⁹ Cummins had no events listed on the author’s or the publisher’s website as of December 14, 2021.²⁶⁰

VIII. Threats Aimed at Authors

The most significant concern coming out of the cancel culture surrounding books, according to Ron Charles, are the threats, physical or otherwise, aimed at the authors.²⁶¹ Myriam Gurba received death threats after publishing her review of *American Dirt*.²⁶² Gurba stated that, after the review, she experienced both a chill and aggression from white teachers and administrators at the high school in which she taught.²⁶³ She also noted that authors of color echoed criticisms across social media. Later she was ushered off her high-school campus by administrators,

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ Charles, *American Dirt*, *supra* note 259.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Events*, Jeanine Cummins, <https://www.jeaninecummins.com/events/> [https://perma.cc/RFY4-ZWTR] (last visited July 9, 2021); *Tours & Events: Flatiron Books*, MACMILLAN, <https://us.macmillan.com/tours/?publisher=flatiron-books> [https://perma.cc/57JN-9V65] (last visited July 9, 2021).

²⁶¹ Charles, *American Dirt*, *supra* note 259.

²⁶² *Id.*

²⁶³ Gurba, *Vox*, *supra* Note 274.

security guards, and an armed police officer for a related but different racial incident in which she spoke out.²⁶⁴

The related incident involved a teacher at the school calling an Afro-American student the n-word.²⁶⁵ Students were appalled and felt their concerns lacked earnest consideration from the school.²⁶⁶ The students went public with a self-published report listing the many transgressions the teacher had committed.²⁶⁷ The document listed thirty-one separate student statements from students in the ninth through twelfth grades.²⁶⁸ The statements addressed the acts of abuse they and others received or witnessed at the hands of the identified teacher.²⁶⁹ Myriam Gurba offered her support to the students.²⁷⁰

A few days after being physically removed from campus, the school placed Gurba on administrative leave without explanation.²⁷¹ She later received a letter stating she “intentionally disrupted the educational environment.”²⁷² Gurba believes her critique of *American Dirt* and supporting the student’s efforts to get their accusations heard led to the administrative leave.²⁷³

Other authors have also received death threats. In response to the book *The Satanic Verses*, Ayatollah Khomeini declared Salman Rushdie guilty of apostasy, issuing a *fatwa* — a death sentence on him.²⁷⁴ Muslims the world over found *The Satanic Verses* defamatory, insulting and offensive, and they claimed they were outraged and hurt.²⁷⁵ After death threats, the author needed police protection and went into hiding.²⁷⁶

Roberto Saviano, Italian journalist, and book author, started receiving death threats after writing *Gomorrah*, a book revealing the internal operations of Camorra, an Italian Mafia organization, eventually infuriating the Mafia.²⁷⁷ After publication in 2006, Saviano had no threats. Earlier, the

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ Malaia Lyric Tibbs, *Enough of Huff: Students of Long Beach Poly High School Speak Out*, MEDIUM (Feb. 14, 2020), <https://medium.com/@malaiatibbs/enough-of-huff-students-of-long-beach-poly-high-school-speak-out-9afd81df4d6b> [https://perma.cc/H9JQ-EY45?type=image].

²⁷⁰ Gurba, Vox, *supra* note 274.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ M.M. Slaughter, *The Salman Rushdie Affair: Apostasy, Honor, and Freedom of Speech*, 79 VA. L. REV. 153 (1993), <https://www.jstor.org/stable/1073409> (subscription required).

²⁷⁵ *Id.*

²⁷⁶ Laura Martin, *Salman Rushdie: What Happened When A Fatwa Was Declared On The Author of the Satanic Verses*, INEWS (Feb.27. 2019), <https://inews.co.uk/culture/salman-rushdie-the-satanic-verses-fatwa-author-what-happened-affair-263009> [https://perma.cc/E2T6-S3HT].

²⁷⁷ Ed Vulliamy, ‘I’m Still alive!’: *Gomorrah* Author Hails Court Victory Over Mafia Threats, THE GUARDIAN (May 29, 2021), <https://www.theguardian.com/world/2021/may/29/damned-bastards-im-still-alive-gomorrah-author-hails-court-victory-over-mafia-threats> [https://perma.cc/D4HF-8RXD].

book was given as gifts with pride among Camorra circles.²⁷⁸ What changed for Saviano was the book's selling more than 100,000 copies, far beyond the normal circulation of 5,000 to 10,000 copies for a Mafia-related book.²⁷⁹

Saviano stated that the Mafia is not afraid of him but his readers.

They want some exposure, but not a lot. They're afraid of big numbers. Because when you reach a lot of people, you turn the problem of the Mafia into a problem of everyone. That is exactly what happened with *Gomorrah*...the book's success led the media – radio, TV, daily newspapers, big international networks – to put the spotlight on them. This is what bothered them.²⁸⁰

The Mafia does not threaten directly. Saviano said, “They don't issue a fatwa like Iran or Isis. Mafia semantics are complex and coded, and their menaces are made at a diagonal.”²⁸¹ Saviano received protection and laid low.²⁸² One day he slipped into a restaurant, ordered and ate his meal without being detected in what he calls his “hipster” disguise (glasses, hat, and caterpillar mustache.)²⁸³ After a historic trial, lasting over thirteen years with many threats to his life, the Rome criminal court found Francesco Bidognetti, a boss of the Camorra Mafia, and his lawyer, Michele Santonastaso, and a colleague, Rosario Capacchione, then a reporter of the Naples newspaper, *Il Mattino*, guilty of threatening the journalist's life.²⁸⁴

Michael Cohen, the author of the anti-Trump book, *Disloyal*,²⁸⁵ has received death threats from Trump supporters.²⁸⁶ Mary L. Trump, Donald Trump's niece and author of *Too Much and Never Enough: How My Family Created the World's Most Dangerous Man*,²⁸⁷ stated in an interview that as of July 22, 2020, she had not received any death threats yet.²⁸⁸ However, she alarmingly

²⁷⁸ Interview with Roberto Saviano, FRONTLINE: WORLD, <https://www.pbs.org/frontlineworld/stories/italy801/interview/saviano.html> [https://perma.cc/D3ES-NK4K] (last visited July 9, 2021).

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ Vulliamy, *supra* note 310.

²⁸² William Brennan, *Hunted by the Mob*, THE ATLANTIC (July/Aug. 2015), <https://www.theatlantic.com/magazine/archive/2015/07/hunted-mob/395270/> [https://perma.cc/J9KP-F9XE?type=image]

²⁸³ *Id.*

²⁸⁴ Vulliamy, *supra* note 310.

²⁸⁵ MICHAEL COHEN, *DISLOYAL: A TRUE STORY OF THE FORMER PERSONAL ATTORNEY TO PRESIDENT DONALD J. TRUMP* (2020).

²⁸⁶ Karen Freifeld, *Trump's Ex-Lawyer Says To Reveal President's 'Skeletons' in Upcoming Book*, REUTERS (Aug. 13, 2020), <https://www.reuters.com/article/us-usa-trump-cohen/trumps-ex-lawyer-michael-cohen-says-to-reveal-presidents-skeletons-in-upcoming-book-idUSKCN259395> [https://perma.cc/RVP4-6RET].

²⁸⁷ MARY L. TRUMP, *TOO MUCH AND NEVER ENOUGH: HOW MY FAMILY CREATED THE WORLD'S MOST DANGEROUS MAN* (2020).

²⁸⁸ Martha Ross, *Mary Trump Reflects Getting Hate Mail from Santa Claus*, MARIN INDEPENDENT J. (July 22, 2020), <https://www.marinij.com/2020/07/22/mary-trump-reflects-on-getting-hate-mail-from-santa-clara/> [https://perma.cc/6MA6-XGXL].

received a card at her house. The return address was Santa Claus, California,²⁸⁹ The card included a distressing note.²⁹⁰ Mary Trump stated, “It was like a Hallmark card.”²⁹¹ She said there was a series of expletives on the cover, “Oh s---,s---, s---, s---.”²⁹² She opened it, and the card read, ‘You’re a piece of s---.’²⁹³ Mary Trump said the note insulted her deceased father, Fred Trump Jr. “It said, ‘Your dad’s a loser, you should have been a billionaire.’”²⁹⁴

J.K. Rowling has received both “death and rape threats” for her comments on transgender rights.²⁹⁵ Another author called out is Jordan Peterson.²⁹⁶ Peterson, a far-right conservative and former attorney in Canada and later a Professor of Psychology at the University of Toronto, is an unrelenting misogynist.²⁹⁷ He was called out by many for his refusal to use gender-neutral pronouns for University of Toronto students where he taught.²⁹⁸ However, the threats bypassed Peterson and focused on Cathy Newman, who interviewed him.²⁹⁹ Newman received “vicious misogynistic abuse” after interviewing Peterson.³⁰⁰ Newman's TV channel employer provided her security analysts.³⁰¹ She even received death threats.³⁰²

Ron Charles explains what we have come to and why it is terrifying.

...we can’t blame the threats against Cummins on President Trump’s race-baiting rhetoric or his obscene immigration abuses. The best critics of “*American Dirt*” are clearly motivated by a desire to defend the integrity of Mexican culture and the humanity of our most vulnerable residents. But in today’s toxic atmosphere, those valuable critiques

²⁸⁹ *Id.* Santa Claus, California, is a tourism village, but now it is gone. *Every Day WAS Christmas – Santa Claus, California*, ROADSIDEAMERICA.COM, <https://www.roadsideamerica.com/story/34482> [https://perma.cc/WN8Z-PC2M] (last visited July 9, 2021). Despite the tourism village closing, Santa Claus Lane has retained its name. *Santa Claus Ln, Carpinteria, CA 93013-1109, USA*, CALIFORNIA ZIP CODE 5 PLUS 4, <https://ca.postcodebase.com/zipcode/93013-1109> [https://perma.cc/4E7K-X2Y6] (last visited July 9, 2021).

²⁹⁰ Ross, *supra* note 321.

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Author J.K. Rowling Has Received ‘Death And Rape Threats For Transgender Rights Comments*, WORLD ENTERTAINMENT NEWS NETWORK (July 6, 2020), <https://canoe.com/entertainment/celebrity/author-j-k-rowling-has-received-death-and-rape-threats-for-transgender-rights-comments> [https://perma.cc/VU3T-TWZR].

²⁹⁶ Law, *supra* note 199.

²⁹⁷ Graham Ruddick, *C4 Calls In Security Experts After Presenter Suffers Online Abuse*, THE GUARDIAN (Jan. 19, 2018), <https://www.theguardian.com/society/2018/jan/19/channel-4-calls-in-security-experts-after-cathy-newman-suffers-online-abuse> [https://perma.cc/QBX9-GPCE].

²⁹⁸ Tom Bartlett, *What’s So Dangerous About Jordan Peterson*, THE CHRONICLE OF EDUCATION (Jan. 17, 2018), <https://www.chronicle.com/article/whats-so-dangerous-about-jordan-peterson/> [https://perma.cc/N7KG-M964?type=image].

²⁹⁹ Ruddick, *supra* note 330.

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² Nosheen Iqbal & Cathy Newman, “*The Internet is Being Written by Men With An Agenda*,” THE GUARDIAN (Mar. 19, 2018), <https://www.theguardian.com/media/2018/mar/19/cathy-newman-the-internet-is-being-written-by-men-with-an-agenda> [https://perma.cc/HQ7H-8C44?type=image].

have been drowned out by a cowardly chorus of violence.³⁰³

IX. Freezing Authors and Free Speech

YA Twitter, an online community of editors, authors, reviewers, agents, and readers, has the power and influence to cancel books even before publication. The community can be arguably misguided and quite harmful to free speech.³⁰⁴ The community effectively froze the author of *Blood Heir*, Melie Zhao, who pulled her first book of a three-book trilogy deal.³⁰⁵ Melie Zhao, a very talented young author, born in Paris, raised in Beijing, had signed a major deal with Delacorte Press, a Penguin Random House imprint to a debut three-book trilogy accompanied by an advance of at least \$500,000. The Twitter community piled on, stating the book “skews significantly older than the actual readership of the popular genre of young adult fiction.”³⁰⁶ The ebullitions ironically focus on issues of social justice and representation.³⁰⁷

A fantasy tale, “Blood Heir,” depicts an empire enslaving magical minorities called Affinites, where “oppression is blind to skin color.”³⁰⁸ The unrelenting critics of YA felt the slavery narrative had erased a particular African-American experience.³⁰⁹ The critics also “objected to a scene in which an apparently black slave girl dies in an apparently white character’s arms, in an act of self-sacrifice.”³¹⁰ Some of YA Tweet’s work is considered legitimate. However, the tactics of pulling out and circulating “selective excerpts... out of context from the advance copies of books most in the community haven’t read yet,” is unconscionable.³¹¹

Another victim of YA Tweets is the canceled book, *A Place for Wolves* by Kosoko Jackson.³¹² Jackson, Afro-American and queer, previously was a member of the YA community calling out books. He once tweeted women should not profit from writing gay men stories.³¹³ Now the same community was demonizing his work.³¹⁴ The book seemed ready to succeed. It received positive starred reviews, and had been named a “Kids’ Indie Next” pick.³¹⁵ Then Jackson asked his publisher to pull the book a month before publication.³¹⁶

³⁰³ Charles, *American Dirt*, *supra* note 259.

³⁰⁴ Jessie Singal, *How a Twitter Mob Derailed an Immigrant Female Author’s Budding Career*, TABLET (Jan. 31, 2019), <https://www.tabletmag.com/sections/news/articles/how-a-twitter-mob-destroyed-a-young-immigrant-female-authors-budding-career> [https://perma.cc/3GDG-SJRN].

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ Katy Waldman, *In Y.A., Where is the Line Between Criticism and Cancel Culture?* THE NEW YORKER: UNDER REVIEW (Mar. 21, 2019), <https://www.newyorker.com/books/under-review/in-ya-where-is-the-line-between-criticism-and-cancel-culture> [https://perma.cc/BWY6-DP5V].

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ Singal, *supra* note 337.

³¹² Ruth Graham, *Wolves: A YA Sensitivity Reader Watched His Own Community Kill His Debut Novel Before It Was Ever Released*, SLATE (Mar. 4, 2019), <https://slate.com/culture/2019/03/ya-book-scandal-kosoko-jackson-a-place-for-wolves-explained.html> [https://perma.cc/YPK7-TAUT].

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

Jackson felt considerable backlash, starting with a Goodreads review. “I have to be absolutely fucking honest here, everybody, I’ve never been so disgusted in my life.”³¹⁷ The canceler stated that the book used a recent genocide as a backdrop to romance, like a “cute gay love story.”³¹⁸ Set in the 1990s during the Kosovo War, she contended a Muslim should have written it.³¹⁹ The canceller said the book centered on privileged Americans, and the villain was an ethnic Albanian. She concluded by questioning if a person could “confidently justify supporting this book despite all of the above, despite the harm it can and will do to real people?”³²⁰

YA Tweet went after a book later published to critical acclaim, *The Black Witch*, a debut young-adult fantasy novel by Laurie Forest.³²¹ Seven weeks from publication, the book was enjoying the early positive buzz. Then YA Tweets community member Shauna Sinyard, bookstore employee, and blogger, got the ball rolling.³²² She stated “*The Black Witch* is the most dangerous, offensive book I have ever read... It was ultimately written for white people. It was written for the type of white person who considers themselves to be not-racist and thinks that they deserve recognition and praise for treating POC like they are actually human.”³²³ Sinyard used YA Tweet’s practice of pulling excerpts out of context that featured the characters saying or doing racist things. An example accompanied by Sinyard’s commentary:

“pg.163. The Kelts are not a pure race like us. They’re more accepting of intermarriage, and because of this, they’re hopelessly mixed.”

Yes, you just read that with your own two eyes. This is one of the times my jaw dropped in horror and I had to walk away from the book.³²⁴

In a tweet retweeted nearly 500 times, Sinyard sent out the clarion call to read her review of *The Black Witch*.³²⁵

Based almost solely on Sinyard’s opinion, the novel became the object of sustained, aggressive opposition in the weeks leading up to its release. Its publisher, Harlequin Teen, was bombarded with angry emails demanding they pull the book. *The Black Witch*’s Goodreads rating dropped to an abysmal 1.71 thanks to a mass coordinated campaign of one-star reviews, mostly from people who admitted to not having read it.³²⁶

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ Kat Rosenfield, *The Toxic Drama on YA Twitter*, VULTURE (Aug. 2017), <https://www.vulture.com/2017/08/the-toxic-drama-of-ya-twitter.html> [https://perma.cc/9HKL-4V2N].

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ *Id.*

Fortunately, Forest did not pull the book under the incoming pressure, even though the publisher, Harlequin, did not demonstrate outward support for Forest and did not respond to the angry bombardment of people who wanted the book pulled.³²⁷ Harlequin told Forest to remain mum on the matter, but they did publish the book to positive critical acclaim.³²⁸

There has been a “systemic exclusion of authors of color... a long-term form of cancellation.”³²⁹ One anonymous director at one of the Big Five Publishers³³⁰ said he saw a peculiar contradiction. Everyone is diversity positive but there is a “pick and choose the kind of diversity we want.”³³¹

If we want to be a publisher and employer for everyone, our publishing has to reflect that. And it becomes a necessary inevitability that we publish books and authors of viewpoints some of our staff don’t agree with or indeed, very, very actively disagree with. That tension is not entirely new, but for whatever reason, it seems to be sort of boiling over now.³³²

The Diversity Baseline Survey by Lee & Low Books showed minimal improvements in diversity in the book business from 2015 to 2019.³³³ Jason Low and Hannah Ehrlich wrote in their analysis of the survey, “Until we start to care about equity, we will not make progress, and any gains the industry makes will continue to be not statistically significant.”³³⁴ The press sources that influence Big Five publishers’ decisions for media placement are unsatisfactory.³³⁵ Big Five publishers deem themselves as centers of knowledge.³³⁶ Therefore, their interest is to publish voices “across the political spectrum.”³³⁷ Unfortunately, it is “a discrete spectrum that excludes a lot of people.”³³⁸ Publishers tend to give advances to white authors instead of to an author from other backgrounds.

On the Day of Solidarity, held on June 8, 2020, during the pandemic, a brave group of more than 1,100 workers from the book and media industry took a day from work to “speak out against

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ Julia Rittenberg, *A Media Studies Perspective on Canceling Books*, BOOK RIOT (Mar. 8, 2021), <https://bookriot.com/canceling-books/> [https://perma.cc/U2Q9-U32D].

³³⁰ Andrew Albanese, *Amazon, Big Five Publishers Face Yet Another Antitrust Suit – From Booksellers*, PUBLISHERS WKLY. (May 26, 2021), <https://www.publishersweekly.com/pw/by-topic/industry-news/publisher-news/article/85909-amazon-big-five-publishers-face-yet-another-antitrust-suit-from-booksellers.html> [https://perma.cc/57EC-6B45].

³³¹ Alison Flood, *‘If Publishers Become Afraid, We’re In Trouble’: Publishing’s Cancel Culture Debate Boils Over*, THE GUARDIAN (June 3, 2021), <https://www.theguardian.com/books/2021/jun/03/if-publishers-become-afraid-were-in-trouble-publishings-cancel-culture-debate-boils-over> [https://perma.cc/A7EV-6CNA].

³³² *Id.*

³³³ Rittenberg, *supra* note 362.

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ *Id.*

racist murder, white supremacy, and racial capitalism.”³³⁹ Each participant was to send out a group message via email. “We protest our industry’s role in systematic racism, its failure to hire and retain a significant number of Black employees or publish a significant number of Black authors, and its pursuit of profit through books that incite racism.”³⁴⁰

In response to the Day of Solidarity, two of the Big 5 Publisher (HarperCollins and Macmillan) did not respond to Publishers Weekly inquiry.³⁴¹ In May of 2020, one of the Big Five, Hachette, published what it is doing to address the diversity issue even before the Day of Solidarity held on June 8, 2020. The publisher stated that they increased their Afro-American, Indigenous, and other people of color employment by seven percent in 2020.³⁴² Twenty-nine percent of new contracts were with authors and illustrators of color compared to twenty-two in 2019.³⁴³

It has been very encouraging to see the level of engagement, urgency, and collaboration throughout Hachette Book Group, and the improvement we’ve seen in the past year. At the same time, we recognize that there’s still a huge amount of work ahead. We’re committed to making meaningful progress toward our goals and working together to create a workplace and publishing programs that reflect the diversity of the nation of readers we want to publish for. The energy and the focus to achieve those goals is in place, thanks to the deep commitment of our employees and our senior management.³⁴⁴

Some of Hachette's policy changes were creating and hiring a position of vice-president for diversity and inclusion. The formation of seven employee resource groups for Afro-American, Latinx, Women in publishing, Asian/Pacific American, LGBTQIA+, trans and gender-nonconforming, and non-majority religions. Hachette also provided diversity and inclusion training to its employees. They audited the diversity in their publishing programs and implemented a new imprint (Legacy Lit) to amplify underserved and overlooked voices.³⁴⁵

In responding to Publishers Weekly the day after the Day of Solidarity, a Hachette spokesperson mentioned some of the measures listed above,³⁴⁶ further stating, “These broad diversity initiatives will include specific actions to support the discovery and publication of Black voices and the recruitment and hiring of Black applicants.”³⁴⁷

³³⁹ John Maher, *Workers Across Book Business Take Collective Action Against Racism*, PUBLISHERS WEEKLY (June 8, 2020), <https://www.publishersweekly.com/pw/by-topic/industry-news/publisher-news/article/83536-workers-across-industry-take-collective-action-against-racism.html> [https://perma.cc/882N-WWUU].

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² Porter Anderson, *Hachette Book Group Announces Diversity Progress in 2020*, PUBL’G PERSPECTIVES (May 13, 2021), <https://publishingperspectives.com/2021/05/hachette-book-group-announces-diversity-progress-in-2020/> [https://perma.cc/22KG-UFLQ].

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

Penguin Random Mouse mentioned that it had published groundbreaking works from Afro-American authors; they stated, “our company and our industry haven’t published enough works by authors of color. We can, and must, do much more, and in particular, we must live up to our goal of publishing books for all readers.”³⁴⁸ Simon and Schuster issued a statement expressing their agreement with its employees on the need for a change. Moreover, the statement read, “We are committed to working with our employees, authors and the publishing community to make our company and our industry a safe and inclusive environment for all, and a publisher of works that represent the breadth and depth of our diverse population.”³⁴⁹

X. Legal Solutions to Cancel Culture

Hillary Clinton was an early proponent of cyberspace increasing democracy.

The freedom to connect is like the freedom of assembly. Only in cyberspace. It allows individuals to come together, and hopefully cooperate. The United States is committed to devoting the diplomatic, economic, and technological resources necessary to advance these freedoms. and as the birthplace for so many of these technologies, including the internet itself, we have a responsibility to see them used for good.³⁵⁰

Clinton did mention the presence of nefarious actors on the internet, but according to her. democracy will triumph.³⁵¹ She shared people will cut through the propaganda when given access to reliable data. However, in the United States, the more prolonged effect of broader information-sharing has not proved as positive as some anticipated. The traditional gatekeepers, like newspapers and network news, lost much of their following.³⁵² In its place came a flood of fake news and conspiracy theories over the Internet and social media.³⁵³

Brianna Wu, software engineer, commentator, advocate for women’s rights, and former candidate for the US Congress in Massachusetts, stated that the country had a chance, through online platforms and law enforcement, to stop the harassment she and others faced through the internet.³⁵⁴ Wu was one of several targets of hordes of video game players during the 2014 Gamergate campaign that attacked and attempted to cancel social-justice advocates and feminists within the gaming industry.³⁵⁵

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ Hillary Clinton, *Defending Online Freedoms*, THE GUARDIAN (Jan. 22, 2010), <https://www.theguardian.com/commentisfree/libertycentral/2010/jan/22/hillary-clinton-online-freedom> [https://perma.cc/9SF3-CRVD].

³⁵¹ *Id.*

³⁵² Geoff Shullenberger, *The New Net Delusion*, THE NEW ATLANTIS (Fall 2020), <https://www.thenewatlantis.com/publications/the-new-net-delusion> [https://perma.cc/7QU6-7SKW].

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ *Id.*

“We’d have stopped the massive disinformation juggernaut on Facebook before it wrecked American politics.”³⁵⁶ Metaphorically, Gamergate was our moment to kill baby Hitler. Only, no one needed to die - you just needed law enforcement, Facebook, Reddit and Youtube to take the harassment of women seriously. They did not. And now our entire political system is poisoned.”³⁵⁷

What can be done to battle the hate and canceling? With the many examples of the socially destructive impact of cancel culture, is a tort remedy plausible?³⁵⁸ One central idea in tort law is “that liability must be based upon conduct which is socially unreasonable. The common thread woven into all torts is the idea of unreasonable interference with the interests of others.”³⁵⁹ Tortious interference addresses the “unreasonable interference with the interests of others.”³⁶⁰

There need not be a contract between parties to have tortious interference.³⁶¹ However, even if there is a relationship without a contract, additional elements are needed for tortious interference. The defendant must know there is no contract, and the defendant’s intentional and unjustified interference with the plaintiff results in damages to the plaintiff.³⁶²

If intentional tortious interference does not offer relief, what about defamation? Defamation may not be successful because, many times, the statements made are factual.³⁶³ What about disparagement? To disparage is “[t]o bring discredit or reproach upon; to dishonour, discredit; to lower in credit or esteem.”³⁶⁴ However, the tort usually involves economic loss to the product rather than reputational damage to the individual.³⁶⁵ False light is another tort that may have some teeth. False light involves “one who gives publicity to a matter concerning another that places the other before the public in a false light.”³⁶⁶ Furthermore, “To place someone in a false light does not necessarily mean that specifically false statements were made about the individual. Instead, misleading implications that the average person would find highly offensive are often enough.”³⁶⁷

In 2016, Val Chmerkovskiy, a dancing celebrity from “Dancing with the Stars,” reposted on his Facebook page a picture of a heavy-set 8-year-old girl with downs-syndrome drinking a large soda at a baseball

³⁵⁶ Brianna Wu (@BriannaWu), TWITTER (June 20, 2020, 10:09 AM), <https://twitter.com/BriannaWu/status/1274343716350803973> [https://perma.cc/AQ3E-6TFN].

³⁵⁷ *Id.*

³⁵⁸ Carr, *supra* note 54, at 141.

³⁵⁹ *Id.* at 140 (citing W. PAGE KEETON ET AL., PROSSER AND KEETON ON TORTS 6 (5th ed. 1984)).

³⁶⁰ *Id.*

³⁶¹ *Id.* at 142.

³⁶² *Popular Bank of Florida v. R.C. Asesoros Financieros, C.A.*, 797 So. 2d 614 (Fla. Dist. Ct. App. 2001).

³⁶³ Carr, *supra* note 54, at 144 (citing RESTATEMENT (SECOND) OF TORTS § 625E cmt. c (AM. LAW INST. 1977), (“It is only when there is such a major misrepresentation of his character, history, activities or beliefs that serious offense may reasonably be expected to be taken by a reasonable man in his position, that there is a cause of action for invasion of privacy”)).

³⁶⁴ Carr, *supra* note 54, at 143-144 (citing *FreeLife Int’l Inc. v. Am. Educ. Music Publ’n Inc.*, No. CV07-2210-PHX-DGC, 2009 U.S. Dist. LEXIS 97680, at 16 (D. Ariz. Oct. 1, 2009) (citing *Disparage*, OXFORD ENGLISH DICTIONARY (2d ed. 1989))).

³⁶⁵ *Id.* at 144 (citing RESTATEMENT (SECOND) OF TORTS § 558 (AM. LAW INST. 1965)).

³⁶⁶ *Id.* (citing RESTATEMENT (SECOND) OF TORTS § 625E cmt. c (AM. LAW INST. 1977), (“It is only when there is such a major misrepresentation of his character, history, activities or beliefs that serious offense may reasonably be expected to be taken by a reasonable man in his position, that there is a cause of action for invasion of privacy”)).

³⁶⁷ *Id.* (citing *Invasion of Privacy, False Light*, FINDLAW, <https://injury.findlaw.com/torts-and-personal-injuries/invasion-of-privacy--false-light.html> [https://perma.cc/E86G-ET7G] (Last visited Feb. 18, 2020); RESTATEMENT (SECOND) OF TORTS § 652E (AM. LAW INST. 1977)). **NOTE TO EDITOR: Carr cited the 2020 viewing of the FindLaw cite, but the permalink in this article is July 12, 2021.**

concession.³⁶⁸ A man named Michael Smail took the unauthorized picture in 2008 and posted it on Flickr with the caption, "Everything that's wrong with America."³⁶⁹ In 2014, [CBS News](#) reposted the post with the word "BUSTED" in bold letters emblazoned across the young girl's image.³⁷⁰ Chmerkovskiy's repost contained his statement, "Letting your kid become obese should be considered child abuse."³⁷¹ The post received over a quarter of a million views from Chmerkovskiy fans alone.³⁷²

The child's mother sent several emails to Chmerkovskiy asking him to take the image down.³⁷³ He never responded to Ms. Mitchell, but he eventually did take the image down and responded with a post on Facebook:

I am truly sorry for the lack of sensitivity...but on some level I have to agree.... You're handicapping your kid, and they're defenseless. They don't know better, that's why you're there ...anyway I'm just a childless preacher, but here's some food for thought.³⁷⁴

The plaintiffs claimed "severe mental anguish and emotional distress, including humiliation, embarrassment, and fear, which has impacted their daily lives."³⁷⁵ The plaintiffs did drop all claims against CBS Corporation and CBS Interactive, Inc.³⁷⁶ The US District Court found that S.E. correctly alleged the elements for a claim of false light under Tennessee law, and the case was allowed to proceed. Mr. Chmerkovskiy's motion to dismiss was denied.³⁷⁷

What about regulating social media platforms? The platforms are the main medium for spreading disinformation, hate, and abuse.³⁷⁸ Countries and governments have been trying to regulate social media platforms.³⁷⁹ From 2018 to 2020, platforms made a series of policy changes affecting protective guidelines on hate speech.³⁸⁰ Leading the policy changes was YouTube on Google making more than 30

³⁶⁸ S.E. v. Chmerkovskiy, 221 F.Supp.3d 980, 982 (M.D. Tenn. 2016).

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Id.* at 983.

³⁷⁶ *Id.* at 982.

³⁷⁷ *Id.* at 987.

³⁷⁸ Anshu Siripurapu & William Merrow, *Social Media and Online Speech: How Should Countries Regulate Tech Giants?*, COUNCIL ON FOREIGN RELATIONS (Feb. 9, 2021), <https://www.cfr.org/in-brief/social-media-and-online-speech-how-should-countries-regulate-tech-giants> [https://perma.cc/6LBU-HPL7].

³⁷⁹ *Id.*

³⁸⁰ Richard Ashby Wilson, Lolly K. Land, *Hate Speech on Social Media: Content Moderation in Context*, 52 CONN. L. REV. 1029, 1050 (2021), https://opencommons.uconn.edu/law_papers/535.

policy changes in 2018 alone.³⁸¹ In 2019, Facebook eliminated all white nationalist pages.³⁸² Twitter banned speech on those dehumanizing groups based on their religion.³⁸³

In 2020, under significant pressure, Facebook established an impartial regulatory structure monitoring removal decisions overseen by a forty-member board managed by an independent trust.³⁸⁴ Its authority is limited, however. The board can only review material taken down and not any material remaining on the platform.³⁸⁵ Furthermore, the board has no authority to review Facebook’s moderation policies guiding removal decisions or the Facebook algorithm.³⁸⁶ Moreover, the board needs to comply with “Facebook’s content policies and values,” limiting the board’s ability to apply other sources of guidance, i.e., international human rights law.³⁸⁷

Due to these and other oversight board limitations, critics have written off the impartial regulatory structure as “toothless.”³⁸⁸ The chief author of the 2020 stolen Presidential election was Donald Trump.³⁸⁹ The mob’s readiness to attack the Capitol on January 6th, inspired by Trump, was the product of “attention economy.”³⁹⁰ Like Twitter and some other social media platforms, Facebook runs on the attention economy business model of commercializing the attention of billions of people daily.³⁹¹

³⁸¹ *Id.* (citing Mark Di Stefano, *YouTube Will Ban Videos That “Maliciously Insult” People Based on Race, Gender, or Sexual Orientation*, BUZZFEED NEWS (Dec. 11, 2019, 9:00 AM), <https://www.buzzfeed.com/markdistefano/youtube-harassment-guidelines-crowder-maza> [https://perma.cc/WCB5-EUJB]; Kevin Roose & Kate Conger, *YouTube to Remove Thousands of Videos Pushing Extreme Views*, N.Y. TIMES (June 5, 2019), <https://www.nytimes.com/2019/06/05/business/youtube-remove-extremist-videos.html> [https://perma.cc/Z7QR-XAGP]).

³⁸² *Id.* at 1051 (citing Liam Stack, *Facebook Announces New Policy to Ban White Nationalist Content*, N.Y. TIMES, (Mar. 27, 2019), <https://www.nytimes.com/2019/03/27/business/facebook-white-nationalist-supremacist.html> [https://perma.cc/G3PV-D47C]; *Community Standards: Hate Speech*, FACEBOOK, https://www.facebook.com/communitystandards/hate_speech [https://perma.cc/T52U-LY9L] (last visited July 12, 2021) (setting out the policy that prohibits statements of inferiority or calls for exclusion or segregation)).

³⁸³ *Id.* (citing Emily Birnbaum, *Twitter Moves to Ban ‘Dehumanizing’ Language Toward Religious Groups*, THE HILL (July 9, 2019, 2:09 PM), <https://thehill.com/policy/technology/452226-twitter-expands-hateful-conduct-policy-to-include-dehumanizing-language> [https://perma.cc/QMN6-ZFEV]; *Hateful Conduct Policy*, TWITTER, <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy> [https://perma.cc/S88G-TAH5] (last visited July 12, 2021)).

³⁸⁴ *Id.* (citing Rebecca Bellan, *Facebook Announces Members of Its Supreme Court*, FORBES (May 6, 2020, 3:54 PM), <https://www.forbes.com/sites/rebeccabellan/2020/05/06/facebook-announces-members-of-its-supreme-court/#3759e11a3f12> [https://perma.cc/U7E2-YDM7]).

³⁸⁵ *Id.* (citing Elizabeth Culliford, *Facebook Names First Members of Oversight Board That Can Overrule Zuckerberg*, REUTERS (May 6, 2020, 1:12 PM), <https://www.reuters.com/article/us-facebook-oversight/facebook-names-first-members-of-oversight-board-that-can-overrule-zuckerberg-idUSKBN22I2LQ> [https://perma.cc/3FC2-DV4L]).

³⁸⁶ *Id.* (citing Karsten Müller & Carlo Schwarz, *Fanning the Flames of Hate: Social Media and Hate Crime* 27, 42 (Nov. 3, 2019) (unpublished manuscript), <https://ssrn.com/abstract=3082972>).

³⁸⁷ *Id.* (citing Facebook Oversight Board Bylaws, art. 1, § 3 (Jan. 2020) https://about.fb.com/wp-content/uploads/2020/01/Bylaws_v6.pdf [https://perma.cc/H4QB-WCZ4]).

³⁸⁸ *Id.* at 1052 (citing Josh Constine, *Toothless: Facebook Proposes a Weak Oversight Board*, TECHCRUNCH (Jan. 28, 2020, 4:33 PM), <https://techcrunch.com/2020/01/28/under-consideration/> [https://perma.cc/S2HU-JFB8]).

³⁸⁹ Tristan Harris, *Big Tech’s attention economy can be reformed. Here’s how*, MIT TECHNOLOGY REV. (Jan 10, 2021), <https://www.technologyreview.com/2021/01/10/1015934/facebook-twitter-youtube-big-tech-attention-economy-reform/> [https://perma.cc/4L95-AWRL]).

³⁹⁰ *Id.*

³⁹¹ *Id.*

The weak oversight board cannot address the business model that “incentivizes contentious and hateful speech to sell more advertising.”³⁹² The board is a half-measure staving off government and anti-trust investigations.³⁹³ The contention of Facebook feeding the attention economy was substantiated in May 2020 with Facebook launching American Edge, an advocacy group lobbying Washington against tech sector regulation.³⁹⁴

In the United States, the emphasis has been on social media platforms regulating themselves.³⁹⁵ If Facebook, the largest publisher of content in the history of man,³⁹⁶ is moderating over 2.4 billion monthly users,³⁹⁷ and doing such a disappointing job of regulating itself,³⁹⁸ what are the chances of any significant reform to social media platforms?

E.O. Wilson, a famed biologist, said we should use only half the Earth and leave the rest alone.³⁹⁹ Perhaps we can use half of the attention economy for human attention?⁴⁰⁰ A specific type of human attention that uses stewardship involves attending to environmental factors.⁴⁰¹ Tim Wu, Julius Silver Professor of Law at Columbia University states:

the biology of human attention suggests three important facts. First, that we are always paying attention to *something*. Second, that our attention is scarce, limited by the processing power of the brain, and by time--the 168 hours per week that we are allotted. Finally, that we make “attentional decisions”-- that we decide to pay attention to some things, while ignoring others. These three basic facts help us understand why attention is a scarce resource.⁴⁰²

One way to establish more human attention is through ad-blockers on digital devices.⁴⁰³ According to some, this software could abolish the attention economy business model.⁴⁰⁴ If ads were blocked, the social media sites could not fund themselves.⁴⁰⁵ The online advertising industry considers ad-blocking software to be a substantial threat to the attention economy business model.⁴⁰⁶ A survey showed that 47% of the

³⁹² Wilson & Land, *supra* note 380 (citing Dipayan Ghosh, *Facebook's Oversight Board Is Not Enough*, HARV. BUS. REV. (Oct. 16, 2019), <https://hbr.org/2019/10/facebooks-oversight-board-is-not-enough> [https://perma.cc/N795-XXM2]).

³⁹³ *Id.* at 1052-1053.

³⁹⁴ *Id.*

³⁹⁵ Siripurapu & Merrow, *supra* note 378.

³⁹⁶ Wilson & Land, *supra* note 380 (citing *Facebook Q3 2019 Results*, FACEBOOK (2019), https://s21.q4cdn.com/399680738/files/doc_financials/2019/q3/Q3-2019-Earnings-Presentation.pdf [https://perma.cc/DJQ6-MWFB]).

³⁹⁷ *Id.*

³⁹⁸ Notes 520 to 524, *supra*.

³⁹⁹ Harris, *supra* note 389.

⁴⁰⁰ *Id.*

⁴⁰¹ JENNY ODELL, HOW TO DO NOTHING: RESISTING THE ATTENTION ECONOMY 147 (2019).

⁴⁰² Tim Wu, *Blind Spot: The Attention Economy and the Law*, 82 ANTITRUST L. J. 771, 783 (2017), https://scholarship.law.columbia.edu/faculty_scholarship/2029.

⁴⁰³ Harris, *supra* note 389.

⁴⁰⁴ Preston M. Torbert, *"Because It is Wrong": An Essay on the Immorality and Illegality of the Online Service Contracts of Google and Facebook*, 12 CASE W. RES. J.L. TECH. & INTERNET Iss. 1, art. 2, at 121 (2021), <https://scholarlycommons.law.case.edu/jolti/vol12/iss1/2>.

⁴⁰⁵ Harris, *supra* note 389.

⁴⁰⁶ Shitong Zhu, Xunchao Hu, Zhiyun Qian, Zubair Shafiq, & Heng Yin, *Measuring and Disrupting Anti-Adblockers Using Differential Execution Analysis 1* (Feb 2018) (unpublished manuscript),

American public already use ad-blocking software.⁴⁰⁷ Large social media platforms have undertaken countermeasures against the ad-blockers.⁴⁰⁸ Some have enrolled in the Acceptable Ads program.⁴⁰⁹ Eyeo GmbH, the creator of the Acceptable Ads program, states the program establishes parameters for ads delivered to the public based on a set of criteria regarding what is “invasive and annoying.”⁴¹⁰

Social media platforms use the Acceptable Ads program to whitelist their ads.⁴¹¹ Whitelisting, although deemed a compromise to address the overwhelming amount of advertising on social media, gives a social media platform the ability to elevate brand advertising.⁴¹² The top social media platforms using influence marketing are Facebook, Twitter, YouTube, Instagram, and LinkedIn.⁴¹³ A second way for social media publishers to exploit ad-blockers is by implementing anti-ad-blockers using JavaScript Code that detects and often responds to ad-blockers existence on the client-side.⁴¹⁴ Many companies are using this method to manipulate ad-blockers.⁴¹⁵

A third way that social media platforms are maneuvering around ad-blockers⁴¹⁶ is by injecting lines of code into every page, making it harder for ad-blockers to detect.⁴¹⁷ Words like “sponsored” or “ad” inside a web code is easy to spot.⁴¹⁸ Therefore, Facebook and other social media companies are using coding tricks.⁴¹⁹ Some examples include:

- Breaking up the word “sponsored” into small chunks only one or two letters long.
- Inserting extra letters, as in “SpSonSsoShreS,” hidden to the viewer.
- Adding the word to all regular posts on the news feed, even ones that are not ads, and then using another piece of code to hide it on the non-adds.⁴²⁰

XI. Can cancel culture be curbed?

<https://par.nsf.gov/biblio/10073746> [https://perma.cc/G4LB-DD3W]. NOTES TO EDITOR: I applied rules 16.7.3 (“cite an individual article within a symposium... in the same manner as any other article) and 17.2.1 (manuscripts not formally published). The date is from the lower left corner of the document.

⁴⁰⁷ Torbert, *supra* note 404.

⁴⁰⁸ Zhu, et. al., *supra* note 406.

⁴⁰⁹ *The ‘Acceptable Ads’ Guide for Digital Publishers*, WHAT’S NEW IN PUBLISHING (Aug. 10, 2020), <https://whatsnewinpublishing.com/the-acceptable-ads-guide-for-digital-publishers/> [https://perma.cc/YU7M-AWQJ].

⁴¹⁰ *Id.*

⁴¹¹ Zhu, et. al., *supra* note 406.

⁴¹² Jenn Kim, *Everything you need to know about influencer whitelisting*, ASPIREIQ (Mar. 1, 2021), <https://www.aspireiq.com/blog/influencer-whitelisting/> [https://perma.cc/Q9YY-GK57].

⁴¹³ Donna James, *Top 5 Social Media Platforms to Use to Become a Powerful Influencer*, CORTEX (Aug. 27, 2020), <https://www.meetcortex.com/blog/top-5-social-media-platforms-to-use-to-become-a-powerful-influencer> [https://perma.cc/G2AT-JCQB].

⁴¹⁴ Zhu, et. al., *supra* note 406.

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

⁴¹⁷ *Facebook’s Hidden Battle Against Ad-Blockers*, BBC NEWS (Dec. 10, 2018), <https://www.bbc.com/news/technology-46508234> [https://perma.cc/8DAB-3QHV].

⁴¹⁸ *Id.*

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

Aaren Kindsvatter, a University of Vermont Professor, surveyed professors in his field of psychotherapy and counseling and found fewer than a third would feel comfortable disagreeing in the classroom with students regarding race, sexuality, social class, or religion.⁴²¹ One professor told Jonathan Rauch for his book, *The Constitution of Knowledge*, “I used to say things in class just to be provocative—because I think the university is not a place where one should feel intellectually comfortable. I never do that anymore because I don’t want to deal with a dozen complaints to the dean.”⁴²²

According to the National Institute of Scholars (NIOS), as of January 21, 2022, there have been 212 occurrences of academic cancellation in USA and Canadian higher education.⁴²³ Author of the NIOS article, David Acevedo, defined academic cancellation:

Academic cancellation usually goes something like this:
1) a professor, administrator, or student says or writes something considered heretical by progressives; 2) outcry ensues among the faculty and student body, who demand institutional discipline; 3) administrators cave to the mob and punish the “culprit.” In most cases, it really is that simple.⁴²⁴

Students are also taking part in self-canceling. A 2019 Knight Foundation poll found that over two-thirds of students feel their campus climate prevents them from expressing opinions because other students may be offended.⁴²⁵ Other surveys have shown similar results.⁴²⁶ Beyond campus, self-canceling is almost as prevalent. According to a 2020 poll by the Cato Institute, 62 percent of people said they felt recalcitrant from expressing themselves in today’s political climate. Self-canceling increased four percentage points from 2017.⁴²⁷

⁴²¹ RAUCH, CONSTITUTION OF KNOWLEDGE, *supra* note 53, at 221.

⁴²² *Id.*

⁴²³ David Acevedo, *Tracking Cancel Culture in Higher Education*, National Association of Scholars, NAT’L ASS’N OF SCHOLARS (Jan.21,2022) <https://www.nas.org/blogs/article/tracking-cancel-culture-in-higher-education> [https://perma.cc/8FK7-5ZFF].

⁴²⁴ *Id.*

⁴²⁵ RAUCH, CONSTITUTION OF KNOWLEDGE, *supra* note 53, at 222 (citing FREE EXPRESSION ON COLLEGE CAMPUSES: A COLLEGE PULSE STUDY COMMISSIONED BY KNIGHT FOUNDATION (May 2019), https://kf-site-production.s3.amazonaws.com/media_elements/files/000/000/351/original/Knight-CP-Report-FINAL.pdf [https://perma.cc/G5YQ-2RW2]).

⁴²⁶ *Id.* at 222 (citing Heterodox Academy, *Understanding the Campus Expression Climate* (Fall 2019), <https://heterodoxacademy.org/wp-content/uploads/2020/04/CES-Fall-2019-Methods-FINAL.pdf> [https://perma.cc/4CLH-N434]; FOUNDATION FOR EQUAL RIGHT IN EDUCATION, WHAT STUDENTS THINK ABOUT: EXPRESSION, ASSOCIATION, AND STUDENT FEES ON CAMPUS (Jan. 2019), <https://d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2019/03/05104349/Student-Attitudes-Association-Survey.pdf> [https://perma.cc/95V6-EWTU] (The 2019 survey states 63 percent of Democratic students and 51 percent of Republican think campus should be able to restrict harmful or offensive language aimed at certain students.); FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION, COLLEGE FREE SPEECH RANKINGS: WHAT’S THE CLIMATE FOR FREE SPEECH ON AMERICA’S COLLEGE CAMPUSES (2021), <https://www.thefire.org/research/publications/student-surveys/2021-college-free-speech-rankings/2021-college-free-speech-rankings-full-text/> [https://perma.cc/H3PQ-Z9EC]. **NOTE TO EDITORS: Rauch cited the HTML version of the 2019 FIRE survey. The PDF of the survey (cited here) was a report with a different title.**

⁴²⁷ RAUCH, CONSTITUTION OF KNOWLEDGE, *supra* note 53, at 222 (citing Emily Ekins, *Poll: 62 Percent of Americans Say They Have Political Views They’re Afraid to Share*, CATO INSTITUTE (July 22, 2020),

There have been information disruptions over history. Perhaps the biggest was Gutenberg's press in the 1440s.⁴²⁸ Soon after the invention, a publication in the late 1400s called *Malleus Maleficarum* ("Hammer of Witches") spread across Europe, leading to the killing of thousands of women.⁴²⁹ The printing press, the first social network, was also used in the 1690s, printing fake news on the so-called witches in Puritan, New England.⁴³⁰ Print also led to newspapers and journalism. In America's founding period, journalism was spectacularly partisan and unreliable.⁴³¹ If standards existed, they were low.⁴³²

Newspapers grew from small presses to influential urban newspapers in the nineteenth century, reaching millions of people daily.⁴³³ "Faking was a rampant journalistic practice during the final quarter of the nineteenth century."⁴³⁴ The turn of the century brought University journalistic curriculum and schools of journalism.⁴³⁵ In 1922, the American Society of Newspaper Editors was founded, and the first order of business was to create a code of ethics.⁴³⁶ The code made a distinction between opinion and news.⁴³⁷ The code said, "By every consideration of good faith a newspaper is constrained to be truthful. It is not to be excused for lack of thoroughness or accuracy within its control."⁴³⁸

In the past, creating codes, norms, and institutions successfully dealt with information disruptions. Codes turned journalism into a fact-based medium as opposed to a reality-based community. Professional journalists, following code, ran a correction for a wrong. Calls to verify before being put in the newspapers. The codes develop these norms and conventions.⁴³⁹

Today, primarily through social media, cancel culture is very effective and well organized. Disinformation and truthiness are making it very difficult to fight back.⁴⁴⁰ Until recently, the thought was that we have a marketplace of ideas and free speech so that things will take care of themselves. The idea is that truth will result out of all the divergent viewpoints.⁴⁴¹ However, if something goes well over a long period, Jonathan Rauch states that people start taking things for granted, and the marketplace of ideas becomes a metaphor for "woefully incomplete."⁴⁴²

<https://www.cato.org/survey-reports/poll-62-americans-say-they-have-political-views-theyre-afraid-share> [https://perma.cc/E55L-VNHZ]).

⁴²⁸ Aja Romano, *Conspiracy Theories, Explained*, VOX (Nov. 18, 2020),

<https://www.vox.com/21558524/conspiracy-theories-2020-qanon-covid-conspiracies-why> [https://perma.cc/BZE9-JTRQ].

⁴²⁹ RAUCH, CONSTITUTION OF KNOWLEDGE, *supra* note 53, at 120.

⁴³⁰ Romano, *supra* note 390.

⁴³¹ RAUCH, CONSTITUTION OF KNOWLEDGE, *supra* note 53, at 121.

⁴³² *Id.*

⁴³³ *Id.* at 122.

⁴³⁴ *Id.*

⁴³⁵ *Id.*

⁴³⁶ *Id.*

⁴³⁷ *Id.*

⁴³⁸ *Id.*

⁴³⁹ *Id.* at 122-123.

⁴⁴⁰ *Id.* at 260-261.

⁴⁴¹ *Id.* at 5

⁴⁴² *Id.*

Ideas in the marketplace do not talk directly to each other, and for the most part neither do individuals. Rather, our conversations are mediated through institutions and fact finding; and they depend on the expertise of professionals, like peer reviews and editors—and the entire system rests on a foundation of values: a shared understanding that there are right and wrong ways to make knowledge. Those values and rules and institutions do for knowledge what the U.S. Constitution does for politics: they create a governing structure, Forcing social contestation onto peaceful and productive pathways.⁴⁴³

Rauch states that the way to fight back against cancel culture is through a code or rule-based system.⁴⁴⁴ As with the Constitution, the constitution of knowledge drives and organizes social interaction.⁴⁴⁵ Each can lead competing factions to compromise or at least accommodate to achieve something.⁴⁴⁶

Information warfare is wickedly effective. Propagandists use techniques in manipulating social media for political advantage. While appearing unhinged and disorganized at times, information warfare uses an advanced understanding of human cognition and emotional susceptibilities. The propagandists are combative and expansive.⁴⁴⁷ Rauch discusses troll epistemology, with system overload from obnoxious, misguided, seditious, blasphemous, and bigoted statements.⁴⁴⁸ The best way to arrive at truth, according to Rauch, is through debate and rigorous checking of the hypothesis to find detail to back the presuppositions.⁴⁴⁹

By requiring everyone be checkable by anyone, the empirical rule keeps millions of people and organizations talking to each other and working on the same reality-based project (albeit from many different angles of view), and it presents social truth-seeking from degenerating into power struggles between warring tribe, the historical norm.⁴⁵⁰

Rauch provides a great example of the effects of applying liberal science — COVID – 19. He tells of one paper on the virus on January 21, 2020, to more than 100.000 papers a year later. The amount of research doubled each month.⁴⁵¹

XII. Conclusion

⁴⁴³ *Id.*

⁴⁴⁴ *Id.*

⁴⁴⁵ *Id.* at 79.

⁴⁴⁶ *Id.*

⁴⁴⁷ *Id.* at 18.

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.* at 90-91.

⁴⁵⁰ *Id.* at 175

⁴⁵¹ *Id.* at 70.

Cancel culture is devoid of reality-based norms or codes.⁴⁵² Free thought and speech do not exist. There is nothing corrective regarding cancel culture. It does not offer examples and analysis in a cogent effort to persuade readers of the worthiness of a book or author. Canceling is about harming and essentially killing the success of a book or author. A canceled author or journalist is fired or loses a book deal. People who support the targeted authors can find themselves targeted if they provide support, so they stay mum.

Cancelling instills the fear of being the next called out target. The effort behind shaming sometimes blames a particular group as the made-up instigators for the canceling. For example, Republicans blamed Democrats for their so-called canceling of six Dr. Seuss books when a corporate decision had nothing to do with canceling the books. Cancel culture does not suggest to others that they offer their opinions in civil discourse. It seeks to quiet and defeat an author or book, and any disagreement is a challenge and a serious threat to safety.

“Emotional safetyism” is becoming entrenched in our culture today.⁴⁵³ Free speech is viewed as a threat to emotional safety and wellbeing. It silences opposition because ideas will make others feel unsafe.⁴⁵⁴ People claim the “words that wound” can traumatize.⁴⁵⁵ Some contend “free speech has always had consequences, especially when that speech has the potential for harm.”⁴⁵⁶ At Harvard, students who demanded a law professor’s removal from his position as faculty dean of a residential house said that his service on the defense team of the disgraced movie executive Harvey Weinstein was ‘not only upsetting, but deeply trauma-inducing.’⁴⁵⁷

A professor of English at Iowa State University called out students in her class, threatening them with discipline if they submitted projects or papers opposing three things: abortion, BLM, or same-sex marriage.⁴⁵⁸ One of the dreadful things in the syllabus read "GIANT WARNING" for students: "Any instances of othering that you participate in intentionally (racism, sexism, ableism, homophobia, sorophobia, transphobia, classism, mocking of mental health issues, body shaming, etc) in class are grounds for dismissal from the classroom."⁴⁵⁹ The professor did clean up her syllabus, and the University has since added guidance to faculty members “on First Amendment protections for student expression in the classroom.”⁴⁶⁰

⁴⁵² *Id.* at 10.

⁴⁵³ *Id.* at 203.

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.*

⁴⁵⁶ Ella Alexander, *Cancel Culture: A Force For Good Or A Threat To Free Speech?*, HARPER’S BAZAAR (Jul. 14, 2020), <https://www.harpersbazaar.com/uk/culture/a33296561/cancel-culture-a-force-for-good-or-a-threat-to-free-speech/> [https://perma.cc/7PXM-UCN8].

⁴⁵⁷ RAUCH, CONSTITUTION OF KNOWLEDGE, *supra* note 53 at 202-203.

⁴⁵⁸ Alaa Elassar, *University Forces Professor To Change Syllabus That Threatened To Dismiss Students Who Argue Against BLM, Abortion, Or Same-Sex Marriage*, CNN (Aug. 23, 2020), <https://www.cnn.com/2020/08/23/us/iowa-state-professor-syllabus-blm-trnd/index.html> [https://perma.cc/2PFT-ZZDX].

⁴⁵⁹ *Id.*

⁴⁶⁰ *Id.*

Cancel culture is all too real today.⁴⁶¹

⁴⁶¹ The elements of cancel culture mentioned in the conclusion come from Jonathan Rauch, *The Cancel Culture Checklist* (Aug. 6, 2020), https://www.jonathanrauch.com/jrauch_articles/2020/08/the-cancel-culture-checklist.html [https://perma.cc/UZ39-GD56].