

Freedom to Read Foundation

REPORT TO COUNCIL

2021 Virtual Annual Conference

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

NEW LITIGATION

During the winter and spring of 2021, the Freedom to Read Foundation agreed to serve as *amicus curiae* in two important First Amendment cases currently pending before the U.S. Supreme Court.

The first, *B.L. v. Mahanoy*, has been widely discussed by the press and on social media. The lawsuit was filed by a high school cheerleader expelled from her school's cheer team as punishment for posting a profanity-laced Snapchat post. After failing to make the varsity cheer team, she created and posted the Snapchat item while off-campus on a Saturday when she was not scheduled to be at school. Her lawsuit challenges the Mahanoy Area High School's "Cheerleading Rules," which prohibit cheerleaders from posting any "negative information" about cheerleading online.

Both the trial court and the Third Circuit Court of Appeals ruled in favor of the cheerleader, holding that the school's disciplinary action violated her First Amendment rights. But the Mahanoy school district has appealed that decision to the Supreme Court, arguing that a school should be able to regulate speech that is directed at the school and disrupts the school environment wherever it originates. In doing so, it seeks to expand the precedent set in *Tinker v. Des Moines Independent Community School District*. That decision, which famously held that "students do not shed their First Amendment rights at the schoolhouse gate," also held that schools could discipline students for speech that disrupts the operation of the school.

But broadly expanding the ability of school administrators to punish speech beyond the "schoolhouse gate" has grave implications for the First Amendment rights of students. To address our concern about this threat, the Freedom to Read Foundation has joined an *amicus curiae* brief written by counsel for the Student Press Law Center. The brief focuses on protecting the rights of student journalists, arguing that a decision that gives school administrators broad and subjective discretion to discipline off-campus speech could impair student journalists' right to publish and engage in other free speech activities.

The second case, *Americans For Prosperity Foundation v Bonta*, implicates the First Amendment associational rights of donors and non-profit organizations. The lawsuit challenges a rule issued by the California Attorney General's office that bars charitable and non-profit organizations from soliciting contributions in California if they do not file an annual report that includes the charity's IRS Form 990 Schedule B, which lists the name, address, total contributions, and types of donations of any contributor that donated more than \$5,000 or 2% of the organization's budget. The organizations bringing the challenge argue that the disclosure requirement, which is not required under the California laws regulating charitable trusts, violates the First Amendment freedom of association and speech rights of the organizations and their donors. The organizations appealed to the Supreme Court after the Ninth Circuit Court of Appeals upheld the attorney general's disclosure requirement.

As a non-profit organization that is 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 is deeply concerned about a potential adverse decision in this case. It has joined an *amicus curiae* brief in support of the plaintiffs that argues three main points. First, the test that the government should have to meet when requesting donor lists should be exacting and 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. Second, the burden should not be on the association to prove that disclosure of its donor list would lead to harassment and a decline in donations before application of the strict scrutiny test. Third, the rule should be overturned even if the government states that it will keep the information confidential as any disclosure requirement will chill the protected activities of donors that do not want the government to have their information or know about their associations.

The Supreme Court heard oral arguments in both cases in April. We are waiting on their opinion in both cases.

CURRENT LITIGATION

Since our last report, the courts have issued opinions in two of FTRF's litigation efforts, while one lawsuit ended with a favorable settlement agreement.

That lawsuit, *PEN American Center v. Trump*, sought to address actions taken by the Trump administration to retaliate against members of the press or others who criticized the former president or his administration. FTRF joined with the Reporters' Committee for Freedom of the Press to file an *amicus curiae* brief addressing the federal government's argument that the plaintiff in case, PEN American Center, did not have associational or organizational standing to bring the lawsuit. Our brief argued that the PEN American Center plausibly alleged an injury-in-fact sufficient to demonstrate organizational standing, and that a decision affirming the government's argument would harm the ability of non-profit and non-government organizations to bring lawsuits to vindicate the First Amendment rights of their members and others.

We are pleased to report that PEN American Center and the government entered into a settlement agreement on February 18, 2021, following the inauguration of President Biden. The settlement agreement concludes the litigation and leaves intact a March 2020 federal court ruling upholding PEN American Center's organizational standing to pursue a legal challenge to a U.S. President's actions on behalf of its members.

Unfortunately, we did not obtain a successful result in *Federal Communications Commission v. Prometheus Radio Project*. FTRF filed an amicus brief in that lawsuit that urged the U.S. Supreme Court to expand and support media ownership by members of historically disadvantaged groups by upholding a decision by the Third Circuit Court of Appeals. That decision held that the Federal Communications Commission acted in an arbitrary and capricious manner in 2017 and 2018 when it relaxed its media cross-ownership rules without considering the likely impact of the revised rules on women and people of color.

It was our hope that a decision upholding the Third Circuit's finding that the FCC had acted improperly would help advance FTRF's strategy for supporting access to information and materials that reflect diverse voices. But on April 1, the Supreme Court issued a decision holding that the FCC's decision to repeal or modify the ownership rule was not arbitrary and capricious and that the FCC could rely on incomplete data in evaluating the need for the ownership rules and concluding that the rule changes were not likely to harm minority and female ownership.

While we are deeply disappointed that this decision may enable further consolidation among large media companies that will exclude minority voices, we are heartened by reports that the FCC may revisit their decision under the new administration.

Finally, we learned recently that the Texas Criminal Courts of Appeal has issued a decision in *Ex Parte Jones*. Jones, the defendant in this case, filed a First Amendment challenge to a broadly written Texas criminal statute intended to bar the disclosure of nude images without consent of the person depicted. However, the law as passed was written so broadly that it could be used to prosecute the distribution of images that are newsworthy or educational, such as the image of "Napalm Girl," from the Viet Nam War. FTRF joined an amicus brief that argued that the law should be overturned or amended because it fails scrutiny analysis and because the law could be used to prosecute mainstream material that is newsworthy, historic, artistic, or educational, implicating the right of libraries and library workers to make those materials available to library users.

The court issued an unpublished, non-precedential decision upholding the statute on May 26, 2021. Though the court concluded that the statute was subject to strict scrutiny analysis, it held that the review of the statute should be limited to the facts of the offense charged in Jones' criminal complaint. Under that analysis, the court concluded that prosecution of the charged conduct did not violate the First Amendment.

While we are glad that the court concluded that the law was subject to strict scrutiny analysis under the First Amendment, we are disappointed that the court did not consider the law's overbreadth. We are pleased to report, however, that during the course of this litigation the Texas legislature amended the statute to sufficiently narrow its application.

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 American Civil Liberties Union to send a letter to the newly confirmed Department of Homeland Security Secretary Alejandro N. Mayorkas, asking the Department of Homeland Security and the U.S. Customs and Border Patrol to withdraw new proposed regulations authorizing the use of facial recognition technologies at airports, seaports, and the land border and requiring all non-U.S. citizens entering and exiting the United States to submit to facial recognition.
- Joining with the American Civil Liberties Union and other civil liberties organizations to send a letter calling on the new Administration to implement a moratorium on the use of facial recognition technologies by the Federal government; to restrict the use of federal funds by state and local law enforcement to purchase facial recognition technologies; and support the proposed Facial Recognition and Biometric Technology Moratorium Act.
- Joining members of the National Coalition Against Censorship to send a letter to the Leander (Texas) Independent School District protesting a decision to remove several books from its voluntary reading lists and urging the school board to refrain from viewpoint discrimination and to ensure that the book review committee makes its decisions without being swayed by anti-LGBTQ prejudice.
- Joining members of the National Coalition Against Censorship to send a letter to the Eanes (Texas) Independent School where parents objected to the use of *Call Me Max* in the classroom. The letter expresses concern about the removal of the book and asks for assurance that the teacher who read the book aloud to her class will not be fired.

FTRF TASK FORCE ON INTELLECTUAL FREEDOM AND SOCIAL JUSTICE

The FTRF Task Force on Intellectual Freedom and Social Justice has made several recommendations for action that are intended to advance the Foundation's work on behalf of intellectual freedom and social justice. The proposals developed by the task force for the consideration of the FTRF Board of Trustees include several initiatives that address membership, collaboration, education, and legal action that are detailed below:

- Sustain and expand the diversity of the Foundation Board and other leadership roles through intentional member recruitment and trustee nominations processes; and by offering discounted or free paths to membership for students, Spectrum Scholars, Emerging Leaders, and members of other underrepresented communities.
- Formalize and refresh the working relationships between the Foundation and the National Associations of Librarians of Color and other relevant ALA units and affiliate organizations.
- Collaborate with units within ALA and other organizations to provide or support professional development for public, academic, and school librarians that highlights the value of diversity and provides practical strategies for increasing diversity in library collections, teaching resources, library programming, and instructional design and delivery.
- Sponsor a national symposium on the intersection between intellectual freedom and diversity, equity, and inclusion in libraries, education, and publishing, and engage in advocacy for intellectual freedom and social justice.
- Monitor and challenge laws, decisions, policies and practices by local communities, school districts, states, and federal government that violate the First Amendment and undermine the delivery of equitable, diverse, and inclusive resources and services.

The Task Force is chaired by Loida Garcia-Febo and Jim Neal and its members include Ray James, Karen Downing, Bob Holley, Barbara Stripling, Martin Garnar, Wanda Huffaker, Elizabeth Brumfield, with staff members Deborah Caldwell-Stone, Joyce Hagen-McIntosh, and Kristin Lahurd.

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:

- Broadband Access is A Human Right
- Do U.S. Enterprises Abridge Free Speech Rights?
- Librarianship at the Intersection of Intellectual Freedom and Social Justice
- Facial Recognition Concerns Grows in Covid 19 era
- Academic Censorship from the Left
- Is replacing the classics in K-12 a form of censorship?
- America's Public Libraries as Health Agencies - Scope and Impact

The Developing Issues Committee has also urged the members of the FTRF Board of Trustees to closely follow the reorganization of the American Library Association's governance structure through

Forward Together and the ongoing discussions of neutrality in the library profession.

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.

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. Each year the Krug Fund supports a wide range of read-outs, displays, discussions, performances, and other educational initiatives that will engage communities in dialogues about censorship and the freedom to read. In 2020, the Krug Fund awarded grants to six institutions to support their Banned Book Week events. They included the Cambria County Library (Johnstown, Pennsylvania); Central Washington University Libraries (Ellensburg, Washington) The Kurt Vonnegut Museum and Library (Indianapolis, Indiana); Manor High School Library (Manor, Texas); Maricopa Public Library (Maricopa, Arizona) and The Center for Transformative Action/Ithaca City of Asylum (Ithaca, New York).

FTRF is soliciting and reviewing applications from potential 2021 grantees for this year's Banned Books Week, whose theme is "Books Unite Us. Censorship Divides Us." Winners will be announced on June 14, 2021. To find out more about the 2021 recipients and the 2020 grantees' events, please visit the FTRF website at www.ftrf.org/Krug_BBW.

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 educational consultant Joyce Hagen-McIntosh for her dedicated support for the course instructors and the students enrolled in these classes.

The Krug Fund also provides scholarships to students wishing to attend the courses provided by the University of Illinois and San Jose State. Katie Krumeich (Washington, D.C.) and Kristina Acosta (Tulsa, OK) received scholarships in the Spring of 2021 to attend the seminar led by instructor Beth Wrenn-Estes through SJSU. Wrenn-Estes' course addresses intellectual freedom issues for young

people and includes strategies for defending against censorship of library materials and resources for youth.

GORDON A. CONABLE CONFERENCE SCHOLARSHIPS

Gordon A. Conable, a past president of the Freedom to Read Foundation, an ALA Councilor, and a tireless champion of intellectual freedom was also deeply invested in mentoring LIS students and those new to the profession. After his untimely death in 2005, the Freedom to Read Foundation created the Gordon A. Conable Conference Scholarship to honor his memory and to continue the practice of mentorship he believed was so important for creating intellectual freedom advocates.

In 2021, the Freedom to Read Foundation will provide two conference scholarships for LIS students and library workers who are in the early stages of their career. The scholarships will underwrite each recipient's registration for the 2021 ALA Virtual Annual Event and provide sufficient financial assistance to each recipient so that they can attend ALA Annual 2022 in Washington, D.C.

It is my pleasure to announce that this year's recipients of the Gordon A. Conable Conference Scholarship are Marisol Moreno Ortiz and Melissa Scheeren. Marisol Moreno Ortiz is a reference and instruction librarian at Clark College in Fort Vancouver, Washington, and Melissa Scheeren is a library associate at the Arlington, Virginia Public Library, where she provides library services for the incarcerated at the Arlington County Detention Facility. She is beginning a new role in August and plans to continue her work advocating for intellectual freedom.

If you would like to support the mentoring mission of the Conable Scholarship Fund, please visit the FTRF website at www.ftrf.org to donate to the fund.

FTRF 2021 ROLL OF HONOR AWARD RECIPIENT ROBIE H. HARRIS

I am pleased to announce that the 2021 FTRF Roll of Honor Award recipient is award-winning author Robie H. Harris, whose expertise in child development and interest in education led her to write the best-selling books *It's Perfectly Normal*, *It's So Amazing!* and *It's Not the Stork!* to answer kids' questions about sex and sexual health.

Because Harris' books take on the difficult but necessary task of answering kids' questions about sex, her books have been challenged and even banned. As a result, she has had many opportunities to work with FTRF and is a long-time supporter of the foundation's work on behalf of young people's freedom to read. She recalls working with FTRF Founding Executive Director Judith Krug, who encouraged her work.

“I don't choose what to write to be controversial, I choose to write what children are thinking about or have questions or worries and want to know about. They have the right to have accurate and honest

information,” said Harris. “If it is in the best interest of children, then it goes in the book no matter what anyone says to me.”

In addition to being an award-winning author, Robie is also a popular speaker around the country on topics such as “Using Children’s Books to Talk about the Questions and Concerns of Children.” She is a graduate of Wheaton College and the Bank Street College of Education and has worked with children over many decades as an educator and as an administrator of childhood after-school programs.

The FTRF Roll of Honor was established in 1987 to recognize and honor individuals who have contributed substantially to the foundation through adherence to its principles and/or substantial monetary support. For more information about the Roll of Honor and other FTRF grants, awards, and scholarships, visit ftrf.org.

2021 INTELLECTUAL FREEDOM VIRTUAL AWARDS CEREMONY

On June 24, 2021, FTRF will join with the Intellectual Freedom Roundtable and the iSchool at the University of Illinois at Urbana Champaign to honor all of the 2020 and 2021 intellectual freedom award winners, including 2021 FTRF Roll of Honor winner Robie Harris and 2020 FTRF Roll of Honor winner Kelley L. Allen, Director of Books at the gaming site HumbleBundle.com. Allen hosted a highly successful Humble Books fundraiser on behalf of the Freedom to Read Foundation in 2019 that helped raise a significant amount of money for the Foundation.

Julius C. Jefferson Jr., ALA President and former FTRF President, will open the celebration with a talk highlighting the value of intellectual freedom awards in the profession and in our culture. Following the presentations, award-winning banned author Kyle Lukoff will present a celebratory keynote speech. Lukoff is a children's book author, school librarian, and former bookseller. He is best known for the Stonewall award-winning *When Aidan Became a Brother* and *Call Me Max*, which has faced several challenges in the past year.

All are invited to attend the celebration, which will take place virtually via Zoom. Visit the FTRF website at ftrf.org to register for the event and to join us in recognizing these award recipients and the organizations that strive to educate and raise awareness of intellectual freedom.

FTRF MEMBERSHIP

The foundation's mission to advocate on behalf of free expression, privacy, and civil liberties is a vital component of the fight for First Amendment freedoms during a time when there are active campaigns to suppress both academic and intellectual freedom around the teaching of anti-racism and the principles of equity, diversity, and inclusion. When you join the Freedom to Read Foundation, you help build our organizational capacity so that we can protect and defend the First Amendment freedom to advocate and teach racial and social justice, and to ensure the rights of all who are silenced and marginalized.

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 or organization 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