

TO: ALA Council

DATE: June 16, 2023

RE: (select one)

- ACTION REQUESTED
- INFORMATION
- REPORT

ACTION REQUESTED/INFORMATION/REPORT: (add below)

Report: Freedom to Read Foundation

Action requested from Councilors is to cast their vote to: (if applicable)

None.

ACTION REQUESTED BY: (add committee name)

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Freedom to Read Foundation

REPORT TO COUNCIL

2023 ANNUAL CONFERENCE

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2023 January Meeting at LibLearnX:

NEW LITIGATION

It gives me great pleasure to report that the Freedom to Read Foundation has joined with the Fayetteville Public Library, Eureka Springs Carnegie Public Library, Central Arkansas Library System (CALs), the Arkansas Library Association, and Advocates for All Arkansas Libraries to file suit to overturn Arkansas Act 372, a law passed in 2023 that would restrict access to books in bookstores and libraries located within the state, and in the process violate the First Amendment and Fourteenth Amendment rights of library users and all of the state's readers. Fayetteville Public Library, et al. v. Crawford County, Arkansas, et al. has been filed with the federal court in Little Rock, Arkansas.

Act 372 makes it a crime for libraries, booksellers, and any brick-and-mortar establishment to display or make available books or other materials works that might be deemed "harmful to minors," under an outdated statute. If allowed to go into law, Act 372 would require libraries and bookstores in the state of Arkansas to limit all readers to books appropriate for young children or exclude all persons under the age of 18 from their premises. Act 372 also makes it possible for any person in Arkansas to demand the removal of a library book the person deems inappropriate – which would allow any person in Arkansas to limit the books available to library users in the state of Arkansas to the books that meet their approval.

Additional plaintiffs in the lawsuit include the American Booksellers Association; the Authors' Guild; the Comic Book Legal Defense Fund; the Association of American Publishers; Nate Coulter, Executive Director of CALs; Adam Webb, a librarian from Garland County, Arkansas; Olivia Farrell, an adult CALs patron; and Hayden Kirby, a 17-year-old CALs patron. WordsWorth Books and Pearl's Books, two Arkansas bookstores, are also plaintiffs. The FTRF trustees are grateful for the opportunity to work with all of the plaintiffs to vigorously defend Arkansans' freedom to read, and to protect Arkansas libraries and librarians' ability to serve all of the information needs of their communities.

The Freedom to Read Foundation also supports the larger mission of defending all Americans' First Amendment rights. As part of this mission, FTRF has joined an amicus curiae brief authored by the Motion Picture Association in the case of Netflix v. Babin.

Last year, Netflix released the movie *Cuties*, which portrayed the stories of pre-teen girls who are members of a competitive dance troupe. At the time of its release, social media posts falsely claimed that the movie constituted child pornography. Netflix filed this lawsuit after Lucas Babin, the Tyler

County, Texas District Attorney, indicted Netflix for violating Texas' child pornography law by making *Cuties* available through its streaming service. Babin has pursued the prosecution for two years despite Netflix demonstrating that the only nudity seen in the movie is of an adult woman's breast seen in a very brief image.

While federal courts do not normally intervene in state criminal prosecutions, there is an exception for bad faith prosecutions, and the federal district court issued an order enjoining Babin from continuing his criminal case against Netflix. Babin has now appealed to the Fifth Circuit Court of Appeals, asking the court to reverse the federal court's decision, so that he can proceed with the prosecution.

The amicus brief signed by FTRF argues the importance of timely addressing bad faith prosecutions and the importance and necessity of upholding First Amendment rights in federal court. The brief also highlights the unconstitutional chilling effect of threats of criminal prosecutions on all speakers and content creators – a threat librarians know all too well these days. FTRF joins a broad coalition of filmmakers, broadcasters, journalists, publishers, and free expression and civil liberties organizations who have signed on to the Motion Picture Association's amicus brief.

CURRENT LITIGATION

We celebrated the news on March 30 that the federal district court presiding over *Leila Green Little, et al. v. Llano County* had issued a number of rulings in favor of the residents of Llano County, Texas, who had sued Llano County, its county commissioners, and the public library board after the library director removed a large number of books from the library's collection due to complaints from commissioners and others about the ideas or topics addressed in the books. The District Courts' rulings denied the defendants' motion to dismiss the plaintiffs' lawsuit and granted plaintiffs' motion for a preliminary injunction. The court then issued an order requiring the county defendants to return the banned books to the library's collection and to re-list them in the library's catalog. The court's opinion strongly affirmed the plaintiffs' First Amendment rights and concluded that there was a strong likelihood that the plaintiff library users would prevail on their First Amendment claims at trial.

The county defendants subsequently appealed that order to the Fifth Circuit Court of Appeals, which granted the defendants an expedited appeal of the court's order. I am pleased to report that FTRF's legal counsel and staff responded immediately, working with the plaintiffs' attorneys and other allied free expression groups to develop amicus curiae briefs in support of the plaintiffs' cause.

On June 2, 2023, FTRF, joined by the American Library Association and the Texas Library Association, filed an amicus curiae brief in support of the plaintiff library users in Llano County. The brief explains that librarians are guided by well-established ethical canons that favor no party, subject, or viewpoint when curating a public library collection, and argues that as a matter of professional ethics and the law, no public library may target certain books for removal or restriction because they may be unpopular, controversial, or outside the mainstream. Additional amicus briefs in support of the plaintiffs were filed by the American Association of Publishers and the Foundation for Individual Rights in Education (FIRE). Oral argument was heard on June 9, 2023, and we are anticipating a quick decision

from the court. We are committed to continuing our support for the plaintiffs' cause throughout the pendency of their case.

The Freedom to Read Foundation's staff and legal counsel are also providing guidance, information and support to library workers, students, and parents addressing book censorship in their communities by filing lawsuits to vindicate the right to read. I am sad to report that one of those lawsuits supported by FTRF has come to a disappointing conclusion. Two students in Wentzville, Missouri had joined with the ACLU of Missouri and the Missouri National Association for the Advancement Of Colored People (NAACP) to file a lawsuit, *C.K.-W. et al. v. Wentzville R-IV School District*, that challenged the decision of their school district to remove from school library shelves several books addressing LGBTQIA+ themes and books addressing race and racism. The students appealed their case to the Eighth Circuit Court of Appeals after the district court erroneously ruled that their case did not involve the banning of books because students could obtain the books from the public library and booksellers. However, during the pendency of the appeal, the school board subsequently returned all but one of the books in question to the library's collection, and the students decided to dismiss both their appeal and their lawsuit.

When we last met in New Orleans, I shared our deep concern over a case that was pending before the Supreme Court that held the potential of overturning or rewriting Section 230, the federal statute that enables and protects libraries' provision of internet access and online information resources. Section 230 does this by providing legal immunities to providers of internet services and online content that prevent them from being sued for content published or hosted by a third party. These legal immunities also protect libraries providing broadband access and access to online information resources.

In February, the Supreme Court heard oral arguments in that case, *Gonzales v. Google, LLC*. The lawsuit was filed by a parent seeking damages from Google and its YouTube service under the U.S. Anti-Terrorism Act following the death of his daughter during a November 2015 ISIS attack at a Parisian bistro. He and other parties to the lawsuit asked the Supreme Court to interpret the provisions of Section 230 to exclude from the immunities provided by Section 230 an online platform's decision to recommend, notify, or even provide a link to online content so internet users can access that content. Setting aside these legal immunities under Section 230 would enable the parent and any other potential plaintiff to pursue his claim that Google assisted and aided ISIS's recruitment through YouTube videos, thereby allowing the terrorist attack to happen. It would also mean that simply providing a URL to reach third party online content would subject any online access provider to possible legal liability for providing access to that online content. This would include libraries and the vendors and online services that provide content to library users.

FTRF joined an amicus brief written by the Electronic Frontier Foundation that asked the Supreme Court to preserve the legal immunities provided by Section 230, in order to preserve the legal shield so crucial to libraries' provision of broadband and online information and services. I am pleased to report that this case has reached a favorable conclusion that leaves those important legal protections for libraries' online services intact. Following the oral argument in *Gonzales v. Google, LLC* the Supreme Court issued a decision in a nearly identical case, *Twitter, Inc. v. Taamneh*, which held that a family's

allegation that Twitter had knowingly allowed ISIS and its supporters to use its platform as a tool for recruiting, which aided ISIS in the execution of a terrorist attack that resulted in the death of their relative, was insufficient to establish that Twitter was legally liable for the attack. At the same time, the Supreme Court vacated the Ninth Circuit Court of Appeal's decision in *Gonzales*, remanding it for reconsideration in light of the court's decision in *Twitter, Inc. v. Taamneh*, thereby taking no action to overturn Section 230 and preserving its protections for entities providing online access.

FREE EXPRESSION AND CIVIL LIBERTIES ADVOCACY

We continue to work with our national partners and the state and local organizations that are working together to address censorship in libraries and schools through the American Library Association's non-partisan grassroots advocacy initiative, Unite Against Book Bans, the public-facing campaign to encourage and equip readers everywhere to stand together in the fight against book banning in libraries and schools across the country. Through the Unite Against Book Bans campaign, FTRF staff and legal counsel provide strategic support and essential legal information to library workers and community activists fighting book censorship in their communities.

Our partnership with Unite Against Book Bans provided particular benefit to the plaintiffs in *Little v. Llano County*. When the plaintiffs learned about a proposal to close the Llano County Library after the federal court issued an order requiring the county to return banned books to the library's collection, FTRF staff were able to connect the plaintiffs with Unite Against Book Bans staff, organizing tools and online resources which directly supported the Llano County plaintiffs' efforts to alert the Llano County community about the threatened closure of their library. Hundreds showed up at the county board meeting to protest the proposal, and the Llano County Library remained open.

The strength of the Unite Against Book Bans initiative depends on the support of individuals willing to stand up and speak out against censorship in their communities. We strongly urge everyone who wants to defend and support the freedom to read to visit uniteagainstbookbans.org, join the campaign, and ask family, friends, and colleagues to do the same.

THE JUDITH F. KRUG MEMORIAL FUND

Established by the family, friends, and colleagues of Judith F. Krug, the Judith F. Krug Memorial Fund supports projects and programs that carry on Judith's mission to educate both librarians and the public about the First Amendment and the importance of defending and advocating for the right to read and speak freely.

Krug Fund Banned Books Week Grants

The Judith F. Krug Fund provides grants to schools, libraries, and non-profit organizations across the country to support their local Banned Books Week celebrations that raise awareness of intellectual freedom and censorship issues during Banned Books Week.

Members of the Judith F. Krug Memorial Fund Banned Books Week Committee met and chose five grant recipients. The 2023 winners covered the gamut of types of library and geographic locations including one school, two public libraries, one academic library, and one foundation.

The recipients of the 2023 Judith F. Krug Banned Book Week Grants are:

- Madison County Library System (MS)
- Keller ISD Families for Public Education (TX)
- Georgia Southern University (GA)
- George Washington High School (PA)
- North Bergen Free Public Library (NJ)

Your financial support for the Krug Fund enables the Freedom to Read Foundation to provide grants to as many of the applicants as possible; please visit www.ftrf.org/?Krug_BBW to learn more about the Krug Fund's support for local Banned Book Week activities and consider contributing to the Krug Fund.

LIS and Professional Education

The Krug Fund's successful partnership with the University of Illinois' iSchool and the San Jose State University School of Information assures that dedicated graduate coursework addressing the practice of intellectual freedom in libraries remains available to those preparing for careers in information science and librarianship. Foundational classes are taught by Professor Emily Knox of the University of Illinois, and Professor Beth Wrenn-Estes and Professor Carrie Gardner of San Jose State University. The Freedom to Read Foundation is grateful to the University of Illinois and San Jose State University for partnering with the Freedom to Read Foundation. Members of the FTRF Education Committee will continue to assist in identifying speakers for the courses as well as sharing webinars and other tools.

The Committee members will be working to increase the number of educational partners in the upcoming year.

Sponsoring webinars has been an effective educational tool for members and the library community. FTRF kicked off 2023 with a three-part webinar series sponsored by the Freedom to Read Foundation and the American Library Association's Office for Intellectual Freedom and the ALA's Continuing Education division. The series included *Navigating Book Challenges in Rural America* with presenters Heather Hutto and MacKenzie Ledley; *Reproductive Health and Libraries: Navigating the New Information Landscape* with presenters Deborah Caldwell-Stone and Theresa Chmara; and *Dealing with Challenges, Misinformation, and Disinformation About Resources for Children and Young Adults* with

presenters Theresa Chmara and Martha Hickson. Freedom to Read Foundation staff, trustees, and members wish to thank the Tocker Foundation for generously covering the cost for staff at rural libraries throughout Texas to attend the webinar series.

The committee is looking ahead to hosting another series this Fall.

2022 ROLL OF HONOR AWARD RECIPIENT PAT SCALES

The FTRF Roll of Honor Committee and the Trustees of the Freedom to Read Foundation are pleased to announce that Pat Scales is the recipient of the 2023 FTRF Roll of Honor Award.

“Pat’s lifetime of dedication to upholding the principles of intellectual freedom, her years as a collaborator and volunteer with the Foundation, and the numerous ways she has ensured that children, and their parents, can find ways to read together, made her a unanimous and clear choice for this year’s Roll of Honor award,” said Roll of Honor Committee Chair and FTRF Vice President Sophia Sotilleo.

Pat’s work as an advocate for the freedom to read began when FTRF founder Judith Krug saw Pat and Judy Blume on the Today Show. Blume had joined Scales to promote Scales’ program, “Communicate through Literature,” which brought together parents from the middle school where Scales was a librarian. The parents met once a month, without their children, to read books that students had chosen for the parents to read. The books covered everything from bullying, belonging, and the need to achieve, to sex, and sexuality. The program was so popular she had to create two groups.

Following Scales’ and Blume’s presentation on the Today Show, Krug wrote a note to Pat recruiting her for the Foundation’s corps of volunteers and trustees, saying that Pat’s work was a good fit with the Freedom to Read Foundation’s mission. Since then, Pat has been an FTRF trustee, an active volunteer on committees, and as a strong voice in defense of authors’ right to write and publish without censorship, and the right of children, students, and parents to freely read without censorship.

Through “Communicate with Literature” and similar initiatives, Pat has worked with everyone from pediatricians to clergy members. “You can’t only preach to the choir,” said Pat. “You have to accept opportunities, go in, and tell our side of the story.” And throughout Scales’ career, she has done exactly that.

Scales’ work as a school librarian and intellectual freedom advocate has had a long-term, visible impact, such as the *Scales on Censorship* column published by *School Library Journal*, as well as a growing number of books tackling intellectual freedom issues in schools and libraries. A new edition of *Teaching Banned Books* will be released this fall and will be available to inform educators, librarians, and parents for years to come about fighting censorship and the importance of having diverse books available for student readers. “The only thing that matters to me is that it’s out there, so people who need it can use it,” said Scales.

Scales has made advocacy for the freedom to read a full-time endeavor since her retirement from teaching 16 years ago. She has also created a legacy for future educators and librarians by donating the [Pat Scales Special Collections](#), a research resource, to the University of Montevallo in Montevallo, Alabama, one of the few public liberal arts schools in the country. The Collection began with 4,000 books in 2016 and now includes over 10,000 children's and young adult literature titles. Pat still joins the archivist there in teaching a banned books course on a regular basis. Pat Scales will receive her award at the Opening General Session of the 2023 ALA Annual Conference.

GORDON A. CONABLE CONFERENCE SCHOLARSHIPS

The Conable Conference Scholarship honors the memory of Gordon Conable, a past president of the Freedom to Read Foundation, an ALA Councilor, and a tireless champion of intellectual freedom. Mentoring those new to the profession was an important undertaking for Gordon, and the FTRF Board of Trustees is pleased to be able to honor his memory by creating mentoring opportunities for students and new librarians. The Conable Scholarship does this by providing financial assistance to a new librarian or library student who shows a particular interest in intellectual freedom and wishes to attend the ALA Annual Conference.

This year we are pleased to sponsor two scholarship recipients' attendance at ALA's Annual Conference:

Paloma Barraza (she/her/hers) is completing her master's degree in library and information Science from the University of Arizona iSchool with a focus in academic libraries. She works as a Library Technician at the University of Northern Colorado Libraries as the course reserve specialist and works for High Plains Library District as a bilingual Substitute Librarian. Paloma also has a master's degree in art history from the University of New Mexico, where she specialized in colonial and pre-contact art of the Americas. After she graduates, she hopes to become a specialized librarian in an academic setting. This is her first time attending the conference, and she hopes to meet academic librarians and others who are working with Latin American collections as well as accessibility for patrons.

Pamela Verfaillie is the library associate at Valdez High School in Valdez, Alaska. She is past-president of the Alaska Association of School Librarians and is currently studying to earn her MLIS at the University of Wisconsin – Milwaukee. She has an undergraduate degree in political science from Bates College (ME) and a certificate in Information and Library Science from the University of Maine at Augusta. Her interest in intellectual freedom stems from watching friends and colleagues facing coordinated efforts to remove books from school libraries and seeing school districts set aside existing policies when confronted by these tactics.

Financial support for the Conable Scholarship is essential for continuing this mentoring program. If you would like to donate to the Conable Scholarship, please visit the FTRF website at www.ftrf.org.

DEVELOPING ISSUES

At each meeting of the FTRF Board of Trustees, members of the Developing Issues Committee choose topics of current and developing interest to inform members of the Board about potential future challenges and legal issues. Currently, the Developing Issues Committee is undertaking a sustained deep dive into factors impacting the heightened pressure on libraries to censor content, including censorship/control efforts and harassment focused on LGBTQIA+ persons and content, as well as content produced by Black, Indigenous, and persons of color; pressure to censor database access based on content, and efforts to use content and programming concerns to control library governance and budgets at all levels of government.

FTRF BOARD OF TRUSTEES ELECTION

During the month of April, FTRF members elected six trustees to its Board of Trustees for two-year terms that begin on Thursday, June 22, 2023. The elected trustees are:

Stephanie “Cole” Adams, who has been elected to her second term as a Trustee. She regularly offers an “Ask the Lawyer” forum for libraries and museums through the regional library councils of New York and has a unique window into legal issues that can impact the freedom to read.

Sukrit Goswami, director of the Haverford Township Free Library in Pennsylvania, has also been elected to his second term as an FTRF trustee. His first year as the FTRF board member, Sukrit co-chaired the FTRF committee that hosted a successful virtual symposium, “Where Intellectual Freedom and Social Justice Meet: A Call to Action.”

Christine Kujawa is the Library Director at Bismarck Veterans Memorial Public Library, North Dakota. In 2023, she was involved in efforts to defeat two pro-censorship bills in the ND legislature and in 2012, Kujawa received the Gordon M. Conable Award. She also served as North Dakota Library Association’s Intellectual Freedom Chair from 2007-2012.

James (Jim) Neal is University Librarian Emeritus at Columbia University and served there as Vice President for Information Services during 2001- 14. Jim is a previous board member of the Freedom to Read Foundation and the 2017-18 President of the American Library Association. Jim is the recipient of the FTRF Roll of Honor Award and the NYLA Intellectual Freedom Award. He was recently appointed by the White House to a five-year term on the National Museum and Libraries Services Board.

Kent Oliver is the recently retired director of the Nashville Public Library and a past President of the Freedom to Read Foundation Board. He has also served on the ALA Council and the Executive Board and is currently serving as a Senior Policy Fellow for ALA’s Public Policy and Advocacy Office, with a portfolio that includes intellectual freedom and leadership of the ALA Policy Corps’ intellectual freedom cohort.

Barbara Stripling is past-president of the American Association of School Librarians, the New York Library Association, the American Library Association, and the Freedom to Read Foundation and was instrumental in adding specific commitments to the principles of Equality under the Law, Diversity, and

Inclusion and supporting the right of libraries to collect – and individuals to access – information that reflects diverse voices to FTRF’s mission statement.

Trustees are elected for a term of two years and may serve on the board for a total of four years. If you are interested in working with the Freedom to Read Foundation as a trustee or as a volunteer serving on one of FTRF’s committees, visit us at www.ftrf.org or email jmcintosh@ala.org for information on how to become involved.

FTRF MEMBERSHIP

The ongoing campaign by partisan advocacy groups to censor diverse books available in schools and libraries has resulted in the censorship of hundreds of books, silencing the voices of LGBTQIA+ persons, Black and Indigenous persons, and persons of color. It is clear that these partisan attacks on librarians, readers, and the right to read may not end until the courts uphold the rule of law and make it plain to governments and elected officials that the First Amendment and Fourteenth Amendment bars discriminatory attacks on books and readers. The Freedom to Read Foundation exists to litigate these cases so that all people read freely - and your support is vital if FTRF is to continue its work on behalf of the freedom to read and to advocate for our civil liberties and our right of free expression.

I want to extend particular thanks to attorneys Thomas F. Allen, Jr., Ryan Goellner, and Kevin Shook and their law firm Frost, Brown, Todd whose generous provision of pro bono legal services supported the filing of FTRF’s amicus brief in *Little v. Llano County*. The trustees are grateful for their contribution of time and talent. I also want to thank our General Counsel, Theresa Chmara, for her leadership, sound counsel, and dedication to FTRF’s mission, which assures our ability to participate in litigation like *Fayetteville Public Library, et al. v. Crawford County, Arkansas, et al.*

I encourage all ALA Councilors and all ALA members to join me in becoming a personal member of the Freedom to Read Foundation. I also ask that you invite your institution, organization, or state chapter to join FTRF as an organizational member. You are invited to include a donation in addition to your membership dues. Please send a check (\$50+ for personal members, \$100+ for organizations, \$35+ for new professionals, \$10+ for students, \$0 for furloughed/unemployed, and \$0 for retirees) to:

Freedom to Read Foundation
225 N. Michigan Ave., Suite 1300
Chicago, Illinois 60601

Alternatively, you can join or renew your membership by calling (800) 545-2433, ext. 4226, or online at www.ftrf.org.

I hope you will strengthen the voice and impact of the Freedom to Read Foundation by becoming a member and an active advocate for the freedom to read.

Respectfully submitted,
Peter Coyl, President
The Freedom to Read Foundation