

TO: ALA Council

DATE: June 18, 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 Annual Meeting
San Diego, California

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 Chicago, Illinois.

LEGAL VICTORY

It is my privilege to report that we have achieved a significant victory in the case of *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. Earlier this month, the Fifth Circuit Court of Appeals issued a decision upholding library users' First Amendment right to receive information and ordering the return of eight banned books to the library's collection.

The case was appealed to the Fifth Circuit Court of Appeals by the defendant county after the federal district court in Austin, Texas, granted the plaintiff library users' motion for a preliminary injunction to halt the unconstitutional actions of the county and its appointed library board. FTRF filed an amicus curiae brief in support of Llano County's library users that sought to refute claims by the defendants that the removal of disfavored or controversial books was merely "weeding" that conformed to librarians' professional ethics and the law. The FTRF brief argued that librarians are guided by well-established ethical canons and standards that do not favor a particular viewpoint, and that weeding library collections is an objective process, not a means for achieving the targeted removal of disfavored or controversial books. The brief also disputed the county's claim that the contents of a public library constituted government speech and that the library could offer a hidden, unpublicized, in-house checkout system for controversial books as a substitute for free and open access to those books, arguing that both claims were contrary to the fundamental concept of a library, which is designed to provide access to information for all patrons.

Oral argument was heard on June 7, 2023. On June 6, 2024, the Fifth Circuit Court of Appeals issued its decision, which upheld the district court's preliminary injunction and ordered the return of eight books to the library shelves with the instruction that the books must be listed in the catalog, rather than kept behind a counter or in a unpublicized in-house checkout system. The majority opinion reaffirmed that library users possess a First Amendment right to receive access to information and ideas and that the First Amendment is violated if "a government decision-maker removes a book with the substantial motivation to prevent access to particular points of view." The opinion further held that library users suffered irreparable harm because they were "unable to anonymously peruse the books in the library without asking a librarian for access." With respect to the argument that a public library collection

constitutes government speech, the majority held that libraries can consider content in curating a collection but no court has held that "the government may make these decisions based solely on the intent to deprive the public of access to ideas with which it disagrees."

Unfortunately, nine of the books removed from library shelves will not be returned immediately to the library shelves because two judges – for different reasons – concluded that the books could be removed during the weeding process. While one judge fully endorsed the legal findings of the majority opinion, that judge held that the picture books that were labeled "butt" and "fart" books had no "idea" or "viewpoint" with which someone would agree or disagree and thus could be removed. The third dissenting judge would have held that library collections constitute government speech and thus decisions to acquire or remove books can be based on viewpoint.

Fortunately, Llano County’s library users will have another opportunity to make arguments about these books at the district court because the case will now return to the federal district court for further consideration and a final order in light of the appeals’ court holding that library users have a First Amendment right to receive information in public libraries.

NEW LITIGATION

I am also pleased to report that the Freedom to Read Foundation has joined with the Iowa Library Association and the American Association of School Librarians to file an amicus brief in *GLBT Youth in Iowa Schools Task Force, et al. v. Reynolds, et al. and Penguin Random House, et al. v. Robbins, et al.*, two lawsuits currently pending before the Eighth Circuit Court of Appeals. The two lawsuits were filed to challenge an Iowa statute, passed as SF 496. The plaintiffs in both lawsuits allege that the statute is unconstitutional because it 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 other licensed professionals from providing programs, promotion, and instruction to students in grade six or below relating to “gender identity” and “sexual orientation.” In addition, the statute requires school districts to notify a child’s parents if the child requests an accommodation relating to gender identity, such as asking to use different pronouns than those in registration records.

The plaintiffs – made up of a coalition of students, parents, educators, publishers, authors, and civil liberties advocates residing in Iowa – filed a motion asking the federal district court to grant a preliminary injunction barring enforcement of SF 496. The district court did so, finding that the statute would likely be found to be unconstitutional because students have a First Amendment right to receive information in school libraries free from suppression based on viewpoint, ideology, or other reasons amounting to the suppression of ideas, and SF 496 violates that right by broadly targeting constitutionally protected materials. Iowa appealed that decision to the Eighth Circuit Court of Appeals

FTRF then took the lead in preparing an amicus brief that was joined by the Iowa Library Association and the American Association of School Librarians. The brief argues that libraries are critical to democracy and robust libraries result in better outcomes for students; that the top-down approach of SF 496 ignores the training and standards relied upon by certified librarians to curate library collections; that library collections are not government speech; that implementation of SF 496 constitutes improper viewpoint discrimination; and the availability of books at public libraries and bookstores does not make SF 496’s restrictions on students’ ability to

access school library books constitutional. Oral argument was heard by the Eighth Circuit Court of Appeals on June 11, and we await their decision.

FTRF has also joined an amicus brief filed in the U.S. Supreme Court that urges the Supreme Court to take up and review the decision of the Fifth Circuit Court of Appeals in *Free Speech Coalition v. Paxton*. The lawsuit challenges a Texas age-verification statute that would restrict the access of minors to certain websites with sexual content and require each person of any age to provide personally identifiable information in order to access the internet. FTRF's brief argues that the statute restricts access to constitutionally protected material for adults and older minors unless the adults and older minors are willing to identify themselves through an age-verification process that may not be secure or private in accessing that constitutionally protected material. The brief provided examples of books and websites that are constitutionally protected for adults and older minors but might be deemed "harmful" to younger minors, thus necessitating an age-verification process if those books were accessible in a bookstore or library. The amicus brief urged the Supreme Court to accept the case for review because the Fifth Circuit decision is in direct conflict with the holdings of multiple other Circuits. Joining FTRF on the amicus brief are the American Booksellers for Free Expression, Association of American Publishers, Inc., Authors Guild, Inc., and Comic Book Legal Defense Fund.

Lastly, FTRF has joined an amicus brief in *Netflix v. Barina*, a lawsuit filed by an individual claiming that Netflix defamed them when it aired the documentary "Guardians, Inc.," which reported on potential financial abuses arising in the process of establishing adult guardianships. The individual claiming that they were defamed was seen in the documentary but could not identify a single false statement in the documentary. Despite the inability to identify any defamatory material, the trial court denied Netflix's Motion to Dismiss the case and an intermediate appellate court upheld that denial, creating a potential legal threat that could chill this kind of documentary reporting.

Netflix has appealed this decision to the Supreme Court of Texas. FTRF has joined an amicus brief in support of Netflix that was authored by more than two dozen documentarians, authors, and Texas lawyers. The brief argues that the lower court's holding that there could be potential liability for defamation when a documentary included no false statements, creates untenable uncertainty for documentarians and others exercising their First Amendment rights and improperly infringes on protected editorial judgment and also argues that there is no "endorsement" exception to Texas' statute which protects accurate reports of third-party allegations on matters of public concern. and the Court of Appeals opinion will chill constitutionally protected speech. The Freedom of Information Foundation of Texas, the Center for Investigative Reporting, the Media Institute, the Tully Center for Free Speech, Freedom of the Press Foundation, Motion Picture Association, Inc., The Authors Guild, National Coalition Against Censorship, The Association of American Publishers, Inc., the Association of American Publishers, Inc., the National Press Photographers Association, the American Booksellers for Free Expression, the News/Media Alliance, the First Amendment Foundation, Inc. and The Media Coalition Foundation also joined the documentarians' brief. We await the Texas Supreme Court'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. 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; *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 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 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. Since January, FTRF has sent the following letters and statements:

- [Coalition Letter Against the Adoption of Florida SB 1372 / HB 1291](#): Urging legislators to vote no on the adoption of SB 1371 / HB 1291 because the legislation would bar Florida's educator preparation programs at both public and private institutions from offering "a curriculum or instruction that teaches identity politics" or "distort[s] significant historical events," or "is based on theories that systemic racism, sexism, oppression, and privilege are inherent in the institutions of the United States and were created to maintain social, political, and economic inequities," which would impair academic freedom and impose viewpoint discrimination in violation of the First Amendment.
- Letter to the North Hunterdon-Voorhees Regional High School District (NJ) encouraging retention of the book *Let's Talk About It*, continued adherence to existing written materials selection and reconsideration policies and provide ongoing support for their school library professionals.
- Letter to Fort Zumwalt School District (MO) urging the school board to adhere to their existing materials selection and reconsideration policies and support their school library professionals.
- Letter to the Cameron R-1 School District (MO) urging the board to end the use of parental permission slips to access the school library, retain challenged books, adhere to written materials selection and reconsideration policies and support school library professionals.
- Letter to the Alpena County Public Library (MI) urging the library board to keep the young adult

book *All Boys Aren't Blue* in the young adult collection in accordance with their policies rather than limit access by moving it to the adult collection.

FTRF also continues to work 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.

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.

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 2024 the Judith F. Krug Fund awarded five grants to three public libraries, one academic library, and one Friends and Foundation organization. The recipients are:

- Lewes Public Library (DE)
- Frankfort Public Library (IN)
- Loutit District Library (MI)
- Hostos Community College
- 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 or write or call Joyce McIntosh at jmcintosh@ala.org.

LIS and Professional Education

Through the Krug Fund, the Freedom to Read Foundation has partnered with two new institutions to support intellectual freedom education for students enrolled in library and information science degree programs. FTRF will collaborate with Emporia State University on "Intellectual Freedom in Libraries," a semester-long course that will examine intellectual freedom as a core value of librarianship and a foundational principle for library professionals. Students will learn how to articulate, promote, and

defend intellectual freedom practices and policies as a key component of professional practice in multiple types of libraries and information services. The course, which will be taught by Professor Mira Dow, is open to LIS graduate students throughout the country, not just those enrolled at Emporia State University.

FTRF will also collaborate with Longwood University on an intellectual freedom course designed for school librarians during the Fall, 2024 term. “Intellectual Freedom and the School Library” will examine intellectual freedom using the core values of librarianship with a focus on school librarianship. The online course will take place over four weeks beginning on August 27, 2024, and will be led by Professor Carl Harvey. It is open to any student registered in a library science program. It represents the first time the Freedom to Read Foundation has collaborated with an accredited LIS program designed for school library media specialists.

The Krug Fund continues to partner with the University of Illinois’ iSchool and the San Jose State University School of Information to offer foundational graduate coursework addressing the practice of intellectual freedom in libraries remains available to those preparing for careers in information science and librarianship. 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.

In addition to its work with FTRF’s graduate education partners, the Krug Fund Education Committee has also been active in 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 the Texas Library Association conference in April, where it was well-received. The poster will be available as a free handout at the ALA Membership Pavilion at ALA Annual in San Diego. A webpage, [First Amendment - Freedom to Read Foundation](https://www.ftrf.org/page/firstamendment) (<https://www.ftrf.org/page/firstamendment>) supplements the information on the poster and will be continually updated.

FTRF member leaders and volunteers are also offering a program, “The Battle for the First Amendment,” to support the poster release. The program was first offered at the Texas Library Association conference and will be offered at ALA Annual on Sunday, June 30, at 2:30 pm.

Your financial support for the Krug Fund enables the Freedom to Read Foundation to support graduate education opportunities for LIS students, public education about the First Amendment, and provide grants to institutions and communities seeking to hold Banned Book Week events. 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.

2024 ROLL OF HONOR AWARD: THOMAS F. ALLEN JR., RYAN W. GOELLNER, KEVIN SHOOK, AND BEN A. WEST OF FROST, BROWN TODD LLP

Thomas F. Allen Jr., Ryan W. Goellner, Kevin Shook, and Ben A. West, attorneys with the law firm Frost Brown Todd LLP, are receiving the foundation's 2024 Roll of Honor Award for their pro bono contributions to FTRF's litigation efforts defending library users' First Amendment rights and the freedom to read.

Allen, Goellner, Shook, and West collaborated with FTRF's General Counsel and staff in writing substantive amicus curiae briefs in *Little v. Llano County* and *Book People, Inc. v. Wong*, two important cases before the United States Court of Appeals for the Fifth Circuit. They are each recognized for their contribution of the many hours of dedicated work they put into writing and researching these briefs and their commitment to supporting the freedom to read and First Amendment rights. The Freedom to Read Foundation also recognizes their firm, Frost Brown Todd LLP, for supporting the work of the four attorneys.

FTRF General Counsel Theresa Chmara praised the work done by the four Frost Brown Todd attorneys, stating that their dedication, commitment, and insights into the issues were valuable to both the briefs and the foundation's ongoing efforts to battle censorship in courts throughout the country.

The Freedom to Read Foundation honored the four attorneys on Friday, June 28 during the Opening General Session of the American Library Association's Annual Conference and at Friday evening's Rally for the Right to Read.

The Freedom to Read Foundation established the Roll of Honor in 1987 to recognize a person or group of people who have contributed to the Foundation through adherence to its principles or who have provided substantial monetary support for the work of the organization.

FTRF AWARDS SPECIAL CITATION HONORING GIRL SCOUT KATE LINDLEY

The Freedom to Read Foundation has awarded a special citation to Girl Scout Kate Lindley of Hanover County, Virginia in recognition of her Girl Scout Gold Award Project, "Free to Read," as well as in recognition of her steadfast advocacy on behalf of the freedom to read even as local elected officials censored any mention of her project at a ceremony intended to honor Gold Award winners in her community.

Lindley's Gold Award project involved the creation of "Banned Book Nooks" and a "Free-to-Read" online app, both designed to assist students and readers in her community access books that had been banned by the Hanover County School Board. Kate also created "Talk Totes," containing 10-15 copies of a banned title with discussion questions, and recruited a network of student ambassadors to distribute the totes in each of the four county high schools.

When it came time for the Hanover County Board of Supervisors to recognize Kate and the other Girl Scouts who earned their Gold Awards, the Board of Supervisors refused to acknowledge the topic of Kate's "Free to Read" project. While other award winners received proclamations recognizing and detailing their Gold Award projects, Kate instead was given a proclamation that failed to include any mention of censorship or banned books.

Kate's bravely stood up to this censorship and refused to be silenced. When it came time to accept her proclamation from the Board of Supervisors, she announced, "My name is Kate Lindley and I am from the Ashland District. I would like to let you, the Board of Supervisors, know that you have bestowed upon me the greatest honor you could, greater than that of any proclamation, in your censorship of my Gold Award Project. You have shown the world that you are afraid to call something what it is, be that a banned book or a deselected one. Thank you for this recognition."

The Freedom to Read Foundation honored Kate Lindley on Friday, June 28, 2024 at the Rally for the Right to Read during the American Library Association's Annual Conference in San Diego, California

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 the attendance of Etana Laing and Tif Sutherland at this year's ALA Annual Conference. Etana Laing is an MLIS student at the University of Maryland-College Park and a library associate at Bowie State University. She also has a book club for Black women and people with lived experience of misogynoir called Revolutionary Reads. Tif Sutherland is the Reference Supervisor at Calvert Library in Maryland and President of the Maryland Library Association, leads a team of seven librarians focused on instruction, access, and equity for a community of 100,000.

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.

FTRF BOARD OF TRUSTEES ELECTION

The Freedom to Read Foundation (FTRF) is led by a board of fifteen trustees. The term for an elected trustee is two years, and board members may serve two consecutive terms. Trustees meet at least twice a year in conjunction with the ALA conferences or professional development events and hold virtual committee meetings throughout the year.

On April 30, 2024, the Freedom to Read Foundation (FTRF), concluded its annual election. Five persons were elected to its Board of Trustees for two-year terms that begin on June 27, 2024.

The elected trustees are:

Shauntee Burns-Simpson has been elected for a 2-year term. Burns-Simpson is the Director of Youth & Family Services at the District of Columbia Public Library. She served as President of the Black Caucus of the American Library Association (BCALA) from 2020 to 2022, and she has also chaired the ALA Committee on Diversity. Burns-Simpson is committed to advancing diversity, equity, and inclusion on a national scale within the profession.

Dorcas Hand has been elected for a 2- year term. She is a retired school librarian from Houston TX who is a co-chair of Students Need Libraries in HISD (Houston), a grass-roots advocacy effort to return school librarians and libraries to all campuses in HISD. Hand served on the FTRF Board from 2019-22, is an active member of the ALA COLA Ecosystem Subcommittee, is the Texas Chapter Councilor to the ALA Governing Council (2021-2024) and sits on the TXLA Executive Board (2021-2024).

Lesliediana Jones has been elected for a 2-year term. She is currently an Associate Director and Interim Assistant Dean at the Harvard Law School Library. Lesliediana has been the Chair of the Intellectual Freedom Committee, 2022 - present and a member of the Executive Board of the Freedom to Read Foundation. She has been a past member of the ALA Committee on Legislation. Lesliediana has been a speaker at conferences locally and internationally on the subject of intellectual freedom and the vital role of libraries in our communities.

Pat Scales has been elected for her second 2-year term. She is a free-speech advocate and is the author of *Banned Books for Children and Teens, Protecting Intellectual Freedom in Your School Library* and *Books Under Fire: A Hit List of Banned and Challenged Children's Books*. She writes a bi-monthly column, *Scales on Censorship*, for the *School Library Journal*. She has also served as a member and chair of the American Library Association's (ALA) Intellectual Freedom Committee.

Sophia Sotilleo has been elected for her second 2-year term. Sotilleo is the Dean of the Thurgood Marshall Library at Bowie State University, is a current ALA Executive Board Member, and a member of the New Castle County Library Advisory Board for the state of Delaware. She also serves on the College and Research Library (CRL) Budget and Finance Committee. She has also served as a past Freedom to Read Foundation Vice president, serving on the education committee and Liaison to the Black Caucus of American Library Association. She also served as the Co-Chair for FTRF's launch of the Symposium on Intellectual Freedom and Social Justice.

The Freedom to Read Foundation (FTRF) is led by a board of fifteen trustees. The term for an elected trustee is two years, and board members may serve two consecutive terms. Trustees meet at least twice a year in conjunction with the ALA conferences or professional development events and hold virtual committee meetings throughout the year.

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.ft rf.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. If you are interested in working with the Freedom to Read Foundation visit us at www.ft rf.org or email jmcintosh@ala.org for information on how to become involved.

In closing, I want to extend particular thanks to attorney Owen Wolfe and the firm of Seyfarth Shaw whose generous provision of pro bono legal services has supported FTRF's litigation efforts in Iowa. 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