



House Committee on the Judiciary  
Subcommittee on the Constitution  
Hearing on “Free Speech: The Biden Administration’s Chilling of Parental Rights”  
\*

Testimony of Nadine Farid Johnson  
Managing Director, Washington and Free Expression Programs, PEN America  
March 23, 2023

Good morning. Thank you Chairman Johnson, Ranking Member Scanlon, and members of the Subcommittee and Committee for convening today’s hearing. My name is Nadine Farid Johnson, and I am the Managing Director, Washington and Free Expression Programs at PEN America. It is an honor and a privilege to present testimony today.

Free speech is the bedrock principle of our system of government, the lifeblood of our democracy, and an enabler and guarantor of other freedoms we cherish and enjoy. Before turning to the bulk of my remarks, I will offer a bit about my own background and an overview of PEN America, our mission and work.

First, a brief introduction. I am a daughter of immigrants, a mother of two young, school-aged children, an attorney by training, and a proud American who had the privilege of serving her country as a foreign service officer under both the Obama and Trump administrations. Through stints in the legal, nonprofit, academic, and public sectors, I have consistently and proudly worked alongside individuals of different political stripes whose interests lay not in partisanship but in ensuring the promises of the Constitution would be realized by all. At PEN America, I have the privilege of continuing that effort, working to protect the foundational right to freedom of expression for everyone.

**ABOUT PEN AMERICA**

PEN America stands at the intersection of literature and human rights to protect free expression in the United States and around the globe. We are proud to be entering our 101st year. Our staying power as an organization is rooted in our nationwide membership and our solidarity with PEN writers’ organizations worldwide, but above all in our mission, which centers on the freedom to write. The [PEN Charter](#), adopted in 1948, calls us to uphold “the principle of unhampered transmission of thought within each nation and between all nations.” Alongside steadfast devotion to free expression, the Charter commits us to do our “utmost to dispel all hatreds and to champion the ideal of one humanity living in peace and equality in one world.” Like the framers of the United States Constitution, the authors of the PEN Charter were prescient about the threats to freedom when speech and expression are curtailed by government action.



We are a nonprofit, nonpartisan organization with an unwavering commitment to free speech, a principle that we view as an underpinning of democracy and a cause above politics. Over its century of history, PEN America has united to protect imperiled Jewish writers in Germany, championed authors imprisoned in Stalin’s gulags, and rallied behind Salman Rushdie when he was targeted by a fatwa by the Ayatollah of Iran and again after the unthinkable, brutal attack on U.S. soil that nearly took his life just last year. We championed Liu Xiaobo and launched the campaign that led to his receiving the 2010 Nobel Peace Prize. In 2015 we gave an award to the surviving staff of the satirical French magazine Charlie Hebdo and, as a result, faced a boycott from a group of our own members who believed the publication was racist and therefore undeserving of such recognition. We have defended the right of figures on both the right and the left, such as Dorian Abbot, Angela Davis, Ilya Shapiro, and Milo Yiannopoulos, to speak and be heard on college campuses. We are accustomed to controversy, and to taking on powerful foes. We remain steadfast in our commitment to the principles of free expression, and to ensuring their defense across ideological divides.

The wide gamut of free expression issues we tackle demonstrates the depth of our commitment to these principles. We have addressed situations as varied as the impact of China’s restrictions on free speech in the mainland and Hong Kong and its rising global influence, including in Hollywood; threats to dissent in Turkey, Russia, and Myanmar; the crisis in local journalism across the United States; a culture of hostility to free expression at colleges and universities; online harassment; disinformation; attacks on press freedom; and digital transnational repression of writers, artists, journalists, and dissidents.

## **THE CURRENT CRISIS**

Today, we are in the midst of the broadest attack on First Amendment rights in schools and universities this country has seen in generations. From book bans to curriculum restrictions, state and local officials across the country are engaging in government-mandated censorship. They are undermining students’ right to receive information, and impairing their freedom to learn. They are putting obstacle after obstacle in front of teachers and librarians to make it difficult for them to carry out their duties as educators.

Time and again in our nation’s history, we have seen waves of efforts to curtail access to books – from the 1637 banning of Thomas Morton’s *New English Canaan*, which was deemed a “harsh and heretical critique” of the Puritans and saw Morton shunned and exiled; to the Comstock laws restricting the possession or dissemination of material deemed “obscene, lewd or lascivious,” “immoral,” or “indecent”; to the McCarthy and Jim Crow eras, defined by efforts to purge “controversial” books on Communism or race; to the widespread efforts to ban books in the late 1970s and early 1980s. In that most recent period, less than fifty years ago, TIME Magazine recorded censorious efforts in public schools and libraries doubling in five years, affecting “every region in the country, and nearly every state,” and resulting in at least two



notorious book burnings. The storm of book bans swept up such titles as Fahrenheit 451, The Wizard of Oz, and Huckleberry Finn. Even The American Heritage Dictionary was banned, “for the words it contain[ed].”

At every turn these efforts to censor, hide, and deny access to books, ideas, or information have ultimately failed. In every episode, the constitutional rights protected by the First Amendment have been preserved, and the jurisprudence supporting these rights has been strengthened.

About seven years ago, we at PEN America began to be alarmed by what we saw as a rising pattern of censoriousness on college campuses. Specifically, we saw a rise in incidents at institutions such as Yale, Middlebury, and the University of Missouri that alerted us to a trend wherein students seemed to diminish the importance of free speech norms and were increasingly willing to shut down speech when disagreement, discomfort, or offense was likely to occur. We became concerned that students--and some university leaders--were coming to believe that robust protections for free speech and academic freedom were not compatible with the drive to make campuses more diverse and inclusive.

We began a series of reports – [And Campus for All: Diversity, Inclusion, and Freedom of Speech at U.S. Universities](#) and [Chasm in the Classroom: Campus Free Speech in a Divided America](#) – spelling out in detail our belief in firm, uncompromising protections for free speech and academic freedom. We convened an ideological cross-section of students, faculty and administrators at several campuses to seek common ground on the imperative of reconciling the values of equal education and freedom of speech. We published the [PEN America Principles on Campus Free Speech](#), giving practical guidance on how to deal with threats to free speech, including calls for so-called safe spaces, trigger warnings, and demands for speaker disinvitations.

When we began our campus free speech work, our concerns in that area emanated in part from a rising awareness that many on the left had become disaffected with free speech as a value, and that many students had never been educated on the essential role of free speech protections in enabling social progress. As a result, students and some faculty did not view free speech as related to the battles they were fighting -- whether for racial justice, gender justice, immigrants’ rights, or other issues. They did not prioritize the need to stand up for free speech protections as part and parcel of the quest for social change. We believe that young people must understand the value of free speech, believe in it, and ensure its place firmly in the foundation of the future that they will create.

But attacks on free speech are not limited to college campuses, nor do they come solely from one side of the political spectrum. In the past two years, PEN America has documented an explosion of restrictions affecting free speech in education. These are in several veins: proposed and enacted legislation limiting what can be taught in high school and college



curricula; bans on books in school libraries and classrooms; the introduction of newly punitive measures, including fines and even criminal provisions, aimed at educators; the cancellation of school plays and field trips; the rejection of textbooks on specious grounds. And, reminiscent of 40 years ago, even efforts to donate dictionaries to some schools have been prevented.

The authority to set curricula and determine school operations vests with the government. But we must distinguish between well-developed, widely accepted methods of interplay between political bodies, educational systems, parents, and citizens and the current spate of deliberate methods to exert ideological control over what can be read, learned, or thought about in schools. Teachers are already expected to teach to state standards. There are already channels for dealing with malpractice or misconduct. Parents have opportunities to address concerns with teachers and school leaders. Managing these issues with the imposition of bans, content restrictions, and vague laws is both unwise and undemocratic.

And these proposals are becoming more extreme.

Since January of 2021, PEN America has tracked the introduction of 303 bills, which we categorize as “[educational gag orders](#),” in 44 states. Of these, 20 have become law in 15 states, and four more states have enacted such restrictions without legislation. Laws and policies in seven states currently apply to colleges, restricting the education of adults. We estimate that about 118 million Americans, over one-third of the US population, live in the 18 states where these government restrictions on teaching are now in force.

As our August 2022 report [America’s Censored Classrooms](#) documented, some bills have been explicit in their targets—prohibiting the teaching of specific curricula or squarely banning certain concepts from the classroom. Others do not explicitly target the classroom, but impose broad prohibitions that implicate all public institutions and employees, including public school teachers and college professors. Still others prohibit the introduction of specific concepts within trainings, workshops, seminars, or orientations ranging beyond curricula and classroom discussions. In Tennessee, for example, teachers are currently banned from discussing 14 distinct ideas; the prohibitions include mentioning anything that “promotes resentment” of any current or historical “class of people.” As we noted in the report, “This provision could be construed to mean that a historian of the US civil rights era or of the Holocaust cannot include in a course historical sources that might inspire ‘resentment’ of the Ku Klux Klan or the Nazis, each of whom might be considered a ‘class of people,’ a term that is not defined.”

A new wave of higher education-focused bills this year would go further, effectively eliminating public universities as independent sites of intellectual freedom. A bill in Florida would empower politicians and political appointees to ban entire majors in gender and ethnic studies, rewrite university mission statements, and ban core curricula based on “experimental” or “theoretical” ideas. That could, in theory, include all science classes. Another bill in Texas would create a



statewide McCarthy-style blacklist for faculty and staff deemed to have violated vague prohibitions on ideas promoting diversity, equity, and inclusion. Faculty and students in these states would exist in a state of perpetual fear, knowing that politicians could act against them with impunity if they disagreed with their views or ideas. And at New College of Florida and North Idaho College, politically-motivated trustees have set out to dismantle respected educational institutions, firing presidents and provosts at will and seeking to remake environments of intellectual openness into environments of intellectual conformity.

Legislators who support these bills appear determined to use state power to deny students the freedom to read masterworks by some of our nation's greatest writers; to learn our history in its full complexity; to see themselves, their families, and their communities represented in their curricula and libraries; and to learn the basic skills of understanding differences and exercising empathy. It must also be recognized that the movement behind these bills has brought a single-minded focus to bear on suppressing content and narratives by and about LGBTQ+ individuals and people of color. As a result, these bills will have tangible consequences for both American education and democracy, undermining the hallmarks of liberal education that set the U.S. system apart from those of authoritarian countries.

In a very short time, we have already seen the chilling effects of this kind of legislation, which has been used to justify suspending sociology courses on race and ethnicity in Oklahoma and Florida, to provide professors at Iowa State University written guidance for how to avoid "drawing scrutiny" for their teaching under their state's law, and led a trainer to propose to teachers in Texas that they needed to balance having books on the Holocaust with those with "opposing" views. An Iowa high schooler described how a lecture on the Three-Fifths Compromise in the Constitution left most of the class confused because the teacher was unable to explain its purpose while complying with the state's educational gag order. "Some faculty are revising their courses to sanitize them," reported one Iowa State University professor. "Fear of what the punishment may be is also motivating people to restrict their speech." In North Dakota, K-12 teachers are now prohibited from even discussing the ways in which widespread racism has inflected American society and the legal system.

In a compounding trend, over the last 18 months we have seen an unprecedented surge of books being banned by school administrators and board members. As PEN America [documented](#) in our September 2022 report *Banned in the USA*, there were more than 2,500 book bans in the 2021-22 school year, in 138 school districts in 32 states.

This school year, the trend has continued apace, with longer lists of books being challenged and removed from student access. National and local groups purporting to represent the wishes of all parents are waging a misleading campaign to brand books with any sexual content as "pornographic" or "indecent." They overwhelmingly target books with LGBTQ+ characters or themes, forcing these books from library shelves, in many cases without anyone having to read



or evaluate them. This is all now being aided by new state laws that pressure school districts to immediately remove any books about which anyone complains, without regard for pedagogical value, the reason or manner in which a book was selected for inclusion on a school shelf, or the context of the work, let alone adherence to an established review process for such challenges.

Just this month, 92 books were banned in Martin County, Florida, and 99% of the challenges resulting in those bans were filed by a single parent. One book was banned ostensibly because it mentions the Black Lives Matter movement; another, because the challenger said the author was controversial. The lone challenger also said John Green's *Looking for Alaska* should be banned because it is "depressing," while simultaneously indicating she had not read it. The book was banned.

In the United States, public and school libraries have available books such as *Mein Kampf* and *The Communist Manifesto* so that patrons can study them as historical texts. Books with dated, racist language, themes, and stereotypes such as *Uncle Tom's Cabin* or *Gone With the Wind* are also on library shelves, as they should be. We must not confuse access to books and ideas with endorsement of or indoctrination in their content. And we must not view the existence of a mandated official curriculum as a limitation on the liberty to engage in independent reading. The right approach to such materials is to contextualize them and to read and teach them with sensitivity and a critical eye, not to deny access. And the right answer when it comes to different ideas about the availability of books cannot be to cull the ones to which anyone objects. That would too easily leave nothing on the shelf.

What began with a concern over how issues of racial justice and American history were being taught in schools has snowballed into a full scale campaign to ban, excise, and punish the discussion of a wide swath of ideas in education and to put politicians and government bureaucrats in control of all aspects of teachers' and librarians' work. Of course there must be room for debate and the presentation of varied perspectives on important subjects in American history. No theory should be presented as dogma, or put above question. Students should be introduced to varied interpretive lenses through which writers and thinkers understand our past and present, and taught to render their own judgments about what is most credible and persuasive. It is also true that, at times, classroom content or training materials in use in American schools may be tendentious or heavy-handed. That happens on occasion in all large systems. The right approach to handling it is for students and parents to raise their concerns with teachers and administrators and work together to address them. The answer is not legislated bans.

We are witnessing a concerted campaign to try to halt and roll back the implications of our evolving, pluralistic society. These measures violate bedrock, constitutional principles that undergird our public educational system: a commitment to the free exchange of ideas, open access to knowledge, and robust academic inquiry.



## RISKS AND CONSEQUENCES

While there are enormous and consequential societal and educational risks engendered by this effort, as a free speech advocate I wish to focus primarily on the constitutional ramifications. But first, I want to emphasize a point that is critical not only in terms of how PEN America approaches these issues, but to me as a parent as well.

Parents have a right and a responsibility to be aware of, involved in, and express concerns about their children's education. That's why we have Parent Teacher Associations. It is why we sign up for parent-teacher conferences and attend school board meetings. It is why we work with parent liaisons, have the option of family engagement plans, and see school districts across the country publish their curricula. And for many of us, myself included, it is why we check our children's homework, keep up on their assignments, read to them or encourage them to read each night, and advocate for them when the need arises.

We at PEN America recognize the essential role of parents in guiding and supporting their children's education. We also understand that some calls for censorship come from parents seeking what they genuinely believe is best for their children, in a time of rapidly changing demographics, expectations, and norms in our evolving and pluralistic society.

Yet much of what we are seeing now is not a natural extension of parents being involved in their children's classrooms. It is instead an effort to impose the wishes of a few onto entire communities, by enlisting the government to act as a proxy and engage in censorship on their behalf.

Supreme Court jurisprudence has repeatedly made clear that the First Amendment applies in public schools, where young people are taught to understand and appreciate democratic citizenship. Though there is discretion granted to state and local school boards in matters of education, these responsibilities must comport with the First Amendment and the Constitution. As Justice William J. Brennan wrote in *Keyishian v. Board of Regents*, the state cannot "cast a pall of orthodoxy over the classroom."

First Amendment protections include the right to receive ideas and information. This extends to schools as well: The Supreme Court has made clear that students have the right, under the First Amendment, to access ideas and information in public school libraries, and that school boards may not "contract the spectrum of available knowledge," as Justice Brennan noted in the 1982 plurality opinion in *Board of Education, Island Trees Union Free School District v. Pico*. Thus, there are First Amendment limits on the grounds on which schools may legitimately remove books from their libraries. Under the *Pico* framework, school officials may not remove books from school libraries for political or ideological reasons. And school boards do not have



discretion to remove and ban books based on an effort to restrict their content. If there are challenges to books, school districts should follow regular, established processes for the review of such materials rather than summarily whisking them from shelves. To do otherwise would be to violate students' rights to access ideas and information, and as Brennan said, "Our constitution does not permit the official suppression of ideas."

Courts insist on tightly delimited restrictions on expression out of a recognition that speech prohibitions wield chilling effects, often silencing not only what is expressly prohibited, but a wider band of speech that might be considered close to the line. A prime concern of PEN America's about the measures that we have termed "educational gag orders" is their vagueness. As Justice Stevens wrote for a unanimous Court in *Reno v. ACLU*, a vague law "raises special First Amendment concerns because of its obvious chilling effect on free speech." Though courts have specified that even permissible restrictions on speech must be narrowly tailored to meet a legitimate government end, the current slate of bills targeting speech in educational settings mostly lacks definitions or guidance. Many bills of this ilk include bans on vague or contradictory "divisive concepts," or bar "race and sex stereotyping" and "race and sex scapegoating," with little explanation of what is meant by these sometimes novel terms. This vagueness casts a wide shadow, leaving educators uncertain about how lessons may be interpreted by students, parents, or government officials.

The imposition of vaguely worded prohibitions governing classroom speech risks rendering entire subject areas and topics off limits as teachers fear anything they say on contested issues—for example, the fugitive slave clause in the Constitution, the *Plessy v. Ferguson* decision legalizing racial segregation, or the Civil War—may run afoul of these restrictions. This effect on pedagogy and intellectual freedom places limits on the professional autonomy of school librarians and teachers.

As a big-tent, free speech advocacy organization, we are mindful that not all threats to open discourse are created equal. The framers of the Constitution most feared viewpoint-specific, politically or ideologically motivated prohibitions on speech enacted by the government with the force of law. That is because restrictions on speech that are backed by the authority of government are more absolute and silencing than other forms of censoriousness. We can certainly disagree about training materials, classroom discussion fodder, and more—and we can and should discuss these issues. But addressing these concerns or disagreements with official, government-sanctioned bans not only removes the opportunity for discourse that is a hallmark of a free society; it also constitutes a far more potent and permanent incursion on speech, and that sets a worrying precedent of government control over discourse.

The broader societal risks the current climate is engendering must also be noted. Controlling and limiting materials undermines the role of teachers, librarians, professors. These bills and the rhetoric behind them are politicizing our classrooms and sowing distrust in educational





professionals on whom we depend to educate rising generations. Book bans pit teachers and parents against each other, and parents against other parents.

The ramifications extend to students' matriculation as well. The College Board has warned that students in schools that ban materials covered in Advanced Placement curricula could lose certification for their AP courses—a problem dramatically worsened by Florida's decision to ban the new AP African American Studies course statewide and to threaten bans for other AP courses. Concurrent enrollment courses in history and literature that offer early college credit for high school students are likewise endangered. In K-12 schools, these restrictions are also compounding a [nationwide teacher shortage](#) as teachers withdraw from the profession, in some cases motivated by the hostility and pressures generated by these divisive measures.

The repercussions extend to the well-being of the students affected by these bans and bills. Children deserve to see themselves in books. They deserve access to a diversity of stories and perspectives that help them understand and navigate the world around them. Public schools that ban books reflecting diverse identities risk creating an environment in which students feel excluded, with potentially profound effects on how students learn and become informed citizens. As our Supreme Court has noted, allowing students access to ideas prepares them for "active and effective participation in the pluralistic, often contentious society in which they will soon be adult members"—something we should all wish for and strive toward, irrespective of political views.

## **LOOKING AHEAD**

As I noted at the outset of these remarks, freedom of speech is a bedrock of our democratic society, foundational to other rights and freedoms. It is the foundation of a thriving culture of literature, film, art, theater, television, and myriad other creative forms. But it is under grave threat due to an unprecedented about-face in our legislatures, communities and school boards. We are turning our backs on free speech for fear of certain ideas and narratives, and seeking to sacrifice the Constitution and betray the First Amendment in our haste to suppress them.

Given our work all over the world to fight threats to free speech, we at PEN America are particularly attuned to the danger in the trends of the past two years. Educational censorship laws and book bans, particularly those aimed at silencing certain peoples, religions, or viewpoints, are a longstanding tactic of oppressive regimes. In apartheid South Africa, the Publications Act of 1974 permitted the banning of any "undesirable" material. The apartheid state banned 12,000 books, at one point commandeering a steel factory furnace in order to burn reviled texts. In the 1930s, the Nazi Party railed against "un-German books," staging book burnings of Jewish, Marxist, pacifist, and sexually explicit literature.



More recently, in 2018, Iran banned the study of English in primary school to ward off “cultural invasion.” As of 2019, the Turkish government had removed and destroyed more than 300,000 books from Turkish schools and libraries since the attempted coup of 2016. Legislation adopted in Hungary in 2021 banned all curriculum referencing homosexuality from schools in the name of “protection of children,” an effort that followed the Hungarian government’s removal of gender studies master’s and PhD programs from the list of accredited subjects in the country.

In Russia, laws ban LGBTQ+ content (via a law titled “For the Purpose of Protecting Children from Information Advocating for a Denial of Traditional Family Values”), offenses to traditional values, and criticisms of the state. A 2014 law banning Nazi propaganda led booksellers in Russia, fearful of running afoul of the ban, to remove Art Spiegelman’s Pulitzer Prize-winning graphic novel *Maus* from their stores because of the swastika on the book’s cover, despite its potent anti-fascist message. At the time, PEN America issued a forceful statement about the perverse result of Moscow’s censorship. Moscow’s censorship efforts now include a 2022 law banning “L.G.B.T. propaganda” not just for children but in society as a whole, a sweeping provision that essentially criminalizes the depiction of homosexuality in public, online, in advertising, and in books and film.

The United States has long been a global standard-bearer for free speech. As we whittle away at the rights of our own people, so too do we imperil those freedoms for others.

The tactics we are seeing now call to mind disturbing eras in American history, when neighbors were suspicious of one another, rumors threatened to destroy careers and reputations, and fear ruled over our communities. When we have turned our backs on the ideals that underpin our society, we have failed ourselves.

Right now, measures aimed at silencing the exchange of ideas and open inquiry in schools are creating a climate of intimidation and fear that detracts from teaching and learning. We risk giving students only a sanitized, narrow education that will constrain their ability to understand and engage with the multiplicity of ideas, perspectives, people, and stories that make up our world. We risk hobbling our ability to contend with social change; to consider, discuss, and address contentious issues; and to move forward together as a nation. An erosion of trust in our educational institutions, our education professionals, and one another, risks undermining fundamental elements of our democracy.

I want to end with the words of a speaker at a meeting of the Martin County, Florida, school board earlier this week. A 100-year-old woman stepped up to speak, indicating she attended to share her shock and dismay at the recent book bans in her county. She noted that her husband had died young, fighting in the Second World War, to defend our democracy, our Constitution, and our freedoms. And she said: “Banned books and burning books are the same. Both are



done for the same reason: Fear of knowledge. Fear is not freedom; fear is not liberty. Fear is control.”

Let us choose courage instead.

Thank you.