

Freedom to Read Foundation
REPORT TO COUNCIL
2015 Midwinter Meeting — Chicago, Illinois

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2014 Annual Conference:

LITIGATION ACTIVITIES

Antigone Books v. Horne

In September 2014, the Freedom to Read Foundation joined with the American Booksellers Foundation for Free Expression, the Association of American Publishers, Voice Media Group, Inc., the National Press Photographers Association and Arizona booksellers Antigone Books, Bookmans, Changing Hands Bookstore, Copper News Book Store, and Mostly Books to challenge an Arizona statute that makes it a crime to publish, sell, loan, or disclose images that include nudity without the depicted person's consent for each distribution. Although intended to target "revenge porn," the law, as written, potentially makes criminal the dissemination of a large number of historic, artistic, educational, and other newsworthy images.

While the Freedom to Read Foundation strongly condemns the malicious invasion of privacy resulting from "revenge porn," and supports using legal tools to stop it, the Arizona law goes far beyond criminalizing this reprehensible practice and potentially makes criminally liable anyone who provides access to any image that includes nudity, including newsworthy images such as the iconic image of the "Napalm Girl," running unclothed from her village during the Vietnam War, or the images of nude prisoners held at Abu Ghraib. Under this law, distributing or otherwise providing access to such materials puts librarians at risk for prosecution for a serious crime punishable by almost four years in prison.

FTRF joined the lawsuit on behalf of its member libraries because the law potentially could be used to impose criminal liability on libraries and librarians for material that currently is available in libraries both in and outside of Arizona. For example, FTRF member libraries provide Internet access through library computers through which

patrons might access nude images. The statute requires consent for each distribution and such consent could not be obtained for every image accessed through the Internet, even if a publisher had original consent to publish the image.

Additionally, FTRF member libraries' online public access catalogs include many works containing nude images that are not obscene but would be restricted by the statute. While the images might not appear online, listing the restricted books online would be "offering" the images. Similarly, libraries outside of Arizona participating in interlibrary loan programs would have to restrict access to materials that may be covered by the law by either ensuring that the materials are not loaned to Arizona libraries or persons in Arizona, or by removing the materials from the interlibrary loan program altogether, thus denying libraries and library users in other states the opportunity to borrow such works.

After FTRF and our fellow plaintiffs filed a motion for preliminary injunction asking the district court to block enforcement of the law, attorneys for the State of Arizona joined with plaintiffs' attorneys to ask the district court to stay enforcement of the law and stay the lawsuit itself to allow the Arizona legislature the opportunity to narrow the law in its next legislative session. The district court agreed to do so, and thus the case remains pending.

Those interested can follow developments in the case at http://www.ftrf.org/?Current_Cases.

Arce v. Huppenthal

We continue to monitor the ongoing progress of this lawsuit filed by teachers and students in the Tucson Unified School District (TUSD) against the Arizona Superintendent of Public Instruction and other state officials that challenges the constitutionality of the Arizona statute prohibiting the use of class materials or books that encourage the overthrow of the government, "promote resentment toward a race or class of people," are "designed primarily for pupils of a particular ethnic group," or "advocate ethnic solidarity instead of the treatment of pupils as individuals." The plaintiffs sued after TUSD was forced to cease its Mexican American Studies program and remove books from its classrooms. After the district court upheld the statute, the students appealed to the Ninth Circuit Court of Appeals. Subsequently FTRF, joined by the American Library Association, REFORMA, the Black Caucus of the ALA, and the Asian Pacific American Librarians Association, filed an amicus brief in support of the students' First Amendment claims. Our brief has been well-received and has been cited by the plaintiffs and other parties to the appeal.

In the brief, FTRF takes the position that the ban on ethnic studies violates the First Amendment because the Supreme Court held in *Board of Education v. Pico* that students have the right to receive information and the government cannot censor material based on political or partisan motivations—as appears to be the case based on the public statements made by Superintendent Huppenthal and other proponents of the legislation. FTRF also took the position that the state violated the First Amendment because curriculum decisions based on political motivations do not constitute a legitimate pedagogical interest. FTRF further maintains that the statute is unconstitutionally overbroad, chilling a substantial amount of other speech not within the purview of the law’s restrictions. FTRF argued that some might fear assigning Maya Angelou’s *I Know Why the Caged Bird Sings* because it could be viewed as being “designed primarily for pupils of a particular ethnic group” or Martin Luther King’s “Letter From a Birmingham Jail” on the ground that it “advocates ethnic solidarity instead of the treatment of pupils as individuals.”

The Ninth Circuit Court of Appeals heard the parties’ oral arguments on January 12; constitutional scholar Erwin Chemerinsky, dean of the law school at the University of California, Irvine, argued the case on behalf of the students. We are hopeful that an opinion will be issued sometime in March or April of 2015. We thank ALA, REFORMA, BCALA, and APALA for their support of this effort.

I invite you track the progress of the case at www.ftrf.org/?Arce_v_Huppenthal and on Twitter @ftrf.

FTRF45 – A CELEBRATION

On November 17, the Freedom to Read Foundation launched a year-long observance of its 45th anniversary with a Google Hangout featuring author Chris Crutcher; it was the first in a series of events we are calling “FTRF45.” FTRF45 aims to achieve a number of goals: to honor FTRF’s history and the free expression heroes that have contributed to FTRF’s impressive record of defending the freedom to read, to build the capacity of FTRF so that we can expand our ability to challenge censorship and defend access to information, and to spread the word about the Freedom to Read Foundation to new audiences.

The first in-person FTRF45 event took place on January 17 in Salt Lake City. The reception celebrated the legacy of Emily Wheelock Reed, a librarian and FTRF Roll of Honor recipient who faced tremendous adversity and yet rose above it to defend the

freedom to read—and basic human rights. It was held in conjunction with the world premiere of *Alabama Story*, an original play written by New York playwright Kenneth Jones that recounts how Reed fought to keep Garth Williams’ book *The Rabbits’ Wedding* on the Alabama central library shelves in 1959 against segregationists’ protests that it promoted miscegenation. In addition to celebrating Reed, the reception highlighted the work FTRF has done in Utah to protect free speech, including supporting Jeanne Layton in the 1980s and more recently, supporting the librarians in the Davis County Public Schools defending access to Patricia Polacco’s picture book *In Our Mothers’ House*.

The second FTRF45 event took place Saturday evening and featured cartoonist Jeff Smith of *BONE* fame, who discussed the impact of censorship efforts on his creative work and generously spent time signing and discussing his books with those in attendance. Additional FTRF45 in-person events are planned for later in the year, including a meet-up in Portland, Oregon on Thursday, March 26 during the Association of College and Research Libraries national conference; a reception in Austin on April 15 in conjunction with the Texas Library Association annual conference; and a fundraiser in New York on May 29 in connection with BookExpo America.

I encourage you to join us in celebrating FTRF45 by joining us for one of our in-person events and by using the hashtag #FTRF45 for all posts and tweets related to the 45th Anniversary. Funds raised in the course of these activities will be used to support FTRF’s Judith F. Krug Memorial Fund as well as for our litigation and advocacy efforts. For a collection of all information related to #FTRF45, including the recording of the Google Hangout launch, visit www.ftrf.org/?FTRF45.

SUPPORT FOR LOCAL ACTIVISM

In October, the Freedom to Read Foundation awarded a \$5,000 grant to **HP Kids Read**, a parents group in Highland Park, Texas fighting book censorship in their local school district. HP Kids Read is working to counter efforts by another group, Speak Up for Standards, that wants the school district to remove a large number of books from the reading list developed by the district’s high school English department. Speak Up for Standards, a well-funded interest group, also has lobbied for the district to change its challenge and opt-out policies to make them considerably more restrictive and to limit what books may be taught in the district.

As a result of the initial demands made by members of Speak Up for Standards, the district superintendent suspended seven books from the curriculum in violation of

district policies. The books included *The Glass Castle* by Jeannette Walls, *Song of Solomon* by Toni Morrison, *Siddhartha* by Herman Hesse, and Sherman Alexie's *The Absolutely True Diary of a Part-Time Indian*.

Concerned parents immediately organized HP Kids Read to support the faculty and to urge the district superintendent to reinstate the books. As a result of their efforts, the district superintendent reinstated the books but initiated a review of district policies that has resulted in the use of permission slips for classics such as *Dracula*, *The Picture of Dorian Gray*, and *Brave New World* as well as David Shipler's nonfiction work, *The Working Poor: Invisible in America*, which currently is being challenged.

HP Kids Reads remains vigilant and is continuing to fight to retain challenged works, maintain the academic integrity of the English department, and support its faculty. FTRF is pleased to provide essential financial support for their efforts.

DEVELOPING ISSUES

Members of the Foundation's Developing Issues committee reported on a number of issues involving threats to free expression. Committee chair Chris Finan reviewed the provisions of the USA PATRIOT Act that authorize mass surveillance and the prospects for reform in the new Congress. Theresa Chmara, FTRF's general counsel, provided a helpful overview of the Supreme Court's First Amendment jurisprudence concerning "true threats" and discussed the facts of the "Facebook threats" case currently pending before the Supreme Court. Kristin Pekoll, the Office for Intellectual Freedom's assistant director, described the growing phenomenon of parent groups organized for the sole purpose of removing books from school and public libraries. Eldon James, the ASCLA liaison to the FTRF Board, discussed how a recent Supreme Court decision facilitates states' efforts to restrict access to public records, and Jill Vassilakos-Long, GODORT liaison, discussed how the failure to institute archiving standards is causing the loss of innumerable federal documents.

JUDITH F. KRUG MEMORIAL FUND

The Judith F. Krug Memorial Fund, created by donations made by Judith's family, friends, colleagues, and admirers, supports projects and programs that assure that her life's work will continue far into the future. At present, the fund supports two major initiatives: a program to augment and improve intellectual freedom education in LIS programs and a grants program that underwrites Banned Books Week activities in libraries, schools, and community institutions.

“Intellectual Freedom and Censorship,” the first online class offered under the auspices of the Krug Memorial Fund and the University of Illinois Graduate School of Library and Information Science (GSLIS) took place this past fall. Students taking the class, which was taught by GSLIS professor Emily Knox, gave the course uniformly positive reviews and noted their appreciation for FTRF’s support for the course, including scholarships; textbooks; historical articles and videos from FTRF’s archives; and guest speakers on a variety of topics. FTRF and GSLIS plan to offer the course again in Fall 2015 and in subsequent years. We hope to increase participation from students enrolled in other LIS programs across the nation and I want to particularly thank Professor Knox and consultant Joyce Hagen-McIntosh for making this particular goal a reality.

The seven recipients of the 2014 Banned Books Week Krug Fund grants put together a multitude of inventive, memorable events. These included a dance performance to the sound of banned books being read; an online quiz, “Which Banned Book Are You?” which was shared over 329,000 times; a Family Story Time program with *And Tango Makes Three*; and a panel of local authors and students talking about their experiences with censorship including students from Chicago’s Lane Tech High School discussing the controversy over the school district’s attempt to ban Marjane Satrapi’s *Persepolis*. In addition, the grant recipients – including Nashua (N.H.) High School North, the Charleston (S.C.) Friends of the Library, DePaul University Library and DePaul University Center for Writing-based Learning, the Columbus State Community College, the Northern Virginia Fine Arts Association, the LGBT Center of Raleigh Library, and the Greater Pittsburgh Chapter of the ACLU of Pennsylvania – sponsored traditional banned book read-outs and lectures in their communities, many of which reflected this year’s Banned Books Week theme of banned and challenged graphic novels and comics.

STRATEGIC PLAN REVIEW

Prior to Friday’s board meeting, FTRF trustees and many liaisons met for half a day to review the progress of our 2012 strategic plan. Groups met to document the Foundation’s many accomplishments in recent years, including expanding organizational capacity, increased awareness of FTRF, and significant activity in intellectual freedom education and community engagement. The groups also came up with concrete suggestions for implementing the rest of the plan in coming years.

Following Midwinter, I will appoint a committee to begin the process of envisioning the future of the Freedom to Read Foundation. I'll provide more information on that during my Annual Conference update in San Francisco.

A status update on the strategic plan will be made available on the FTRF website at www.ftrf.org/?Strategic_Plan in February.

FTRF MEMBERSHIP

Your membership in the Freedom to Read Foundation is needed to sustain and grow FTRF's unique role as the defender of First Amendment rights in the library and in the wider world. I invite you to join me in supporting FTRF as a personal member, and ask that you please consider inviting your organization or your institution to join FTRF as an organizational member. Please visit www.ftrf.org and join today.

Alternatively, you can call the FTRF office at (800) 545-2433 x4226 and join by phone, or send a check (\$35.00+ for personal members, \$100.00+ for organizations, \$10.00+ for students) to:

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Respectfully submitted,

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President
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