

# Freedom to Read Foundation REPORT TO COUNCIL 2014 Annual Conference — Las Vegas, Nevada

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

## LITIGATION

*Susan B. Anthony List v. Driehaus*: The Freedom to Read Foundation's ability to defend the freedom to read in our libraries and schools and protect the freedom of speech and freedom of the press depends on our ability to challenge unconstitutional laws and regulations before any chilling effect on speech takes hold. On January 10, 2014, the Supreme Court agreed to take up a lawsuit that, if decided against the petitioner, would all but eliminate FTRF's ability to seek judicial relief from unconstitutional laws. That lawsuit, *Susan B. Anthony List v. Driehaus*, challenged a state law regulating speech in campaign advertising. The plaintiff, the Susan B. Anthony List (SBAL) alleged that the statute unconstitutionally chilled its speech after the Ohio Elections Commission said it found probable cause to believe that SBA violated the law via its political ads in opposition to Steve Driehaus, a Congressman running for re-election. Because the candidate dropped his complaint against SBAL after the conclusion of the election, the district court ruled that SBAL lacked standing to file a pre-enforcement challenge because it couldn't demonstrate that prosecution was likely or imminent. The court said, "[w]ithout enforcement action pending at any stage, a case or controversy does not exist." The Sixth Circuit Court of Appeals affirmed the district court's decision, saying neither past threats of enforcement nor a chilling effect on the plaintiff's speech sufficed to prove an "imminent threat of future prosecution" that would allow SBAL to challenge the constitutionality of a statute threatening free speech rights.

Over the past 40 years, the Freedom to Read Foundation has participated in over a dozen "pre-enforcement" constitutional challenges to state statutes that resulted in several statutes being held unconstitutional and others narrowed to comply with the First Amendment. If the standard adopted by the Sixth Circuit had applied, none of those cases could have been brought and many of these unconstitutional statutes would have remained unchallenged, effectively chilling protected speech and diminishing library users' right to read and libraries' right to disseminate all materials contained in their collections.

The importance of allowing challenges to censorship laws before an individual or institution is prosecuted for their speech spurred the Freedom to Read Foundation to join an *amicus curiae* brief urging the United States Supreme Court to reaffirm the principle that persons who have a well-founded fear of prosecution under a law that infringes First Amendment rights should have standing to bring a "pre-enforcement" challenge to the law, and not face a choice between

engaging in self-censorship or risking criminal prosecution. The American Library Association joined the brief, which also was signed by the American Booksellers Association; the American Booksellers Foundation for Free Expression; the Association of American Publishers, Inc.; the Comic Book Legal Defense Fund; and a number of regional bookseller associations and individual bookstores.

I am happy to report that on June 16, 2014, the Supreme Court held unanimously that SBAL indeed had standing to bring the pre-enforcement action and reiterated that “a plaintiff satisfies the injury-in-fact requirement where he alleges ‘an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.’” In writing its opinion, the Supreme Court relied on previous cases brought by the Freedom to Read Foundation and other organizations on the *amicus curiae* brief to reiterate that a well-founded fear of prosecution suffices for standing purposes in a challenge to a pre-enforcement action. This is an important victory for the Freedom to Read Foundation, the American Library Association, and other organizations and associations that work to preserve the freedom to read. For much more on the case, visit [www.mediacoalition.org/sbal-v-driehaus](http://www.mediacoalition.org/sbal-v-driehaus).

***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 Asian/Pacific American Librarians Association, filed an *amicus* brief in support of the students’ First Amendment claims.

Briefing continues in the case and we are waiting for the Ninth Circuit to set a date for oral argument. Our brief has been well-received and has been cited by the plaintiffs and other parties to the appeal, and we thank ALA, REFORMA, BCALA, and APALA for their support. I invite you track the progress of the case at [www.ftrf.org/?Arce\\_v\\_Huppenthal](http://www.ftrf.org/?Arce_v_Huppenthal) and on Twitter @ftrf.

## **THE JUDITH F. KRUG MEMORIAL FUND**

**Banned Books Week**: FTRF’s Judith F. Krug Memorial Fund, created and supported by donations made in memory of FTRF’s founding executive director, funds projects and programs that assure that her passion to educate both librarians and the public about the First Amendment and the importance of defending the right to read and speak freely will continue far into the future.

On May 27, via the Krug Fund, FTRF identified the recipients of seven \$1,000 grants for events celebrating Banned Books Week this fall:

- Nashua (N.H.) High School North
- Charleston (S.C.) Friends of the Library
- DePaul University Library and DePaul University Center for Writing-based Learning
- Columbus (Ohio) State Community College
- The Northern Virginia Fine Arts Association
- LGBT Center of Raleigh Library
- Greater Pittsburgh Chapter of the ACLU of Pennsylvania

The grantees' proposals for 2014, the fifth year of Krug Fund grants, feature programs addressing recent local challenges to books (Chicago and Charleston, S.C.); books that have disappeared completely (Alexandria, Va.); the connection between literacy and intellectual freedom (Nashua, N.H.); and content creation and interactivity (Columbus, Ohio).

As with past years, recipients will provide FTRF with photos, videos, and written reports of their events. For more information, please visit [www.ftrf.org/?Krug\\_BBW](http://www.ftrf.org/?Krug_BBW).

**Intellectual Freedom Education:** The Krug Fund also provides funding for various initiatives to provide intellectual freedom curricula and training for LIS students. I am very pleased to report that FTRF has moved forward with one of these initiatives, partnering with the Graduate School of Library and Information Science (GSLIS) at the University of Illinois at Urbana-Champaign (Illinois) to offer an online graduate-level course on intellectual freedom for LIS students around the country. The course will be taught by GSLIS professor Emily Knox, who earned her Ph.D. from Rutgers University School of Communication and Information. Knox's scholarship, which encompasses intellectual freedom and censorship, print culture and reading practices, and information ethics and policy, has earned her the acclaim of other LIS academics.

The class, "Intellectual Freedom and Censorship" will be held August 26–October 10, 2014, and is open to any student enrolled in an LIS program. Those at Illinois and other institutions in the WISE consortium ([www.wiseeducation.org](http://www.wiseeducation.org)) can enroll via the WISE system. Students at non-WISE institutions can enroll by calling Tonyia Tidline, GSLIS director of professional development, at (217) 244-2945 or [tidline@illinois.edu](mailto:tidline@illinois.edu). For details, visit [www.ftrf.org/?Krug\\_Education](http://www.ftrf.org/?Krug_Education).

## **DEVELOPING ISSUES**

The Foundation's Developing Issues Committee led a discussion about several emerging issues that could impact free speech, freedom of the press, and intellectual freedom in libraries and possibly give rise to future litigation. The first discussion addressed several intellectual freedom issues arising at colleges and universities, including trigger warnings, state legislation in South Carolina and Michigan intended to restrict or chill instruction of disfavored courses and topics, and cancellation of commencement addresses as a result of public protest. The second discussion raised concerns about press freedoms and free speech in relation to state legislation intended to restrict online posting of arrest photos, "revenge porn," and videos and images depicting animal cruelty occurring on farms and other animal facilities. The third discussion addressed the issue of e-book privacy and the final discussion reviewed the findings in the new

report on filtering and the Children's Internet Protection Act issued by the Office for Information Technology Policy and the Office for Intellectual Freedom entitled "Fencing Out Knowledge: Impacts of the Children's Internet Protection Act Ten Years Later." That report is available at [http://connect.ala.org/files/cipa\\_report.pdf](http://connect.ala.org/files/cipa_report.pdf).

#### **2014 ROLL OF HONOR AWARD RECIPIENT HERBERT KRUG**

It is my pleasure and privilege to introduce this year's recipient of the 2014 Freedom to Read Foundation Roll of Honor Award, Herbert Krug. Krug is a charter member of the Foundation who has provided immeasurable service to FTRF since 1969, and who is among the most generous donors in this organization's history. He has served two terms as FTRF's treasurer and is currently chair of the Membership and Fundraising Committee, where his expertise in direct marketing contributes to FTRF's successful fundraising and membership development efforts.

Krug's remarkable commitment to the Foundation's mission and his diligence and generosity in supporting that mission have contributed substantially to FTRF's success. We are delighted to now turn the spotlight on him and to honor him with the Roll of Honor Award.

#### **2014 CONABLE CONFERENCE SCHOLARSHIP**

I am also pleased to announce that FTRF has named John "Mack" Freeman as the seventh recipient of the Gordon M. Conable Conference Scholarship. Freeman works at the Tifton-Tift County Public Library in Tifton, Georgia. He is very involved with the Gay, Lesbian, Bisexual, and Transgender Round Table of the ALA as a member of both their Web and News Committees and is incoming chair of the News Committee. Freeman also serves as a representative on the ALA Games and Gaming Round Table's Will Eisner Graphic Novel Growth Grant.

After earning his undergraduate degree, he spent a year as an AmeriCorps volunteer serving the students of an elementary school in the Watts neighborhood of Los Angeles. He then received his MLIS from Valdosta State University in December 2013.

Conable Scholarship Committee members were especially impressed by Freeman's concluding statement in his application essay: "IF issues are local, so the advocates for IF must also be. I want to acquire the skills that allow me to promote IF on a regional and national stage. Through this scholarship the Freedom to Read Foundation will provide me with the opportunity to look after the future of IF as both an advocate and future mentor."

The Conable Scholarship was created to honor the memory of former FTRF President Gordon Conable and to advance two principles that Conable held dear: intellectual freedom and mentorship. His unexpected death in 2005 inspired his wife, Irene Conable, and the FTRF Board to create the Conable Fund, which provided the means for Freeman to attend this conference and attend intellectual freedom meetings and programs here. He will prepare a formal report about his activities and experiences after the conference concludes.

## **FTRF MEMBERSHIP**

Membership in the Freedom to Read Foundation allows the Foundation to continue to building our organizational capacity in order to support our litigation, education, and awareness campaigns. It is the critical foundation for FTRF's work defending First Amendment freedoms in the library and in the larger world. As always, I strongly encourage all ALA Councilors to join me in becoming a personal member of the Freedom to Read Foundation, and to have your libraries and other institutions become organizational members. Please send a check (\$35.00+ for personal members, \$100.00+ for organizations, 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](http://www.ftrf.org).

Respectfully submitted,  
Julius C. Jefferson  
President, Freedom to Read Foundation