

TO: ALA Council

DATE: January 15, 2025

RE: (select one)

ACTION REQUESTED
INFORMATION

X 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
2025 LibLearnX Meeting
Phoenix, Arizona**

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2024 Annual Meeting in San Diego, California.

LEGAL VICTORY

I am extremely pleased to report that on December 23, 2024, Judge Brooks of the U.S. District Court for the Western District of Arkansas ruled that both Sections 1 and 5 of Arkansas' Act 372 are unconstitutional. The final order issued in *Fayetteville Public Library, et al. v. Crawford County, Arkansas* permanently bars the State of Arkansas from enforcing Sections 1 and 5 of the law.

Section 1 of the Act 372 would have made it a crime for libraries and bookstores to make available, provide, or show a book to a minor that meets the state's broad definition of "harmful to minors," forcing bookstores and libraries either to create an "adults only" section in their facilities or ban minors entirely, should they include a book in their collections that is appropriate for adults and older minors to read but might be found to be "harmful" to a young child. Section 5 would have required public libraries to adopt procedures that would allow any person – even those who do not reside in the state - to challenge the "appropriateness" of any book in the library's collection and demand that it be relocated to an "adults only" section of the library, thereby limiting books available to library users to the books that meet censors' approval.

The court's decision to overturn and enjoin enforcement of Act 372's book ban provisions is a significant legal victory for library users, for those that work in libraries, and for everyone's freedom to read. The opinion reinforces and upholds prior court decisions ruling that legislatures cannot impose restrictions on books intended to protect younger minors that are so broad that they deprive older minors and adult readers of their First Amendment right to read those books. Nor can legislatures adopt laws that invite government officials to engage in unconstitutional content-based censorship of a book simply because someone does not like the ideas or opinions communicated by the book.

Most importantly for libraries, library workers, and those that use libraries to access the breadth and depth of the world's available knowledge, the court's decision once again refutes the claim that a public library's collection – or the decision to add or remove books from a library's collection is a form of "government speech" that is not subject to First Amendment scrutiny. The court made it clear that any action by a government body that burdens access to books within a public library collection by restricting or removing those books due to the books' content or viewpoint is prohibited by the First Amendment.

The FTRF trustees are grateful for the opportunity to work with all the plaintiffs to vigorously defend Arkansans' freedom to read and to protect the ability of Arkansas libraries and librarians to serve the information needs of their communities. We thank our fellow plaintiffs, including the Fayetteville Public Library; the Eureka Springs Carnegie Public Library; the Central Arkansas Library System (CALs); the Arkansas Library Association; Advocates for All Arkansas Libraries; the American Booksellers Association; the Authors' Guild; the Comic Book Legal Defense Fund; the Association of American Publishers; and the brave Arkansas librarians, library users and booksellers who initiated the fight to overturn Act 372, including Nate Coulter, Executive Director of CALs; Adam Webb, a Garland County librarian; Olivia Farrell, an adult CALs patron; Hayden Kirby, a 17-year-old CALs patron; and WordsWorth Books and Pearl's Books.

The State of Arkansas will have 30 days to decide whether it will appeal the court's decision to the Eighth Circuit Court of Appeals. Should the state appeal the decision, the Freedom to Read Foundation plans to participate in the defense of the court's decision barring enforcement of Act 372.

NEW LITIGATION

The Freedom to Read Foundation has filed a friend of the court brief in support of a group of plaintiffs in Alabama who have filed a lawsuit to challenge a library board's adoption of selection and reconsideration policies that have forced library staff to remove books from the library's collection that include LGBTQIA themes and characters, as well as young adult books like John Green's *Looking for Alaska*. Their lawsuit, *Read Freely Alabama v. Autauga-Prattville Public Library Board of Trustees*, seeks to set aside written policies that prohibit library staff from purchasing or acquiring books or other materials advertised for readers aged 17 or younger that include sexual conduct, sexual intercourse, sexual orientation, gender identity, and gender "discordance." An additional policy bars library users aged seventeen or younger from checking out books that include such content.

The plaintiffs, which include both minor and adult library users as well as the Alabama Library Association, state that the policies unconstitutionally interfere with their right to check out and read constitutionally protected books and other material by requiring their removal from and preventing their acquisition for the library's collection. The brief filed by FTRF asks the court to continue the lawsuit and supports the plaintiffs' request for a preliminary injunction halting enforcement of the new policies. The brief explains why libraries are crucial to American democracy; how librarians follow long-established objective criteria and standards in curating library collections; how the new policies ignore these standards and violate the First Amendment right to receive information.

FTRF has also joined an amicus brief authored by the Electronic Frontier Foundation in *TikTok, Inc. et al. v. Merrick Garland, et al.* The lawsuit challenges the constitutionality of the Protecting Americans from Foreign Adversary Controlled Applications Act, which would require ByteDance, the China-based owner of the social media platform TikTok, to sell its U.S. operations or face a nationwide ban. The brief urged the United States Court of Appeals for the District of Columbia to overturn the law on the grounds that it violates the First Amendment. and thus unconstitutional. Since the filing of the brief, the

appellate court denied the petitioners' request for a declaratory judgment stating the law is unconstitutional, and the Supreme Court granted certiorari to review the case. The Supreme Court heard oral argument on January 10, 2025.

CURRENT LITIGATION

Last spring, the federal district court in Iowa issued a preliminary injunction in *GLBT Youth in Iowa Schools Task Force v. Reynolds* and *Penguin Random House v. Robbins* halting enforcement of SF 496, an Iowa statute that, among other matters, requires the removal of any book from Iowa public school libraries that contains a description or visual depiction of a "sex act" and forbids school districts, teachers, and librarians from providing programs, promotion, and instruction to students in grade six or below relating to "gender identity" and "sexual orientation. The state of Iowa appealed that decision to the Eighth Circuit Court of Appeals.

The Freedom to Read Foundation took the lead in preparing an amicus brief in support of the plaintiffs seeking to overturn SF 496. The Iowa Library Association and the American Association of School Librarians joined in signing the brief, which argued that SF 496's restrictions on books and instruction constitutes unconstitutional viewpoint discrimination. The brief also challenged the state's claim that library collections are "government speech" not subject to the First Amendment, arguing that libraries are critical to democracy, that robust libraries result in better outcomes for students, and that library collections curated by certified school librarians include a diversity of views that should not be seen as the government speaking.

The Eighth Circuit Court of Appeals issued its opinion in August 2024. While the Eighth Circuit remanded the case back to the district court for additional analysis of the case's legal and factual issues, the appellate decisively rejected the argument that school library collections constitute "government speech," that allows a state to engage in viewpoint discrimination by removing books from library collections. It noted that the Supreme Court has not extended the government speech doctrine to the placement and removal of books in public school libraries and based on the diversity of ideas and opinions to be found in a well-appointed school library, no one would view the curation of a library collection as government speech. The case remains pending before the district court.

I also want to update you on *Free Speech Coalition v. Paxton*, a lawsuit challenging the constitutionality of a Texas age-verification statute that requires persons of every age to provide personally identifiable information to access the internet and restricts minors' access to certain websites with sexual content. Last year the Freedom to Read Foundation joined with the American Booksellers for Free Expression, the Association of American Publishers, Inc., the Authors Guild and the Comic Book Legal Defense Fund to file an amicus brief in that case after the Fifth Circuit Court of Appeals incorrectly upheld the statute as constitutional using a "rational basis" standard of review. FTRF's brief urged the Supreme Court to review the Fifth Circuit's decision, arguing that the statute violated the First Amendment and that the law's content-based restrictions require the use of the more rights-protective "strict scrutiny" test to evaluate its validity.

The Supreme Court granted review of the Fifth Circuit's opinion on July 2. FTRF and its partners subsequently filed a second amicus brief in support of the plaintiffs, emphasizing that the law should be subject to strict scrutiny review because the law substantially restricts protected speech published by mainstream publishers and made available by libraries and booksellers and also burdens the First Amendment rights of older minors and adults. The Supreme Court has scheduled oral argument for January 15, 2025.

At our last meeting in San Diego, California, I reported on the June 2024 decision issued by the Fifth Circuit Court of Appeals in *Little v. Llano County, Texas* that upheld the plaintiff library users' First Amendment right to receive information and ordered the return of eight banned books to the library's collection. Attorneys for Llano County asked the Fifth Circuit to re-hear the case *en banc*, with all seventeen of the court's judges present for the argument.

The judges voted to grant the request, and in September 2024, the *en banc* U.S. Fifth Circuit Court of Appeals heard oral argument on why the appellate court decision should be upheld by the full court. The Freedom to Read Foundation, joined by the American Library Association and the Texas Library Association, once again filed a friend of the court brief in support of the plaintiffs. We are waiting for the *en banc* panel's decision.

ONGOING LITIGATION SUPPORT

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. Our work in this area 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. In accordance with our mission, we will continue to support such litigation and file amicus briefs in these cases when appropriate and when needed.

Included in the lawsuits FTRF has consulted on or supported are *PEN American Center Inc v. Escambia County School District*, *Cousins v. School Board Of Orange County*, *Nancy Tray v. Florida State Board of Education* and *Parnell et al v. School Board of Lake County* in Florida; *Missouri Association Of School Librarians And Missouri Library Association v. Baker* in Missouri; *Wheeler v. Sterling, Kansas, Free Public Library Board of Directors* and *Spiehs v. Morgan* in Kansas, and *Pickens County Branch of NAACP v. School District of Pickens County* in South Carolina; *Lesley v. Bennett* in Wyoming; *Northwest Association of Independent Schools et al. v. Labrador* in Idaho; and *Crookshanks, et al. v. Elizabeth School District* in Colorado.

As with FTRF's litigation efforts, there has been success in halting book bans and other library censorship. For example, after the court granted plaintiffs' request for a preliminary injunction in *Dawn Adams et al v. Matanuska-Susitna (Alaska) Borough School District* barring removal of books from the school library, the school district settled the case and agreed to pay the plaintiffs \$89,000 for attorney fees. Similarly, the Lake County school district in Florida decided to *settle Parnell v. School Board of*

Nassau County, Florida rather than defend its removal of books from the school library. The district agreed to restore the books to the library's collection and acknowledged that the book *And Tango Makes Three* is not obscene and is suitable for students of all ages. And in *Virden v. Crawford County AR*, the district court ordered the county library system to stop implementation of a policy that required library staff to remove and label books containing LGBTQ themes from their children's sections and segregating the books a new "social section." The court held that the policy was motivated by unconstitutional viewpoint discrimination.

FREE EXPRESSION AND CIVIL LIBERTIES ADVOCACY

FTRF continues to collaborate 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 writing to boards, elected officials, and others to urge them to defend the right to read and to defend librarians' ability to meet the information needs of everyone in their communities. Since September, FTRF has responded to two requests for assistance:

- A letter was sent to the Columbia County, Georgia library board, urging them to rescind a newly adopted policy barring all minors' access to books addressing matters related to gender, sexual identity, human reproduction, or human behavior related to sex or sexuality, even if the books are intended for child or young adult readers. It noted that the new policy could violate users' First Amendment rights and encouraged the library to restore their previous collection development policy that did not use content-based restrictions to limit access to books.
- A letter sent to the Carteret County School Board in North Carolina encouraged board members to return to the school library collection books that had been removed by administrators without following the district's written reconsideration policy. It also asked the board to allow students to participate in the North Carolina Battle of the Books. The board had cancelled students' participation based on some individuals' objection to a number of books on the reading list.

FTRF also continues to work with coalitions to defend the freedom to read and prevent the censorship of library resources. Among these groups are the Media Coalition, the Right to Read Working Group, and 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 these coalitions, FTRF staff and legal counsel provide strategic support and essential legal information to library workers and community activists fighting book censorship in their communities.

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 continue 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 partners with the University of Illinois' iSchool, the San Jose State University School of Information, Emporia State University, and Longwood University to assure that foundational graduate coursework addressing the practice of intellectual freedom in libraries remains available to those preparing for careers in information science, librarianship, and education. The Freedom to Read Foundation is grateful to the University of Illinois, San Jose State University, Emporia State University, and Longwood University for partnering with the Freedom to Read Foundation on this important initiative.

The Judith F. Krug Fund also 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 2024 the Judith F. Krug Fund awarded five grants to three public libraries, one academic library, and one Friends and Foundation organization. The recipients include the Lewes Public Library (DE), Frankfort Public Library (IN), Loutit District Library (MI), Hostos Community College (NY), and the Friends and Foundation of Albany Public Library (NY). To learn more about the 2024 recipients and their projects, and to learn how your institution can apply for a Krug Fund Banned Book Week grant in the future, please visit the Freedom to Read Foundation Judith F. Krug Memorial Fund online at https://www.ftrf.org/page/Krug_BBW,

In addition to its work with FTRF's graduate education partners, the Krug Fund Education Committee has expanded its outreach, developing a poster highlighting the freedoms protected by the First Amendment for use in K-12 classrooms and public libraries. With the support of Penguin Random House publishers, the poster was released at state library conferences and ALA's Annual Conference in San Diego, where the poster was well-received. A webpage, [First Amendment - Freedom to Read Foundation](https://www.ftrf.org/page/firstamendment) (<https://www.ftrf.org/page/firstamendment>) supplements the information.

The committee is now developing 6 8.5" x 11" downloadable posters that further explain each of the six court cases included on the large poster to enhance the poster's outreach. It is also considering new posters that will include additional court cases supporting First Amendment rights as well as a series of short videos to accompany these small posters.

Your financial support for the Krug Fund enables the Freedom to Read Foundation to support these important educational opportunities for LIS students, k-12 students, and the public. Please visit https://www.ftrf.org/page/Krug_Fund to learn more about the Krug Fund's support for intellectual freedom education and Banned Book Week activities, please consider contributing to the Krug Fund to support this important work.

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. This year, the Developing Issues Committee will be focusing on five major issues that have intellectual freedom implications:

- Artificial intelligence in terms of intellectual freedom, privacy, and ethics.
- Intellectual freedom for youth on social media platforms, focusing on legislation, litigation, media platform rules and censorship/First Amendment impacts.
- Academic freedom of speech, focusing on predatory journals, atmosphere of publish or perish, and retracted tenure.
- Impact of censorship policies, practices, and legislation on the profession of librarianship, with particular focus on school and public librarians.
- Scan of state and federal Supreme Court rulings that have implications for the First Amendment.

FTRF MEMBERSHIP

Litigation – fighting library censorship in the courts - continues to be an effective safeguard against censorship. FTRF is successfully challenging the authoritarian and anti-democratic narrative that casts schools and libraries as centers for indoctrination, rather than centers for enlightenment. The foundation is establishing the necessary legal precedents that will help end the censorship of diverse books and end the campaign to silence the voices of LGBTQIA+ persons, Black and Indigenous persons, and persons of color.

But litigating on behalf of the right of all people to read freely is a costly endeavor. Your support is essential if FTRF is to continue its defense of the freedom to read and its advocacy on behalf of our civil liberties and our right of free expression.

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
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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 encouraging your institutions and membership organizations to join FTRF.

Respectfully submitted,
Sophia Sotilleo, President
The Freedom to Read Foundation