

2023-2024 ALA CD#22
2024 ALA LLX Meeting

TO: ALA Council

DATE: January 12, 2024

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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BACKGROUND: (add information)

Freedom to Read Foundation

REPORT TO COUNCIL

2024 LibLearnX Meeting

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2023 Annual Meeting in Chicago, Illinois.

LEGAL VICTORIES

Since we last met, the Freedom to Read Foundation has achieved a series of legal victories in defense of the First Amendment.

As we reported last June, the Freedom to Read Foundation joined with the Arkansas Library Association, the Fayetteville Public Library, Eureka Springs Carnegie Public Library, Central Arkansas Library System (CALs) and a host of Arkansas booksellers and library users to challenge the constitutionality of Arkansas Act 372 in *Fayetteville Public Library, et al. v. Crawford County, Arkansas, et al.* Act 372, a law passed in 2023, required both librarians and booksellers in the state of Arkansas to limit all readers to books deemed appropriate for young children or exclude all persons under the age of 18 from their premises, using a vague and overbroad criminal definition of "harmful to minors" that would result in prosecutions of librarians and booksellers across the state for providing access to constitutionally protected books and materials. The law also allows any person residing in Arkansas to demand the removal or relocation of a library book if that person believes the book to be "inappropriate," providing any individual a heckler's veto that would allow that person to dictate what books are available to library users in the state.

I am pleased to report that on July 29, 2023, Judge Brooks of the Arkansas federal district court entered a preliminary injunction barring enforcement of Act 372, ruling that the plaintiffs – including the Freedom to Read Foundation - are likely to succeed in demonstrating that both sections of Act 372 are unconstitutional. The district court held that the criminal provisions of Act 372 were vague and overbroad and that banning minors under the age of eighteen from public libraries would compromise the mission of public libraries. The district court also rejected the argument that libraries could require adults to accompany minors because that requirement would infringe the rights of older minors to access constitutionally protected materials, while still allowing for prosecutions of librarians and parents if the material later were deemed "harmful" to minors.

As for the "heckler's veto" provision, the district court held that the challenge process of the statute was unconstitutionally vague and encourages viewpoint discrimination aimed at silencing unpopular speech.

The defendants, including the State of Arkansas, did not appeal the district court's decision, and the lawsuit will now proceed to a full resolution of the case on the merits. We are hopeful for a permanent order protecting Arkansas libraries and Arkansas residents' right to read.

The Freedom to Read Foundation also joined in filing an amicus brief in support of publishers, booksellers, and vendors challenging the constitutionality of HB 900, the READER Act, a Texas statute that requires any entity that sells library materials to Texas K-12 schools to rate their materials as "sexually explicit," "sexually relevant," or "no rating" using vague and arbitrary criteria. Books labeled "sexually explicit" cannot be sold to Texas public school or charter school libraries and books labeled "sexually relevant" require parental permission. The statute also gives the Texas Education Agency (TEA) the authority to overrule a bookseller's rating. Book ratings will be posted on the TEA website and any bookseller that does not rate their books will be listed as non-compliant on the TEA website.

FTRF's amicus brief in *Book People, Inc. v. Wong* argued that the statute violates the constitutional rights of book vendors but would also harm students' constitutional rights if it became effective. On August 31, 2023, the district court denied the State's Motion to Dismiss and agreed to enter a Preliminary Injunction order enjoining enforcement of the statute. However, on September 25, the Fifth Circuit Court of Appeals entered an administrative stay of the injunction after Texas appealed the court's order to that court. FTRF joined with the American Association of School Librarians (AASL) to file a second amicus curiae brief in support of the plaintiffs that urges the Fifth Circuit to affirm the district court's injunction and highlights the harm the law does to students' First Amendment rights. Oral argument of the appeal took place on November 29, and we are waiting for the court's decision.

FTRF also joined a large coalition of organizations in an *amicus* brief filed in the Fifth Circuit Court of Appeals in the *Netflix v. Babin* lawsuit. The case arose after a Texas prosecutor indicted the movie streaming service Netflix for violating Texas' child pornography law for streaming the film entitled *Cuties* through its platform. The prosecutor, Lewin Babin, pursued the criminal prosecution for over two years even though the movie does not meet the statutory definition of child pornography and only includes one brief scene of adult nudity.

Netflix subsequently filed a civil suit in federal court asking it to bar the prosecution on the grounds that Babin was acting in bad faith. The federal district court agreed with Netflix and entered an order enjoining the prosecutor from continuing his case against Netflix. Babin then appealed the decision to the Fifth Circuit Court of Appeals, asking the court to reverse the federal court's decision and allow the criminal case to proceed against Netflix on the grounds that the prosecution was not a criminal case in which the federal court could intervene.

FTRF's amicus brief in support of Netflix emphasized the importance of timely addressing bad faith prosecutions and the unconstitutional chilling effects of criminal prosecutions on all speakers, given that state prosecutors can abuse their power to prosecute protected speech for political reasons. On December 18, I am pleased to report that the Fifth Circuit Court of Appeals upheld the district court's preliminary injunction barring Babin from pursuing the criminal prosecution of Netflix, holding that the

evidence of a bad faith prosecution and the potential harm to Netflix's First Amendment rights supported the district court's decision to issue an injunction.

NEW LITIGATION

In December 2022, three school board members in Temecula Valley, California formed a voting bloc that rejected a textbook for its inclusion of Harvey Milk, the pioneering gay activist and member of the San Francisco board of supervisors who was assassinated in 1978 as well as adopting a resolution banning the teaching of what the board described as "critical race theory." As adopted by the school board, the resolution broadly restricts the teaching of any subject relating to race, racism, slavery and social justice and requires the forcible outing of gender non-conforming students. Now, a group of plaintiffs, comprised of students, teachers, and the Temecula Valley Unified School District's teachers' union, are asking the California courts to overturn the resolution, arguing that the resolution has censored teachers, and taken away students' fundamental rights to an education free of discrimination and censorship. On December 18, the Freedom to Read Foundation joined with Penguin Random House, The Authors Guild, the First Amendment Coalition, PEN American Center, Inc. and Freedom to Learn Advocates to file an amicus curiae brief in *Mae M. et al. v. Komrosky and Temecula Valley Unified School District et al.* The brief supports the plaintiffs' motion asking for a preliminary injunction halting enforcement of the resolution, arguing that the board's policies and actions aimed at censoring curriculum and library books threaten students' First Amendment rights.

The Freedom to Read Foundation has also joined in filing an amicus brief before the Pennsylvania Supreme Court that raises and argues an urgent and pressing privacy issue that could impact all libraries and library users. In a recent criminal case, *Commonwealth of Pennsylvania v. Kurtz*, the defendant in the lawsuit challenged the constitutionality of a keyword search warrant issued by the police to Google that sought the identities of all persons conducting a search on a particular keyword, and resulted in Google turning over the names of the persons associated with the search to the police without notice to the individuals. A Pennsylvania Superior Court concluded that an individual does not have a reasonable expectation of privacy in their private internet search queries and upheld the constitutionality of the warrant and the evidence it produced. FTRF has joined with the ACLU of Pennsylvania, the Association Of Research Libraries, Internet Archive, and the Library Freedom Project to file an amicus brief arguing that Superior Court erred in holding that an individual's search queries receive no constitutional privacy protections and that broad, "dragnet" search warrants allowing police indiscriminately sift through search engine databases are unconstitutional orders targeting free speech and privacy rights.

CURRENT LITIGATION

FTRF continues to monitor *Leila Green Little, et al. v. Llano County*, the lawsuit challenging the actions of the Llano County, Texas county commissioners, its public library board, and its library director, who 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, including race, gender identity, and sexual orientation. After the District Courts' granted the plaintiffs' motion for a

preliminary injunction and ordered the county defendants to return the banned books to the library's collection, the county appealed that order to the Fifth Circuit Court of Appeals. FTRF subsequently filed an amicus curiae brief in support of Llano County's library users. Oral argument was heard on June 9, 2023, and we are still waiting for a decision from the Fifth Circuit Court of Appeals.

In addition to its direct participation in litigation, FTRF staff and legal counsel continue to offer guidance to library workers, students, and parents addressing book censorship in their communities. This includes consulting with legal counsel on the growing number of lawsuits challenging book censorship and other legal actions aimed at preserving students' and library users' right to read. Among the lawsuits FTRF has consulted on or supported are *PEN American Center Inc et al. v. Escambia County School District*, *Cousins et al v. School Board Of Orange County et al.*, and *Parnell et al v. School Board of Lake County* in Florida; *GLBT Youth in Iowa Schools Task Force et al. v. Reynolds et al.* and *Penguin Random House, et al. v. Robbins et al.* in Iowa; *Dawn Adams et al v. Matanuska-Susitna Borough School District* in Alaska; *Missouri Association Of School Librarians And Missouri Library Association v. Baker* in Missouri; *Wheeler et al v. Sterling, Kansas, Free Public Library, Board of Directors et al.* in Kansas, and *Pickens County Branch of NAACP v. School District of Pickens County* in South Carolina. In accordance with our mission, we will continue to support such litigation and file amicus briefs in these cases when appropriate and when needed.

FREE EXPRESSION AND CIVIL LIBERTIES ADVOCACY

FTRF continues to work with our allies and state, local, and national partners to advocate for the freedom to read, free and open access to libraries, and First Amendment freedoms. This can include sending letters and utilizing other advocacy tools to urge action in defense of the right to read and the right of librarians to provide for the information needs of their communities:

- On August 3, FTRF sent a letter to the Mayor and City Council of St. Joseph, Missouri, urging them to refrain from disqualifying anyone for appointment to the St. Joseph Library Board because of their identity, background, or political or religious views, and asking them to look to a candidate's commitment to governing the public library for the benefit of all who reside in the community, and not on behalf of a particular group or faction. The letter responded to a campaign in that community to disqualify candidates for the library board who were LGBTQIA.
- On October 17, the Freedom to Read Foundation joined the First Amendment Coalition and ACLU of Southern California to send a letter to the Huntington Beach City Council urging it to reject Resolution No. 2023-41, which would prohibit any city library from allowing access to "any content of a sexual nature" for anyone under 18 years of age without consent of a parent or guardian, regardless of "whether the books or materials are intended for children or adults," and to establish a "community parent/guardian review board" that would have veto power over the city library's acquisition of new children's books. The letter concluded "[t]he City Council would far better serve the people of Huntington Beach by respecting their fundamental right to freedom of expression and turning its attention to public services, instead of stoking division by adopting an arbitrary and unconstitutional censorship regime."

- On November 6, FTRF joined with the ACLU of Northern California, the First Amendment Coalition, and PEN America, [FAC sent a letter](#) to the Fresno County Board of Supervisors urging them to reject the “Resolution Establishing a ‘Parents Matter’ Approach to Reviewing Age-Appropriate Children’s Books in Fresno County Libraries.” The resolution would make children’s books and other materials with allegedly “age-inappropriate content” off-limits to anyone under 18 without “parental or guardian consent.” The letter advised that the resolution threatened Fresno County residents’ First Amendment rights and said that “[t]he government has no business interfering with the decisions of young people and their families about what library books to read.”

Both the Huntington Beach City Council and the Fresno Board of Supervisors adopted censorious resolutions. FTRF and its partners continue to work with local residents and support any actions to challenge the resolutions.

UNITE AGAINST BOOK BANS

FTRF continues to work with our allies and state, local, and national partners to advocate for the freedom to read, free and open access to libraries, and First Amendment freedoms. This includes FTRF’s partnership with Unite Against Book Bans, ALA’s 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. In addition, FTRF staff have supported the campaign by organizing and supporting educational and advocacy programming that integrate Unite Against Book Bans’ advocacy tools into all FTRF training and education opportunities, including conferences in Michigan, Hawaii, and Kansas, and more. During Banned Books Week FTRF staff member Joyce McIntosh conducted a number of programs and training sessions sharing advocacy tools, anti-censorship strategies and information with a number of unique groups through FTRF and Unite Against Book Bans, including two historically Black sororities and Invenergy, an international corporation, whose workers’ groups Black and Brown and Invenergy+ (LGBTQ) sought out FTRF training.

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 every member of FTRF and anyone 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.

The Krug Fund Education Committee has been active on two fronts: working with FTRF staff to plan a webinar series in collaboration with ALA's Office for Intellectual Freedom to take place in Spring 2024 and to draft a First Amendment poster to increase public awareness and understanding of what the First Amendment says and means. The poster is being developed in partnership with Penguin Random House publishers, with a goal of releasing the poster in April of 2024.

In addition to the programming through the Judith F. Krug Memorial Fund, Freedom to Read Foundation staff, member leaders, and members are supporting the revitalization of Lawyers for Libraries and Law for Librarians professional development initiative.

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. In 2023 the Krug Fund awarded grants to the Keller ISD Families for Public Education, Canton, MS; Georgia Southern University, Savannah, GA; George Washington High School, Philadelphia, PA; and the North Bergen Free Public Library, North Bergen, NJ. To learn more about the 2023 recipients and their projects, and to consider applying for a Krug Fund Banned Book Week grant in the future, please visit the Freedom to Read Foundation Judith F. Krug Memorial Fund online or write or call Joyce McIntosh at jmcintosh@ala.org.

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. I am pleased to report that the FTRF staff and the Krug Fund Education Committee members hope to increase our IF course collaborations this year by adding between two and four colleges/universities. Two new collaborations are on track to begin in 2024, and we will be announcing those new collaborations at our Annual meeting.

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 to support the availability of intellectual freedom education for library and information science students.

EQUITY, DIVERSITY, AND INCLUSION / FTRF PRESIDENT'S PROGRAM

In order to honor the FTRF Board of Trustees' commitment to further the conversation about the intersection of intellectual freedom and social justice following its sponsorship of last year's Symposium on the Intersection of Intellectual Freedom and Social Justice, I glad to report that I will be working with Lesliediana Jones, Chair of the FTRF Intellectual Freedom and Equity, Diversity, and Inclusion Committee and additional members of FTRF's leadership to present a President's Program webinar on this important topic. The webinar will center the voices of leaders from National Associations of Librarians of Color, with a goal of identifying the ways FTRF supports the right of access to information and the ways FTRF and each of these organizations can work together. We anticipate sharing full details of the webinar in February, 2024.

FTRF MEMBERSHIP

The freedom to read is under attack. 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, and the firing of library professionals across the country. We know that the means to end these attacks on libraries and the freedom to read is through thoughtful and careful litigation that urges courts to uphold the rule of law and end discriminatory and unconstitutional attacks on books and readers. Our victories in Arkansas, Llano County, and Texas point the way forward.

But litigating on behalf of the right of all people to read freely is costly. Your financial support is vital and necessary if FTRF is to continue to fight for the freedom to read and to advocate for our civil liberties and our right of free expression.

I ask that all ALA Councilors and all ALA members to join me in becoming a personal member of the Freedom to Read Foundation and include a donation in support of our mission and work. I also urge you to encourage your institution, organization, or state chapter to join FTRF. 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.

In closing, I want to extend particular thanks to attorneys Thomas F. Allen, Jr., Ryan Goellner, Kevin Shook, Benjamin West and their law firm Frost, Brown, Todd whose generous provision of pro bono legal services has supported FTRF's litigation efforts in Texas. We 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 as well as the dedicated staff of the Freedom to Read Foundation, Joyce McIntosh, Karen Gianni, and our Executive Director, Deborah Caldwell-Stone.

Respectfully submitted,
Sukrit Goswami, President
The Freedom to Read Foundation