

# Cancel Culture is more toxic than Censorship

Joseph Custer\*

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\* Associate Professor of Law, Director, The Ben C. Green Law Library, Case Western Reserve University School of Law. The author wishes to thank both Andrew Pollis, Professor of Law, Case Western Reserve University School of Law and Heidi L. Frostestad, Associate Dean of Academic Affairs, Director of the Law Library, and Associate Professor of Law, Northern Illinois University College of Law for their helpful insights and suggestions for the paper. Thanks go to Sarajeon Petite, Reference Law Librarian, Case Western Reserve University Ben C. Green Law Library, for her tremendous assistance with footnotes. In addition, the author wants to thank close friend Donna Mintz for her careful reading and excellent suggestions.

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## I. Introduction

The thesis for this paper is in two parts. The first is how and to what extent cancel culture differs from censorship. The second part is how and to what extent cancel culture is more damaging than censorship. Some may view Cancel culture and censorship as forms of accountability, while others view them as destructive.<sup>1</sup> “Both cancel culture and censorship can spark debates about the limit of free speech, the right to express opinions, and the potential impact on individual liberties.”<sup>2</sup> The similarities lead many to conclude that they are the same and the ramifications are the same.<sup>3</sup> But

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<sup>1</sup> Emily A. Vogels et al., *Americans and ‘Cancel Culture’: Where Some See Calls for Accountability, Others See Censorship, Punishment*, PEW RSCH. CTR. (May 19, 2021), <https://www.pewresearch.org/internet/2021/05/19/americans-and-cancel-culture-where-some-see-calls-for-accountability-others-see-censorship-punishment/> [https://perma.cc/8G6P-YYBR].

<sup>2</sup> ChatGPT4 answer to the query: What is the difference between cancel culture and censorship? July 17, 2023.

<sup>3</sup> Lata Nott, *Perspective: Unpacking Cancel Culture: Is it censorship, Civil Right, or Something Else?* FREEDOM FORUM at <https://www.freedomforum.org/perspective-unpacking-cancel-culture-is-it-censorship-civil-right-or-something-else/> [https://perma.cc/5SH4-HFRM] (last visited July 20, 2023 4:16 PM). See also Emily A. Vogels, et al., *Americans and ‘Cancel Culture’: Where Some See Calls for Accountability, Others See Censorship, Punishment*, PEW RSCH. CTR. (May 19, 2021), <https://www.pewresearch.org/internet/2021/05/19/americans-and-cancel-culture-where-some-see-calls-for-accountability-others-see-censorship-punishment/> [https://perma.cc/8G6P-YYBR].

cancel culture is not the same as censorship.<sup>4</sup> Cancel culture is hostile speech but free speech.<sup>5</sup> Censorship can violate the First Amendment.<sup>6</sup> Cancel culture does not.<sup>7</sup> The First Amendment protects against the government compromising speech by censoring but canceling does not.<sup>8</sup> There are populist claims that Cancel culture is the same as censorship.<sup>9</sup> The possible impact of cancel culture can dissuade someone from coming forth with ideas or other forms of expression for fear of being shamed.<sup>10</sup> Canceling is not censorship, however; it is the fear of social ostracism.<sup>11</sup>

On the other hand, some authors view censorship as a "badge of honor" that leads to increased sales.<sup>12</sup> When people refrain from speech in deference to social pressure, they engage in self-imposed cancel culture.<sup>13</sup> When law is not available to stop others from expressing viewpoints, people have resorted to "blaming, shaming, and shunning" since the American Revolution.<sup>14</sup> The threat of cancel culture can intimidate people from coming forth with ideas or forms of expression because of potential shame.<sup>15</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> Vogels et al., *supra* note 1.

<sup>6</sup> *First Amendment and Censorship*, AM. LIBR. ASS'N <https://www.ala.org/advocacy/intfreedom/censorship> [<https://perma.cc/DQZ4-5RS7>] (last visited July 20, 2023 4:21 PM).

<sup>7</sup> Nott, *supra* note 3.

<sup>8</sup> *Id.*

<sup>9</sup> Franciska Coleman, *The Anatomy of Cancel Culture*, 2 J. FREE SPEECH L. 205 (2022), <https://heinonline.org/HOL/P?h=hein.journals/jfsp12&i=205> (subscription required) (citing Vogels et. al, *supra* note 1); The Learning Network, *What Students Are Saying About Cancel Culture, Friendly Celebrity Battles and Finding Escape*, N.Y. TIMES (Nov. 19, 2020), <https://www.nytimes.com/2020/11/19/learning/what-students-are-saying-about-cancel-culture-friendly-celebrity-battles-and-finding-escape.html> [<https://perma.cc/C9CJ-BR85>]; Suzanne Nossel, 'Cancel Culture' Censorship Can Be Most Dangerous for Those Who Promote Social Justice, NBC NEWS (Aug. 4, 2020), <https://www.nbcnews.com/think/opinion/cancel-culture-censorship-can-be-most-dangerous-those-who-promote-nena1235671> [<https://perma.cc/5K3N-YLU5>]; John P. Wihbey & Brooke Foucault Welles, *High School Student Views on the First Amendment: Trends in the 21st Century* (Nov. 20, 2019), <https://knightfoundation.org/wp-content/uploads/2019/11/KF-Student-Views-Report-FINAL.pdf> [<https://perma.cc/6EYP-AUW6>]; Knight Foundation, *College Student Views on Free Expression and Campus Speech 2022* (Jan. 2022), [https://knightfoundation.org/wp-content/uploads/2022/01/KFX\\_College\\_2022.pdf](https://knightfoundation.org/wp-content/uploads/2022/01/KFX_College_2022.pdf) [<https://perma.cc/DTA8-SL7Q>]; Ronald K. L. Collins, *Recent ASU Law School Conference on 'Non-Governmental Restrictions on Free Speech' Draws Noted Scholars - FAN 334*, FIRE (Apr. 6, 2022), <https://www.thefire.org/news/blogs/ronald-kl-collins-first-amendment-news/recent-asu-law-school-conference-non-governmental> [<https://perma.cc/VSN8-M86E>].

<sup>10</sup> Alexandra D'Amour, *Cancel Culture: The Good, the Bad, & Its Impact on Social Change*, On Our Moon at <https://onourmoon.com/cancel-culture-the-good-the-bad-its-impact-on-social-change/> [<https://perma.cc/37RQ-KQS5>] (last visited July 27, 2023 4:56 PM).

<sup>11</sup> Jeff Nillson, *How "Cancel Culture" Started the American Revolution*, SATURDAY EVENING POST (Feb. 5, 2021), <https://www.saturdayeveningpost.com/2021/02/how-cancel-culture-started-the-american-revolution/> [<https://perma.cc/G7EN-3SH9>].

<sup>12</sup> Kara Yorio, *Authors Share the Emotions, Impact When Their Books Are Banned*, SCH. LIB. J. (Nov. 16, 2021), <https://www.slj.com/story/authors-share-the-emotions-impact-when-their-books-are-banned-jerry-craft-grace-lin-jarrett-krosoczka> [<https://perma.cc/XN3T-YC3W>].

<sup>13</sup> J.D. Tuccille, *For Many American, Cancel Culture is Self-Inflicted*, REASON (Aug. 24, 2022), <https://reason.com/2022/08/24/for-many-americans-cancel-culture-is-self-inflicted/> [<https://perma.cc/K8RG-EMA6>].

<sup>14</sup> Nillson, *supra* note 11.

<sup>15</sup> Nott, *supra* note 3.

A search in both federal and state cases on Westlaw for “cancel culture” /s “First Amendment” produced one case.<sup>16</sup> A search of both federal and state cases on Westlaw for censorship /s “First Amendment” produced 2,304 cases.<sup>17</sup> Regarding the one case that had “cancel culture” within a sentence of “First Amendment,” the judge’s opinion addressing cancel culture and the First amendment was dicta.<sup>18</sup> Even the dicta do not state that cancel culture is to be decided on First Amendment grounds, just that it “undermines and stifles First Amendment privileges.”<sup>19</sup> These Westlaw searches are simple, but illustrate the fact that censorship has First Amendment protections while cancel culture does not. This makes cancelling more dangerous.

Jonathan Rauch<sup>20</sup> paraphrases John Stuart Mill, a leading thinker in the history of Liberalism, 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.”<sup>21</sup> Cancel culture can destroy a person’s reputation and career.<sup>22</sup> Cancel culture, according to the *Merriam-Webster Dictionary* is the practice or tendency of engaging in mass canceling as a way of expressing disapproval and exerting social pressure.<sup>23</sup>

Conversely, Jonathan Rauch states that censorship does not make thoughts or harmful ideas go away. Censorship magnifies what is banned.<sup>24</sup> Rauch says, “[o]ld-fashioned censorship is expensive, inefficient, and leaky, especially in an open society like modern America.”<sup>25</sup> Censorship “concentrates upon a method a government uses to control information and defers analysis of the legitimacy of such measures to a separate step.”<sup>26</sup> In *Free Speech on Campus*, Erwin Chemerinsky and Howard Gilliam state, “[c]ensorship has always been on the side of authoritarian ship, conformity, ignorance, and the status quo.”<sup>27</sup>

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<sup>16</sup> Searches for “First Amendment” combined with “cancel culture” or “censorship”, WESTLAW PRECISION, <http://next.westlaw.com>. To make certain there were no other pertinent cases, “cancel culture” and “First Amendment” were searched producing 20 cases, but none were pertinent other than the previous case found in the /s (“within sentence”) search.

<sup>17</sup> A perusal of the over two thousand cases produced in the search found many of the cases to be pertinent.

<sup>18</sup> *Wisconsin Fam. Action v. Fed. Election Comm'n*, No. 21-C-1373, 2022 WL 844436 (E.D. Wis. Mar. 22, 2022).

<sup>19</sup> *Id.*

<sup>20</sup> Rauch is an American author, journalist, and activist and senior fellow at the Brookings Institute. JONATHAN RAUCH, <https://www.jonathanrauch.com/about.html> [https://perma.cc/A2LK-S49Z] (last visited Aug. 17, 2023 11:50 AM).

<sup>21</sup> *Id.*

<sup>22</sup> Vogels et al., *supra* note 1.

<sup>23</sup> *Cancel culture*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/cancel%20culture> [https://perma.cc/FH97-R4B8] (last updated Aug. 6, 2023).

<sup>24</sup> JONATHAN RAUCH, *THE CONSTITUTION OF KNOWLEDGE: A DEFENSE OF TRUTH* 252 (2021) (citing ERWIN CHEMERINSKY & HOWARD GILLIAM, *FREE SPEECH ON CAMPUS*, 204-205 (2017)), <https://www.jstor.org/stable/10.7864/j.ctv13qfw2t> (subscription required) (hereinafter “Rauch, Constitution of Knowledge”).

<sup>25</sup> *Id.* at 167-168.

<sup>26</sup> Derek E. Bambauer, *Orwell’s Armchair*, 79 CHI. L. REV. 863, 873 (2012), <https://chicagounbound.uchicago.edu/uclrev/vol79/iss3/1>.

<sup>27</sup> RAUCH, *CONSTITUTION OF KNOWLEDGE*, *supra* note 24, at 7.

This paper explores the differences between cancel culture and censorship and why cancel culture is more dangerous and punishing compared to censorship. The paper examines the argument made by some that cancel culture can benefit society.<sup>28</sup> The paper then looks at the history of cancel culture explaining that it has been around for decades, not a recent manifestation of social media.<sup>29</sup> The paper uses the example of Dr. Seuss Enterprise choosing to cease the publication of six of its children books and how Giesel, a.k.a. Dr. Seuss, was canceled and how Republicans fabricated the cease of publication, blaming the Democrats for canceling Dr. Seuss.<sup>30</sup> The paper examines the effects of cancel culture on authors and their books.<sup>31</sup> Finally, the paper will demonstrate the lack of effective legal ways to deal with the social firestorm of cancel culture, while showing how courts have used the First Amendment to defeat examples of censorship over time.<sup>32</sup> This paper follows several journal articles examining cancel culture.<sup>33</sup>

## II. Does Cancel Culture Benefit Society?

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<sup>28</sup> Section II, *infra*.

<sup>29</sup> Section III, *infra*.; Richard Morris, *Cancel Culture and Call Out Culture in Salem and Essex County, Massachusetts on the Eve of the American Revolution*, EARLY AM. STUD. (May 13, 2022), <https://web.sas.upenn.edu/earlyamericanstudies/2022/05/13/cancel-culture-and-call-out-culture-in-salem-and-essex-county-massachusetts-on-the-eve-of-the-american-revolution-richard-morris/> [<https://perma.cc/2FNQ-2DY2>].

<sup>30</sup> Section IV, *infra*.

<sup>31</sup> Section V, *infra*.

<sup>32</sup> Section VI, *infra*.

<sup>33</sup> Thomas Kelly, *Cancel Culture on Campus: A Critical Analysis*, 2 J. FREE SPEECH L. 359 (2022), <https://www.journaloffreespeechlaw.org/kelly.pdf> [<https://perma.cc/ZK2D-BUGV>]; Bambauer, *supra* note 24; Todd A. Berger, *Male Legal Educators Cannot Teach Women How to Practice “Gender Judo”: The Need to Critically Re-Assess Current Pedagogical Approaches for Teaching Trial Advocacy*, 45 J LEGAL PROF. 1 (2020); Nanci K. Carr, *How Can We End #CancelCulture – Tort Liability or Thumper’s Rule?* 28 CATH. U. J. L. & TECH 133 (2020), <https://scholarship.law.edu/jlt/vol28/iss2/6>; Stephen McLoughlin, *How Free Speech Can Address the Dual Threats that Cancel Culture and Hate Speech Pose to Individual Liberty*, 55 CREIGHTON L. REV. 311 (2022), <http://hdl.handle.net/10504/137908>; Coleman, *supra* note 8; Mary Anne Franks, *The Lost Cause of Free Speech*, 2 J. FREE SPEECH L. (2022); Kathleen McGarvey Hidy, *The Speech Gods: Freedom of Speech, Censorship, and Cancel Culture in the Age of Social Media*, 61 WASHBURN L. J. 99 (2021), <https://contentdm.washburnlaw.edu/digital/collection/wlj/id/7491/rec/71>; Joel M. Gora, *Free Speech Still Matters*, 87 BROOKLYN L. REV. 195 (2021), <https://brooklynworks.brooklaw.edu/blr/vol87/iss1/5/>; Tracy Reilly, *Cancel [©opyright] Culture: A Legal Analysis of George Orwell’s Nineteen Eighty-Four*, 21 CHI-KENT J. INTELL. PROP. 23 (2022), <https://scholarship.kentlaw.iit.edu/ckjip/vol21/iss1/9>; Emerson Sykes, “Free Speech, Academic Freedom, and Racial Justice on Campus: An ACLU Lawyer’s Perspective”, 20 HASTINGS RACE & POVERTY L.J. 3 (2023), [https://repository.uclawsf.edu/hastings\\_race\\_poverty\\_law\\_journal/vol20/iss1/3/](https://repository.uclawsf.edu/hastings_race_poverty_law_journal/vol20/iss1/3/); Nadine Strossen, *The Paradox of Free Speech in the Digital World: First Amendment Friendly Proposals for Promoting User Agency*, 61 WASHBURN L.J. 1 (2021), [https://digitalcommons.nyls.edu/fac\\_articles\\_chapters/1555](https://digitalcommons.nyls.edu/fac_articles_chapters/1555); Elizabeth Elving, *The Online Defamation Dilemma: Adapting an Age-Old Doctrine to the Reality of Modern Speech*, 104 MARQ. L. REV. 543 (2020), <https://scholarship.law.marquette.edu/mulr/vol104/iss2/8>; Catharine A. MacKinnon, *Weaponizing The First Amendment: An Equality Reading*, 106 VA. L. REV. 1223 (2020), <https://virginialawreview.org/articles/weaponizing-first-amendment-equality-reading/> [<https://perma.cc/P6Z6-TYNP>]; Natalie T. Crawford, *Writing in Race: Cultural Democracy in the Digital Age*, 36 Berkeley Tech. L.J. 1683 (2021), <https://btlj.org/wp-content/uploads/2023/02/0011-36-4-Crawford.pdf>; Lily A. Coad, Note, *Compelling Code: A First Amendment Argument Against Requiring Neutrality in Online Content Moderation*, 106 CORNELL L. REV. 457 (2021), <https://www.cornelllawreview.org/wp-content/uploads/2021/01/Coad-note-final.pdf> [<https://perma.cc/EVW7-MLJ4>].

Is cancel culture the instrument that levels the playing field against those bullies who express hate but thrive under the First Amendment?<sup>34</sup> Cancel culture also appears to encourage bullying.<sup>35</sup> Has cancel culture evolved into bullying with a cooler name?<sup>36</sup> It appears to promote ostracization over education, condemnation over compassion, and is deaf to redemption and change.”<sup>37</sup>

Cancel culture calls out those who are not politically correct.<sup>38</sup> The *Britannica Dictionary* defines politically correct as “agreeing with the idea that people should be careful to not use language or behave in a way that could offend a particular group of people.”<sup>39</sup> The definition sounds good, but Jon Ronson, the author of *So You’ve Been Publicly Shamed*,<sup>40</sup> states that a degree of correctness is requisite, but political correctness and cancel culture have overreached.<sup>41</sup> Ronson says “We’re living in this very binary world, and in this world, people on the right are saying, ‘You know, we are being silenced by the woke mob’, and people on the left are saying, ‘It’s not happening – we’re just holding people accountable.’”<sup>42</sup> He states that the truth “is somewhere in the middle.”<sup>43</sup>

Some regard cancel culture fondly for the solidarity and social bonds created by uniting against a perpetrator.<sup>44</sup> People use “social media to form solidarity and clarity of how the public should treat the cancellee and their content.”<sup>45</sup> However, the online vigilantes fighting a cause on social

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<sup>34</sup>Ernest Owens, *Why Cancel Culture Is Good for Democracy*, ROLLING STONE (Feb. 20, 2023), <https://www.rollingstone.com/culture/culture-commentary/opinion-cancel-culture-is-good-for-democracy-1234681224/> [https://perma.cc/HM6Q-BMKP].

<sup>35</sup> Pamela B. Rutledge, *Cancel Culture: Accountability or Bullying?* PSYCHOLOGY TODAY (Mar. 3, 2021), <https://www.psychologytoday.com/us/blog/positively-media/202103/cancel-culture-accountability-or-bullying> [https://perma.cc/K3UD-LQAM].

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Ari Shapiro, Alejandra Marquez Janse, Mia Venkat, Noah Caldwell, & Patrick Jarenwattananon, *How Cancel Culture Became Politicized – Just Like Political Correctness*, NPR: ALL THINGS CONSIDERED (July 26, 2021), <https://www.npr.org/2021/07/09/1014744289/cancel-culture-debate-has-early-90s-roots-political-correctness> [https://perma.cc/2KBC-HVEL].

<sup>39</sup>*Politically Correct*, BRITANNICA DICTIONARY, <https://www.britannica.com/dictionary/political-correct> [https://perma.cc/FBW6-9L8N] (last viewed Aug. 17, 2023 4:25 PM).

<sup>40</sup>JON RONSON, *SO YOU’VE BEEN PUBLICLY SHAMED* (2015).

<sup>41</sup> Shapiro, *supra* note 38.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup>Rob Henderson, *5 Reasons why People Love Cancel Culture*, PSYCHOLOGY TODAY (Dec. 1, 2019), <https://www.psychologytoday.com/intl/blog/after-service/201912/5-reasons-why-people-love-cancel-culture> [https://perma.cc/V2PR-VLTV].

<sup>45</sup> Samantha Haskell, *Cancel Culture: A Qualitative Analysis of the Social Media Practice of Canceling* (Aug. 2021) (M.A. thesis, Boise State University), <https://scholarworks.boisestate.edu/td/1851/>.

media are not bound by any guidelines.<sup>46</sup> Their actions can lead to destroying reputations and livelihoods.<sup>47</sup>

Cancel culture was an essential part of the #MeToo movement.<sup>48</sup> A movement labeled the “best fruit of cancel culture.”<sup>49</sup> Anne Charity Hudley, chair of linguistics of African America for the University of California Santa Barbara, states that canceling empowers Black people to reject the spread of harmful ideas.<sup>50</sup> The author agrees that disenfranchised and marginalized people have effectively used canceling to seek accountability.<sup>51</sup> Still, canceling is a violation of free expression and can mute people.<sup>52</sup> There is no place for those spreading racism and hate, but trying other steps first before canceling is encouraged.<sup>53</sup> Creating a stance “to educate and promote growth rather than creating fear of canceling” is an excellent place to start.<sup>54</sup>

Canceling is not equal.<sup>55</sup> There are those affected negatively by canceling, such as Jeannine Cummins, author of *American Dirt*.<sup>56</sup> However, a journalist pointed out that Justin Trudeau’s previous blackface disguises, revealed during the 2019 Canadian election, did not cancel him due to his importance.<sup>57</sup> Likewise, actor Ezra Miller survived a barrage of canceling allegations.<sup>58</sup> Two examples are Ezra throwing a chair at a woman and another for choking a woman.<sup>59</sup> Miller released an honest apology, and his career stayed on track.<sup>60</sup>

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<sup>46</sup> *Id.* (citing Daniel Trotter, *Confronting the Digital Mob: Press Coverage of Online Justice Seeking*, 35 EUR. J. COMM’N 597 (2020), <https://journals.sagepub.com/toc/ejca/35/6>).

<sup>47</sup> *Id.* (citing Kristine L. Gallardo, *Taming the Internet Pitchfork Mob: Online Public Shaming, the Viral Media Age, and the Communications Decency Act*, 19 VAND. J. ENT. TECH. L. 721 (2020), <https://scholarship.law.vanderbilt.edu/jetlaw/vol19/iss3/6>).

<sup>48</sup> Carr, *supra* note 33, at 138.

<sup>49</sup> Jordan M. Peterson, *How Cancel Culture Tarnishes Morals Clauses and What to do about It*, 47 VT. L. REV. 210, 214 (2022), [https://lawreview.vermontlaw.edu/wp-content/uploads/2023/03/04\\_Peterson\\_Book2\\_Final-copy.pdf](https://lawreview.vermontlaw.edu/wp-content/uploads/2023/03/04_Peterson_Book2_Final-copy.pdf) [<https://perma.cc/6KQQ-3AC6>].

<sup>50</sup> *Cancel Culture – Top 3 Pros and Cons*, PROCON.ORG., <https://www.procon.org/headlines/is-cancel-culture-or-callout-culture-good-for-society/> [<https://perma.cc/X3BS-9BCC>] (last updated Aug. 16, 2023).

<sup>51</sup> Aja Romano, *Why We Can’t Stop Fighting About Cancel Culture*, VOX (Aug. 25, 2020), <https://www.vox.com/culture/2019/12/30/20879720/what-is-cancel-culture-explained-history-debate> [<https://perma.cc/KR3N-NXA>].

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Emma Haag & Madeline Young, *The Toxic Rise of Cancel Culture*, PORTOLA PILOT (Oct. 14, 2020), <https://portolapilot.com/the-toxic-rise-of-cancel-culture/> [<https://perma.cc/EUC7-NWWA>].

<sup>55</sup> Herve’ Saint-Louis, *Understanding Cancel Culture: Normative and Unequal Sanctioning*, FIRST MONDAY (June 23, 2021), <https://firstmonday.org/ojs/index.php/fm/article/view/10891/1017> [<https://perma.cc/YSG3-5TGQ>].

<sup>56</sup> Notes 210 – 211, *infra*, and accompanying text.

<sup>57</sup> *Id.*

<sup>58</sup> Danielle Cohen, Olivia Truffaut-Wong & Tariro Mzezewa, *Unpacking the Allegations Against Ezra Miller*, THE CUT (July 5, 2023), <https://www.thecut.com/article/ezra-miller-allegations.html> [<https://perma.cc/2FAS-9PLC>].

<sup>59</sup> *Id.*

<sup>60</sup> Brady Langmann, *All the Allegations Against Ezra Miller*, ESQUIRE (June 14, 2023), <https://www.esquire.com/entertainment/movies/a39661626/ezra-miller-arrest-the-flash-dc/> [<https://perma.cc/5JEH-6R55>].

### III. Brief History of Cancel Culture

Cancel culture can be highly effective, as history tells:

Today calling out or canceling individuals or groups for objectionable behaviors often occurs on social media but such actions are not the product of the digital age. They existed in early times, when communities were small and word spread rapidly from person to person on the streets and in local gatherings.<sup>61</sup>

Cancel culture occurred during the American Revolution. The Parliament of Great Britain enacted the Stamp Act without involving the colonists' elected assemblies. At first, the colonists formed angry mobs, burned effigies in the street, and burned tax collectors' houses. New York merchants knew that these violent acts would encourage the British to retaliate. Thus, the merchants decided to cancel British goods. Soon merchants from Boston, Philadelphia, and other seaports canceled orders for British goods. Feeling the pinch, English merchants got Parliament to repeal the Stamp Act, but Parliament soon reasserted its authority with the Townshend Act, conferring on Parliament the power to tax the colonies and impose indirect taxes on products the colonists could not produce themselves.

The colonists' reacted again via cancellation. The Sons of Liberty spread the word throughout the colonies to boycott British goods. More than sixty merchants and traders signed the "Boston Non-Importation Agreement." Soon other cities, including Philadelphia, New York and southern port cities in South Carolina, signed on. Cancel culture arose again, this time with colonial merchants and traders shaming and ostracizing the other colonial merchants and tradesmen who did not sign the embargo. Like today, with publicly shaming on social media, the names of the uncooperative merchants and their businesses were identified in print resulting in the shunning of the merchants and resultant loss of business.

John Stuart Mill, the great English philosopher, published *On Liberty* in 1859.<sup>62</sup> Mill never used the phrase "cancel culture," "but what he wrote appeared to deplore it."<sup>63</sup> Mill thought prohibiting speech was harmful to the one silenced and to the greater society bereft of hearing the speaker's opinions.<sup>64</sup> Mill thought it essential, for three main reasons, to listen to all views:

First, if any opinion is compelled to silence, that opinion may,

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<sup>61</sup> Morris, *supra* note 29.

<sup>62</sup> JOHN STUART MILL, ON LIBERTY 69 (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&cbv=EB&ppid=pp\\_69](https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip.shib&db=nlebk&AN=188087&site=ehost-live&custid=s8481523&cbv=EB&ppid=pp_69) (subscription required).

<sup>63</sup> Samuel Goldman, *The Thrill of Teaching Mill: Free Speech is a Live Issue Again, and John Stuart Mill is an Able Guide*, *The Week* (Mar. 21, 2022), <https://theweek.com/education/1011492/the-thrill-of-teaching-mill> [https://perma.cc/X9MY-RY8E].

<sup>64</sup> MILL, *supra* note 62, 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].



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, with little comprehension or feeling of its rational grounds.<sup>65</sup>

Mill 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. Fabricated rumors and conspiracies coming from a powerful leader can help obscure truth.<sup>66</sup>

In the late 1980s and early 1990s, a movement started on university campuses to limit speech.<sup>67</sup> According to Rauch, the effort to protect society from wounding words had consequences.<sup>68</sup> It led to an inquisition and cancellation because of what they said or thought.<sup>69</sup> 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.)<sup>70</sup>

## IV. Dr. Seuss and Six Books

### A. Background

In 2019, Katie Ishizuka of The Conscious Kid’s Library with Ramón Stephens from the University of California-San Diego conducted a study called “The Cat is Out of the Bag: Orientalism, Anti-

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<sup>65</sup> MILL, *supra* note 62, at 118.

<sup>66</sup> 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>].

<sup>67</sup> 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>].

<sup>68</sup> JONATHAN RAUCH, *KINDLY INQUISITORS: THE NEW ATTACKS ON FREE THOUGHT* 25-26 (1993).

<sup>69</sup> *Id.* at 143-45.

<sup>70</sup> *Id.* at 123.

Blackness, and White Supremacy in Dr. Seuss's Children's Books."<sup>71</sup> The study focused on the occurrence of explicit racism.<sup>72</sup> The primary research question was, "How and to what extent are non-White characters depicted in Dr. Seuss' children's books?"<sup>73</sup> The researchers found significant evidence of Dr. Seuss's degradation and dehumanization of Afro-Americans, Indigenous, Asians, and other people of color.<sup>74</sup>

The extent of white supremacy in Theodor Geisel's<sup>75</sup> (a.k.a. Dr. Seuss's) children's books was significant. "White supremacy is seen through the centering of Whiteness and White characters, who comprise 98% (2,195 characters) of all characters."<sup>76</sup> White characters provide all the narratives and speaking roles. Characters of color are all silent.<sup>77</sup> As with contemporary white supremacists, dominant white males live with subservient white women.<sup>78</sup> "The more startling finding is that women and girls of color are completely absent across his children's book collection."<sup>79</sup> Like the current white-supremacy culture, the potential use of violence with guns and weapons is pervasive.<sup>80</sup> Ramón 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."<sup>81</sup>

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."<sup>82</sup> NEA spokesperson Steven Grant stated, "One of the reasons we partnered with Seuss 20 years ago in 1997 was to

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<sup>71</sup> Katie Ishizuka and Ramón Stephens, *The Cat is Out of the Bag: Orientalism, Anti-Blackness, and White Supremacy in Dr. Seuss's Children's Books*, 1 RSC. ON DIVERSITY IN YOUTH LITERATURE, Issue 2, Article 4 (2019), <https://sophia.stkate.edu/rdyl/vol1/iss2/4>.

<sup>72</sup> *Id.*

<sup>73</sup> 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>].

<sup>74</sup> *Id.*

<sup>75</sup> "Dr. Seuss" is the pseudonym of Theodor Geisel, the writer and illustrator who created Dr. Seuss. 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>].

<sup>76</sup> Ishizuka & Stephens, *supra* note 71, at 14.

<sup>77</sup> *Id.* at 25.

<sup>78</sup> 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>.

<sup>79</sup> *Id.* at 30.

<sup>80</sup> 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>].

<sup>81</sup> Elinor Aspegren, *'Read Across America Day,' Once Synonymous with Dr. Seuss, Is Diversifying. Here's Why Things Have Changed*, USA TODAY (March 3, 2021), <https://www.usatoday.com/story/news/education/2021/03/01/read-across-america-day-dr-seuss-diversity-racism/6878454002/> [<https://perma.cc/43U4-TBWT>] (Citing a statement made by Ramón Stephens in 2017).

<sup>82</sup> 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>].

kick-start this program. That was the strategy upfront, so kids would see Dr. Seuss's *Cat in the Hat* and spark some attention."<sup>83</sup> The program has been enormously successful, with "An estimated 45 million people" predicted to partake in March 2022.<sup>84</sup>

In the fall of 2017, the NEA decided to switch "its focus toward a year-round promotion of diverse children's books."<sup>85</sup> "The NEA, in 2018, withdrew Geisel's books from its Read Across America program, supplanting them with other diverse authors and books."<sup>86</sup> 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."<sup>87</sup> NEA News stated, "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 and 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."<sup>88</sup>

In March 2021, Dr. Seuss Enterprises announced it would discontinue the publication of six of its children's books:

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.<sup>89</sup>

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<sup>83</sup> 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].

<sup>84</sup> 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].

<sup>85</sup> *Id.*

<sup>86</sup> Julia Barajas, *How Teachers in L.A. And Beyond Turned Away from Dr. Seuss*, L.A. 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].

<sup>87</sup> *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].

<sup>88</sup> 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].

<sup>89</sup> Statement from Dr. Seuss Enterprises, SEUSSVILLE (Mar. 2, 2021) <https://www.seussville.com/statement-from-dr-seuss-enterprises/> [https://perma.cc/TJ2E-RMHV].

The effect of Dr. Seuss Enterprise's decision turned into a cancellation of Theodore Giesel.<sup>90</sup> Giesel's reputation was damaged.<sup>91</sup> However, the six books no longer published went up considerably in value.<sup>92</sup>

## B. Politicians cancelling Dr. Seuss

John Stuart Mill, in a passage in *On Liberty*, speaks of fake news in a “post-truth era.”<sup>93</sup> Mill's excerpt in footnote 102 provides insight into his views regarding those in power and their possible defiance of freedom of thought and expression.<sup>94</sup> 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. Traditional and right-wing media outlets occupied diverging universes, not just in terms of what they believed, but in terms of how they believed.”<sup>95</sup>

Ron Charles of the Washington Post stated that written words “may be frozen, but we're not.”<sup>96</sup> He suggests mindful word selection and civility “to reap a better understanding of who we were and are.”<sup>97</sup> His July 3, 2020, Washington Post article, *While Offensive TV Shows get pulled, problematic books are still inspiring debate and conversation*, struck a nerve with conservatives.

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<sup>90</sup> Steven Malanga, *How the Woke Stole Childhood*, CITY J. (Mar. 3, 2021), <https://www.city-journal.org/article/how-the-woke-stole-childhood> [<https://perma.cc/J6MR-N4FS>].

<sup>91</sup> Stephan Roget, *Dark Facts We Learned About Dr. Seuss's Past That Made Us Cringe*, RANKER (Dec. 10, 2021), <https://www.ranker.com/list/dark-facts-about-dr-seuss/stephanroget> [<https://perma.cc/T66B-CETJ>].

<sup>92</sup> Malanga, *supra* note 90.

<sup>93</sup> Pearson, *supra* note 66.

<sup>94</sup> MILL, *supra* note 62, at 87. 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. *Id.*

<sup>95</sup> RAUCH, CONSTITUTION OF KNOWLEDGE, *supra* note 24, at 179-180.

<sup>96</sup> Ron Charles, *While Offensive TV Shows Get Pulled, Problematic Books are Still Inspiring Debate and Conversation*, WASH. POST (July 3, 2020), [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://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/HKC5-W7S8>].

<sup>97</sup> *Id.*

Fox News originally stated correctly that it was Dr. Seuss Enterprise's decision not to publish the six books.<sup>98</sup>

Still, many conservatives did not get past the term "problematic books" in the title; the moral grandstanding by conservatives confused censorship with cancel culture. Donald Trump Jr. tweeted on July 5, 2020, "They're never going to stop — I imagine the Libs will also be the arbiters of which books are acceptable and which ones are to be burned."<sup>99</sup> Steven Miller, a conservative commentator, also tweeted, "They're not going to stop."<sup>100</sup> Dan McLaughlin, senior writer for the National Review, tweeted, "They were inevitably going to burn books."<sup>101</sup> Conservative radio host Dana Loesch wrote, "Book burners have never been on the right side of history."<sup>102</sup>

At the time of Dr. Seuss Enterprise's decision to stop publishing six of their most controversial children's books, the Democrats were just about to pass the American Rescue Plan Act of 2021,<sup>103</sup> a 1.9 trillion economic package expanding both Obamacare and COVID relief.<sup>104</sup> Recent policies and issues had not favored the Republicans, so the Republican politicians decided to concoct a non-issue distraction stating that the Democrats had canceled Dr. Seuss.<sup>105</sup> The damage surrounding cancel culture in this instance was the Republicans using it in a damaging way to divert the public away from the actual policy and issues making news, such as the hearings involving FBI Director Christopher testifying about the "racially motivated extremists" invading the capitol on January 6, 2021.<sup>106</sup>

There are many examples of Republican politicians speaking out, directly or indirectly, targeting the Democrats for canceling Dr. Seuss. The paper will discuss several below.<sup>107</sup> As Jonathan Rauch states, any successful disinformation campaign comes through repetition and amplification through various mediums, primarily through social media with modern cancel culture.<sup>108</sup> Rauch also says that establishing disinformation comes from a deliberate, systematic, and sophisticated

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<sup>98</sup> Audrey Conklin, *6 Dr. Seuss Books to Stop Being Published Because of Racist Imagery*, FOX NEWS (Mar. 2, 2021), [//www.foxnews.com/us/dr-seuss-books-canceled-racist-imagery](https://www.foxnews.com/us/dr-seuss-books-canceled-racist-imagery) [https://perma.cc/S5U9-235L].

<sup>99</sup> 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/7ZK2-MQVH].

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Pub. L. 117-2 -Mar. 11, 2021.

<sup>104</sup> Eric Levitz, *The Right Would Rather Debate Kid's Books Than Biden's Bills*, NY MAG: INTELLIGENCER (Mar. 5, 2021), <https://nymag.com/intelligencer/2021/03/mr-potato-head-dr-seuss-republicans-covid-relief-bill.html> [https://perma.cc/4CE5-2R9V].

<sup>105</sup> Jennifer Rubin, *Why Republicans are screeching about Dr. Seuss*, WASH. POST (Mar. 3, 2021), <https://www.washingtonpost.com/opinions/2021/03/03/why-republicans-are-screeching-about-dr-seuss/> [https://perma.cc/N878-BW9W].

<sup>106</sup> *Id.*

<sup>107</sup> Notes 111-146, *infra*, and accompanying text.

<sup>108</sup> RAUCH, CONSTITUTION OF KNOWLEDGE, *supra* note 24, at 179-180.

attack.<sup>109</sup> Donald Trump, his congressional allies, and others in his orbit operate in this high-level mode of attack to deliberately divert society from reality for political gain.<sup>110</sup>

The conservative news outlet, Fox News, had reported the day before, on March 1, 2021, that President Biden had “erased” Dr. Seuss.<sup>111</sup> The President had “bucked” Presidential tradition by not mentioning Dr. Seuss in his “Read Across America” proclamation.<sup>112</sup> Fox News stated that President Trump and Obama had noted Dr. Seuss in their previous “Read Across America” proclamations.<sup>113</sup> According to Fox News, Dr. Seuss “got blacklisted.”<sup>114</sup> A Fox News opinion piece stated, “Should President Biden himself be canceled because he won’t say why he canceled Dr. Seuss from his proclamation?”<sup>115</sup> 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.”<sup>116</sup> There is a lack of analysis or critical thinking about the Enterprise’s decision and its discussion in right-wing media.<sup>117</sup>

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.<sup>118</sup>

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.”<sup>119</sup> The company was “making the right decision to respect how these people are viewed.”<sup>120</sup> Leo Terrell, a regular Fox

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<sup>109</sup> *Id.* at 169-173.

<sup>110</sup> *Id.*

<sup>111</sup> 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].

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> 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].

<sup>115</sup> *Id.*

<sup>116</sup> 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]

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> 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].

<sup>120</sup> *Id.*

News contributor, and a Donald Trump supporter, was on the same Sean Hannity segment.<sup>121</sup> 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!”<sup>122</sup> Terrell did not understand or refused to recognize that Seuss Enterprises decided to pull back six of its publications after accessing the racial content of its books.<sup>123</sup> No one has canceled anything in this case.

Madison Cawthorn, a Republican representative from North Carolina, appeared on *Fox and Friends* on March 2, 2021.<sup>124</sup> The same day, reports of more sexual allegations against the 25-year-old congressional representative became known.<sup>125</sup> Cawthorn was ready to discuss anything else, and *Fox and Friends* complied. Cawthorn said, “I’m so fired up, the actual priorities of the Democrats are renaming a post office and now cancelling Dr. Seuss. Americans are actually struggling and this cancel culture does not help us.”<sup>126</sup>

Kevin McCarthy confused many when he tweeted a video of himself reading “*Green Eggs and Ham*,” not one of the controversial six Seuss books.<sup>127</sup> 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!”<sup>128</sup> That night, March 6, 2021, the video appeared on *Don Lemon Tonight*.<sup>129</sup> 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,” he said. “They are playing you. Are you going to fall for it?”<sup>130</sup>

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.

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<sup>121</sup> Terrell is a civil rights attorney and talk show host based in Las Angeles, California. *Leo Terrell*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Leo\\_Terrell](https://en.wikipedia.org/wiki/Leo_Terrell) [https://perma.cc/SX6Y-64SS] (Last updated May 22, 2021).

<sup>122</sup> Taylor, *supra* note 119.

<sup>123</sup> See Statement from Dr. Seuss Enterprises, *supra* note 89.

<sup>124</sup> 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].

<sup>125</sup> 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].

<sup>126</sup> Bort, *supra* note 124.

<sup>127</sup> 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://www.huffpost.com/entry/kevin-mccarthy-dr-seuss-reading_n_60433b1cc5b6429d083388e8) [https://perma.cc/V6FA-4APQ].

<sup>128</sup> *Id.*

<sup>129</sup> Don Lemon, *Lemon: As Americans Are Desperate For Relief, Here’s What McCarthy Is Doing*, CNN POLITICS (Mar. 6, 2021), <https://www.cnn.com/videos/politics/2021/03/06/mccarthy-dr-seuss-fox-news-stoking-fake-outrage-dons-take-ctn-vpx.cnn> [https://perma.cc/N8TG-9LHC].

<sup>130</sup> *Id.*

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.<sup>131</sup>

Republican Senator Marco Rubio from Florida joined the crush of canceling 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."<sup>132</sup> In debating the election-law reforms, House Minority Leader McCarthy spoke in a false non sequitur stating "First, they outlaw Dr. Seuss and now they want to tell us what to say."<sup>133</sup>

Senator Ted Cruz, a Republican from Texas, suggested that Biden was somehow responsible for the Dr; Seuss Enterprise decision not to publish six books. On one tweet, he showed several Dr. Seuss books on an online bestseller list, stating, "Who knew Joe Biden was such a great bookseller."<sup>134</sup> 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?"<sup>135</sup> 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 she's being cancelled for being racist? These people will stop at nothing. Can't wait to share her pic to trigger a few idiots."<sup>136</sup>

The echo chamber works well in conservative social media.<sup>137</sup> A poll of Republican voters from March 6 to 8th, 2021, by Morning Consult/Politico found that almost half of the Republican voter respondents, 48%, had heard "a lot" about the Democrats cancelling Dr. Seuss curfuffle compared to 44% of Republican voter respondents who heard "a lot" about the House passage of the \$1.9

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<sup>131</sup> 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>].

<sup>132</sup> Marco Rubio (@marcorubio), TWITTER (Mar. 2, 2021, 12:50 PM), <https://twitter.com/marcorubio/status/1366808242861576192> [<https://perma.cc/EPH2-EQ6Z>].

<sup>133</sup> 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>.

<sup>134</sup> 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>].

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* Caitlin O' Kane, *New York and Denver 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/PW7Z-U7LL>].

<sup>137</sup> Steven L. Johnson, Brent Kitchens, & Peter Gray, *Facebook serves as an echo chamber, especially for conservatives. Blame its algorithm*, WASH. POST (Oct. 26, 2020), <https://www.washingtonpost.com/opinions/2020/10/26/facebook-algorithm-conservative-liberal-extremes/> [<https://perma.cc/HF6K-YFH8>].



trillion COVID-19 relief bill.<sup>138</sup> On March 2, 2021, F.B.I. Director Christopher Wray testified before the Senate Judicial Committee on the January 6 riot and the right-wing extremism role in the riot.<sup>139</sup> Rather than cover the Wray hearings, the conservative network Fox News hyper-focused on the concocted canceling controversy surrounding Dr. Seuss Enterprises' decision to stop publishing six books from Geisel's<sup>140</sup> over sixty children's book collection.<sup>141</sup>

None of this information regarding Fox News should be shocking to the reader. Three top-ranking former Fox executives recently issued a joint statement on Wednesday, July 12, 2023, expressing their "regret" over Fox and that it has become a disinformation news network.<sup>142</sup> "We never envisioned, and would not knowingly have enabled, the disinformation machine that, in our opinion, Fox has become."<sup>143</sup> As stated, Fox News did not carry Wray's testimony on March 2, 2021, but mentioned Dr. Seuss sixty times compared to the Wray hearings nine times over 24 hours - from 9 a.m. Tuesday, March 2, to 9 a.m. Wednesday, March 3, 2021.<sup>144</sup> During the same period, CNN brought up the Wray hearings 102 times.<sup>145</sup> Fox effectively canceled the hearings for millions of viewers while wrongfully claiming Democrats canceled Dr. Seuss. *The Five*, a Fox News Show, on March 2, 2021, the day of the Wray Senate Judicial Committee Hearing, the panel discussed Ohio Congressman Jim Jordan's intention to hold congressional House hearings on cancel culture.<sup>146</sup>

## V. Authors and Their Books Called Out

With the cancellation of a crush of authors and their books in recent years, the paper discusses only three notable instances and references two others in footnotes. One mentioned in a footnote

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<sup>138</sup> Cameron Easley, *More GOP Voters Heard "a lot" About Move to Pull Dr. Seuss Books then COVID-19 Relief Bill Vote*, MORNING CONSULT (Mar. 10, 2021), <https://morningconsult.com/2021/03/10/dr-seuss-polling/> [https://perma.cc/U7SZ-VWAY].

<sup>139</sup> 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].

<sup>140</sup> "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].

<sup>141</sup> *Dr. Seuss Bibliography*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Dr.\\_Seuss\\_bibliography](https://en.wikipedia.org/wiki/Dr._Seuss_bibliography) [https://perma.cc/77TA-GJHD] (last updated June 24, 2021).

<sup>142</sup> Oliver Darcy, *Former Fox Executives Say They Regret Helping Rupert Murdoch Birth "Disinformation Machine"*, CNN (July 12, 2023), <https://www.cnn.com/2023/07/12/media/former-fox-executives-rupert-murdoch-reliable-sources/index.html> [https://perma.cc/J9FR-4EX4].

<sup>143</sup> *Id.*

<sup>144</sup> 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].

<sup>145</sup> *Id.*

<sup>146</sup> 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].

is Missouri Senator Josh Hawling and his book, *The Tyranny of Big Tech*.<sup>147</sup> Another interesting case involves journalist and author Julie Burchill.<sup>148</sup>

One of the most notable authors called out is J.K. Rowling, the famed author of the Harry Potter series.<sup>149</sup> The cancelations are not for her books but for her repeatedly expressed views hostile to

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<sup>147</sup> 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. (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>]). The next night, Simon & Schuster announced its decision not to publish Hawley's book, *The Tyranny of Big Tech*. (*Id.*). 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 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. (*Id.*)

Senator Josh Hawley's book was accepted and published by a conservative publishing house, Regnery Publishing. (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>]). **NOTE TO EDITOR: Citation sentences are in parenthesis for clarity.**

<sup>148</sup> Julie Burchill tweeted Novara Media journalist Ash Sarkar was "an Islamist and a paedophile worshipper" for comments Sarker had tweeted criticizing journalist Rod Liddle. (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>]). **NOTE TO EDITOR: There are several other cites that could be added but since it is in a footnote the author does not want to make a very long footnote even longer. Cites will be provided if editor deems important.**

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

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.

[*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>]]. **NOTE TO EDITOR: Citation sentences are in parenthesis for clarity.**

<sup>149</sup> 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>].

transgender women. She tweeted that transgender women are men in dresses.<sup>150</sup> A spokesperson for Rowling dismissed it as a “clumsy and middle-aged moment.”<sup>151</sup> People started to notice that Rowling was following anti-trans propagandists on Twitter.<sup>152</sup> 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!”<sup>153</sup>

Rowling was criticized for supporting British anti-transgender researcher Maya Forstater.<sup>154</sup> Forstator addressing complaints regarding her views on transgender people, 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.”<sup>155</sup> Forstater lost her job and took her employer to court in London.<sup>156</sup> 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.”<sup>157</sup>

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<sup>150</sup> *Id.*

<sup>151</sup> 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].

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> Liam Stack, *J.K. Rowling Criticized After Tweeting Support for Anti-Transgender Researcher,* N.Y. TIMES (May 26, 2020), <https://www.nytimes.com/2019/12/19/world/europe/jk-rowling-maya-forstater-transgender.html> [https://perma.cc/FGN5-PXNN].

<sup>155</sup> *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.*

<sup>156</sup> *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].

<sup>157</sup> 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,<sup>158</sup> Virginia Kamowa,<sup>159</sup> and Therese Mahon,<sup>160</sup> in May of 2020, wrote an op-ed piece to highlight the most vulnerable to COVID-19. The article described those in globally depressed crowded conditions facing extraordinary challenges, especially girls, women, and non-binary people, requiring access to clean and private spaces with water, soap, and sanitary materials.<sup>161</sup>

Rowling did not comment on the lack of necessary public health measures to contain the spread of infection but attacked the people.<sup>162</sup> She tweeted, “‘People who menstruate.’ I’m sure there used to be a word for those people. Someone help me out. Wumben? Wimpund? Woomud?”<sup>163</sup> Rowling has stated that she has received death threats.<sup>164</sup> She said “to be fair, when you can’t get a woman sacked, arrested or dropped by her publisher, and cancelling her only made her book sales go up, there’s really only one place to go. Yes, but now hundreds of trans activists have threatened to beat, rape, assassinate and bomb me I’ve realized that this movement poses no risk to women whatsoever.”<sup>165</sup>

Obviously, Rowling is fighting back and, in her estimation, does not consider herself damaged by cancel culture like Trudeau and Ezra Miller, who did not pay much of a price for being called out.<sup>166</sup> There are others like Kevin Spacey, James Franco, and Louis C.K., who have paid the price of being canceled.<sup>167</sup>

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<sup>158</sup> 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.**

<sup>159</sup> 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.**

<sup>160</sup> “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).

<sup>161</sup> 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>].

<sup>162</sup> 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>].

<sup>163</sup> *Id.* (Rowling was responding to Sommer, et.al., *supra* note 169.)

<sup>164</sup> Abby Gardner, *A Complete Breakdown of J.K. Rowling Transgender-Comments Controversy*, GLAMOUR (Apr. 25, 2023), <https://www.glamour.com/story/a-complete-breakdown-of-the-jk-rowling-transgender-comments-controversy> [<https://perma.cc/Q83D-RGGX>].

<sup>165</sup> *Id.* (citing J.K. Rowling (@jk\_rowling), TWITTER (June 6, 2020 5:35 PM), [https://twitter.com/jk\\_rowling/status/1269382518362509313?s=20](https://twitter.com/jk_rowling/status/1269382518362509313?s=20) [<https://perma.cc/5EQ8-MJJP?type=image>] (“‘People who menstruate.’ I’m sure there used to be a word for those people. Someone help me out. Wumben? Wimpund? Woomud?”)).

<sup>166</sup> Note 57 - 60, *supra*, and accompanying text. .

<sup>167</sup> Rafly Gilang, *‘Cancel Culture’: How These 10 Celeb’s Careers Were Affected From Being Canceled*, THE THINGS (Mar. 6, 2021), <https://www.thethings.com/cancel-culture-how-these-10-celebs-careers-were-affected-from-being-canceled> [<https://perma.cc/3FRH-TXPZ>].

Woody Allen, in his autobiographical book, *Apropos of Nothing*, provided his account of his ex-wife, Mia Farrow's allegations that he sexually abused their children.<sup>168</sup> Allen stated how Mia Farrow not only brain washed her children to have them believe Allen victimized Dylan, his daughter, at age 7, but also Mia physically and psychologically abused both Dylan and Ronan.<sup>169</sup> The later, the biological son of Allen and Mia Farrow.<sup>170</sup> The Hachette Book Group walked out on the company in protest when learning of the publisher's decision to publish *Apropos of Nothing*.<sup>171</sup> 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 slated for publication, it should not be withdrawn just because it's controversial or gives rise to vociferous objections.<sup>172</sup>

However, Hachette reversed its earlier decision two days later, just one day after the protests.<sup>173</sup> 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."<sup>174</sup> In a statement, Suzanne Nossel, chief executive of PEN America, called the state of affairs "something of a perfect storm."<sup>175</sup> It:

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

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<sup>168</sup> Bret Stephens, *Woody Allen Meets the Cancel Culture*, N.Y. TIMES (Mar, 18, 2020), <https://www.nytimes.com/2020/03/18/opinion/woody-allen-memoir.html> [https://perma.cc/24PN-EEPU].

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> 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].

<sup>172</sup> *Id.*

<sup>173</sup> John Williams, *Hachette Says It Won't Publish Woody Allen's Book*, N.Y. TIMES (Mar. 9, 2020), <https://www.nytimes.com/2020/03/06/books/hachette-woody-allen-apropos-nothing.html> [https://perma.cc/QT6U-N48N].

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

to read it and render their own judgements.<sup>176</sup>

*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.”<sup>177</sup> Arcade Publishing decided to publish *Apropos of Nothing* on March 23, 2020.<sup>178</sup>

*American Dirt*, by Jeannine Cummins, is a work of fiction that received much attention.<sup>179</sup> A prominent group of authors offered praise, including John Grisham, Ann Patchett, Julia Alvarez, Kristin Hannah, Sandra Cisneros, and Don Winslow.<sup>180</sup> Winslow called the book the *Grapes of Wrath* of our time.<sup>181</sup> 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.”<sup>182</sup> The book was hailed 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.”<sup>183</sup>

Cummins’ bona fides, or lack thereof, were exposed even before the book release on January 21, 2020.<sup>184</sup> Cummins stated that her grandmother was Puerto Rican in the book’s release.<sup>185</sup> Twitter was quick to react stating early readers with advanced copies had been criticizing the book since 2019.<sup>186</sup> 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.<sup>187</sup> Twitter has called the book stereotypical, appropriative, opportunistic, selfish, and parasitic.<sup>188</sup>

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<sup>176</sup> *Id.*

<sup>177</sup> 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].

<sup>178</sup> 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].

<sup>179</sup> JEANNINE CUMMINS, *AMERICAN DIRT* (2020).

<sup>180</sup> 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].

<sup>181</sup> 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://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*]

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> 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].

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

In referencing a petition signed by 142 authors asking Oprah Winfrey to cancel her book club selection of *American Dirt*,<sup>189</sup> Ron Charles, *Washington Post* Critic for *Book World*, who idolizes many of the authors who signed the petition, said it was “heartening to see people so engaged in a work of fiction.”<sup>190</sup> 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.”<sup>191</sup>

Oprah declined to remove *American Dirt* from her book-club selections.<sup>192</sup> Instead, Oprah said she would hold a special event bringing in three Latino authors and Jeanine Cummins to discuss differing perspectives.<sup>193</sup> Members of the DignidadLiteraria movement attended the event,<sup>194</sup> and scholars and volunteers working with migrant trauma, migrant mothers, publishers, DACA survivors, and others directly affected by the migrant experience were in attendance.<sup>195</sup>

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.<sup>196</sup> Cummins said she suffered from her identity as she wrote the book and wished she had not made the statement in her note.<sup>197</sup> Cummins remained stoic as the Latin authors criticized her, the book, and the publisher.<sup>198</sup> Author Reyna Grande noted the double standard, fanfare, resources, and budget given to Cummin’s white perspective in contrast to her fellow Latin writers.<sup>199</sup> “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.”<sup>200</sup> 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 that Flatiron blamed angry Latino violence as the cause for canceling Cummin’s book tour.<sup>201</sup>

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<sup>189</sup> *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]).

<sup>190</sup> Charles, *American Dirt*, *supra* note 181.

<sup>191</sup> *Dear Oprah Winfrey*, *supra* note 189.

<sup>192</sup> 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].

<sup>193</sup> *Id.*

<sup>194</sup> “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).

<sup>195</sup> 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].

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

Cummins stated that the ad hominin comments “flying around the web have been brutal.”<sup>202</sup> Too much of the discussion has centered on identity politics. Inadvertently, the cancelling was encouraged by Cummins with her note that she wished that someone browner than her had written the book.<sup>203</sup> Ron Charles stated 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 to read.<sup>204</sup> Flatiron stated it was holding more book fairs, and they were open to serious debate regarding the book with planned town halls with Cummins.<sup>205</sup>

Cummins had no events listed on the author’s or the publisher’s website on December 14, 2021.<sup>206</sup> In follow-up, the publisher’s homepage listed one virtual event with Ms. Cummins and Mexican novelist and film-maker, Guillermo Arriga to be held on Thursday, February 10, 2022.<sup>207</sup> The listing stated a URL link was forthcoming, but it has yet to post.<sup>208</sup> However, Arrigo did discuss the book at book clubs in Mexico and stated to the *New York Times*, “As a Mexican born and raised, I didn’t feel the least uncomfortable with what Jeanine did. I think it’s completely valid to write whatever you want on whatever subject you want. Even if she exaggerated the narco aspect, that’s the privilege of an artist.”<sup>209</sup>

She has not written any novel since *American Dirt*.<sup>210</sup> Regarding being “canceled,” Cummins said, “Certain people are paying the price an incredibly high price for making one stupid decision. But there are also plenty who are paying this incredibly high price without having made a stupid decisions – they are literally in the wrong place at the wrong time. I was one of those people.”<sup>211</sup>

There was other corporate reaction to woke books. Scholastic pulled the distribution of the book *The Adventures of Ook and Gluk: Kung-Fu Cavemen from the Future*.<sup>212</sup> Scholastic pulled the book, which they deemed “hurtful and wrong” in the same month that Geisel Enterprises chose to discontinue the publication of six of its children’s book series.<sup>213</sup> Scholastic said it pulled the book

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<sup>202</sup> Charles, *American Dirt*, *supra* note 181.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Events*, JEANINE CUMMINS, <https://www.jeaninecummins.com/events/> [https://perma.cc/RFY4-ZWTR] (last visited July 9, 2021 3:01 PM); *Tours & Events: Flatiron Books*, MACMILLAN, <https://us.macmillan.com/tours/?publisher=flatiron-books> [https://perma.cc/57JN-9V65] (last visited July 9, 2021).

<sup>207</sup> *Events*, JEANINE CUMMINS, <https://www.jeaninecummins.com/events/> [https://perma.cc/5E3K-56F5] (last visited Aug. 2, 2023 1:21 PM).

<sup>208</sup> *Id.*

<sup>209</sup> Pamela Paul, *The Long Shadow of ‘American Dirt’*, N.Y. TIMES (Jan. 26, 2023), <https://www.nytimes.com/2023/01/26/opinion/american-dirt-book-publishing.html> [https://perma.cc/ZY94-V9JC].

<sup>210</sup> *Jeanine Cummins*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Jeanine\\_Cummins](https://en.wikipedia.org/wiki/Jeanine_Cummins) [https://perma.cc/U4QZ-AR2C] (last updated July 9, 2023).

<sup>211</sup> Julia Llewellyn Smith, *Jeannine Cummins on American Dirt, Trolls and Cancel Culture*, LONDON TIMES (Feb. 19, 2021), <https://www.thetimes.co.uk/article/jeanine-cummins-on-american-dirt-trolls-and-cancel-culture-2crgjtdqw> (subscription required).

<sup>212</sup> Christine Morales, *Scholastica Halts Distribution of Book by ‘Captain Underpants’ Author*, N.Y. TIMES, March 28, 2021 at <https://www.nytimes.com/2021/03/28/books/dav-pilkey-ook-gluk-racism.html> [https://perma.cc/8TYG-KW93].

<sup>213</sup> *Id.*



distribution after a Korean-American father of two children, 5 and 7, had borrowed the book from a library and the father saw the racist depictions.<sup>214</sup> Dav Pilkey, the book's author who also created the *Captain Underpants* series, apologized, stating that he had “intended to showcase diversity, equality and nonviolent conflict resolution” with the book.<sup>215</sup>

Previously Scholastic decided not to distribute Pickey’s Captain Underpants book series because they felt the series “contains harmful and racial stereotypes and passively racist imagery.”<sup>216</sup> Scholastic later changed its mind.<sup>217</sup> Ellie Berger, president of Scholastic Trade expected they would publish additional Pikey titles in digital format: “We’re exploring different options to find the right way to expand the series into digital formats while keeping the great value of the printed books.”<sup>218</sup> Dav Pilkey is an author not significantly damaged by cancel culture.<sup>219</sup>

## VI. Legal Solutions

### A. Cancel Culture

To this point, the paper has focused on cancel culture, how it differs from censorship, and how it is more dangerous than censorship. All previous sections of the paper have demonstrated the havoc that cancel culture produces. Some rightfully point out the success of canceling in the #MeToo movement.<sup>220</sup> Still, online vigilantes are out to galvanize their followers on social media to attack people rather than try to make people accountable.<sup>221</sup> The effects of canceling can be debilitating and unredeemable to some targeted.<sup>222</sup> The history of cancel culture over the centuries shows its staying power.<sup>223</sup> The dangers of cancel culture were demonstrated when politicians in the Republican Party made Dr. Seuss Enterprises’ decision to cancel the publication of six of its most controversial books into a political wedge issue, blaming the Biden administration and other Democrats for canceling Dr. Seuss.<sup>224</sup> In addition, the damaging reputational effects of cancel culture on authors and their books and livelihoods were analyzed.<sup>225</sup>

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<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> Sally Lodge, *Scholastic Announces the Return of Captain Underpants*, PUBLISHERS WKLY. (Jan. 12, 2012), <https://www.publishersweekly.com/pw/by-topic/childrens/childrens-book-news/article/50161-scholastic-announces-the-return-of-captain-underpants.html> [https://perma.cc/DGB4-WCE3].

<sup>218</sup> *Id.*

<sup>219</sup> Notes 57-60, *supra*, and accompanying text.

<sup>220</sup> Notes 48-49, *supra*, and accompanying text.

<sup>221</sup> Destry Adams, *OPINION: Cancel culture can be effective, but horribly misused*, TECHNICIAN (Mar. 16, 2021), [https://www.technicianonline.com/opinion/opinion-cancel-culture-can-be-effective-but-it-s-horribly-misused/article\\_07b3d488-8660-11eb-ba66-779f3e810565.html](https://www.technicianonline.com/opinion/opinion-cancel-culture-can-be-effective-but-it-s-horribly-misused/article_07b3d488-8660-11eb-ba66-779f3e810565.html) [https://perma.cc/6VNK-DGGK].

<sup>222</sup> Alesandra Dubin, *Why Cancel Culture Is So Toxic and How to Effectively Hold Folks Accountable, According to Social Media Experts*, INSIDER (Oct. 28, 2022), <https://www.insider.com/guides/health/mental-health/why-cancel-culture-is-toxic> [https://perma.cc/8BSK-HK28].

<sup>223</sup> Notes 61-70, *supra*, and accompanying text.

<sup>224</sup> Notes 111-146, *supra*, and accompanying text.

<sup>225</sup> Notes 147 – 219, *supra*, and accompanying text.

The pages below on legal solutions will describe how cancel culture is more dangerous than censorship and how there are no current effective legal solutions to those people canceled.<sup>226</sup> For comparison's sake, the paper explores the power of the First Amendment in holding censors accountable.<sup>227</sup> Since there is a deluge of First Amendment and censorship cases, and a part of the paper explores the deleterious effect cancel culture has on authors and their books, the paper focuses on a more narrow subpart, censorship, regarding libraries and the resources libraries offer to the public.<sup>228</sup>

As referenced above, no cases have successfully argued that cancel culture violates the First Amendment.<sup>229</sup> Are there other possible legal remedies to help curb cancel culture without the First Amendment legal protections? With the many examples of the socially destructive impact of cancel culture, is a tort remedy plausible? One scholar states, "Given the significant negative impact of being canceled, cancel culture is socially unreasonable and, therefore tort liability should be applicable."<sup>230</sup> The scholar continues that the most likely tort that may work is the one addressing the notion of "unreasonable interference with the interests of others."<sup>231</sup>

Another author states that tortious interference may work.<sup>232</sup> *Cousins v. Goodier*<sup>233</sup> is a 2021 Delaware Superior case where an email sent by attorney Rosemary S. Goodier<sup>234</sup> to Cousins' employer, Bayard P.A., resulted in Cousins' dismissal from Bayard within 24 hours.<sup>235</sup> The email regarded Cousins' pro se lawsuit he filed against the Unionville Chadds Ford School District in West Chester, Pennsylvania, to preserve the school's Indian mascot.<sup>236</sup> Cousin claimed tortious interference and defamation focusing on two sentences in Goodier's email:

- We hope you can reflect upon how *shockingly racist* and tone deaf this suit is, particularly in light of the present demands against the school board, who has to deal with getting students back to school safely in the midst of a deadly pandemic.

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<sup>226</sup> Notes 229 – 249, *infra*, and accompanying text.

<sup>227</sup> Notes 250 – 297, *infra*, and accompanying text.

<sup>228</sup> *Id.*

<sup>229</sup> Notes 16-19, *supra*, and accompanying text.

<sup>230</sup> Carr, *supra* note 33, at 141.

<sup>231</sup> *Id.* (citing Abby Ohlheiser & Elahe Izadi, *A Step-by-Step Guide to Why People Can't Stop Arguing About 'Cancel Culture,'* WASH. POST (Sept. 18, 2019), <https://www.washingtonpost.com/arts-entertainment/2019/09/18/step-by-step-guide-why-people-cant-stop-arguing-about-cancel-culture/> [https://perma.cc/C6G6-GEF2]).

<sup>232</sup> *Id.* (citing Tortious Interference, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/tortious\\_interference](https://www.law.cornell.edu/wex/tortious_interference) [https://perma.cc/7LUY-CTEN] (last visited Aug 2, 2023 4:13 PM) ("Tortious interference is a common law tort allowing a claim for damages against a defendant who wrongfully interferes with the plaintiff's contractual or business relationships."); see Robert B. Gigl Jr., *The Murky World of Tortious Interference: What Are the Rules of the Game?*, N.J. LAW., February 2008, at 14, 14-15.

<sup>233</sup> *Cousins v. Goodier*, No. CV S20C-11-036 CAK, 2021 WL 3355471 (Del. Super. Ct. July 30, 2021).

<sup>234</sup> Profile for Rosemary S. Goodier, FINDLAW, [https://lawyers.findlaw.com/profile/view/3268369\\_1](https://lawyers.findlaw.com/profile/view/3268369_1) [https://perma.cc/WG2E-PSG8] (last updated Dec. 3, 2013).

<sup>235</sup> 2021 WL 3355471, at \*1.

<sup>236</sup> *Id.*

[Emphasis supplied]

- Our tax dollars and administrative resources will be plunged into countering some *shockingly racist statements* by Mr. Cousins about *protecting his white, Christian heritage*. [Emphasis supplied]<sup>237</sup>

Cousin's claim of tortious interference with contract failed because the plaintiff did not claim that the defendant's sole motivation was to have Cousins lose his job. Cousins also claimed that Goodier's motivation was political, as the plaintiff termed "cancel culture" in his complaint.<sup>238</sup> Plaintiff lost on defamation since the court looked at Goodier's language as an opinion instead of fact and fell under free speech.<sup>239</sup>

In a defamation case, a plaintiff specializing in boudoir photoshoots in southern California shared a tip with another photographer in a Facebook niche photography peer group. The recipient defendant, owner of a like-kind boudoir photoshoot company in New Hampshire, took offense.<sup>240</sup> The plaintiff stated the defendant then "began a personal 'cancel culture' campaign against plaintiff" with declarations on social media platforms stating the plaintiff engaged in theft and pedophilia, causing the plaintiff considerable harm due to lost prospects and revenue.<sup>241</sup> The plaintiff was unable to claim libel because he could not show the claims made by the defendant were false.<sup>242</sup>

What about disparagement? Could the tort be used by a supposed victim suffering economic loss from a called-out product?<sup>243</sup> In *Oumere LLC v. Zarpas*, the plaintiff, a manufacturer and distributor of skin care products, sued Calli Zarpas for trade libel after Zarpas placed posts to Reddit regarding being scammed by Oumere.<sup>244</sup> The court stated that the language in Zarpas's Reddit posts expressed opinions, not facts.<sup>245</sup> How about false light? False light involves "one who gives publicity to a matter concerning another that places the other before the public in a false light."<sup>246</sup>

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

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<sup>237</sup> *Id.* at \*2.

<sup>238</sup> *Id.* at \*7-8.

<sup>239</sup> *Id.* at \*6.

<sup>240</sup> *Aellis O. v. Connor*, No. 22-CV-200 JLS (WVG), 2022 WL 2229421, at \*3 (S.D. Cal. June 21, 2022).

<sup>241</sup> *Id.*

<sup>242</sup> 2022 WL 2229421, at \*8.

<sup>243</sup> Carr, *supra* note 33, at 144 (citing RESTATEMENT (SECOND) OF TORTS § 558 (AM. LAW INST. 1965)).

<sup>244</sup> *Oumere LLC v. Zarpas*, 2021 WL 2894643 (C.D. Cal.).

<sup>245</sup> *Id.* at \*4.

<sup>246</sup> Carr, *supra* note 33, 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")).

person would find highly offensive are often enough.”<sup>247</sup> No tort cases involving false light and cancel culture came from searching.<sup>248</sup> There does not appear to be any tort cases involving books or libraries and cancel culture.<sup>249</sup> Other tort possibilities and cancel culture, in addition to those proffered above, may be successful in time, and others may explore this. The current legal landscape does not offer solutions for cancel culture making the practice that much more dangerous.

## B. Censorship

In comparison, there are multitudes of First Amendment and censorship cases.<sup>250</sup> Rather than cover the myriad ways that the First Amendment has treated censorship, in consideration of brevity, this paper will focus narrowly on public libraries since the paper has discussed authors and books. There are two important United States Supreme Court cases,<sup>251</sup> that dealt with censorship in public libraries along with a current Texas case currently on appeal to the Fifth Circuit Court of Appeals.<sup>252</sup> The United States Supreme Court first recognized a First Amendment constitutional right to receive information in the 1943 case, *Martin v. Struthers*.<sup>253</sup> The case did not involve a library, but it helped establish a right that libraries have used -- the right to receive information is an expression of free speech.<sup>254</sup>

One of the most significant cases dealing with the right to receive information and libraries is *Board of Education v. Pico*.<sup>255</sup> The school board of the Island Trees Union Free School District in New York ordered the removal of several books from the school library it deemed objectionable.<sup>256</sup> Under the First Amendment, students claimed the violation of their rights and sued the school board.<sup>257</sup> The case made its way to the United States Supreme Court, and the Court ruled students’ First Amendment rights had been violated by removing the books.<sup>258</sup> Brennan writing for the majority, which Marshall and Stevens joined, stated:

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<sup>247</sup> *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.**

<sup>248</sup> Search of all states and federal materials for “false light” and “cancel culture”, WESTLAW PRECISION, <http://next.westlaw.com> (search conducted on July 10, 2023). There were many false (no pun) hits.

<sup>249</sup> None of the above searches involving cancel culture with tortious interference, defamation, disparagement, or false light produced any occurrence with books or libraries.

<sup>250</sup> Search of all states and federal materials for “First Amendment” and “censorship”, WESTLAW PRECISION, <http://next.westlaw.com> (search conducted on July 10, 2023).

<sup>251</sup> *Board of Education v. Pico*, 457 U.S. 853 (1982) and *United States v. American Library Association*, 539 U.S. 194 (2003)

<sup>252</sup> *Little v. Llano County*, 2023 U.S. Dist. LEXIS 54716 (W.D. Texas - Austin Division).

<sup>253</sup> *Martin v. Struthers*, 319 U.S. 141 (1943).

<sup>254</sup> Susan Nevelow Mart, *The Right to Receive Information*, 95 LAW LIBR. J. 175, 176 (2003), <https://scholar.law.colorado.edu/faculty-articles/435>.

<sup>255</sup> *Board of Education v. Pico*, 457 U.S. 853 (1982).

<sup>256</sup> 457 U.S. 853.

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

...we think that the First Amendment rights of students may be directly and sharply implicated by the removal of books from the shelves of a school library. Our precedents have focused “not only on the role of the First Amendment in fostering individual self-expression but also on its role in affording the public access to discussion, debate, and the dissemination of information and ideas.”<sup>259</sup>

In *United States v. American Library Association*, the American Library Association alleged the Children’s Internet Protection Act (CIPA)<sup>260</sup> violated library patrons’ First Amendment rights.<sup>261</sup> CIPA required libraries receiving federal funding to install internet-filtering software to prevent children from viewing harmful content.<sup>262</sup> The district court found CIPA to be unconstitutional.<sup>263</sup> The district court from the Eastern Federal District of Pennsylvania held CIPA to be overbroad.<sup>264</sup> The district court put significant weight on the filtering technology that did not accurately decipher harmful material deemed obscene or inappropriate from unarmful material, which was the congress's objective.

No presently conceivable technology can make the judgements necessary to determine whether a visual depiction fits the legal definitions of obscenity, child pornography, or harmful to minors. Given the state of the art in filtering and image recognition Technology, and the rapidly changing and expanding nature of the web, we find that filtering products’ shortcomings will not be solved through a technical solution in the foreseeable future.<sup>265</sup>

The government appealed the opinion. The plurality of the United States Supreme Court did not apply heightened scrutiny to the case as the district court had done. There were two concurrences and three dissenters. Justice Stevens stated, “a statutory blunderbuss that mandates this vast amount of ‘overblocking’ abridges the freedom of speech protected by the First Amendment.”<sup>266</sup>

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<sup>259</sup> 457 U.S. 866 (citing *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978)).

<sup>260</sup> Children's Internet Protection Act (CIPA), 114 Stat. 2763A–335 (codified at 20 U.S.C. § 9134 and 47 U.S.C. § 254).

<sup>261</sup> *United States v. American Library Association*, 539 U.S. 194 (2003).

<sup>262</sup> *American Library Association v. United States*, 201 F. Supp. 2d 401,480 - 481 (E.D. Pa. 2002,) rev’d 539 US 194 (2003).

<sup>263</sup> David Montgomery & Alexandra Alter, *Texas County Keeps Public Libraries Open Amid Book Ban Controversy*, N.Y. TIMES (Apr. 13, 2022), <https://www.nytimes.com/2023/04/13/books/book-bans-libraries-texas-llano.html> [https://perma.cc/3AK3-C2EZ].

<sup>264</sup> *American Library Association v. United States*, 201 F. Supp. 2d 401,489 (E.D. Pa. 2002,) rev’d 539 US 194 (2003).

<sup>265</sup> 201 F. Supp. 2d 449.

<sup>266</sup> *United States v. American Library Association*, 539 U.S. 194, 222 (2003).

Souter, joined by Ginsburg in his dissent, stated the software blocks legal access to adults of legitimate content, making it censorship.<sup>267</sup> Souter, joined by Ginsburg, provides an excellent six-page historical account of public libraries, the First Amendment, and censorship.<sup>268</sup>

The plurality of Rehnquist, joined by O'Connor, Scalia, and Thomas, stated the First Amendment applying strict scrutiny would interfere with a library's discretion over its collection.<sup>269</sup> The plurality said that libraries could exclude entire categories of obscene and pornographic content through their broad discretion over their collection, even though the filtering will affect adult patrons also.<sup>270</sup> The court ruled that internet filtering did not violate the patrons' rights under the First Amendment because patrons could request a librarian to view the internet site and grant access if the site is helpful to the patron or erroneously blocked by the filter.<sup>271</sup>

The most recent First Amendment case involving censorship and public libraries is taking place in Llano County, Texas.<sup>272</sup> The case may be a harbinger of how courts deal with book censorship challenges going forward.<sup>273</sup> In August 2021, a concerned number of citizens, who identified woke books in the Llano County Public Libraries, reached out to a judge and members of the county commissioners with a list of the woke books.<sup>274</sup>

After removing the books in August 2021 from the Llano County Library System, state Republican representative Matt Krause, chair of the Texas House Committee and at the time running for Texas Attorney General, sent a letter to the Texas Education Agency and selected school district superintendents.<sup>275</sup> The letter included a 16-page list of approximately 850 books.<sup>276</sup> The letter instructed the superintendents to identify any books on the list as well as books addressing:

human sexuality, sexually transmitted diseases, or human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS), sexually explicit images, graphic presentations of sexual behavior" or material that "might make students feel discomfort, guilt, anguish, or any other form of

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<sup>267</sup> *Id.* at 234-235.

<sup>268</sup> *Id.* at 238-244.

<sup>269</sup> *Id.* at 195.

<sup>270</sup> *Id.* at 200-201.

<sup>271</sup> *Id.*

<sup>272</sup> Erika Hayasaki, *How Book Bans Turned a Texas Town Upside Down*, N.Y. TIMES (Sept. 9, 2022), <https://www.nytimes.com/2022/09/08/magazine/book-bans-texas.html> [https://perma.cc/EX77-MSBN].

<sup>273</sup> Alejandro Serrano, "Seems Obscene" Says Federal Appeals Court Judge During Hearing for Llano County Library Book Removal Case. TEX. TRIBUNE (June 7, 2023), <https://www.texastribune.org/2023/06/07/llano-county-books-appeal/> [https://perma.cc/3QKW-EXLF].

<sup>274</sup> Hayasaki, *supra* note 267.

<sup>275</sup> Nicole Chavez, *A Texas Lawmaker Is Investigating 850 Books on Race and Gender That Could Cause 'Discomfort' to Students*, CNN (Oct. 29, 2021), <https://www.cnn.com/2021/10/28/us/texas-school-books-race-gender-investigation/index.html> [https://perma.cc/DYG6-2GNP].

<sup>276</sup> Brian Lopez, *Texas House committee to investigate school districts' books on race and sexuality*, TEX. TRIBUNE (Oct. 26, 2021), <https://www.texastribune.org/2021/10/26/texas-school-books-race-sexuality/> [https://perma.cc/A2EN-NE7Y].

psychological distress because of their race or sex or convey that a student, by virtue of their race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.<sup>277</sup>

The Texas Education Agency chose not to comment.<sup>278</sup>

Lelia Green Little, a mother in Llano County, and six other plaintiffs sued the county for the August 2021 removal of children's books.<sup>279</sup> The co-defendants were the county commissioners, the library board, and the library systems director.<sup>280</sup> Robert Pitman, the U.S. District Court for the Western District of Texas, provided a significant victory for the plaintiffs on Thursday, March 31, 2023, ordering the return of the 17 banned books to the public library shelves, including *They Called Themselves the K.K.K.: The Birth of an American Terrorist Group* by Susan Campbell Bartoletti.<sup>281</sup>

Judge Pittman stated, "Defendants, like other government officials implicated in maintaining libraries, have broad discretion to select and acquire books for the library's collection," Pitman acknowledged. "But the Fifth Circuit [whose decisions are binding on federal courts in Texas] recognizes a First Amendment right to access to information in libraries, a right that applies to book removal decisions. Plaintiffs have clearly stated a claim that falls squarely within this right: that Defendants removed the books at issue to prevent access to viewpoints and content to which they objected."<sup>282</sup>

Upon interviewing author Susan Campbell Bartoletti on how she felt about the censorship of her book, she replied, "Furious!"<sup>283</sup> She said she appreciated the folks in the county that banded together to sue the county to have the books reshelfed and was grateful to the District Court Judge<sup>284</sup> who ruled in the plaintiffs' favor.<sup>285</sup> She said she did not know what to expect from the 5th Circuit of Appeals since Texas is such a conservative state but remains hopeful (*to affirm the district court ruling.*)<sup>286</sup> One judge of the 5th Circuit Court of Appeals panel recently stated in the hearing that one of the targeted books, *Lawn Boy*, "Seems obscene."<sup>287</sup> Bartoletti said she thinks the announcement of the ruling will happen in October 2023.<sup>288</sup>

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<sup>277</sup> Chavez, *supra* note 281.

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> Montgomery & Alter, *supra* note 269.

<sup>281</sup> *Little v. Llano County*, 2023 U.S. Dist. LEXIS 54716 (W.D. Texas - Austin Division).

<sup>282</sup> Arthur S. Leonard, *Federal Judge Orders Texas County To Restore Censored "LGBTQ Books" to Library*, GAY CITY NEWS (Apr. 5, 2023), <https://gaycitynews.com/federal-judge-orders-texas-county-restore-censored-lgbtq-books-library/> [https://digitalcommons.nyls.edu/fac\_other\_pubs/900].

<sup>283</sup> Zoom interview with author Susan Campbell Bartoletti (June 21, 2023 4:00 PM) [hereinafter Bartoletti interview].

<sup>284</sup> Judge Robert Pittman, U.S. District Court for the Western District of Texas.

<sup>285</sup> Bartoletti interview, *supra* note 283.

<sup>286</sup> *Id.* Italics provided by author for clarification.

<sup>287</sup> Serrano, *supra* note 273.

<sup>288</sup> *Id.*

When asked about cancel culture and whether it is worse than censorship, Bartoletti said, “I doubt it.”<sup>289</sup> She said to be censored is bad but you do have the courts to help, like in Llano County “of all places.”<sup>290</sup> Of her writing colleagues, there has been a little censorship but she did not personally know any of her acquaintances to be canceled. However, she said the ramifications could be terrible if canceled, “It can ruin a career.” Bartoletti was particularly discouraged by the lack of outrage against those who want to ban books. “Where are the people? There are so many more people on the right side of things compared to these far-right groups wanting to ban. It’s good that seven plaintiffs in a rural Texas County had the nerve to do something about it but they are the exception. Public education and libraries will continue to be challenged and they, the Republicans, are getting away with it. There is no call to action. The apathy is incredible”<sup>291</sup>

Bartoletti said both NPR and Anderson Cooper of CNN had mentioned her and her book.<sup>292</sup> In her research for the book, she visited a Klan meeting in the Ozark Mountains outside of Harrison, Arkansas.<sup>293</sup> Many noted Harrison, Arkansas, as the “most racist town in the United States.”<sup>294</sup> She said her publisher had not mentioned the censorship, and she does not intend to alter her subject matter or self-cancel herself.<sup>295</sup>

The censorship of books is very prevalent today. According to the American Library Association (ALA), a few hundred books were challenged from 2000 to 2020.<sup>296</sup> In 2021, the number of challenged books rose to 1858; in 2022, the number of challenges went up a whopping 38% to 2571.<sup>297</sup> In the years leading up to 2021, the challenges were primarily from individuals challenging one title. That has changed recently with at least 50 organizations, some with multiple chapters, organizing at the local and state level to ban books.<sup>298</sup>

## VII. Conclusion

If there is anything the reader has gleaned from the paper, it is that cancel culture is not the same as censorship and that cancel culture is more damaging to those targeted. At this point, the reader hopefully agrees that cancel culture is alive and well<sup>299</sup> and here to stay.<sup>300</sup> Since it is here to stay, the focus should be diminishing its effects. Education is the logical place to start. Colleges and

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<sup>289</sup> Bartoletti interview, *supra* note 283

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

<sup>294</sup> *Harrison, Arkansas*, WIKIPEDIA [https://en.wikipedia.org/wiki/Harrison,\\_Arkansas](https://en.wikipedia.org/wiki/Harrison,_Arkansas) [https://perma.cc/3SVS-RTFV] (last updated July 4, 2023).

<sup>295</sup> *Id.*

<sup>296</sup> Eesha Pendharker, *Book Challenges Doubled in 2022 and Became More Organized*, EDUC. WK. (Mar. 29, 2023), <https://www.edweek.org/teaching-learning/book-challenges-doubled-in-2022-and-became-more-organized/2023/03> [https://perma.cc/E8FK-WZH2].

<sup>297</sup> *Id.*

<sup>298</sup> *Id.*

<sup>299</sup> James C. Ho, *Agreeing to Disagree: Restoring America by Resisting Cancel Culture*, 27 TEX. REV. L. & POL. 1 (2022), <https://heinonline.org/HOL/P?h=hein.journals/trlp27&i=13> (subscription required).

<sup>300</sup> *Kennedy v. Bremerton School District*, 2, 2022 WL 577827 (U.S.) (Appellate Brief), 2022.



Universities, where there is much debate, are good place to educate students on “how to be empathetic speakers and generous listeners even — and especially — in the midst of our most contentious debates.”<sup>301</sup> John Stuart Mill, an advocate for free expression, quoted several times above in the paper, states “He who knows only his own side of the case knows little of that. His reasons may be good, and no one may have been able to refute them. But if he is equally unable to refute the reasons on the opposite side, if he does not so much as know what they are, he has no ground for preferring either opinion.”<sup>302</sup>

Educating against cancel culture does not have to start at the stage of higher education. Educating children and adults of the practicalities of how to lessen the effects of cancel culture can have impact. Educating people to care about cancel culture is effective.<sup>303</sup> If someone feels compelled to respond to some communication, make certain the response is factual and honest – truth is the best defense.<sup>304</sup> People who respond with their opinion also need to stand their ground and not cower. If a person cowers, cancel culture wins.<sup>305</sup> A person should not be a hypocrite and cancel others — use grace and forgiveness.<sup>306</sup> People must be aware of what is said in front of a camera or a cell phone can come back to hurt them.<sup>307</sup> There are people who deliberately take things out of context to make others look bad. Be careful to communicate clearly with enough context so there can be no mistake in what was said.<sup>308</sup>

There has been discussion concerning the regulation of social media, the biggest source of cancel culture.<sup>309</sup> The United States Supreme Court, however, views social media as a “right to speak” and be heard.<sup>310</sup> “Those websites can provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard. They allow a person with an internet connection to “become a town crier with a voice that resonates farther than it could from any soapbox.”<sup>311</sup>

Cancel culture is also dangerous because there are no legal protections for canceled people.<sup>312</sup> There have been no plaintiffs that have been successful in alleging that cancel culture violates their

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<sup>301</sup> Jim Ryan & Ian Baucom, *Can We Talk?*, INSIDE HIGHER EDUC. (Mar. 27, 2022), <https://www.insidehighered.com/views/2022/03/28/what-universities-can-do-about-cancel-culture-opinion> [https://perma.cc/N39X-6B5E].

<sup>302</sup> Jim Ryan, *Ryan’s Remarks: ‘Be Curious, Not Judgmental*, UVA TODAY (Aug. 22, 2021) <https://news.virginia.edu/content/ryans-remarks-be-curious-not-judgmental> [https://perma.cc/GR7N-MXWK] (citing MILL, *supra* note 70).

<sup>303</sup> Kay Coles James, *Seven Steps to Surviving Cancel Culture*, HERITAGE FOUND. (Jan. 2, 2021), <https://www.heritage.org/conservatism/commentary/seven-steps-surviving-cancel-culture> [https://perma.cc/379J-DU7X].

<sup>304</sup> *Id.*

<sup>305</sup> *Id.*

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> Hidy, *supra* note 33, at 114 – 115.

<sup>310</sup> *Id.* (Citing *Reno v. ACLU*, 521 U.S. 844, 870 (1997)).

<sup>311</sup> *Id.*

<sup>312</sup> Notes 229-249, *supra*, and accompanying text.

rights under the First Amendment.<sup>313</sup> Recently, there have been cases where plaintiffs have alleged various torts based on cancel culture, but at this point, the efforts to use cancel culture to commit a tort has proved unsuccessful.<sup>314</sup>

Canceling does not involve government authority. Therefore, a person or, more likely, people and groups can attack an author or an author's book quickly and effectively through social media platforms.<sup>315</sup> They have carte blanche to shame, ridicule, humiliate, withdraw support, and bully. As Jonathan Rauch states, "to swamp and storm."<sup>316</sup> The attacks can eventually ruin an author's reputation and perhaps the success of a book.<sup>317</sup>

With cancel culture not going away, perhaps the final question should be: Is there be a way to redeem those successfully targeted? There are those who have successfully come back from being successfully called out.<sup>318</sup> The answer seems to largely matter on how those targeted respond to being canceled.<sup>319</sup> The person attacked should take ownership of what they did.<sup>320</sup> An apology seems to be necessary for redemption.<sup>321</sup> As in the case of Ezra Miller, a heartfelt apology goes a long way toward forgiveness.<sup>322</sup> "In order to find redemption and move on, you need to do it with a renewed sense of purpose — personally, professionally, and publicly."<sup>323</sup>

In closing, online vigilantes take advantage of cancel culture to freely blame, shame, and bully people to destroy their reputations and livelihoods.<sup>324</sup> Cancel culture chills speech for democracy since "You can't give people the benefit of the doubt to just hold a conversation anymore. You've got to worry about feeling judges."<sup>325</sup>

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<sup>313</sup> Notes 216 – 219, *supra*, and accompanying text.

<sup>314</sup> Notes 271 – 290, *supra*, and accompanying text.

<sup>315</sup> Notes 111 – 149, *supra*, and accompanying text.

<sup>316</sup> RAUCH, CONSTITUTION OF KNOWLEDGE, *supra* note 24, at 167-168.

<sup>317</sup> Notes 210 - 211, *supra*, and accompanying text.

<sup>318</sup> Marianne Garvey, *From Digital Detox to Apology Tours, How Some Celebrities Come Back from Being 'Canceled'*, CNN ENT. (July 19, 2021), <https://www.cnn.com/2021/07/16/entertainment/canceled-cancel-culture/index.html> [https://perma.cc/93HU-XUNH].

<sup>319</sup> Erica Nahmad, *Cancel Culture: Is there an Opportunity for Redemption After Being Canceled?* BELATINO (Feb. 16, 2022), <https://belatina.com/cancel-culture-redemption/> [https://perma.cc/JW3F-GMQ9].

<sup>320</sup> Tovia Smith, *Is Redemption Possible In the Aftermath Of #MeToo?*, NPR (Oct. 5, 2019), <https://www.npr.org/2019/10/05/766843292/is-redemption-possible-in-the-aftermath-of-metoo> [https://perma.cc/G3MP-XUYB]

<sup>321</sup> Note 326, *supra*.

<sup>322</sup> Note 61, *supra*.

<sup>323</sup> Note 326, *supra*.

<sup>324</sup> Note 46 - 47, *supra*, and accompanying text.

<sup>325</sup> *America Has a Free Speech Problem*, N.Y. TIMES (Mar. 18, 2022), <https://www.nytimes.com/2022/03/18/opinion/cancel-culture-free-speech-poll.html> (subscription required).