

Collection Development and Maintenance of Accurate Grey Literature on Climate Change: A Case Study of the Law and Policy in the United States

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Abstract

Problem: The United States exists in a Post-truth Era with false beliefs such as the moon landing was a hoax, the 2020 presidential election was stolen, the Chinese government created, then distributed the Covid-19 virus and many others. Conspiracy theorists abound in the U.S. cultural and political landscape. Another such belief is that climate change is a myth; it is not occurring.

*Research method/procedure: This study explores in a U.S. Constitutional context the ability of public librarians and public libraries to collect and maintain truthful (trusted) grey content regarding climate change. One element of many collection development policies in libraries is accuracy. See, *ACLU v. Miami-Dade County School Board*, 557 F.3d 1177, 1184 (11th Cir.), cert. denied 130 S. Ct. 659 (2009). Accuracy is also used to assess collection maintenance. Prior content including grey literature created and collected at time when climate change was unproven is no longer accurate and should be withdrawn. Likewise requests by patrons to keep or add content presenting an alternative and inaccurate viewpoint regarding climate change should be withdrawn or refused. In the United States the First Amendment guarantees not only the right to speak but also to receive information, including in a public library, the “quintessential locus of the receipt of information.” *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242, 1255 (3d Cir. 1992). Under First Amendment Forum analysis, a public library collection would be considered a non-public forum while the public spaces within the library are a limited public forum. See, *Faith Center Church Evangelistic Ministries v. Glover*, 462 F.3d 1194, 1204 (9th Cir. 2006). In a non-public forum, government policies that regulate speech must be rationale and viewpoint neutral. See, *Case v. Unified School District No. 233*, 908 F. Supp. 864, 875 (D. Kan. 1995).*

The constitutional framework poses the following questions: Do public library patrons have a right to require that inaccurate grey content regarding climate change be retained or added to the collection? Must a public library accept gifts of such content, adding it to its collection? Likewise do those same patrons have the right to object when librarians withdraw inaccurate grey content regarding climate change reflecting an alternative viewpoint?

*A textual analysis of the extant case law regarding the rights of public librarians and their patrons is undertaken in order answer these questions. In addition to relevant U.S. Supreme Court, the following cases among others are analyzed and discussed. *ACLU v. Miami-Dade County School Board*, 557 F.3d 1177 (11th Cir.), cert. denied 130 S. Ct. 659 (2009); *Elgi v. Chester County Library System [CCLS]*, (E.D. Pa. 2019); and *Via v. City of Richmond*, 543 F. Supp. 382 (D.C. Va. 1982).*

Anticipated results of the research: The cases reviewed should prove instructive regarding the rights and limitations of public librarians and libraries to collect and maintain accurate content including grey literature regarding climate change as well as the rights and limitations of patrons possess to impact that collection development and maintenance process. Strategies and responses to interactions with patrons holding alternative viewpoints on climate change are forwarded to assist public libraries and its librarians in their efforts to collect and maintain truthful, trusted grey content regarding climate change.

Keywords: Free Speech, Public Forum Analysis, Content Challenges and Removal, Library Discretion in Collection Building and Maintenance

Introduction

While climate change impacts every individual, certain individuals have access to avenues to promote literacy and awareness of the climate change phenomenon. Public libraries and public librarians are, in fact, “in a critical position with the potential to be educational leaders in their communities” (Trotter & Komarnytska, 2023, p. 209) on the topic of climate change. However, there are several issues public libraries face when educating individuals on the topic of climate change. These issues include interfacing with individuals who do not believe in the climate change phenomenon, such as climate change denialists living in a “post-truth” era, and, as a result, individuals who wish to remove items from libraries’ collection reflecting the reality about specific conditions which they deny, or adopt inaccurate materials reflecting an “alternate truth.”

This paper is divided into several sections. The first section will explore the foundations of the philosophy of truth and the problem of post-truth. The second section will explore the United States context of post-truth narratives involving the restriction and censorship of sensitive topics as well as science and climate change denial and what that means for in a post-truth world. Third, we will bring forth several legal cases in the United States to analyze the First Amendment, including prior restraint and viewpoint discrimination. Then, we will discuss legislation impacting grey resources and put forth recommendations for library sustainability strategies, as well as for public library collection building and maintenance of trusted climate resources, grey or otherwise. We argue that in terms of collection development and maintenance, accurate grey literature on climate change will guide public libraries’ role in developing awareness of the climate change phenomenon among their patrons.

Part I Truth Theories and the Problems with Post-Truth

Although this paper will not delve deeper into truth theories, a philosophical foundation through truth theories will be discussed in this section, which serves as a basis for the discussion of the concepts of truth and post-truth narratives. These concepts can be evaluated particularly through the correspondence theory, consensus theory, and constructivist theories of truth. The concept of truth is not limited to these theories and is also not limited to the discussion below.

The correspondence theory of truth considers truth as correspondence between a fact, statement, or belief and objective reality (Russell, 1906). As it is arguable that “we have no access to objective reality independent of ourselves against which to match our claims and beliefs,” (Porpora & Sekalala, 2019, p. 940), the concept of objective reality is disputable. This theory is applied to a universal and indisputable reality. Although this theory is applicable to the factual conditions of the planet, it falls short when individuals do not acknowledge the state of the world *is* the reality, in which much of these conditions are the result of human actions. Anthropogenic causes of climate change are the accumulation of the economic usage of fossil fuels and carbon dioxide emissions, resulting in environmental injustice (Oreskes, 2023). There are many who simply deny this reality or believe they play no part in it.

Another truth theory, the consensus theory, considers truth to be agreed upon among a community or society. With the paradox of post-truth, “it appeals to consensus (for post-truth) as a way of undermining another consensus (for truth)” (Bufacci, 2020, p. 355). In an ideal world, elements of Jürgen Habermas’ concept of the public sphere, or a place for discourse to develop public opinion, would apply. However, the concept of the public sphere, with the original rules and expectations of “a collective willingness to cooperate in the search for meaningful agreement on how the world is and should be” (Foust & Pratt, 2021) was reconstructed over time and ultimately faced its downfall. The proliferation and deregulation of sensationalist online news, forums, and other networking sites (including social media) on the Internet “...made consensus on post-truth much easier to manufacture” (Bufacci, 2020, p. 356) even though a superficial means which reflect a

'public sphere.' This is inevitably problematic with the evolution of artificial intelligence (AI) to repost misinformation¹, thus increasing the number of these posts available for others to consume and continues to create an echo chamber lacking critical discourse. Misinformation about climate change is also occurring through native advertising, or a form of paid content embedded within real news articles even from widely circulating news distributors, often "misrepresent[ing] the full extent to which fossil fuel companies are responsible for climate change" (Colarossi and Ricciardi, 2023). It is difficult to dismiss the potential attribution of these misinformation reposts and ads to a disinformation campaign. These insidious ads fabricated by predatory companies and sanctioned by traditionally trusted resources ultimately influences individuals into the false and captivating narrative that humans are faultless in their contribution to the problem of climate change.

Finally, constructivist theories of truth can differ depending on the evaluative lens. Building on the concept of reality, this theory of truth does not consider a shared reality as "facts are contingent upon consciousness and human activities and are created or 'constructed,'" (Brahms, 2020, p. 13) which rejects the correspondence theory of truth. Those who view such ads and articles previously mentioned with false narratives and do not see any physical evidence of climate change around them or do not equate global disasters with climate change may deny that the phenomenon is occurring. This is a point of view, or a perspective, which allows those who deny climate change to shift blame and accountability for climate change conditions away from themselves and to other entities.

Climate change denialists and skeptics fall victim to manufactured arguments as "alternative truths," allowing doubt to further influence both individual and political decision-making and obstructing the actions needed to combat climate change. This action occurs in what is called post-truth crisis (Sher, 2022) or epistemological crisis (Friedman, 2023), in an era where individuals "believe information that appeals to emotions or existing personal beliefs" (Cooke, 2017, p. 212) and fail to think critically. Post-truth itself is the irrelevance of truth (McIntyre, 2018), where properties of soundness and validity are insignificant. However, the lack of the significance of truth threatens its value, which has profound effects on not only the value of truth but what humanity does because of the loss of the value of truth. Although post-truth is a phenomenon throughout the globe, we will discuss post-truth narratives in the context of the United States in the next section.

Part II United States Context of Post-Truth Narratives

Post-truth narratives are prevalent in post-truth politics and present in any realm where there is evidence; emotions or feelings of an event, phenomena, or such evidence; and a platform to provide feedback. Two post-truth narratives in the United States discussed below, restrictions on library collections and science and climate change denial, will provide a framework for the discussion of several cases exploring First Amendment challenges in the following sections.

Restrictions on Library Collections and Classroom Censorship on Sensitive Topics

The American Library Association (ALA) has seen challenges to nearly 1,915 unique titles and 3,923 total titles in the year 2023 alone (American Library Association, 2023b; American Library Association, 2023c) with the majority occurring at public libraries, school libraries, and schools. These challenges "attempt to remove materials from curricula or libraries, thereby curtailing the ability of others to access information, views, ideas, expressions, and stories" (American Library Association, 2023b). Reasons for book bans or challenges are subjective, but the consensus and those who subsequently participate in authoring legislation, can influence the choices made for their community, predominantly in places that should be providing and promoting access and education. One of the problems with bans or challenges is that it is the attempt to "eliminate

narratives...elucidat[ing] the truths of marginalized groups” (Cooke, 2023) as seen in the United States, where 7 out of 13² of the top challenged books of 2022 reported by the American Library Association centered around LGBTQIA+ content including gender identity and sexuality. Other highly challenged topics are race and critical race theory (CRT), in which these challenges bring forth fallacious arguments such as “the critical race theory is defamatory...forc[ing] feelings of racial guilt and distress upon white students,” (Shearer, 2022) when the goal is to examine racism as a social construct, and historically—particularly the reality of systemic racism. Individuals who identify with a certain group and lack intergroup contact, or contact with other social groups other than their own, may believe certain conditions are lies or that a specific phenomenon is false. These statements are repeated frequently within their group and may be sensationalized on the news. When presented with the truth, these individuals will doubt it, in contrary to the evidence available and even against their own judgment, leading to prejudices.

Challenges continue to arise ranging from claims of obscenity to lifestyle differences in misalignment with the requestor’s moral values. In terms of legality, United States public schools can “exercise discretion to restrict the range of permissible materials,” (Fiore, 2011, p. 98) specifically through decisions made by local school boards. Such valid exercise of discretion can lead to skewed or inaccurate content in the curriculum or library shelves. For example, in one school district in a suburb of Milwaukee, science teachers are forbidden from using the phrase “climate change,”³ but teaching and discussing the impact that humans have on the environment is possible without using the phrase.

The topic of climate change depicted in books is not excluded from the list above, even though it is not the most popular topic to challenge. In Kutztown, Pennsylvania, the attempt to remove a middle-school academic curriculum teaching a book about climate change occurred in early 2023. A school board member spearheaded this attempt by claiming educators were “pushing a politically charged book about climate change [and] questioned if the other side would be presented” (Mitchell, 2023) exemplifying the two-sides fallacy (Froehlich, 2017, p. 8). As discussed in the next section, facts about climate change or any other topic are not opinion, apolitical, or impermissible viewpoint discrimination. As one appellate court posed rhetorically for example, “what about a book that talked about the life of German children during the Third Reich? ...Hitler is out of favor now. Political orthodoxy views his regime as evil... And what about a book about life in the antebellum South ...Would we describe that book as ‘apolitical?’”⁴ It goes without saying that climate change has been observed over many years and that there is evidence for anthropogenic causes. However, some still deny science and climate change regardless of the overwhelming amount of evidence.

Science and Climate Change Denial

Science denial includes many categories such as rejecting the benefit and safety of vaccinations, the theory of evolution, pseudoscientific beliefs about the shape of the Earth (“flat earth”), the revolution of the planets in our solar system, and the human impact on climate change. Individuals who lack the basic literacy of such phenomena may deny scientific evidence at a superficial level. However, post-truth composes another story about those who deny science; not because there is not a lack of understanding, but rather the truth is irrelevant to them.

Lee McIntyre calls the climate change phenomenon, the “most egregious case” (McIntyre, 2018, p. 27) of science denial. Like book bans or challenges due to certain topics, individuals denying climate change believe it is a “direct and intentional assault on their personal lifestyles and moral attitudes” (Rubin, 2017, p. 105). Arguments of the denial of climate change in the era of post-truth can be described by more logical fallacies or biases, such as the appeal to false authority fallacy where opinions of individuals lacking real authority on a subject are treated as authoritative and laypeople put trust in those

opinions. This fallacy is a result of corporate attempts⁵ to create counternarratives such as the fossil fuel industry and its motive of self-preservation or the politics of geography such as states or regions economically dependent upon the fossil fuel industry. Social media posts from Donald Trump who frequently posted about climate change and global warming skepticism before and during his presidency (Matthews, 2017) are other examples of this fallacy, with numerous grey literature reports (Anderson, 2016; Borick et al., 2017; Greenpeace, 2019) which followed in attempt to invalidate his claims and provide input for policy issues the posts would affect.

More recently, the Pew Research Center (2023) released a report noting that Americans' climate change perceptions are tied strongly to their partisan affiliation rather than to the actual conditions of their area. However, it is not just beliefs that set these individuals apart as "ideology trumps science" (McIntyre, 2018, p. 34), because the actions of those who deny science and climate change affect others. Several states possessing a conservative political background or have conservative leadership, including Florida, Montana, and Oklahoma, are partnering with PragerU, a conservative non-profit which developed classroom education materials containing misleading information about climate change and other climate change denial material, further pushing the conservative agenda (Branch, 2023a; Branch, 2023b; Reuters, 2020). These choices will not only affect young individuals learning about climate change for the first time, but also the choices of materials and resources made available through places traditionally prescribed to provide and promote access and education.

In the next section, the issues above will be put into perspective with the discussion of several cases regarding collection development and maintenance the First Amendment.

Part III First Amendment and the Legal Framework for Content Review in Library Collections

In the United States the Free Speech provision of the First Amendment guarantees not only the right to speak but also to receive information, including the right to read. The "public library, the *quintessential locus* of the receipt of information"⁶ plays an important role in facilitating citizens exercise of these right. Under First Amendment Forum analysis, a public library collection would be considered a non-public forum. In a non-public forum, where free speech rights are the least robust, government policies that regulate speech need only be rationale and viewpoint neutral.⁷ Patrons do have a First Amendment right derived from the Free Speech clause to be in a public library due to a Liberty Interest.⁸ Courts view the public spaces of a public library, as opposed to administrative or staff workspaces, as a limited public forum.⁹ In a limited public forum, the exercise of patron speech rights can be limited to that which conforms to the nature of the forum: "Its [public library] very purpose is to aid in the acquisition of knowledge through reading, writing and quiet contemplation... exercise of other oral and interactive First Amendment activities is antithetical to the nature of the Library."¹⁰ While patrons have a Liberty Interest to be in the service areas of a public library, but the nature of the collection itself is that of a nonpublic forum. Where again, the regulations of the speech is subject to a mere reasonableness standard and be viewpoint neutral: "the First Amendment prohibits the removal of books from libraries based on either viewpoint or content discrimination."¹¹ These standards are often expressed in the collection development policy of the library.

In the context of trusted grey literature on climate change the constitutional framework poses the following questions: Do public library patrons have a right to require that inaccurate grey content regarding climate change be retained or added to the collection? Must a public library accept gifts of such content, adding it to its collection? Likewise do those same patrons have the right to object when librarians withdraw inaccurate grey literature or other library content for that matter, regarding climate change that reflects

an alternative viewpoint? A textual analysis of the extant case law regarding the rights of public librarians and their patrons is undertaken in order answer these questions.

As the literature regarding climate change has evolved over the past several decades, there may in fact be outdated or otherwise questionable content that the library desires to deaccession. For example, in one review there were 108 “English-language books that reject the strong scientific evidence that global warming is occurring, that human activities are the predominant cause, and that negative impacts to humans and natural systems may occur” published between 1982 and 2010.¹² What are the legal standards involved in the deaccessioning of such titles? The legal (constitutional) standards are offered by the United States Supreme Court. Writing for the plurality in *Board of Education, Island Trees Union School District No. 26 v. Pico*, Justice Brennan saw a distinction, between the **removal** of school library items and the **acquisition** of school library items: “Furthermore, even as to library books, the action before us does **not** involve the **acquisition** of books. Respondents have not sought to compel their school Board to add to the school library shelves any books that students desire to read. Rather, the only action challenged in this case is the removal from school libraries of books originally placed there by the school authorities, or without objection from them.”¹³ Removals are therefore permissible but must comply with constitutional standards. “Petitioners rightly possess significant discretion to determine the content of their school libraries. But that discretion may not be exercised in a narrowly partisan or political manner... Thus whether petitioners’ removal of books from their school libraries denied respondents their First Amendment rights depends upon the **motivation** behind petitioners’ actions.”¹⁴ The Court cautioned that content may not be removed because of the viewpoint or ideas expressed in the item. “If petitioners intended [motivated] by their removal decision to deny respondents access to ideas with which petitioners disagreed... then petitioners have exercised their discretion in violation of the Constitution.”¹⁵ The Court proceeded to offer examples of the impermissible motivation, whereby there is an attempt to suppress the ideas expressed by the content. “If a Democratic school board, motivated by party affiliation, ordered the removal of all books written by or in favor of Republicans, few would doubt that the order violated the constitutional rights of the students denied access to those books. The same conclusion would surely apply if an all-white school board, motivated by racial animus, decided to remove all books authored by blacks or advocating racial equality and integration.”¹⁶ There are, however, constitutional standards for removal of material from a public school library or public library. “On the other hand, respondents implicitly concede that an **unconstitutional motivation** would **not** be demonstrated if it were shown that petitioners had decided to remove the books at issue because those books were **pervasively vulgar**. Tr. of Oral Arg. 36. And again, respondents concede that if it were demonstrated that the removal decision was based solely upon the **‘educational suitability’** of the books in question, then their removal would be ‘perfectly permissible.’ In other words, in respondents’ view such motivations, if decisive of petitioners’ actions, would **not** carry the danger of an official suppression of ideas, and thus would **not** violate respondents’ First Amendment rights.”¹⁷ The Court did not define how much vulgarity rises to a level “pervasively.” However, such content is unlikely to be found in grey literature regarding climate change. “Furthermore, while the Book Review Committee appointed by petitioners was instructed to make its recommendations based upon criteria that appear on their face to be permissible—the books’ “educational suitability,” “good taste,” “relevance,” and “appropriateness to age and grade level,” the Committee’s recommendations that five of the books be retained and that only two be removed were essentially rejected by petitioners.”¹⁸ A court will view library professionals, and in school settings affiliated individuals such as a Reading Specialist, Head of Curriculum, etc., as best positioned to decide if material is educationally suitable or not.¹⁹

When Administrators or Library or School Boards ignore and override the decision of these individuals during a “book challenge” or reconsideration process, courts are more apt to suspect an improper ill-motive, with removal often based on impermissible viewpoint discrimination.²⁰ Likely content that is outdated regarding the topic of climate change is no longer educationally suitable and may be permissibly removed for the collection of a public or public school library.

Part IV Viewpoint Discrimination and its Application in the Accuracy of Library Collections

If the goal is viewpoint neutrality, must a library acquire content that both forwards as well as denies the occurrence of climate change? In other words, must the library present both “viewpoints” or can the outdated climate change content be removed from the collection? To answer this question an understanding of what is meant by viewpoint discrimination is required. Second, a viewpoint must be distinguished from an opinion or belief and a fact.

These issues were addressed by a federal Court of Appeals decision.²¹ The Miami-Dade County School Board collection policy consisted of “fifteen criteria for selecting library materials: educational significance, appropriateness, **accuracy**, literary merit, scope, authority, special features, translation integrity, arrangement, treatment, technical quality, aesthetic quality, potential demand, durability, and lack of obscene material.”²² A book entitled *Vamos a Cuba* was challenged and removal of it from the public school library requested, as it contained *factual errors* on 7 of its 32 pages.²³ As the court observed: “if we find that the Board was motivated by the factual errors in the book, the plaintiffs have no chance of success on the merits, much less a substantial one.”²⁴ The court discussed the relevant standards from the *Pico* decision that applied: “Even assuming that standard [*Pico*] applies, however, the plaintiffs still lose if the School Board removed *Vamos a Cuba* not for those prohibited reasons but instead, as the Board insists, for legitimate pedagogical reasons such as concerns about the accuracy of the book.”²⁵ Factual inaccuracy is a legitimate reason to deaccession of library material whether the inaccuracy stems from “commission or omission. There is no constitutional right to have books containing misstatements of objective facts shelved in a school library.”²⁶ The School Board voted to remove the book as it “contain[ed] factual errors and does not present an accurate picture of life in Cuba.”²⁷ In the words of the court: “What *Vamos a Cuba* fails to mention, and takes great pains to cover up with its ‘like you do’ misrepresentations, is that the people of Cuba live in a state of subjugation to a totalitarian communist regime with all that involves.”²⁸ In the context of climate change as opposed to geography, is the library required to collect material offering, for example, an alternative viewpoint on climate change (denying its occurrence) and could it deaccession material that presents that now outdated view of climate change. As with the factually inaccurate view of Cuba present in *Vamos a Cuba*, the library need not collect and may remove material reflective of that position, i.e., that climate change is not occurring. “A preference in favor of factual accuracy is not unconstitutional viewpoint discrimination.”²⁹ As the court further stated: “Facts about the conditions inside a country are not a viewpoint. They are facts. A book that recounts those facts accurately would not, for that reason, be political in nature.”³⁰ An example of unconstitutional viewpoint discrimination in the deaccessioning process would be found where content that expressed a positive impression of LGBTQIA2+ attitudes or realities is removed but content critical of those attitudes and realities remains untouched.³¹

Post-truth narratives on the fallacy of climate change are simply that, untruths and inaccurate. A library may deaccession such content under the U.S. Constitution and is under no obligation to collect such content in attempt to comport with viewpoint neutral collection building and maintenance objectives. A public library possesses broad

discretion in building and maintaining its collections. Furthermore, the individual collecting and maintenance decisions in a public library reside with the librarians.³²

Pico and its progeny established standards for permissible removals. What if a patron insisted that the library add content to its collection that questions or outright denies climate change? Patrons do not have a constitutional right to command a library to add content to its collection. Even if the item is donated, at no cost to the library. In *Via v. City of Richmond*,³³ the Richmond Public Library was within its discretion to refuse a gift subscription to *The American Atheist* magazine. The senior librarian indicated “that the publication was of **low quality**, that there was little or **no indication of interest** by the reading public, and that the subject matter was dealt with by **better quality** publications and books.”³⁴ These factors parallel the collecting criteria of most libraries. Adherence to these criteria is reasonable. Further as the court observed there was no evidence that the gift subscription offer was refused due to unwillingness to espouse the cause of atheism, i.e., a viewpoint on the existence of a divine being.³⁵ Such refusals are permissible. Likewise, in *Elgi v. Chester County Library System*,³⁶ involving both a book acquisition request and a programming (speaker) request, the library refused to acquire a copy of *The Phantom Ogre; Exploring the Upside-Down World of anti-Semitism*, following its Materials Selection Policy. Programming was also limited to those “that promote and extend the Library’s collections, services, goals and mission [of the library] ... sponsored program must not promote the services, products, or philosophy of an individual group.”³⁷ The court commented extensively on the discretion libraries possess in determining material for its collections; “Libraries have broad discretion in determining the content of their collections... public libraries require and merit ‘broad discretion’ to make content-based decisions in collection and internet management since their purpose is to offer selective access of information to the public... Libraries are not required to accommodate every book or proposed talk.”³⁸ The court found no evidence of viewpoint discrimination in the refusal to acquire Elgi’s book or invite him to speak regarding it.³⁹ Concluding that authors do not have a constitutional right be included library collections or programming the court observed that Elgi “alleges only that his book and proposed talk were not accepted, but as Plaintiff does not have a constitutional right to be included in a library collection...”⁴⁰ The Supreme Court has further stated that in order to “fulfill their traditional missions, public libraries must have broad discretion to decide what material to provide to their patrons.”⁴¹ Alluding to collection criteria employed by a public library the Court added that the goal is to “facilitate research, learning, and recreational pursuits by furnishing materials of requisite and appropriate quality.”⁴² Further, this discretion extends to what content the library makes available online to its patrons. “A library’s need to exercise judgment in making collection decisions depends on its traditional role in identifying suitable and worthwhile material; it is no less entitled to play that role when it collects material from the Internet than when it collects material from any other source.”⁴³

Subsequent lower court decisions have echoed the concept that the Internet and other online sources are an extension of the collection over which the library possesses the same discretion whether to make certain content available or not. A “public library has discretion to make content-based decisions about which magazines and books to include in its collection, it has discretion to make decisions about Internet content.”⁴⁴ Alluding again to use of the collection development criteria when deciding what content to make available online the court observed that viewing the access to content online “not comparable to removal of items from NCRL’s collection, but rather acquisition of materials to add to its collection.”⁴⁵ If a library would not acquire material denying climate change it need not allow patrons to access such content online either. The right to receive information protected by the First Amendment “would still exist only with respect to the materials that are actually in a library’s collection. A patron would not have a right to receive information in a public library if that information was not part of the library’s collection.”⁴⁶ Reaffirming the *Elgi* court, a “patron does not have the constitutional right

to force a public library to acquire a particular book or type of book. Analogously, this right would not exist with respect to Internet sites that have not been added...collection decisions about Internet materials are not... subject to public forum analysis."⁴⁷ Such collecting and access decisions are permissible under the constitution as such discretion is "reasonable and accords with its mission and these policies and is viewpoint neutral."⁴⁸ As the physical collection as well as access to online content is considered a nonpublic forum "under rational review, the Court finds NCRL's use of FortiGuard to filter its patrons, Internet access and its decision to not disable the filter upon an adult patron's request complies with the First Amendment."⁴⁹ The physical collection and access to content online are considered one and the same. A public library need not collect material denying climate change nor need it allow patrons to access such content online, if for example, access to such content is blocked by a filter or the library decides not to subscribe to a database from a publisher that espouses that position.

Table 1. Application of legal principles to library collecting practices regarding trusted grey sources on climate change.

Legal Decision	Legal Principle Espoused	Impact on Grey or other Climate Change Content in Library Collections
<p><i>Board of Education, Island Trees Union School District No. 26 v. Pico</i>, 457 U.S. 853 (1982).</p>	<p>Permissible removal of items from a public school library.</p> <p>Court: "educational suitability" Id. at 871.</p> <p>From Oral Argument Transcript: "pervasively vulgar." Id.</p> <p>Book Review Committee: "educational suitability," "good taste," "relevance," and "appropriateness to age and grade level." Id. at 873.</p>	<p>It is constitutionally permissible to deaccession out of date material on climate change / global warming.</p>
<p><i>United States v. American Library Association</i>, 123 S. Ct. 2297 (2003).</p>	<p>"To fulfill their traditional missions, public libraries must have broad discretion to decide what material to provide to their patrons." Id. at 204. Library discretion extends to what resources are made available online to patrons as well</p>	<p>A library could use technology (filtering mechanism) to block sites and content denying the occurrence of climate change / global warming.</p> <p>As a library might choose not to not collect such content for its physical collection, it need not make such content available to patrons online either.</p>
<p><i>ACLU v. Miami-Dade County School Board</i>, 557 F.3d 1177 (11th Cir.), cert. denied 130 S. Ct. 659 (2009).</p>	<p>Inaccurate content, whether by "commission or omission" can be considered educationally unsuitable. Accuracy is an acceptable criterion to use in collection development.</p> <p>"There is no constitutional right to have books containing misstatements of objective facts shelved in a school library." Id. at 1202.</p> <p>"A preference in favor of factual accuracy is not unconstitutional viewpoint discrimination." Id. at 1222.</p>	<p>It is constitutionally permissible to deaccession content that is factually inaccurate.</p> <p>Content denying that climate change / global warming is occurring would be considered factually inaccurate.</p> <p>Content denying that climate change / global warming is occurring is not expressive of a viewpoint. Likewise, content that forwards that climate change / global warming is occurring is not a viewpoint, it is a fact.</p>

<p><i>Via v. City of Richmond</i>, 543 F.Supp. 382 (D.C.Va. 1982).</p>	<p>A library is not required to accept any gifts if the content is inconsistent with its criteria for collection development. Senior librarian indicated “that the publication was of <i>low quality</i>, that there was little or <i>no</i> indication of <i>interest</i> by the reading public, and that the subject matter was dealt with by <i>better quality</i> publications and books.” Id. at 384</p>	<p>A library is not required to accept content denying that climate change / global warming is occurring even if it is offered as a gift, such content would not meet the “quality” or accuracy criterion of a collection development policy.</p>
<p><i>Elgi v. Chester County Library System</i>, 394 F.Supp.3d 497 (E.D. Pa. 2019).</p>	<p>“Libraries have broad discretion in determining the content of their collections... public libraries require and merit ‘broad discretion’ to make content-based decisions in collection and internet management...” Id. at 504. “Plaintiff does not have a constitutional right to be included in a library collection...” Id.</p>	<p>The discretion of a library in determining the content of its collection extends to the programming it offers. A library, if requested to invite a speaker or provide programming denying that climate change / global warming is occurring, need not fulfill that request.</p>
<p><i>Bradburn v. North Central Regional Library District</i>, 231 P.3d 166 (Wash. 2010) (en banc).</p>	<p>“Given the traditional and historical role of a public library, and the discretion necessarily entailed to make content-based judgments about what to include in its collection...” Id. at 180. Use of a filter “advances the duty of education and fulfills NCRL’s mission and traditional role.” Id. “A public library has traditionally and historically enjoyed broad discretion to select materials to add to its collection of printed materials... the same discretion must be afforded a public library to choose what materials from millions of Internet sites it will... make available to its patrons. Id. at 181. Standard of Review: “Protecting patrons (including minors) from obscene material and increasing the library’s capacity to provide literary, <i>scientific</i>, historic, and other materials clearly satisfies the rational basis test.” Id. at 182 (Johnson, J., concurring).</p>	<p>Library discretion in collection development extends to the content it makes available online to its patrons. It is constitutionally permissible for a library to refuse to restore or disable a filter blocking access to content denying that climate change / global warming is occurring. Library collection decisions that provide scientific content, including the topic of climate change / global warming are consistent with its educational mission.</p>
<p><i>Bradburn v. NCRLD</i>, 2012 WL 1200448, (E.D. Wash.) (unpublished).</p>	<p>Standard of Review: “under rational review, the Court finds NCRL’s use of FortiGuard to filter its patrons, Internet access and its decision to not disable the filter upon an adult patron’s request complies with the First Amendment.” Id. at *2.</p>	<p>Library discretion in collection development extends to the content it makes available online to its patrons. It is constitutionally permissible for a library to refuse to restore or disable a filter blocking access to content denying that climate change / global warming is occurring or to refuse to subscribe to a database from a publisher that espouses that position.</p>

Part V Libraries in Green Space: Sustainability Strategies

Since libraries have the right and the ability to choose the items adopted into their library and the right to refuse gifts and donations, this means that libraries also have the responsibility to choose accurate resources reflecting the causes and conditions of climate change. Additionally, libraries must set forth an example for its patrons by participating in practices uncondusive to the further development of climate change. These actions can occur within the library as an organization or as part of a larger institution, such as reducing carbon footprints by reducing electric use, promoting green programs and services such as gardening or nature walks. Finally, selection of green resources in their library collection, as well as “green de-selection” which involves “recycling or reusing weeded materials” (Kurbanoglu & Boustany, 2014, p. 52). Beyond the public library or school setting, academic libraries may participate in university-led green initiatives to conserve energy through smart technology or by going ‘paperless’ by reducing printing.

At an international level, the United Nations’ Department of Economic and Social Affairs has developed seventeen Sustainability Goals including building safe and sustainable cities, ensuring responsible consumption and production patterns, and providing inclusive and equitable education. With respect to climate change, the concern is lower in the United States than other countries, specifically those with advanced economies (Poushter et al., 2022) that are often reliant on fossil fuels. It was reported that many countries have partisan problems like the United States when it comes to accepting the reality of climate change and the threats of climate change and responses to those threats.

The co-author is also on an ALA Task Force developing core values of the profession. One core value identified is Sustainability, defined as “making choices that are good for the environment, make sense economically, and treat everyone equitably. Sustainable choices preserve physical and digital resources and keep services useful now and into the future. By supporting climate resiliency, library workers create thriving communities and care for our common good for a better tomorrow.”⁵⁰

For individuals in the library profession experiencing eco-anxiety, or the “chronic fear of environmental doom” (Wakeman, 2020), one way to combat this issue is to “improve engagement with the subject of climate change [by] having materials that focus on and encourage sustainability” (Mathur, 2022 as cited in Trotter & Komarnytska, 2023). The ALA’s Sustainability Roundtable (SustainRT) as well as the Sustainable Libraries Initiative (Sustainable Libraries Initiative, 2023) bring together library staff and libraries of all types with the goals of exchanging ideas to build sustainable environments and futures in the library and beyond.

Conclusion and Recommendations for Library Collection of Trusted Climate Resources

In conclusion, libraries may face unprecedented times in terms of adopting accurate climate change resources in the collection development process during the age of misinformation due to existing post-truth narrative its supporters. With the rise of more states choosing to adopt materials reflecting alternative truths or post-truths including the topic of climate change as well as the rise of book bans and challenges, libraries and library professionals have a responsibility to not only develop a collection of accurate resources, but also participate in sustainability strategies. The discussion of various cases on the analysis of the First Amendment and what constitutes free speech regarding library materials acquisitions and removals as well as what does not constitute viewpoint discrimination should empower librarians and library staff to take ownership of their abilities to choose and adopt accurate climate change resources for their patrons. Below are some strategies to be included when creating a library collection development policy as well as trusted grey resources to assist in the collection development process.

Library Collection Development Policy

- Review the library collection development policy ensuring that “climate change as a priority factor in a library’s collection policy ... Collections must also acknowledge the barriers that exist in getting people to engage with climate change in a sustainable way, some of the most difficult factors to overcome being climate change denial and the resulting climate change denial materials.” (Trotter & Komarnytska, 2023)
- Include accuracy as a criterion in the collection development policy, applying to acquisition and deaccession decisions as well as acceptance of gifts; using it to judge whether material on climate change is accurate. Deaccession or refuse to add material that does not meet this standard and is not trusted.
- Be aware keep abreast of sources that produce and disseminate questionable material regarding climate change.
- Vest collection or programming decisions with trained professionals, librarians and not with elected official or some subset of the service population.⁵¹

Trusted Resources to Assist in Collection Development and Design of Literacy Programs on Climate Change

Library staff develop relationships with their patrons and develop an understanding of the types of resources they seek over time. In their case studies, Trotter & Komarnytska (2023) described the launch of a climate change collection at Thunder Bay Public Library in Ontario, Canada, which was “formed due to requests from Thunder Bay community members who wanted to see better access to climate change resources” (Hardy, 2022). Although the Thunder Bay community specifically requested these types of materials in their library, it serves as an example of how the library can partner with climate-focused organizations who can assist them in suggesting and gathering accurate materials, which will still require collection development expertise for the adoption process. Based on the suggested policies above, libraries can determine whether a climate change collection is missing and what might be needed to develop it, along with any accompanying literacy programs. From a practical standpoint, Connell (2010) discussed ‘green’ practices in collection development, including the consideration of the environmental impacts of print and electronic resources, areas in which collection development staff must also develop awareness.

In the matter of keeping abreast of adjacent areas of collection development and climate change, several non-profit organizations have created their own databases to track book bans and censorship attacks (Magnusson & EveryLibrary Institute, 2023; PEN America, 2023). Just like databases to track library book bans and book challenges, there is a need for individuals to track challenged climate change resources. On the legal side, there is a Climate Change Litigation Database which tracks both United States and global climate change litigation, breaking the items up into appropriate categories such as claims, regulations, and suits (Sabin Center for Climate Change Law & Arnold & Porter Kaye Scholer LLP, 2023). These grey resources advocate for the systems thinking methodology and encourage library professionals to think outside of the box.

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Endnotes

¹ Disinformation attacks are performed by using artificial intelligence (AI) to create human-like accounts which bypass the verification process. After these accounts are created, followers are gained (both attacker-controlled and real individuals) and the accounts post disinformation and allow it to “propagate...through replies and likes.” See Villasenor, 2020.

² Three books tied for 10th place in this list. The books on this list challenged for LGBTQIA+ content included other challenge reasons, such as providing sexual education, claimed to be sexually explicit, containing depictions of sexual abuse, drug use, and profanity. See American Library Association, 2023a.

³ Author conversation with Kim Liepert, Library Technology Lead at Pilgrim Park Middle School, Elmbrook Schools, Brookfield, Wisconsin, United States (October 13, 2023).

⁴ “It confuses interest with motive...the argument, for example, render constitutionally suspect the votes of Jewish school board members to remove our hypothetical book about life in the Third Reich. It would do the same to the votes of any African American board members who wanted to remove our hypothetical book about life in the antebellum South. Interest does not necessarily equate with improper motive.” *Id.* a 1224.). See *ACLU v. Miami-Dade County School Board*, 557 F.3d 1177, 1223-1224 (11th Cir.), cert. denied 130 S. Ct. 659 (2009).

⁵ In *Post-truth*, McIntyre discussed the creation of the Tobacco Industry Research Committee created in the 1950s to promote a “positive value of scientific skepticism of science itself.” See McIntyre, 2018, p. 25. See also Brandt, 2011.

⁶ *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242, 1255 (3d Cir. 1992).

⁷ See, *Case v. Unified School District No. 233*, 908 F. Supp. 864, 875 (D. Kan. 1995).

⁸ *Little v Llano County*, 2023 WL 2731089, *9 (W.D. Tex.) (“The Court follows our many sister courts in holding that there is a protected liberty interest in access to information in a public library...”).

⁹ *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242, 1259 (3d Cir. 1992) (“In our view... the [public] Library constitutes a limited public forum, a type of designated public fora.”).

¹⁰ *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242, 1261 (3d Cir. 1992).

¹¹ *Little v Llano County*, 2023 WL 2731089, *9 (W.D. Tex.), citing *Board of Education, Island Trees Union School District No. 26 v. Pico*, 457 U.S. 853 (1982).

¹² Christine Russell, Attack of the climate-denial books: Conservative think tanks fuel publishing boom that spreads misinformation. *Columbia Journalism Review* (March 12, 2013), https://archives.cjr.org/the_observatory/climate_change_denial_skeptic.php.

¹³ *Board of Education, Island Trees Union School District No. 26 v. Pico*, 457 U.S. 853, 862 (1982).

¹⁴ *Board of Education, Island Trees Union School District No. 26 v. Pico*, 457 U.S. 853, 871 (1982).

¹⁵ *Board of Education, Island Trees Union School District No. 26 v. Pico*, 457 U.S. 853, 871 (1982).

¹⁶ *Board of Education, Island Trees Union School District No. 26 v. Pico*, 457 U.S. 853, 870-871 (1982).

¹⁷ *Board of Education, Island Trees Union School District No. 26 v. Pico*, 457 U.S. 853, 871 (1982).

¹⁸ *Board of Education, Island Trees Union School District No. 26 v. Pico*, 457 U.S. 853, 873 (1982).

¹⁹ *Sund v. City of Wichita Falls, Texas*, 121 F. Supp. 2d 530, 541 (N.D. Texas 2000) (“Linda Hughes, the Library Administrator... is the real heroine... of the censorship of two children’s Books-and the unconstitutional interference with her ability to perform her duties in running the Library as a trained, skilled, and very competent professional...Ms. Hughes has a master’ degree in library science, and she follows the code of ethics that governs professional librarians.”). See also, *Fayetteville Public Library v Crawford County Arkansas*, 2023 WL 4845636, *3 (W.D. Ark.) (finding unconstitutional an Arkansas statute that shifted collection decisions “from **professional librarians** to the politically elected members of local county quorum courts and city councils... empower a vocal minority to dictate to the entire community what its citizens may and may not read”).

²⁰ See, e.g., *Case v. Unified School District No. 233*, 908 F. Supp. 864, 875 (D. Kan. 1995); *Parents, Families, and Friends of Lesbians and Gays, Inc. v. Camdenton R-III School*, 2012 WL 510877 (W.D. Mo. 2012); *Hunter v. City of Salem*, 2012 WL 1205137, *1 (E.D. Mo.) (unpublished) (decided on other grounds but the complaint claimed impermissible viewpoint discrimination).

²¹ *ACLU v. Miami-Dade County School Board*, 557 F.3d 1177 (11th Cir.), cert. denied 130 S. Ct. 659 (2009).

²² *ACLU v. Miami-Dade County School Board*, 557 F.3d 1184 (11th Cir.), cert. denied 130 S. Ct. 659 (2009).

²³ *ACLU v. Miami-Dade County School Board*, 557 F.3d 1184, 1207 (11th Cir.), cert. denied 130 S. Ct. 659 (2009) (a list of errors is recounted on pages 1211-1214 of the opinion).

²⁴ *ACLU v. Miami-Dade County School Board*, 557 F.3d 1184, 1198-1199 (11th Cir.), cert. denied 130 S. Ct. 659 (2009).

²⁵ *ACLU v. Miami-Dade County School Board*, 557 F.3d 1184, 1202 (11th Cir.), cert. denied 130 S. Ct. 659 (2009).



²⁶ *ACLU v. Miami-Dade County School Board*, 557 F.3d 1184, 1202 (11th Cir.), cert. denied 130 S. Ct. 659 (2009).

²⁷ *ACLU v. Miami-Dade County School Board*, 557 F.3d 1184, 1206 (11th Cir.), cert. denied 130 S. Ct. 659 (2009).

²⁸ *ACLU v. Miami-Dade County School Board*, 557 F.3d 1184, 1213 (11th Cir.), cert. denied 130 S. Ct. 659 (2009).

²⁹ *ACLU v. Miami-Dade County School Board*, 557 F.3d 1184, 1222 (11th Cir.), cert. denied 130 S. Ct. 659 (2009).

³⁰ *ACLU v. Miami-Dade County School Board*, 557 F.3d 1184, 1222 (11th Cir.), cert. denied 130 S. Ct. 659 (2009).

³¹ See, e.g., *Case v. Unified School District No. 233*, 908 F. Supp. 864, 875 (D. Kan. 1995); *Parents, Families, and Friends of Lesbians and Gays, Inc. v. Camdenton R-III School*, 2012 WL 510877 (W.D. Mo. 2012); *Hunter v. City of Salem*, 2012 WL 1205137, *1 (E.D. Mo.) (unpublished) (decided on other grounds but the complaint claimed impermissible viewpoint discrimination); *Little v Llano County*, 2023 WL 2731089, *10 (W.D. Tex.) (“a list of books [] considered inappropriate [] LGBTQ books’ and advocating for their removal and relocation”).

³² *Fayetteville Public Library v Crawford County Arkansas*, 2023 WL 4845636, *4 (W.D. Ark.) (Librarians—much like doctors and lawyers—are afforded significant professional responsibility and deference with respect to their area of expertise.”).

³³ *Via v. City of Richmond*, 543 F.Supp. 382 (D.C.Va. 1982).

³⁴ *Via v. City of Richmond*, 543 F.Supp. 382, 384 (D.C.Va. 1982).

³⁵ *Via v. City of Richmond*, 543 F.Supp. 382, 384 (D.C.Va. 1982).

³⁶ *Elgi v. Chester County Library System*, 394 F.Supp.3d 497 (E.D. Pa. 2019).

³⁷ *Elgi v. Chester County Library System*, 394 F.Supp.3d 497, 501 (E.D. Pa. 2019).

³⁸ *Elgi v. Chester County Library System*, 394 F.Supp.3d 497, 504 (E.D. Pa. 2019), citing *United States v. American Library Association*, 123 S. Ct. 2297 (2003) and *Pico* by footnote.

³⁹ *Elgi v. Chester County Library System*, 394 F.Supp.3d 497, 514 (E.D. Pa. 2019).

⁴⁰ *Elgi v. Chester County Library System*, 394 F.Supp.3d 497, 514 (E.D. Pa. 2019).

⁴¹ *United States v. American Library Association*, 539 U.S. 194, 204 (2003).

⁴² *United States v. American Library Association*, 539 U.S. 194, 206 (2003).

⁴³ *United States v. American Library Association*, 539 U.S. 194, 207-208 (2003).

⁴⁴ *Bradburn v. North Central Regional Library District*, 231 P.3d 166, 178 (Wash. 2010) (en banc).

⁴⁵ *Bradburn v. North Central Regional Library District*, 231 P.3d 166, 175 (Wash. 2010) (en banc).

⁴⁶ *Bradburn v. North Central Regional Library District*, 231 P.3d 166, 179 (Wash. 2010) (en banc).

⁴⁷ *Bradburn v. North Central Regional Library District*, 231 P.3d 166, 179-180 (Wash. 2010) (en banc).

⁴⁸ *Bradburn v. North Central Regional Library District*, 231 P.3d 166, 180 (Wash. 2010) (en banc). See also, “collection decisions to allocate scarce resources are not subject to strict scrutiny, but instead are subject to the rational basis test... increasing the library’s capacity to provide literary, scientific, historic, and other materials clearly satisfies the rational basis test.” *Id.* at 182 (Johnson, J., concurring).

⁴⁹ *Bradburn v. North Central Regional Library District*, 2012 WL 1200448, *2 (E.D. Wash.) (unpublished).

⁵⁰ ALA Core Values Task Force December 2023 draft goals and preamble (Not for public distribution as the Core Values are yet to be adopted by the ALA Council. The final draft will be presented to Council for review at LibLearnX in Baltimore, Maryland in January, 2024, citing “ALA Task Force on United Nations 2030 Sustainable Development Goals,” ALA, accessed November 28, 2023, <https://www.ala.org/aboutala/ala-task-force-united-nations-2030-sustainable-development-goals..>

⁵¹ See, *Sund v. City of Wichita Falls, Texas*, 121 F. Supp. 2d 530, 533-534 (N.D. Texas 2000) (Finding unconstitutional a Library Board resolution that allowed anyone collecting 300 signatures from adults in the service population to request relocation of library materials); and *Fayetteville Public Library v Crawford County Arkansas*, 2023 WL 4845636 (W.D. Ark.) (politically elected members of local county courts and city councils). See also, *Little v Llano County*, 2023 WL 2731089 (W.D. Tex.) (“the Commissioners Court also voted to dissolve the existing library board and to create a new one...residents who advocated for book removals were appointed to the new board... Board then instituted a policy that all new books must be presented to and approved by the board before purchasing them.” *Id.* at *3.)