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Talibah-mawusi Smith

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WHEN THE WELL RUNS DRY, DIG DEEPER: THE CASE FOR FUNDING THE PUBLIC LIBRARY, A NECESSARY RESOURCE FOR MINORITIES

Talibah-mawusi Smith*

A reduction in government funding for public libraries means more than just fewer resources and shorter operating hours; a reduction means a less empowered class of U.S. citizens. When the public's ability to progress is hampered by its government, a weaker system is created; a house is only as strong and sure as its foundation. This essay covers in brief the current economic woes of the public library and the effects of its impending demise. It poses several ways the government can reduce the library's expenditures or increase funding. Minorities, who stand to gain the most from the benefits of the public library, are encouraged to take a proactive role in advocating for governmental support of the public library. The general intent of this essay is to continue dialogue about the necessity of more funding for the nation's public libraries and the detrimental effect their demise would have on the general public, especially the nation's minorities.

"Read a book . . .
Read a book . . ."

I. INTRODUCTION

Throughout history, the political majority has sought to limit access by the minority to written information and the attainment of knowledge from print sources. These denials were used as a means of continued racial subjugation, political disempowerment, and further installation of legalized structures as hindrances to economic progress. Barriers have included: denying slaves of the chance to learn to

* Talibah-mawusi Smith is a 3L at Mississippi College School of Law. Her scholarship interests include the law and how it relates to intellectual property and/or race. This essay is a continuation from an earlier paper, Effectuating the Framers' Intent: Can Congress constitutionally promote the arts and sciences, by indirectly promoting a public good—the public library?, which received an Honorable Mention in the Nathan Burkan Memorial Student Legal-Writing Competition at the local level. She wishes to extend many thanks to Mississippi College School of Law, Dean Jim Rosenblatt, and her advisors Professors Angela Mae Kupenda and Alina Ng for their help and support of her participation in LatCrit XV. She also appreciates comments from Law Librarian Tiffany Paige on an earlier draft.


read, restricting access to higher education for those who could read, decreasing opportunities for economic advancement for white women and people of color, and denying access to the public library funded by public funds, including funds contributed by the very dispossessed groups who were denied access.

While most of the formal, de jure structures used to deny access to critical book resources have been dismantled, other de facto denials continue, even of the mere use of the public library. From mainstream dialogue to pop culture, the critical knowledge potentially available through access to print resources, especially for minority groups, is a point of discussion. Reading is Fundamental, for example, promotes literacy among children and seeks to make sure younger children have access to print resources, stressing that, despite its efforts, "nearly two-thirds of low-income families in the U.S. own no books." Black Entertainment Television carries a similar message, but in a different style, by showcasing a controversial video featuring the artist rapping, "Read a book. Read a book," accentuated with a rap beat and expletives.

The music video, seemingly produced out of frustration that minorities are not proactive enough about self-improvement, chastises people of color for not reading more and for seemingly disrespecting the access they do have to build a knowledge base. As hindrances to access of books and other print resources continue during the current recession, the undeniable response to "read a book," may soon be, "but from where?"

The LatCrit symposium addresses the many ways in which the economic crisis disproportionately impacts people of color. During these tough times, much of the weight of the economic crisis may inure, once again, to people of color who now depend on the public library for resources and to keep up with the increased digitization of necessary information.

While the majority of people may enjoy enough informational and electronic resources to consider libraries nonessential, America’s public library continues to serve as a springboard of success for many minority patrons across the country. The public library is a tool of empowerment through the many programs and resources offered to the public at large, especially those of color. This "public," the patrons of the public library, did not always include people of color under many states’ laws, but it does today. While the entire general public benefits from the

9. Id.
13. This was not always the case. People of color were denied access to many library
public library’s offerings, the public minority, perhaps, benefits even more, and, thereby, stands to lose most during ongoing economic demise and the resulting funding crisis for the public library.

Who is this minority standing to lose from the demise of public library resources? This minority can be categorized by race or color, educational background, economic status, proficiency in English, amount of access to the Internet and digital media, and residential location, to name a few. Not all in the minority are people of color; some are white, perhaps from rural areas, who, like many people of color, have been historically dispossessed of access both to education and to avenues to acquire knowledge and other resources. Minorities, however categorized, benefit greatly from the existence of the public library and would be detrimentally affected should our libraries’ services become compromised, which is currently a reality for some public libraries and a grave possibility for others.

The current economic crisis has affected many people and almost every facet of American life. One example of the necessity of the survival of the public library relates to the unemployment rate, which rose to 9.8% in November 2010.5 As America’s unemployed minority desperately looks for other sources of income or resources for help, no other entity serves their common need for job resources, education, and skill enhancement more than the public library. Yet many public libraries have had to cut back hours of operation, number of staffed employees, and amount and types of resources offered as budgets are significantly reduced.6 In the current economy, many minority Americans, without the public library, will have no other outlet for help. If libraries are forced to close due to budget cuts caused by the current economic crisis, millions of Americans will not have access to the free public assistance in seeking better opportunities for the future.

Our founding fathers recognized the intrinsic and extrinsic value of knowledge, including scientific progress, literature, and, more generally, information. The Constitution granted Congress the power “to promote the Progress of Science and useful arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”7 While the focus of this provision seems to empower Congress to promote the progress of science and the useful arts, Congress has chosen primarily to exert this power through its enactment of the U.S. Copyright laws, including subsequent amendments,8 which protect authors, owners, and publishers.9 Over time, these groups have chosen largely to enjoy the maximum protection of the copyright provisions.20 As will be

resources under prevailing state laws. See Killen v. State, 958 So. 2d 172, 175 (Miss. 2007).
discussed in this article, though, the protection of these groups has been to the
detriment of the general public, especially the public minority, and, arguably, has
hindered, rather than promoted, the progress of science and useful arts. Given the
current economic climate, the congressional power under this clause must be
reexamined to protect the historical and important role of the library.

In protecting private rights of ownership through its constitutionally
endowed powers, Congress has hindered access to the public, and especially to
minorities, thus failing to advance the progress of the science and arts for larger,
more public segments of our society. Thus, this paper focuses on how the legal
system and LatCrit can improve public access, especially for the public minority.
The means of public access examined in this paper is the public library, a historically
significant institution that is now in dire straits.

Lack of access has always hindered the promotion of the arts and sciences
in all segments of American society. 21 Today, many groups continue to experience a
lack of access to information. 22 Presently, the restriction to access has taken on
digital forms; as society becomes more digitized, whole segments will be denied
access to information and creative works. 23 First, in order to gain access to digital
information and creative works, one must set up online accounts, which may require
the creation or divulging of private user information. 24 Failure to submit required
information may result in the denial of access. Second, persons may not be
computer-, technology-, or internet-savvy. 25 And, third, some people may not have
access to these digital resources for financial or geographical reasons. 26 Therefore,
the digital age has resulted in decreased access to materials for many in the general
public. 27 So too has the digital age, coupled with the economic crisis, led to another
crisis of denied access to information for already dispossessed minority groups, all
while authors, owners, and publishers continue to restrict access via copyright
protection. 28

Congress must take steps toward addressing the apparently one-sided view
of copyright and patent laws. Progress so far seems to be directed at protecting
creators, not at enlightening or providing access for the public, especially minorities
who were lawfully denied access for so many years. 29

Congress is not powerless to act to facilitate access to books and other print
resources as it can return to the intent of its enumerated power, designated by the

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21. See generally Janet Thompson Jackson, Capitalizing on Digital Entrepreneurship for
22. Id.
23. Sallie Smith, Susanna Leers & Patricia Roncevich, Database Ownership: Myth or
Relationship, 38 J.L. MED. & ETHICS 17, 22 (2010).
25. Jackson, supra note 21, at 188.
26. Id.
27. Id.
29. As stated by one scholar, "[Copyright] suppresses content as a means of promoting the
original creation, and presumably the subsequent commercial distribution, of the same content. Its aim is
to have more of the content that, in relation to some speakers, it also suppresses." C. Edwin Baker, First
Constitution, to promote the progress of the arts and sciences. While public libraries allow the public to gain access to information and creative works, especially in a digital age, doing so is not a cheap endeavor. For the public library to access materials, digital or print, it often has to pay for licensing. Still, authors, owners, and publishers frequently attempt to deny even licensed access to the public library. Congress should support public libraries by using its legislative power to enact or amend certain laws and provisions to remedy the lack of access to information and the failure to promote useful arts and sciences.

The ultimate purpose of public libraries is to provide access to material for the general public. To acquire, then, materials to encourage an informed public, public libraries must use large amounts of their budgets to acquire the right to offer those works that are being made available to the public by the author, owner, or publisher. How Congress can help libraries acquire these materials, given the limited library budgets, is the focus of this paper.

More specifically, this paper is concerned with the detriment to the public resulting from current issues related to lack of access to materials via the public library, congressional ability to remedy this situation, and, how exercising this congressional power will better promote the progress of science and useful arts. With a prospective view, this article has three primary goals: Part I surveys the public library’s historical significance and its role as an agent of the Framers of the Constitution. Part II, then, focuses on the current ills of the public library and the devastating consequences of its demise. Finally, Part III puts forth several proposals to address these problems, including specific recommendations for congressional action and other recommendations for a call to action to the LatCrit community.

II. THE PUBLIC LIBRARY, HISTORICALLY SIGNIFICANT AND AN AGENT OF THE FRAMERS’ INTENT

The founding fathers of this great nation collaborated to pen one of the finest political documents in modern history and, even with its flaws, their ideals were innovative. The Framers implemented the necessity for balance, and defined the allowances and limits of the three branches endowed with the responsibility of keeping the nation’s governmental affairs synced. The Constitution lays out the plan of action and the power to act for the executive, judicial, and legislative

36. Sanford Levinson, It Is Time to Repair the Constitution’s Flaws, http://www.utexas.edu/law/news/2006/100906_che.html (last visited Dec. 31, 2010). The abolition of slavery, the right to vote regardless of race or gender, the abolition of the poll tax, etc. did not come until later as amendments to the Constitution.
37. U.S. CONST. art. II.
branches.

The Constitution grants Congress a number of powers, among which were the powers to levy taxes to provide for the country’s welfare and defense, to regulate commerce between the country and foreign nations, to determine citizenship, to coin money and to provide for the punishment of the counterfeit of such money, to set up courts inferior only to the Supreme Court, and to set up military enforcements for the protection of the country.

The Constitution addresses concerns for citizens and non-citizens from many different walks of life. Politicians, soldiers, pirates, aliens, and postal workers were all considered by the men who wrote and ratified the Constitution. Other professionals, including sculptors, painters, writers, inventors, singers, authors, and scientists, were also to be acknowledged, all of whom were thought to play a vital role in the advancement of our great nation. Congress was therefore given the power to protect the rights of these special and necessary individuals.

However, Congress’s laws pursuant to these clauses now lead to the need for future changes. By examining the power of Congress “to promote the progress of the arts and sciences, this article will propose some such necessary changes. For more than 200 years, our country, through its Constitution, has painstakingly ushered along the progress of science and the arts. This constant nudging has led to discoveries and advancements beyond human imagination or at least the average human imagination, and suggests why the Framers may have thought it necessary to promote their progress. It is worth noting the promotion of the progress of science and useful arts was started long before the U.S. Constitution was even a thought, long before the pilgrims landed. In fact, this promotion has been carried out by libraries all around the world for thousands of years.

Despite the contributions of libraries throughout the world and our nation’s history, the U.S. public library currently suffers, in a time where the desire for and production of information is flourishing. The library’s original purpose, making

38. U.S. CONST. art. III.
39. U.S. CONST. art. I.
40. U.S. CONST. art. I § 8, cl. 1.
41. U.S. CONST. art. I § 8, cl. 3.
42. U.S. CONST. art. I § 8, cl. 4.
43. U.S. CONST. art. I § 8, cl. 5-6.
44. U.S. CONST. art. I § 8, cl. 9.
45. U.S. CONST. art. I § 8, cl. 12-16.
46. U.S. CONST. art. I § 8, cl. 10.
47. U.S. CONST. art. I § 8, cl. 9.
49. U.S. Const. art. I § 8; cl. 7.
physical works available for the use of the public, has changed to bridging the digital divide for the public, most often free of charge.\textsuperscript{56} The ultimate purpose of the nation's public library is to provide access to materials, whether digital or not, to the public. Though the shift of the public's use from physical libraries to digital ones has borne much of the blame for the current demise of our nation's public libraries,\textsuperscript{57} access produces a more informed, information-savvy public who can, in turn, take the information they acquire and use it, expound upon it, enhance it, and change it for the better. Considering its purpose, the "public library is . . . a foundational component of copyright law itself in that it is a symbol of our constitutional mandate to 'promote the progress of science and useful arts.'"\textsuperscript{58} So, "the public library. . .therefore serves not only the public good, but [it is] an essential element of our. . .society,"\textsuperscript{59} fulfilling the Constitutional demand for the promotion of the arts and sciences.

The Framers seemed to have envisioned an inclusive relationship between Congress, inventors and creators, the progress of science and useful arts, and the public.\textsuperscript{60} Surely, the Framers did not want to promote "progress" solely for the financial or other good of the owners or inventors. The relationship conceived of in the Constitution\textsuperscript{61} suggests a circle unbroken. Congress, an agent of the people, elected to represent their interests, and its members pulled from the people, should seek to include those people and seek ways to insure access to and the benefits of the progress of science and useful arts. Currently the circle is broken, as the laws Congress has enacted primarily inure to the financial benefit of the creators and inventors, with little attention to the protection of creators as a means of promoting the progress of arts and sciences—ultimately for the good of the people, who elect Congress.\textsuperscript{62}

To repair the broken circle, then, a link is required; the public library stands as a ready link. The public library connects (1) the intent of the Framers of the Constitution to promote the progress of science and useful arts, (2) the tools that Congress has used to carry out these wishes, (3) the sources of the innovations in science and useful arts, (4) and the public who, through the public library, (5) then promotes the progress of science and useful arts.\textsuperscript{63} Accomplished, this connection represents an unbroken circle, leading to a continuous flow of progress that will lead to the empowerment of all and the actual promotion of the progress of the arts and sciences for the entire country, the people who are at the heart of the protections of the Constitution.

The digital age calls for the public library also to act as an agent for the

\begin{footnotesize}
\begin{itemize}
\item[57.] Rita Reusch, \textit{By the Book: Thoughts on the Future of Our Print Collections}, 100 LAW LIBR. J. 555, 557 (2008).
\item[58.] Cichocki, \textit{supra} note 34, at 30.
\item[59.] Id.
\item[61.] U.S. CONST. art. I § 8, cl. 8.
\item[63.] Cichocki, \textit{supra} note 58.
\end{itemize}
\end{footnotesize}
public with its ultimate purpose to bring access to, and benefits of, intellectual property to the public. Yet, there seems to be a progression towards the extension of copyright protection, which results in ideas, innovations, creations, discoveries, and the like, being governed and shared by only a few. Scholar, James Boyle, discusses the effects of both physical and intellectual enclosure. First, he notes that physical enclosure, the process of fencing off common land and turning it into private property, achieved positive results by creating the possibility to realize the land’s full potential once it was in the hands of one industrious owner. The benefits of the developed land were then enjoyed by all, including those who may have once had some direct involvement with the land. After the enclosure of the once common land, these persons no longer had any control of the land; they only reaped the benefits. Boyle contrasts the physical enclosure movement with the modern enclosure movement involving not physical, but intellectual property, questioning whether putting intellectual property in the hands of a few leads to greater possibilities that all others, non-owners as they are, will benefit. He seems to answer in the negative, suggesting that enclosing ideas, innovations, and creations from the public and placing them under the management of a few owners leads to a hindrance of the progress of science and useful arts. The arguments that prevailed in favor of the physical property enclosure movement either do not apply or are not as strong in the context of intellectual property enclosure. Additionally, he points out that the benefit of intellectual property rights seems to be one-sided and that the strength or extension of those rights is not based on the value of the matter being protected, but on the level of difficulty associated with making the matter available to the public.

Just as Boyle pointed out that the ideals that worked for enclosure of property in physical form did not support the enclosure of property in the intellectual form, Congress can and should examine whether its current measures protecting of intellectual property rights are sufficient to achieve its overall purpose to promote progress, considering the social and technological climate and how many people

68. Id. at 33-36.
69. Id. at 34-35.
70. Id.
71. Id. (The old enclosure seems to operate off of the premise of nothing gets accomplished when there are too many cooks in the kitchen. Put one good talented chef in the kitchen and soon everyone will enjoy a delicious meal.).
72. Id. at 37-40.
73. Id. at 37-44.
74. Id. at 35.
75. Id. at 67.
76. Id. at 42-43.
77. Id. at 40.
continue to be denied access to this progress. Congress has the ability to effect change in the way that it has sought to carry out its Constitutional power in furthering the sciences and useful arts. Congress created laws to carry out the intent of the Framers. These laws are now constantly extended to the detriment of many and, arguably, against the Framers’ intent. These laws were created by Congress and, therefore, can be changed, amended, or revoked by Congress, to further the ultimate purpose of the public library, as an agent for the public—giving the public access to the benefits of intellectual property.

III. THE PUBLIC LIBRARY’S CURRENT PLIGHT AND THE CONSEQUENCES OF ITS DEMISE

We are living in an age of immense technological advancement, information gathering, and information sharing. For the majority, the reality is that we want to know, we want to know right now, and we have the tools to get the desired result; for the minority, this may be only a dream. The future of the nation’s public library is vitally important to a large segment of the public who rely on its resources to gain access to knowledge in various forms. Yet the public library is at risk. Much government as well as private funding has begun to diminish over the last few years and the future looks bleak. Yet, the necessity of the public library has not changed; in fact, with the steady march towards digitization, the purpose and need for the library has never been greater. It already bridges the gap of the digital divide by providing access to the Internet to those who may not otherwise have access. With tomorrow’s technological advances, it may be the strong tower of information sharing to the public. However, without the library, especially in today’s digital world, the sharing, promotion, and progress of ideas—science and useful arts—may be just a figment of the Constitution’s imagination.

Funding difficulties for the public library are not new; it has been suffering

81. ALA, ALA Library Fact Sheet 6 – Public Library Use, http://www.ala.org/ala/professionalresources/libfactsheets/alalibraryfactsheet06.cfm (last visited Oct. 2, 2011) (stating that nearly one-third of Americans age 14 or older – roughly 77 million people – used a public library computer or wireless network to access the Internet in the past year, according to a national report released today).
85. SEE U.S. CONST. art. 1 § 8, cl. 8.
for many years. The public library has seen many recent changes, none of which seem to be advances. All of the modifications are cutbacks—on hours and days of operation, staff employment, resource availability, and community outreach.

Many argue that the purpose of the library is to meet the current demands of society, and that includes the demand to bridge the digital divide, or in other words, provide Internet access. The purpose of the library has, is, and will continue to be more than just providing free Internet. Other misguided beliefs, that much of our society does not need the library to access the Internet and print resources, also causes the urgency of this matter to be ignored. The discussion below addresses both of these fallacies.

IV. FUNDING DIFFICULTIES AND PUBLIC APATHY

While it may seem that increased digitization decreases the function and necessity of the library, the reality is quite the opposite. With increased digitization, the function of the public library is even more vital to our society as it relates to information gathering and access to all. The public library is often the only means of access to resources, especially digital resources, by those who are unable via other means. These persons include rural residents, less technologically-apt patrons, and poor and minority students—all members of the general public. The public library is not patronized by just “disadvantaged” persons but by persons from all walks of life, from varied backgrounds, with varied economical dispositions, and with varied expectations of the public library.

There may also be some sentiment that increased funding for libraries is not needed given that people now use more digital sources than print resources of public libraries. On the contrary, print resources are relied upon by many people who are not computer literate, by those who need print resource availability, and by those who just plainly prefer to have their resources in hand and not on a computer screen.

The availability of print resources empowers not just patrons, but authors, writers, and producers through the public library’s media offerings. These persons benefit from libraries across the nation buying their books or licensing their works, adding to the libraries’ collections for the use of the public. Thus, the public library

91. Jackson, supra note 21, at 188-91.
92. Cf. id.
93. Reusch, supra note 57, at 558.
95. ALA, ALA Library Fact Sheet 5 – Marketing to Libraries, http://www.ala.org/ala/professionalresources/libfactsheets/alalibraryfactsheet05.cfm (last visited Nov. 7,
plays a vital role in creating demand for print resources available to the public through direct offerings and purchasing materials or licensing rights from authors and publishers.\textsuperscript{96}

Progress is promoted when print resources are made available in public libraries.\textsuperscript{97} Many authors or owners of works still rely heavily on sales of their print or hard copy product.\textsuperscript{98} The authors or owners of the work benefit from the library’s purchase of their product, reflecting the protection given to authors and inventors over the use of their work by the Constitution in its effort to promote the progress of science and useful arts; the public as library patrons benefits from the offerings of these resources and materials.\textsuperscript{99} Because of the importance of print resources, the fact that libraries house resources that are in print or in hard copy should not be a reason to diminish funding, but a reason to increase funding.

If the importance of print materials and hard copies is not considered when discussing library funding, a mistaken belief can be formed that libraries are not important enough today to continue to receive adequate, if any, funding from the government. This view is detrimental to society as a whole and it falls short of the charge given to Congress to promote the progress of science and useful arts.

V. THE CONSEQUENCES OF THE LIBRARY’S DEMISE

A major factor in the lack of funding and other support for public libraries, then, is the underutilization of congressional power.\textsuperscript{100} There is a failure to see the importance of the public library considering the availability of so many resources online. It is true that millions of people in this country have Internet access readily at their disposal;\textsuperscript{101} however, there are still millions of people in the U.S. who do not have Internet access.\textsuperscript{102} This is chiefly where the purpose and necessity of the library lies—to make available resources to those who do not have access otherwise. Funding cuts to many of the nation’s libraries, resulting in the closing or merging of libraries, staff layoffs, shorter hours, and fewer resources, is a major contributor to the public library’s impending demise\textsuperscript{103} and may have dire consequences for those served by the library. While the public library is the information agent for the less fortunate, the public library benefits all persons who engage in the offering of its resources.

Funding cuts leading to the closing of libraries entails a denial of access to

\begin{itemize}
  \item\textsuperscript{97} Simone A. Rose, \textit{Johnny Can Read, But Can He “Surf”? Harmonizing Copyright Law and Internet Ethics}, 1 MINN. INTELL. PROP. REV. 79, 115 (2000).
  \item\textsuperscript{98} Id.
  \item\textsuperscript{100} U.S. CONST. art. I § 8, cl. 8.
  \item\textsuperscript{102} Id.
  \item\textsuperscript{103} Raquel J. Gabriel, \textit{Diversity Dialogues}, 103 LAW LIBR. J. 313, 317 (2011).
\end{itemize}
any of the library's resources, whether digital or print, to anyone. The poor, underserved, and rural residents whose only point of access may be the public library will be affected the most. While the public library is available to all, it happens to be minorities along with those who are less fortunate that seem to make the most use of the public libraries resources because they often have no other option. Decreased funding for libraries means decreased access to resources and information, especially for minority members of the public.

What is happening to our nation's public libraries is frightening because it results in certain segments of the population being denied access to information, the arts, education, and entertainment, while the more fortunate, majority members of society are not equally affected. A study conducted in 2001 revealed that only 47% of children living in poverty were likely to use a computer at home, compared to 82% of children living above the poverty line. Public schools and public libraries are an integral part of access to information for minority students when they provide the sole source of access to the Internet. According to a government study, 8.6% of Whites use public libraries to access the Internet, while 18.7% Black Americans and 13.8% Hispanics gain Internet access at public libraries, painting a ghastly picture of inequity. A closed library may in fact mean that minorities and the poor will be disproportionately barred from benefitting from the Constitutional provision of "the Progress of Sciences and useful arts." Furthermore, these groups will be disproportionately kept from being able to influence the progress of science and art.

It is also important to note that Internet access is currently not available to many people across the country for the mere fact that the Internet is not usually free; it is a luxury. And throughout the years public libraries have provided resources to those who cannot afford that luxury of having information and arts resources at their personal disposal. Internet access is also unavailable to many people because they live in geographical areas that are not serviced by Internet companies.

It is the aim of the public library to cater to its patrons. In fulfilling this purpose, libraries have developed programs to assist those who otherwise might not have access to necessary resources, including resources for those whose first

106. Baynes, supra note 104, at 199.
107. Id. at 222.
108. U.S. CONST. art. 1, § 8, cl. 8.
110. Many people from all walks of life use the public library for varied reasons. People come to the library to read and/or check out books, to fill out tax forms, to complete applications for employment, to complete admission applications to school, to borrow a CD, DVD, VHS, or the like, to learn of the latest research, to learn of the latest news. In addition, many of the public library's patrons are persons whose first and/or primary language is not English.
112. Nicole M. Nicolino, ¿Por Qué No Podemos Leer En La Biblioteca?: Questioning the
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Language is not English, employees and staff who communicate and assist those who speak other languages, and other library-sponsored activities that inform this community. The American Library Association reports that the public library makes it a priority to serve patrons who speak languages other than English. Seventy-eight percent of public libraries have made developing services and programs devoted to Spanish-speaking populations their top priority, 29% cater to Asian languages as their second priority, and 17.6% list Indo-European languages as their second priority. The library serves as a bridge to resources for those with language barriers. Where minorities who have not mastered the English language face the challenge of being active participants in their community, public libraries serve as keys to unlock the restraints placed upon them.

These individuals are affected dually, due to their status as both a minority and not English proficient. As a result, these language minority communities are often isolated, oppressed, and without a political voice. The public library serves as a place of inclusion for those excluded daily from various areas of American life due to language limitations, through community awareness programs, classes, language accessible material, and networking possibilities.

The demise of the public library would result in the demise of many of our communities, including new communities of immigrants facing the challenges of growing, surviving, and sustaining in an environment often not conducive to their native language, culture, concerns, or interests. Members of these communities should be able to visit the public library to freely educate themselves, engage with others, and access many of the best tools the government has to offer to build and improve their situations. The public library serves the country’s purpose because it equips such people with the ability to become viable pieces of the strong foundation of self-empowerment that this country was founded upon.

Another important consequence of the library’s demise is related to the public’s access to advanced voting technology. Across the country, there is a move towards Internet voting. An obvious concern is that a large segment of the population will be at a greater disadvantage than other voters, which is, apparently, not an economic issue, but an issue of race. Statistics abound about the gap in digital access between minorities and their White counterparts.


113. Id.
115. Id.
117. Nicolino, supra note 112, at 555.
118. Gasaway, supra note 55, at 432.
120. Id.
122. Baynes, supra note 104.
123. Id.
The public library can and should serve as an all-access hub for those individuals who would be locked out of the Internet voting option due to a lack of either Internet access or skills. The public library may be able to provide the education about and access to Internet voting for those who need it. Should Internet voting become standard, the public library will greatly serve the government's aim to provide a democratic election process by making e-voting accessible to all.

VI. PROPOSALS FOR PUBLIC LIBRARY SUPPORT

When considering the current financial state of the nation's public libraries, cuts in government support, and lackluster financial donations or other income from private sources, it is apparent that the current funding initiatives are not sufficient to maintain and enhance our public libraries. Therefore, it is necessary to seek out other funding sources.

A. Congressional Remedies

The many options of support for the nation's public libraries fall under one or both of the following categories: (1) congressional laws, and (2) congressional appropriations. It is arguable whether the Constitution demands Congressional support in the form of increased funding for public libraries. Evaluating what can be done through statute is both timely and more productive. To support public libraries in their quest to acquire and offer creative works, Congress should come to the aid of the public library either by amending current laws or enacting new laws.

Should Congress choose to amend current laws, there are several options at its disposal, including: (1) reducing the duration of copyrights, (2) limiting the extent of copyright protection, and (3) extending the Fair Use Doctrine and Fair Use Protection to public libraries in their effort to serve the public.

It is not hard to imagine the opposition that a law reducing the duration of copyright or the extension of copyright protection would face. Although the duration of copyright has seen three extensions, groups continue to lobby for an even greater extension of copyright protection. This opposition to change is one of the reasons for the demise of the public library. And while the duration of copyright protection should be addressed by Congress in time, the present and ever-expanding extension of copyright protection is what should be addressed immediately to help remedy the plight of public libraries.

Because of annual or one-time licensing and access fees for the materials that they offer to the public, most public libraries operate off of already-strapped budgets. Many libraries are making tough choices about the type and amount of

124. Stendel, supra note 121.
125. Id.
128. Katherine Kelly, For of All Sad Words of Tongue or Pen, the Saddest Are "It Might Have Been", 31 Wm. Mitchell L. Rev. 793, 794 (2004).
129. Rose, supra note 97, at 113.
materials they can afford to add to their collections. Interlibrary loans are sometimes necessary because the requesting library does not have the funds to purchase that particular work. Therefore, the public library should have the right to make necessary copies or at least one copy of the work to be added to its collection. This right to photocopy should be extended to the public library for purposes of research and education.

Limitations on exclusive copyright under provisions of “fair use” should be used to allow public libraries to serve the public. To determine whether the particular use made of a work falls under fair use, courts consider the following factors: (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.

Applying the above factors to the public library, it appears that they are permitted to use copyrighted works according to the Fair Use Clause. Most public libraries serve as nonprofit educational institutions and therefore the purpose for which they would make copyrighted materials available to the public should satisfy Factor One.

Factors Three and Four could potentially negate a Fair Use defense for a public library. Although the public library’s purpose is to provide the public with access to resources, because a fair use defense rests on the use of a copyrighted work only being of a limited amount and insubstantial, it cannot offer the whole work, but must make only a part of a work available for photocopying. Factor Four considers how the public library’s use of a copyrighted work would affect the potential market for or value of the copyrighted work. Some may argue that the effect of every public library in America carrying a particular work as a part of its collection available to its patrons and making them available for multiple-use is that thousands of works will not ultimately be purchased from the copyright owner. However, this argument fails to account for the possibility that poor, underserved, and underprivileged patrons probably could not afford to purchase and benefit from the work otherwise. Supporters for more limited copyright protection would argue that extended copyright protection keeps valuable information from that segment of the population who could not access it without the public library.

Further, proponents of the fair use defense for the public library must

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134. Gasaway, supra note 55, at 121. Note, I do not discuss Factor Two because it is not important to my analysis of a Fair Use defense for the public library.
consider that the fair use defense is a backward-looking tool. It is not relevant if the library has never gotten access to the work. Even where the owner of the copyrighted work makes it available to the library for use, if the library has to pay for that license or work and does not have the funds to do so, then it is quite possible that the library will not gain access to the work and the whole fair use argument will not apply. Without adequate funding and cooperation from copyright owners, the future of the public library is compromised.

Should Congress choose the route of enacting new laws, there are two options at its disposal: (1) setting up a Creative Works Bank or (2) setting up a fund to secure monies to support public libraries.

The current requirement that works be submitted to the Library of Congress in lieu of an imposed fine should be extended to the public library as well. Similar to the current law, the new law would require works to be filed in a Creative Works Bank. To the extent that sharing copyrighted works with every public library is a daunting and unreasonable task, Congress could provide for the Creative Works Bank to be set up for public libraries to be able to access these works to add to their collections at will. The Library of Congress could be required to deposit copies of works it already has or those it receives into this Creative Works Bank. The fair use defense could be used to protect the Library of Congress from charges of infringement because it is making copies of submitted copyrighted works available for the Creative Works Bank. The Library of Congress would be acting for nonprofit educational purposes.

Works have been offered in public libraries throughout history, without any perceived negative effect on the potential market or value of the work due to it being offered in a public library. Were that not the case, copyright owners would have shunned the public library long ago, along with the cheap advertising and shelf space that comes with their work being a part of the library’s collection. The problem is not that making their works available to the public library would lead to a damaging effect on the potential market for the work, but that they do not want to offer the work to the public library for free. Congress should weigh the benefit to the copyright owner in acquiring licensing or purchasing fees from the public library against the benefit to the public and the purpose of promoting the progress of science and useful arts.

Another suggestion is a new law requiring copyright owners to contribute to a fund that would support public libraries. A portion of the fees required for filing with the copyright office can go towards a fund to support public libraries as they will be offering these works to the public. The benefit of such solution is that it does not require extra fees to accompany an application for copyright protection. However, Congress would have to give consideration to a new allocation of funds derived from these fees.

While the purpose of this article is to explore what the government can do to save the public library, it would be incomplete without a call to action to the LatCrit community. Should the plight of the public library, and of not having access to the resources it provides, be considered a civil rights concern? If, due to lack of government funding, a collective group of persons is denied the ability to participate in the civil and political life of the State due to the closure of the public library, then

a civil right may be at stake. Should the government fail to see the need and the purpose that the public library fulfills on behalf of the people, then it is up to the people to address the government with its concerns and grievances.

B. What could and should the LatCrit community do to save public libraries?

This section of the article suggests steps to be taken to ensure that this concern is acknowledged and addressed in a timely manner. How can the LatCrit community engage the government on this issue? With its many resources, located among its scholar-activists, the LatCrit community has the wherewithal to tackle this issue.

The first step to solving any problem is to acknowledge that such a problem exists. How can the government be expected to realize an issue if it is not made aware? Awareness of the detrimental effects of underfunded public libraries on the minority public could be achieved through scholarship. More LatCrit scholars must recognize the effects of government underfunding of the public library and how the LatCrit community stands to suffer and that must be communicated.

Increased scholarship that continues the discussion of the importance of adequate funding of public libraries and the need for more resources and materials in other languages within LatCrit circles are critical to exposing these issues. The effect of the demise of the public library on minorities and the necessity of providing materials in multiple languages may not be obvious to the majority. Therefore, exposure through academic writings and discussions is necessary to make at least the academic world aware.

Another step the LatCrit community must take is to engage its community. This engagement should have a two-fold purpose. The first aim should be to educate its community about the benefits of the public library. The LatCrit community should view the public library as a valuable asset in its growth and stability. Considering the economic downturn of this country, the library should be utilized more by the community as a source of information, education, and networking. Also, the library should be seen as a helpful agent of progress regardless of the country's economic situation. The public library has long served an essential purpose within the minority community.

The second goal should be to encourage its community to use the tools provided by the public library to communicate the need for continued government support of the public library. The library is a ready source of information, outlets of communication including internet access, reference materials that would include government directories, sources of information or help with the details of communicating concerns, including language support and writing assistance. The library contains all the resources needed by the community to make a valiant collective effort to voice its concerns and gain the government's ear.

The aforementioned steps focus on the all-important feat of awareness. If the public can be educated of the necessity of the public library regardless of digital innovations or economic downturns, then a dialogue can began about the many negative effects reduction in library funding causes within minority communities and for our nation as a whole. This dialogue must be carried on within every community, spoken in every language, and shared by each person, so that the gravity of losing access to the invaluable resources and the critical support system that our nation's
public libraries offer is understood by all.

VII. CONCLUSION

This essay has attempted to provide an abbreviated view of the funding problems facing the public library, the consequences of its impending demise, and some solutions that the people can put into effect to restore it once again. The future of the public library lies in the hands of the very people it serves. Congress is representative of that group of people; yet we have seen Congress cut public library funding on the federal and state levels leaving our public libraries in desperate financial straits and the public suffering the consequences.

Since its institution, the public library has served its purpose well. Without it, many would not have access to necessary and invaluable resources of information, education, and the arts. This essay has suggested actions that Congress should take in order to ensure the future of the library. Also, the LatCrit community is encouraged to become active in securing the future of the public library. Although the library serves all, it is widely noted that communities like LatCrit are those who suffer and will suffer the most as a result of the public library’s demise. Now is the time for Congress to use the power granted to it for the benefit of the nation’s public libraries. Now is the time for the people to demand support of an institution designed to support the people.

* A portion of the work and research for this article was completed at a public library.*