

COUNCIL COMMITTEE REPORT FORM

TO: ALA Council

DATE: January 3, 2022

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. One information item.

ACTION REQUESTED BY: (add committee name)

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BACKGROUND: (add information)

Freedom to Read Foundation

REPORT TO COUNCIL

2022 Virtual January Meeting

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2021 Virtual Annual Conference:

NEW LITIGATION

Coleman v. Grand: FTRF has joined an amicus curiae brief authored by counsel for the Reporters' Committee for Freedom of the Press that supports providing additional protection for speakers making comments on matters of public concern, such as the comments made by individuals addressing sexism and harassment in the music industry. The lawsuit involves a jazz musician's claims of defamation filed against an aspiring musician who wrote a letter to friends and colleagues in the jazz music industry about her concerns about their personal and professional relationship. A court dismissed those claims, holding that the plaintiff jazz musician had failed to show that the defendant had acted with actual malice, based on the legal standard for establishing actual malice in New York's newly amended anti-SLAPP ("Strategic Lawsuit Against Public Participation") law, which places limits on the use of defamation lawsuits to silence critics speaking out on matters of public concern.

The plaintiff has appealed that decision, arguing that New York state law should not apply in federal court. He also argues that the young musician's statements address "purely private matters" and do not constitute "an issue of public interest" for purposes of the anti-SLAPP law. The brief joined by FTRF argues that the Anti-SLAPP law applies because the case involves a substantive matter, and that actual malice is the correct standard to be applied in the case. The brief further argues that Grand's statements concerning sexual harassment in the music industry, made in the early days of the #MeToo movement, concern an issue of vital public interest that should be protected speech.

Happ v. Facebook: FTRF has also joined an amicus curiae brief filed in *Happ v. Facebook*. The lawsuit concerns the extent of the legal protections provided to online intermediaries that host third-party content, which includes those libraries that provide users access to platforms and websites.

A Philadelphia newscaster whose image was used in online advertisements for a dating app without her permission has filed suit against Facebook and other platforms, claiming that the social media platform had violated her right of publicity under Pennsylvania law by hosting the advertisement on its pages. A federal district court dismissed her complaint, holding that Facebook was entitled to legal immunity as provided in Section 230(c) of the Communications Decency Act, which provides online platforms and websites immunity for materials published by third parties. The Third Circuit Court of

Appeals has reversed that decision, holding that Section 230 does not provide immunity from state law-based intellectual property claims like the newscaster's claims.

FTRF has joined an amicus curiae brief authored by counsel for the Electronic Frontier Foundation that argues that excluding state publicity rights claims from Section 230 immunity would impair the ability of online platforms and other online intermediaries to host content created by users, forcing email providers, social media platforms, and any site that supports user-generated content - including libraries - to tailor their sites to ensure compliance with the most restrictive state laws.

CURRENT LITIGATION

Since our last report, the Supreme Court issued opinions in two cases in which FTRF served as amicus curiae. I am pleased to report that both cases were resolved in favor of the plaintiffs' First Amendment rights.

The first, and most well-known, is *B.L. v. Mahanoy*, the lawsuit filed by a high school cheerleader expelled from her school's cheer team as punishment for posting a profanity-laced Snapchat post while off-campus on a Saturday when she was not scheduled to be at school. Her lawsuit challenged her high school's "Cheerleading Rules," which prohibited cheerleaders from posting any "negative information" about cheerleading online.

On June 23, 2021, the Supreme Court ruled, 8-1, that Brandi Levy's Snapchat post was speech protected by the First Amendment and did not create the kind of substantial disruption that would justify her punishment. The majority held that schools do not generally have the authority to punish students for speech made off-campus and outside of school hours and must respect their students' First Amendment right to express unpopular or dissenting views. While noting that schools can, in some limited circumstances, regulate students' off-campus speech-related conduct - such as participation in online school activities, or bullying and threats directed at other students and faculty members - the court held that parents, not schools, exercise primary responsibility for their children's speech while away from school.

The FTRF amicus brief focused the Court on how a decision giving school administrators broad and subjective discretion to discipline off-campus speech could impact other student speech, such as that of student journalists. While the court's opinion did not directly address the issue of speech by student journalists, the Court agreed that school administrators do not have broad and subjective discretion to discipline off-campus speech. In fact, in their concurring opinion, Justices Alito and Gorsuch cited the amicus brief joined by FTRF. We are pleased that the Supreme Court specifically upheld the right of students to express even disagreeable or unpopular ideas outside of school without fear that their speech will result in school discipline.

The second case, *Americans for Prosperity Foundation v Bonta*, addressed the associational and privacy rights of members of non-profit organizations. A rule issued by the California Attorney

General's office prevented charitable and non-profit organizations from soliciting contributions in California if they did not file Schedule B of the charity's IRS Form 990, which would disclose the name, address, and total contributions of any contributor that donated more than \$5,000 or 2% of the organization's budget. The organizations challenging the disclosure requirement argue that the forced disclosure of their donors' personal and financial information violates the free speech and freedom of association rights of the organizations and their contributors.

As a non-profit organization dedicated to defending First Amendment freedoms and the right to privacy, and that relies on the support of its members and donors, the Freedom to Read Foundation was deeply concerned about a potential adverse decision in this case. It joined an amicus curiae brief that argued that the government should bear the burden of demonstrating a compelling interest in requiring the disclosure of donor information and that the information requested is narrowly tailored to achieve that compelling interest before an organization is required to disclose donor information. The brief further argued that the rule should be overturned even if the government promises to keep the information confidential, as any disclosure requirement could chill the protected activities of donors that do not want the government to have their information.

I am pleased to report that the Supreme Court struck down California's donor disclosure requirement on July 1, 2021. While the justices disagreed on the test to be used to determine whether a disclosure requirement was sufficiently narrowly tailored, they agreed that such disclosure requirements could chill First Amendment activities and that California's sweeping disclosure requirement impaired the rights of the organizations and their donors.

FREE EXPRESSION AND CIVIL LIBERTIES ADVOCACY

The Freedom to Read Foundation regularly advocates on behalf of fundamental rights and civil liberties through correspondence and statements directed to legislatures, organizations, and government bodies. Our recent advocacy efforts include:

- Joining with the National Coalition Against Censorship and other civil liberties and civil society organizations to issue a [Statement on the Attack on Books in Schools](#) to protest the organized political campaign to censor books in schools. The American Library Association also joined the statement.
- The Freedom to Read Foundation also signed on to a letter protesting the decision of the Coral Gables city commissioners to condition city funding for Illuminate Coral Gables 2022, an art exhibit, on the forced exclusion of two of the participating artists based on elected officials' objection to the artists' perceived political viewpoint.
- FTRF also joined coalition letters written by NCAC protesting book censorship in the Keller, Texas Independent School District and the Pinellas County, FL School District.

INTELLECTUAL FREEDOM AND SOCIAL JUSTICE

I am pleased to report that we have made progress on implementing the recommendations of the FTRF Task Force on Intellectual Freedom and Social Justice. The FTRF Board has revised membership categories to provide more accessible and affordable paths to membership in the foundation and charged the nomination committee to adopt more intentional recruitment guidelines intended to expand the diversity of the board's membership. The FTRF Board has also established the Intellectual Freedom and Equity, Diversity, Inclusion Committee, which is chaired by Cindy Hohl.

Most notably, planning for the Intellectual Freedom and Social Justice Symposium has begun, led by a task force chaired by Sukrit Goswami and Sophia Sotilleo. Titled *Where Intellectual Freedom and Social Justice Meet: A Call to Action*, the current plan is to hold two half-day virtual events in July 2022 that would explore the intersection of intellectual freedom and social justice and how we might empower individuals to act and engage in advocacy for intellectual freedom and social justice. An accompanying issue of the Journal of Intellectual Freedom and Privacy will publish the papers presented at the symposium. More information will be available in February 2022.

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. Among the topics for discussion and consideration during the 2021-2022 term:

- Ongoing attempts to file criminal charges and complaints against librarians, staff, and trustees
- Surveillance software and student privacy
- Students' and faculty concerns about free speech on college campuses
- Challenges and removals of controversial books
- Geofencing
- Repeal of New York Civil Rights Law §50-a, which was one of the strictest laws shielding public officers from scrutiny by prohibiting the release of disciplinary records, performance reviews, and investigations regarding misconduct

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

A major initiative of the Krug Fund is its support for local Banned Books Week celebrations in schools and libraries across the country. For the 2021 Banned Books Week observance, the Krug Fund awarded grants to the following institutions:

Acadia Parish Library, Crowley, Louisiana. A recent challenge raised awareness for staff that they would like to promote education about banned books. Staff will host a Parish-wide Banned Books Week Poster Contest for Elementary, Middle School, and High School students to raise awareness of Banned Books Week and the issues of censorship and banned books. All entries to the contest will be put on display at The Acadia Parish Library and winners will be selected from the three age groups. Winning entrants will receive \$100 for a first prize winner, \$50 for second prize, and \$25 for third. They will host a community-wide reception at the end and the posters will be on display through October.

Highland County District Library, Hillsboro, Ohio will hold a week-long Banned Books Festival. One highlight is “Dear Banned Author” Day, during which patrons will have the opportunity to write letters to their favorite authors whose works have been banned. The festival will culminate on Friday with a Banned Books Discussion and Dinner, catered by a local business. Throughout the week patrons will be given tickets to be entered in a drawing for a banned book-themed gift basket. The more activities patrons attend, the better chance they will have of winning. The five gift basket themes will be: *Harry Potter*, *To Kill a Mockingbird* (southern-themed basket), *The Great Gatsby* (1920s-themed basket), *Lord of the Flies* (survival/camping/hiking-themed basket), and *The Call of the Wild* (dog-themed basket).

New Madrid County Library, Portageville, Missouri. To bring awareness of censorship and banned books to the county’s young people, the library will sponsor an essay contest for all high school and middle school (grades 6-8) students using the “Books Unite Us, Censorship Divides Us” theme. They will award cash prizes of \$100 for 1st place, \$75 for 2nd place and \$50 for 3rd place in both high school and middle school. While adult patrons may be aware that books such as *A Catcher in the Rye* or *To Kill a Mockingbird* have been banned in the past, they may not be aware that book censorship is still happening. For this reason, the library will create a display in a high-traffic area and titles that have been challenged or banned during the past 1-2 years will be displayed along with older titles such as those mentioned above.

Patchogue-Medford Library, Patchogue, New York will offer a wide variety of opportunities for its diverse community. A main display will include banned and challenged books wrapped in kraft paper, with the reason for the challenge written on the outside. During the week anyone who checks out a banned book from the display will receive a themed mug. The library will host a community wide ‘Hide A Book’ activity that will place banned and challenged books in local businesses for people to find and keep. The main event will be a live author talk featuring Suzanne Nossel, CEO of PEN America. She will talk about the necessity of free speech, listening, and debating to create productive

conversations in a democratic society. Patrons may also attend remotely. Finally, the library will offer an educational webinar for staff developed by the ALA Office of Intellectual Freedom.

West Lake Middle School and Northglenn Middle School, Broomfield, Colorado. The only school on the list this year will celebrate by pairing banned books with primary sources, studying events that took place during the time when the book was written, and studying any events that followed the publication of the book. Teachers and staff members will be creating videos about a banned book that impacted them. The videos will be featured on posters with QR codes throughout the district buildings that students can scan to learn more about the titles and experiences. The videos will also be featured in a Goosechase Online Digital Scavenger hunt. Goosechase offers an online experience that allows for interaction, text, GPS location and image clues. There will be prizes offered for the Goosechase Scavenger Hunt and a display in the library about how censorship is a dead end.

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 Professors Beth Wrenn-Estes and Carrie Gardner 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 officer Joyce Hagen-McIntosh for her dedicated support for the course instructors and the students enrolled in these classes.

This past fall, the Krug Education Fund provided each LIS student taking the UIUC iSchool course on intellectual freedom with a copy of the Intellectual Freedom Manual 10th Edition. The Krug Education Fund also awarded two half-scholarships to LIS students

This fall, the Krug Educational Fund committee also awarded two half-tuition scholarships to LIS students attending the SJSU School of Information course "Intellectual Freedom and Young Adults" in the Spring semester of 2022. Melissa Brinn (Cherry Hill, NJ) and Meaghan Rondeau (Edmonton, AB) were provided funding for the seminar led by instructor Beth Wrenn-Estes.

Finally, the Krug Educational Fund committee organized a December 2021 webinar to support librarians under stress as a result of all the book challenges and censorship efforts underway nationwide. On December 9, FTRF General Counsel Theresa Chmara joined FTRF Executive Director Deborah Caldwell-Stone and Megan Cusick, ALA's Director of State and Local Advocacy to present "Managing and Addressing Book Challenges in Your Community: Law, Policy, Advocacy." The webinar was available without charge to FTRF members and offered to others for a fee equivalent to the cost of an annual FTRF membership. It is now available to everyone without charge.

FTRF MEMBERSHIP

At a time when a number of partisan advocacy groups have organized a campaign to censor diverse books available through schools and libraries, your support for the work of the Freedom to Read Foundation as it advocates for our civil liberties and our right of free expression is vital. Your membership in the Freedom to Read Foundation helps to build our organizational capacity so that we can protect and defend our First Amendment freedoms – our freedom to read, our freedom to advocate for racial and social justice, and our freedom to raise up the voices of all those who have been silenced and marginalized throughout our history.

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.ftrf.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,

Barbara Stripling, President
The Freedom to Read Foundation