

TO: ALA Council

DATE: January 22, 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)

CONTACT PERSON:

Peter Coyl

STAFF LIAISON CONTACT:

Deborah Caldwell-Stone
Director, Office for Intellectual Freedom
dstone@ala.org

Joyce McIntosh
Assistant Program Director
Freedom to Read Foundation
jmcintosh@ala.org

Karen Gianni
Program Coordinator
Freedom to Read Foundation
kgianni@ala.org

BACKGROUND: (add information)

Freedom to Read Foundation
REPORT TO COUNCIL
2023 LIBLEARNX CONFERENCE
New Orleans, Louisiana

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation’s activities since the 2022 Annual Meeting in Washington, D.C.:

NEW LITIGATION

One of the most important statutes that enables and protects libraries’ provision of internet access and online information resources is Section 230 of the Communications Act of 1934 which states, in part, that “no provider or user of an interactive computer service shall be treated as the publisher of, or speaker of, information provided by another information content provider.” Originally adopted as part of the Communications Decency Act of 1996, the provisions of Section 230 provide legal immunities to providers of internet services, online platforms and publications that prevent them from being sued for online content published or hosted by a third party.

These legal protections enable those organizations that provide access to the internet – including libraries – to allow users to freely choose among the wide range of information and ideas online, to utilize tools that allow speakers to find an audience for their ideas, and allow online providers to undertake the curatorial decisions an online provider may make while providing access to online content.

Over the years, courts have applied Section 230 to preempt laws that would make providers and users legally liable for third-party content, or liable for decisions to transmit or take down user-generated content. For example, in *Kathleen R. v. City of Livermore*, the California Court of Appeals ruled that a library could not be held legally liable to a parent or her minor son after the son voluntarily used library computers to download images the parent found inappropriate. The court rejected the mother’s claims on the grounds that Section 230 immunizes internet service providers, including libraries, against legal liability for materials published on the internet by third parties that the library had no part in publishing.

Next month, the U.S. Supreme Court will hear oral arguments in [Gonzales v. Google, LLC](#). This is a lawsuit filed against Google and its YouTube service under the Anti-Terrorism Act by Reynaldo Gonzalez, who is seeking damages from Google following the death of his daughter during an ISIS attack at a Parisian bistro in November 2015. Gonzalez says Google assisted and aided ISIS’s

recruitment through YouTube videos. He and other parties to the lawsuit are asking 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 content so internet users can access the content. However, if providing a URL to content falls outside Section 230's protections for third-party access providers, then any hosting or provision of access to third-party content is unprotected and could subject the provider to possible legal liability. This includes libraries and the services that provide content to library users.

For this reason, the Freedom to Read Foundation has joined the Electronic Frontier Foundation, the American Library Association, the Association Of Research Libraries, and the Internet Archive in an [amicus brief](#) authored by the Electronic Frontier Foundation. The amicus brief urges the Supreme Court to preserve the immunities provided by Section 230 which provide a crucial shield to libraries, archives, and educational institutions when they provide access to online resources that facilitate the free and open exchange of ideas and information on the internet. Oral argument is scheduled to take place on February 21, 2023.

CURRENT LITIGATION

I am pleased to report that the recent effort by a Virginia Congressional candidate to have the books *Gender Queer* and *A Court of Mist and Fury* declared obscene for viewing by minors in that state has been defeated, following a successful defense mounted by the books' publishers and authors, with support of booksellers, librarians, and civil liberties advocates, including the Freedom to Read Foundation, the Virginia Library Association, and the American Library Association.

The candidate filed the legal actions against the two books pursuant to a Virginia statute that permits any person file a civil action to declare an expressive work obscene. He also filed a motion for a temporary injunction to prevent the local Barnes and Noble bookstore and the Virginia Beach High School library from making the books available to minors while the legal actions were pending.

After the publishers and authors filed their opposition to both legal actions, The Freedom to Read Foundation joined Virginia librarians and booksellers, the American Library Association, the ACLU, and organizations representing publishers, authors, and readers in filing an amicus brief urging the court to find the statute unconstitutional and hold that the books at issue did not meet the definition of obscenity.

On August 30, 2022, the circuit court judge dismissed both petitions in their entirety, finding that the petition did not allege sufficient facts to support a finding that the books were obscene under Virginia law and that the United States and Virginia state constitutions do not permit a finding of obscenity as to adults on the grounds that material is inappropriate for minors. The judge further ruled that the statute used to file the legal actions was unconstitutional, both as a prior restraint on speech protected by the First Amendment and as a violation of the due process rights of the publishers, authors, and those making the books available to the public. Indeed, the judge went so far as to vacate her earlier finding

that there was “probable cause” to hear the candidate’s petitions, stating that the finding was issued on an incomplete record containing only short excerpts from each work, and without briefs and arguments by the affected parties. Because the candidate chose not to appeal the court’s decision, the court’s ruling overturning the Virginia statute as unconstitutional is final.

The Freedom to Read Foundation’s staff and legal counsel continue to provide guidance, information and support to library workers, students, and parents addressing book censorship in their communities including those filing suit to defend their right to read. This includes Leila Green Little, et al. v. Llano County, a lawsuit filed by residents of Llano County, Texas to challenge the Llano County public library board’s decision to remove a large number of books from public library shelves and C.K.-W. et al. v. Wentzville R-IV School District, a lawsuit filed by two students of the Wentzville R-IV School District with the Missouri National Association for the Advancement Of Colored People (NAACP) and the NAACP’s St. Charles County, MO unit.

In Leila Green Little, et al. v. Llano County, plaintiffs filed a Motion for Preliminary Injunction and the court heard arguments on October 31, 2022. We are now waiting for the court to issue an opinion.

Unfortunately, the student plaintiffs in C.K.-W. et al. v. Wentzville R-IV School District received a disappointing decision in their efforts to return the books banned from their school library to the library’s shelves. On August 5, 2022, the district court denied their Motion for Preliminary Injunction, ruling that the case does not involve the banning of books because students could obtain the books from the public library and online booksellers. Nonetheless, plaintiffs are resolved to fully litigate their claims before the court and are preparing their case for a full hearing on the merits.

We also received news of a disappointing result in Gibson Bros, Inc., et al., v. Oberlin College, et al. You may recall that a jury found Oberlin College and its Dean of Students guilty of defamation for allowing distribution of a flyer and the posting of a student senate resolution that claimed that a local bakery acted in a racist manner following a confrontation between an employee of the bakery and three African American Oberlin College students. The jury reached its verdict after the trial court instructed the jury that it could find the defendants liable on the basis of mere negligence, rather than requiring a finding of actual malice. Consequently, the jury awarded the bakery \$44 million dollars in compensatory and punitive damages, an amount reduced to \$31 million dollars under an Ohio statute that limits punitive damages.

Subsequently, FTRF signed on to an *amicus* brief in support of Oberlin College, arguing that Ohio legal precedents require a finding of actual malice for defamation liability, and that the trial judge erred when he instructed the jury that it could base its judgment on mere negligence. Unfortunately, the Ohio Court of Appeals upheld the judgment against Oberlin College, and the Ohio Supreme Court refused to accept the case for further review.

FREE EXPRESSION AND CIVIL LIBERTIES ADVOCACY

The Freedom to Read Foundation is an active national partner with the American Library Association in ALA’s non-partisan, grassroots advocacy campaign, [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 are providing essential legal information and strategic support to library workers and community activists fighting book censorship in their communities.

One result of this fruitful collaboration is the panel held yesterday evening at the Marriott headquarters hotel, *Book Bans, Libraries, and the Law: Standing Up to Library Censorship in Louisiana and Beyond*. Theresa Chmara, FTRF’s general counsel, joined with Louisiana librarians, community activists, and Katie Schwartzman, director of the Tulane First Amendment Clinic, to engage in a conversation about legal and practical strategies for fighting library censorship that can be utilized by all library workers and library advocates.

We continue to encourage you and all persons who defend and support the freedom to read to join the campaign and to urge their friends, neighbors, and colleagues to also sign up to support the fight against book bans.

INTELLECTUAL FREEDOM AND SOCIAL JUSTICE

Over 500 people registered to attend the Freedom to Read Foundation’s online, two-day symposium, *Where Intellectual Freedom and Social Justice Meet: A Call to Action*. Our speakers represented a range of perspectives, from our keynote by author and educator Sofia Leung to the current Museum and Library Services Director, Crosby Kemper. The speakers and panelists addressed essential topics such as intellectual freedom and community values, alternatives to neutrality, library policy and practice, and challenges facing the library community and drew on their knowledge and experience to offer strategies for community change, building consensus, developing strong policies, and building coalitions and engaging in effective public outreach.

Symposium co-chair Sophia Sotilleo is the guest editor for a special edition of the *Journal of Intellectual Freedom & Privacy*, titled *Social Justice and Intellectual Freedom: Working within a Divided Nation* which will preserve and carry forward the conversations begun during the symposium. This special edition of the *Journal of Intellectual Freedom and Privacy* is anticipated to come out Winter of 2023.

As a result of this work, FTRF has added a formal Intellectual Freedom/EDI Committee to determine additional ways for FTRF to continue this important work. FTRF has never had a more diverse executive board and with the strength of our thought leaders working together we can accomplish great things in the scope of this work to uplift and support librarianship through an EDI lens.

I want to especially recognize and thank Sophia Sotilleo, who led the special task force that has organized the symposium, and Cindy Hohl, chair of FTRF’s Intellectual Freedom and Equity, Diversity, and Inclusion Committee, for their contributions to the symposium and the ongoing work of the Foundation.

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.

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 and libraries 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 2022, the Krug Fund awarded grants to the following institutions: Athens-Clarke County Library, Athens, GA; Friends of the Chesapeake Public Library, Chesapeake, VA; Kean University, Common Read Program, Sayre, PA; Mary Lou Johnson Hardin County Library, Kenton, OH; Medina County District Library, Medina, OH; and the Sidney Silverman Library at Bergen Community College, Paramus, NJ.

To learn more about past recipients and their projects and consider applying in the future, visit the [Freedom to Read Foundation](https://www.ftmf.org) online at www.ftmf.org or [Judith F. Krug Memorial Fund](https://www.judithfkrug.org). Contact Joyce McIntosh at jmcintosh@ala.org with questions.

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 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. We also thank FTRF program director Joyce McIntosh for her dedicated support for the course instructors and the students enrolled in these classes.

This fall, Emily Knox was on sabbatical, and FTRF Trustee Jarrett Dapier taught the U of I intellectual freedom course. The Krug Fund provided copies of the Intellectual Freedom Manual for students taking the U of I course and assisted Mr. Dapier in acquiring speakers.

FTRF MEMBERSHIP

We are facing an unprecedented authoritarian and anti-democratic campaign by partisan advocacy groups and elected officials to censor diverse books available in schools and libraries, silencing the voices of LGBTQIA+ persons, Black and Indigenous persons, and persons of color. 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 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.ft rf.org.

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

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