

Freedom to Read Foundation
REPORT TO COUNCIL
2019 Annual Conference — Washington, D.C.

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2019 Midwinter Meeting:

50th ANNIVERSARY CELEBRATION

Fifty years ago, the Freedom to Read Foundation was founded by members of the American Library Association who wanted to defend the First Amendment and help librarians who faced loss of employment and worse as a consequence of their support for intellectual freedom.

Under the leadership of Judith Krug, FTRF's founding executive director, FTRF's Board of Trustees embarked on an ambitious plan to create the legal precedent necessary to support the First Amendment principles outlined in the Library Bill of Rights. Through a program of grants-in-aid, amicus curiae briefs, legal assistance and legal representation, FTRF helped to establish the legal foundation for the right to read and receive information in libraries in the United States. In doing so, FTRF secured the right of libraries and library workers to provide any book and any resource to their library users, without limit and without discrimination.

Since its founding in 1969, the Freedom to Read Foundation has initiated or joined over 150 different cases in defense of First Amendment freedoms. The issue at hand has varied from book censorship, to the constitutionality of federal and state obscenity statutes and harmful-to-minors laws, the rights of journalists to collect and disseminate the news, and the right of publishers to publish the books that challenge the status quo and change our understanding of the world.

On Saturday, June 22, the members and friends of the Freedom to Read Foundation gathered to celebrate these achievements and look forward to the next fifty years of defending First Amendment rights and protecting the freedom to read. Highlighted by talks by Colson Whitehead, the Pulitzer Prize-winning author of *The Underground Railroad* and New York Times bestselling author Laurie Halse Anderson, the celebration in the Renaissance Washington D.C.'s Grand Ballroom proved to be a festive event featuring food, drink, and lively conversation. The Freedom to Read Foundation is grateful to the sponsors, donors and members who made the celebration possible and whose contributions will launch FTRF into its next five decades.

It is clear, however, that current political and social conditions will engender new challenges to the right to read and receive information. Arizona's discriminatory censorship of the Tucson Unified School District's Mexican American Studies program – which FTRF successfully challenged and overturned – was merely a bellwether for a rising number of discriminatory censorship campaigns that aim to erase the experiences and lives of those who are underrepresented and marginalized in our society. These growing number of challenges – particularly to LGBTQ+ materials – demonstrate that

FTRF's legal resources and educational initiatives will be needed by libraries and library workers for many years to come.

FTRF intends to remain on the front lines, defending every person's right to read and receive information and defending the right of library workers to freely provide to their users the resources and programs that enrich and reflect their lives. Your ongoing support of the Freedom to Read Foundation is vital to our successful defense of readers, librarians, journalists, and publishers. I invite you to become a member of the foundation and work with us as we establish a sound foundation for the defense of the freedom to read.

CURRENT LITIGATION

Two cases on FTRF's dockets have been decided by the courts since I last reported to you.

The first, *Robinson v. Hunt County, Texas*, represents a success for FTRF. The lawsuit was filed by a Hunt County resident, Deanna Robinson, against the Sheriff's Office of Hunt County, Texas. Robinson filed suit after she was banned from posting on the Facebook page maintained by the Hunt County Sheriff's Office after she posted strong comments critical of the County Sheriff. Robinson's posts were removed from the Facebook page and she was banned from posting any comment on the Sheriff's Facebook page. Other posters to the Sheriff's Office Facebook page, who used comparably strong language as Deanna Robinson, did not have their posts removed or their posting rights taken away if the poster expressed his or her support for the Sheriff or if the poster criticized the Sheriff's critics. The district court ruled in favor of the Sheriff's Office on the ground that Facebook's Community Standards would allow Facebook to remove "verbally abusive" posts, thus requiring the Sheriff's office to remove those posts or face deactivation of its Facebook page. The case was appealed to the Fifth Circuit Court of Appeals.

FTRF joined an amicus brief in support of Robinson, which also included the Brechner Center for Freedom of Information, the Marion B. Brechner First Amendment Project, the National Coalition Against Censorship, and the DKT Liberty Project. The brief argued that the Facebook page established by the County Sheriff's office is a designated public forum and that a government entity cannot enforce a prior restraint against speech on such a forum or ban speech based on the viewpoint expressed. The brief further argued that the district court erred when it held that a government agency could rely on the Community Standards of a private company such as Facebook to support its viewpoint-based removal of content.

On April 15, 2019, the Fifth Circuit reversed the lower court's decision, holding that the removal of Robinson's posts on the basis of either disagreement with her opinion or a determination that her comments were offensive constituted unconstitutional viewpoint discrimination: "Official censorship based on a state actor's subjective judgment that the content of protected speech is offensive or inappropriate is viewpoint discrimination."

The Fifth Circuit also rejected the argument that the Sheriff could not be liable because Facebook could have deleted her comments or banned her from the site based on Facebook's own policies. The appellate court held that "[a] private policy cannot authorize a state actor to engage in conduct that violates the Constitution."

Our second lawsuit, *Nieves v. Bartlett*, represented a second attempt on the part of FTRF to establish a new legal standard that will allow reporters and citizens to pursue First Amendment civil rights claims against police and government bodies when they are arrested while exercising their First Amendment rights to speak, observe, and report at public events, demonstrations, and crime scenes. Unfortunately, the Supreme Court did not rule in favor of our position.

The case involves Russell Bartlett, who filed a lawsuit alleging that he was arrested by two Alaska state troopers in retaliation for his refusal to speak to them at an outdoor festival and for challenging the troopers when the troopers attempted to question a teenager outside the presence of the youth's parent or guardian. The troopers allege that Bartlett was intoxicated and belligerent; the parties further disagree on several other aspects of the case. At trial, the district court granted summary judgment to the state troopers on Bartlett's First Amendment retaliatory arrest claims; the Ninth Circuit Court of Appeals reversed that decision, finding that probable cause for arrest did not automatically preclude a First Amendment claim of retaliatory arrest.

FTRF had joined an *amicus curiae* brief written by counsel for the National Press Photographers Association and filed with the Supreme Court. The brief took no position on the facts of the case but argued that the court should use a balancing test in First Amendment retaliation cases rather than dismissing such cases as a matter of law. Twenty-eight other organizations and media companies joined the brief. On May 28, 2019, the Supreme Court ruled in favor of the troopers, holding that because the troopers had probable cause to arrest Russell Bartlett, his First Amendment retaliatory arrest claim fails as a matter of law.

NEW LITIGATION

FTRF has agreed to join as an *amicus curiae* in *PEN American Center v. Trump*, a lawsuit filed by the PEN American Center against President Trump. The lawsuit asks the court to rule that Trump violated the First Amendment to the Constitution of the United States when he used his powers or the power of the federal government to retaliate against speech critical of him or his Administration, and an injunction barring Trump from directing or ordering government officers or agencies to retaliate against any person or entity for publishing or speaking speech critical of him or his Administration.

The government filed a motion to dismiss, alleging, among other things, that the PEN American Center did not have associational or organizational standing to bring the lawsuit. FTRF has joined an *amicus curiae* brief written by counsel for the Reporters' Committee for Freedom of the Press which is narrowly focused on the issue of PEN American Center's standing. The brief argues that PEN has plausibly alleged an injury-in-fact sufficient to demonstrate organizational standing and further addresses the harm that an adverse decision would have on the ability of non-profit and non-government organizations to demonstrate an injury sufficient to establish organizational standing in cases they may file to vindicate First Amendment rights. In particular, it supports organizational standing for PEN to challenge First Amendment violations that might not otherwise be able to be litigated given the financial difficulty that its individual members would face in bringing those same challenges.

Joining FTRF on the Reporters' Committee *amicus* brief are The Authors Guild, the National Coalition Against Censorship, the National Press Photographers Association, the Online News Association, Reporters Without Borders, and the Society of Professional Journalists.

DEVELOPING ISSUES

Members of the Foundation’s Developing Issues committee reported on several important issues that raise significant Constitutional or privacy issues for libraries and society at large, and eventually prompt litigation to preserve free speech and privacy rights. The issues include:

- Big data and librarianship
- First Amendment and the press, focusing on the arrest and harassment of news photographers
- Censorship of library research databases
- K-12 students’ rights to freedom of expression, especially on social media
- Increasing infringement on prisoners’ right of access to information by state and federal governments
- Content moderation at scale – algorithms and artificial intelligence

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 the right to read and speak freely.

Banned Books Week Grants

In May, the Freedom to Read Foundation awarded the 2019 Krug Fund Banned Books Week grants. These grants, which provide financial support and guidance to libraries, schools, and community organizations planning Banned Books Week celebrations, are awarded annually and are aimed to assist libraries and schools that would otherwise not have the resources to do Banned Book Week events for their communities. The grantees for 2019 are:

- Academy of the Sacred Heart - New Orleans, Louisiana
- Belen Public Library - Belen, New Mexico
- Oceanside Public Library - Oceanside, California
- Park University Library - Parkville, Missouri
- Worcester County Public Schools - Newark, Maryland

Each library or school has proposed a unique and exciting event to observe Banned Books Week and celebrate the freedom to read. The events include a week-long series of exhibits, performances, presentations, and community discussions exploring the experiences and perspectives of women around censorship; escape rooms, with the goal of players trying to “escape censorship;” and a Banned Books Week project with the theme of "Love is Love," that focus on banned books featuring LGBTQIA+ characters, authors, and content. Each of the grantees will submit photos, videos, and written reports, which will be featured on the foundation's website. To learn more about the grantees and their events, please visit www.ftfr.org/?Krug_BBW.

LIS and Professional Education

The Krug Fund continues to successfully partner with the University of Illinois’ School of Information Science and the San Jose State University School of Information to support dedicated coursework on

intellectual freedom in libraries. Professor Emily Knox will be teaching “Intellectual Freedom and Censorship” this fall at UIUC’s iSchool. Professor Beth Wrenn-Estes and Carrie Gardner will both teach courses on Intellectual Freedom for San Jose State during the upcoming academic year.

FTRF supports these courses with the assistance of FTRF educational consultant Joyce Hagen-McIntosh. She identifies guest lecturers for the class, ensures the provision of course materials to students, and provides additional consultation and assistance to each instructor whenever requested to do so.

The Krug Fund also awards scholarships to students wishing to attend the courses provided by the University of Illinois and San Jose State. Three LIS students will receive Krug Fund scholarships in the coming academic year. They are:

- Georgia Westbrook of Syracuse University;
- Joann Elinger of San Jose State University; and
- Monica Cammack of the University of Illinois.

We thank the University of Illinois and San Jose State University for partnering with the Freedom to Read Foundation to assure that high-quality intellectual freedom curricula and training remains available to LIS students preparing for their professional careers.

On May 23, the FTRF Education Committee hosted “Minds Unlocked: Supporting Intellectual Freedom Behind Bars,” a webinar addressing the realities of censorship in correctional institutions. Presenter Erin Boyington, a former library manager in the Colorado Department of Corrections and the incoming co-chair for the Library Services to the Incarcerated and Detained interest group, taught webinar participants how to be powerful and articulate voices in their institutions in order to support intellectual freedom in unfree spaces.

I want to acknowledge the contributions and good work of our educational consultant Joyce Hagen-McIntosh. Her efforts on behalf of the Krug Fund’s education initiative are vital to maintaining our ongoing programs in support of intellectual freedom education.

2019 ROLL OF HONOR AWARD RECIPIENT PAMELA (PAM) R. KLIPSCH

At every Annual Conference, FTRF recognizes and honors the recipient of the Freedom to Read Foundation Roll of Honor Award. It gives me the deepest pleasure to announce that Pamela (Pam) R. Klipsch, Director of Jefferson County Library in High Ridge, Missouri, is the recipient of the 2019 Freedom to Read Foundation Roll of Honor Award.

For over twenty years, Klipsch has been active in the Missouri Library Association, serving on both the Missouri Library Association Intellectual Freedom Committee (IFC) and as a member of its Legislative Committee. In 2014, as part of her work with the Missouri IFC, she successfully persuaded her State Representative, Republican John McCaherty, to sponsor a bill in the Missouri House of Representatives that extended the protections of Missouri’s state library records law to library users’ personally identifiable information and to data about the electronic media they access through their library’s portal, even when the electronic or online resource is hosted by third party vendors. It is considered the gold standard of library patron confidentiality legislation.

Klipsch is a long-time member of the Freedom to Read Foundation and notably has faithfully attended its semi-annual board meetings for more than three decades. She served on the FTRF Board of Trustees from 2008-2019 and again from 2015-2017 as the chair of ALA's Intellectual Freedom Committee. As chair of the IFC, she authored and edited many interpretations of the Library Bill of Rights. She was instrumental in the creation of "Equity, Diversity, Inclusion: An Interpretation of the *Library Bill of Rights*," approved by ALA Council in June 2017.

In addition to her work with FTRF, Klipsch has been a member of the ALA Intellectual Freedom Round Table (IFRT), serving as a board member, chair, and as the first IFRT counselor from 2000-2003. As a former five-term Council member, she helped the ALA policy-making body work through many difficult intellectual freedom issues.

The Board of Trustees are especially gratified to recognize Pam for her work and her advocacy on behalf of intellectual freedom. We thank Pam for giving so much to the profession.

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 www.ftrf.org.

2019 CONABLE CONFERENCE SCHOLARSHIP

This year's recipient of the 2019 Gordon M. Conable Conference Scholarship is Amanda Vazquez, the Assistant Director at Dubuque County Library District. Previously, Amanda served as the library director in Orange City, Iowa, where she addressed and managed difficult and contentious challenges to displays featuring LGBTQ+ resources, including an activist's decision to burn two books with LGBTQ+ themes to protest their presence in the library's collection.

The committee was deeply impressed by her commitment to intellectual freedom advocacy and professional education, as well as her passion for engaging in national conversations about free speech. As part of her scholarship, Amanda is attending the FTRF meeting and other intellectual freedom events at Annual Conference. She will also consult with mentors and prepare a report about her experiences and thoughts following the conference.

The Conable Scholarship honors the memory of Gordon Conable, a past president of the Freedom to Read Foundation, an ALA Councilor, and a tireless champion of intellectual freedom. The Conable Scholarship provides financial assistance to a new librarian or library student who shows a particular interest in intellectual freedom and wishes to attend the ALA Annual Conference. Mentoring was an important undertaking for Gordon, and the board is pleased to be able to honor his memory in this way. If you would like to donate to the Conable Scholarship, please visit the FTRF website at www.ftrf.org.

FTRF MEMBERSHIP

Membership in the Freedom to Read Foundation provides necessary and vital support for the foundation's defense of First Amendment freedoms in the library and in the larger world. 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. Please send a check (\$50+ for personal members, \$100.00+ for organizations, \$35 for new professionals and \$10.00+ for students) to:

Freedom to Read Foundation
50 E. Huron Street
Chicago, IL 60611

Alternatively, you can join or renew your membership by calling (800) 545-2433, ext. 4226, or online at www.ftrf.org.

Respectfully submitted,

Charles Brownstein
President, Freedom to Read Foundation