

TO: ALA Council

DATE: January 12, 2024

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

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 *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 _____ 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 _____ 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 _____ 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*

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

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