



Freedom to Read Foundation News

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R. Kathleen Molz, President

Judith F. Krug, Executive Director

Volume 8

Fall 1978-Winter 1979

Nos. 1-2

1979 Election

Nominating Committee Submits Slate of Names

Eight candidates for the Freedom to Read Foundation's 1979 election have been slated by a committee composed of Trustees Nancy Bolt, Eli M. Oboler, and Sophie C. Silberberg, chairperson.

Trustees to fill four scheduled vacancies on the Board of Trustees will be chosen from the following list of candidates:

- Page Ackerman, University Librarian Emeritus, University of California at Los Angeles.
- Mary K. Chelton, Assistant Professor, Graduate School of Library and Information Studies, Rutgers University of New Jersey.
- Kenneth L. Donelson, Professor of English, Arizona State University, Tempe.
- Richard P. Kleeman, Vice President, Washington Office, and Staff Director, Freedom to Read Committee, Association of American Publishers.
- Florence McMullin, Immediate Past President, Board of Trustees, King County Library System, Seattle.
- Judith A. Sessions, Director, Learning Resources Center, Mount Vernon College, Washington, D.C.
- Samuel L. Simon, Director, Finkelstein Memorial Library, Spring Valley, New York.
- Lucille C. Thomas, Assistant Director, School Library Services, New York City Board of Education.

According to FTRF election rules, at least two candidates must be nominated for each vacancy on the Board.

Ballots will be mailed on May 1 to all persons holding paid membership in the Foundation on that date.

Nominations by Petition

Persons who wish to *nominate candidates by petition* should submit twenty-five signatures of current members of the Foundation in support of each candidate. Names of petition candidates, statements of consent from the candidates, and the required signatures to

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Trustees Vote to Support Suits Against School Censorship

Growing pressures against freedom of expression and inquiry in public schools have resulted in increased anti-censorship litigation—litigation which reflects a new boldness on the part of both students and public school professionals in asserting their First Amendment rights.

At their regular midwinter in January, the trustees of the Foundation voted to support freedom of expression in public schools by authorizing grants to help subsidize lawsuits in Minnesota and Vermont. Legal actions on behalf of students and school librarians in those states are being conducted by volunteer attorneys for the Minnesota Civil Liberties Union and the Vermont Civil Liberties Union.

Vote \$1,000 for VCLU

The VCLU suit—filed in U.S. District Court in Burlington—asks the court to reverse orders of the Vergennes Union High School board of directors which banned *The Wanderers* from the high school library and put severe restrictions on the circulation of two other works, *Carrie* and *Dog Day Afternoon*. The board of directors also halted the librarian, Elizabeth Phillips, from making any major purchases of fiction and instituted procedures to assure close supervision of all other acquisitions.

In briefs submitted to the court, the plaintiffs complain that the board's actions were based on "the personal opinions of some of its members that the books involved are 'obscene' and 'vulgar.'" They state that the board of directors failed to cite any possible adverse effects of the books upon students, and that the challenged decisions "were not motivated by any substantial and legitimate government interests reasonably related to the needs of the educational process."

The plaintiffs include nine students and their parents and guardians, and Librarian Phillips. Their attorneys, whose expenses the Freedom to Read Foundation's grant of \$1,000 will pay, are Richard A. Axelrod and Brooke Pearson.

Two Grants Made to MCLU

In the latter of two suits filed in U.S. District Court

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in Minnesota by the MCLU, it is contended that the rights of three Forest Lake High School students and members of their class were violated when the Forest Lake school board banned all showings of *The Lottery*. Before the censorship was ordered by the board, the highly acclaimed Encyclopaedia Britannica film was borrowed from the Minneapolis Public Library by teachers who used it in their English classes.

The suit alleges that the decision to remove the film from the curriculum was not made on "a determination that the film lacked educational merit." The suit also charges that the school board failed "to promulgate standards concerning the withdrawal of materials from the educational curriculum" and denied the plaintiffs a right to be heard on the issue.

The Foundation's grant of \$500 will support the lawsuit, which was prepared by MCLU Volunteer Attorney Philip W. Getts.

Prior to the January meeting, the Foundation responded to an earlier request from the MCLU by granting \$500 to support litigation challenging the removal of *Ms.* magazine from the high school library in Prior Lake, Minnesota.

The suit, filed in U.S. District Court by MCLU Attorneys Patsy Reinard and George T. Morrow II, contends that the rights of the student plaintiffs were abridged when the Prior Lake school board denied them access to the magazine's articles, essays, and fiction on the topic of discrimination against women. The legal action also claims that the board's decision was "not motivated by sound educational policy, or other reasons neutral to the interests protected by the First Amendment."

According to the class-action complaint, the board ignored the recommendation of a committee of teachers and ordered all issues of the magazine removed from the library and canceled the subscription. The teachers had recommended that actions less drastic than total removal be considered.

The review committee was appointed after a member of the board complained that a particular issue of *Ms.* was "too sexually oriented."

FTRF Joins Brief to Supreme Court

At their January meeting the trustees also heard a report on a case before the U.S. Supreme Court (*Lo-Ji Sales v. New York*) involving the issue of the nature of the scrutiny which a magistrate must devote to allegedly obscene publications before ordering their confiscation. Following the meeting, the Foundation Executive Committee authorized the filing of a friend-of-the-court brief in conjunction with the American Booksellers Association, the Association of American Publishers, the Council for Periodical Distributors Associations, the International Periodical Distributors Association, and the

National Association of College Stores.

According to statements made to the Supreme Court on behalf of Lo-Ji Sales, a New York State magistrate authorized the seizure of approximately 860 copies of 650 publications after giving them only a cursory examination.

According to the brief of the Foundation and the other organizations, a massive seizure of publications "having an effect of a prior restraint is not permissible unless there has been a prior adversary hearing."

Second Circuit Asked to Grant Rehearing

In an action involving a New York State child pornography law adopted in 1977, the Foundation joined the Association of American Publishers and the American Booksellers Association in urging the U.S. Court of Appeals for the Second Circuit to reexamine its order nullifying a lower court injunction against enforcement of the law.

The injunction, granted by the U.S. District Court for the Southern District of New York, was sought by St. Martin's Press and various booksellers in order to protect the distribution of *Show Me!* and, by implication, similar sex education materials which are, legally, clearly non-obscene.

In its two-to-one decision, handed down in mid-January, the U.S. Court of Appeals said "this is a case of the wicked fleeing where none pursue." In dissent, Judge William H. Timber declared that the publishers and sellers of *Show Me!* had been "impermissibly forced to choose between their right of free expression guaranteed by the First Amendment and the threat of imprisonment" under the New York law.

The AAP-ABA-FTRF brief notes that New York State legislators were fully aware that publications like *Show Me!* could be caught in the net of the disputed statute.

'Taken as a Whole' Issue Addressed

In other action, the Foundation participated with the American Booksellers Association, the Association of American Publishers, the Council for Periodical Distributors Associations, the International Periodical Distributors Association, and the National Association of College Stores in the filing of a brief with the U.S. Court of Appeals for the Fifth Circuit in a case involving the "taken as a whole" aspect of the current test for obscenity.

The suit before the Fifth Circuit was filed by the publishers of *Playboy* and *Penthouse* to protect themselves and their distributors in Atlanta, Georgia from criminal prosecutions by Fulton County Solicitor Hinson McAuliffe, who argues that the obscenity test must be applied separately to the individual "features" which make up each issue of the periodicals.

Highlights of Midwinter Meeting

In a presentation to the Council of the American Library Association, assembled in Washington, D.C. for the ALA's 1979 Midwinter Meeting, President Molz reported on the business conducted by the Foundation trustees at their January meeting. Her report has been edited slightly for publication here.

When I reported to the Council at the 1978 Annual Conference in Chicago, cases involving censorship of school libraries had dominated the docket of the trustees of the Freedom to Read Foundation. To the surprise of no one on the Foundation Board, school-related cases were again in the forefront when we met on January 6.

Last year, a suit was filed in the U.S. District Court in Burlington, Vermont to reverse orders of the Vergennes Union High School board which resulted in the removal of *The Wanderers* from the high school library and in restrictions on the use of two other titles—*Carrie* and *Dog Day Afternoon*. The suit also challenges a prohibition—in effect since last spring—which bars the librarian, Elizabeth Phillips, from ordering any major works of fiction.

The Foundation trustees have authorized a grant of \$1,000 to sustain this legal action. The Foundation will maintain communications with the Vermont Library Association's Intellectual Freedom Committee, with Librarian Phillips, who is a plaintiff along with several students, and with the Vermont Civil Liberties Union, to assure that adequate funding is available for this important action.

In one of two cases in Minnesota, the Foundation trustees voted to grant \$500 to the Minnesota Civil Liberties Union to support a federal suit against the Forest Lake, Minnesota school board in order to reverse an order barring all use of the film *The Lottery* in Forest Lake schools. The suit was filed by several students whose teachers had borrowed the film from the Minneapolis Public Library for use in their classes. The suit contends that the film was banned on the basis of reactions to it which were not based on an evaluation of its educational merits.

In the second case in Minnesota, involving the removal of *Ms.* magazine from the Prior Lake High School library, a grant of \$500—authorized by the Foundation Executive Committee late last year—will pay the expenses of expert library witnesses needed by the Minnesota Civil Liberties Union for a successful effort in the court room.

Pico v. Board of Education

One year ago I reported our interest in and strong determination to support the *Pico* case against the Island Trees, Long Island school board. That board, you will recall, precipitously ordered the removal of nearly a

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Report of the Auditors

At its 1979 midwinter meeting, the FTRF Board of Trustees received and approved the annual report of the appointed auditors, Kupferberg, Goldberg & Neimark, Certified Public Accountants, 111 E. Wacker Drive, Chicago, Ill. 60601.

The report stated:

We have examined the comparative statement of assets and fund balance arising from cash transactions of the Freedom to Read Foundation as of August 31, 1978 and 1977 and the related comparative statement of cash receipts and expenditures and fund balance for the years then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

As described in Note 1, the Foundation's policy is to prepare its financial statements on the basis of cash receipts and disbursements; consequently, revenue and the related assets are recognized when received rather than when earned, and expenses are recognized when paid, rather than when the obligation is incurred. Accordingly, the accompanying financial statements are not intended to present financial position and results of operations in conformity with generally accepted accounting principles.

In our opinion, the financial statements referred to above present fairly the assets and fund balance arising from cash transactions of Freedom to Read Foundation as of August 31, 1978 and 1977, and the revenue collected and expenses paid during the years then ended, using the method of accounting described in Note 1, which method has been applied on a consistent basis.

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*Freedom to Read Foundation
Comparative Statement of Assets
and Fund Balance
(Cash Basis)
August 31, 1978 and 1977*

	<i>Assets</i>	
	1978	1977
Cash in bank	\$ 2,705	\$ 7,728
Cash in savings account	30,305	36,944
Cash in savings account (David H. Clift Fund)	1,412	1,340
	<u>\$ 34,422</u>	<u>\$ 46,012</u>
	<i>Fund Balance</i>	
Fund balance	<u>\$ 34,422</u>	<u>\$ 46,012</u>

*Comparative Statement of Cash Receipts and Expenditures and Fund Balance
For the Years Ended August 31, 1978 and 1977*

	1978		1977	
	Amount	% to Total Receipts	Amount	% to Total Receipts
<i>Receipts</i>				
Memberships received	\$ 27,523	94.8%	\$ 32,266	94.1%
Interest on savings accounts	1,433	4.9	1,878	5.5
Sale of briefs, etc.	79	.3	132	.4
Total receipts	29,035	100.0	34,276	100.0
<i>Expenditures</i>				
Legal fees (see Note 1)	31,171	107.3	22,807	66.5
Meeting expenses	159	.6	821	2.4
Grants	2,546	8.8	-	-
Accounting, audit, and election fees	1,187	4.1	1,142	3.4
Printing and duplicating	4,930	17.0	3,119	9.1
Stationery	297	1.0	9	-
Postage and mailing	88	.3	196	.6
Temporary office help	127	.4	75	.2
Publications	115	.4	62	.2
Franchise tax	5	-	-	-
Total expenditures	40,625	139.9	28,231	82.4
<i>Excess (deficiency) of cash receipts over expenditures</i>	(11,590)	(39.9%)	6,045	17.6%
<i>Fund balance, beginning of year</i>	46,012		39,967	
<i>Fund balance, end of year</i>	\$ 34,422		\$ 46,012	

Note 1. These financial statements are prepared using the "cash basis" of accounting. Accordingly, receipts are recorded only as collected and expenditures are recorded only as actually disbursed. Amounts receivable and payable by the Foundation are not included.

During September 1977, \$24,498 was paid for legal services rendered prior to the fiscal year ended August 31, 1977. There were no significant unpaid expenses at August 31, 1978.

Note 2. The Freedom to Read Foundation was incorporated in the State of Illinois under the "General Not For Profit Corporation Act" on November 20, 1969. Its purposes as stated in its Articles of Incorporation are: (1) to promote and protect freedom of speech and freedom of the press as guaranteed by the Constitution and laws of the United States; (2) to promote the recognition and acceptance of libraries as repositories of the world's accumulated wisdom and knowledge and to protect the public right to access to such wisdom and

knowledge; (3) to support the right of libraries to include in their collections and to make available to the public any creative work which they may legally acquire; (4) to supply legal counsel to libraries and librarians, to defend the above mentioned freedoms if necessary. Such legal counsel is to be furnished upon request on account of poverty or inability to obtain legal counsel without assistance.

Note 3. The Foundation has been granted exemption from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Accordingly, no federal income tax provision has been recorded in these financial statements.

Freedom to Read Foundation News is edited by the staff of the Office for Intellectual Freedom, American Library Association. It is issued quarterly to all members of the Foundation.

Regular membership in the Freedom to Read Foundation begins at \$10.00 per year. Contributions to the Foundation should be sent to: Freedom to Read Foundation, 50 E. Hurc St., Chicago, Ill. 60611. All contributions are tax-deductible.

Supreme Court Rulings

First Amendment Protects Employee Complaints

Midway through its 1978-79 term, the U.S. Supreme Court upheld the right of employees to complain in private to their superiors and reversed an obscenity conviction in a move that apparently signaled the justices' agreement with the U.S. Solicitor General that prosecutors in the case had "forum shopped."

Free speech for employees. In a ruling which was unanimous, the Supreme Court held that the First Amendment protects government employees against retaliation for privately complaining to their superiors about working conditions.

Speaking for the high tribunal, Justice William H. Rehnquist said: "We are unable to agree that private expression of one's views is beyond constitutional protection. . . . The First Amendment forbids abridgment of 'freedom of speech.' Neither the Amendment itself nor our decisions indicate that this freedom is lost to the public employee who arranges to communicate privately with his employer rather than to spread his views before the public."

The ruling, which reversed the decision of the U.S. Court of Appeals for the Fifth Circuit, was handed down in the case of Bessie D. Givhan, a junior high English teacher in rural Mississippi who was dismissed by the Western Line Consolidated School District in 1971 for her "antagonistic and hostile attitude to the administration."

The U.S. District Court found that her complaints were neither "petty" nor "unreasonable," as charged by the school district, and that they pertained to employment policies and practices which she perceived to be racially discriminatory in purpose or effect.

Justices and solicitor general reject "forum shopping."

In an order handed down in January, the Supreme Court directed the U.S. District Court for Wyoming to dismiss an obscenity indictment against Gerald L. Blucher, a Portland, Oregon resident who was convicted of obscenity charges after he mailed sexually explicit materials to a postal inspector in Wyoming.

In a memorandum filed with the Court in December, U.S. Solicitor General Wade H. McCree Jr. said a postal inspector's choice of the point of receipt of materials could represent the kind of "unrestricted forum shopping" which federal officials had assured the Senate would not occur when, in 1958, federal law was modified to permit obscenity prosecutions at locations other than those from which sexually explicit materials are mailed.

Law on "Christian virtue" not reviewed. The justices declined to review a Florida law that requires public school teachers to "embrace every opportunity to inculcate . . . the principles of truth, honesty, and patriotism and the practice of every Christian virtue." The statute was upheld by an evenly split U.S. Court of Appeals for the Fifth Circuit. In his comment on the case, which arose when Gideon Bibles were distributed in a Florida school district, Appellate Judge John R. Brown stated: "If this statute had required the inculcation of 'Jewish virtue' or 'Muslim virtue' we would have no doubt that the unconstitutionality of the statute would be conceded by all."

In other action, the Court:

- Reversed an order of Justice William J. Brennan Jr. which had stayed an order of the Massachusetts Supreme Judicial Court barring the city of Boston from expending public funds in support of a ballot referendum to modify state tax legislation.

- Let stand a lower court decision that Walt Disney

Freedom to Read Foundation

Regular members	\$10.00 or more
Contributing members	\$25.00 or more
Sponsors	\$50.00 or more
Patrons	\$100.00 or more
Benefactors	\$500.00 or more

Members are entitled to vote in elections of trustees to the Board, and to receive the FTRF NEWS plus material pertaining to special issues.

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Contributions are tax-deductible.*

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Productions' copyrights were infringed by three "counterculture" comic books which showed Mickey and Minnie Mouse and other popular cartoon figures engaged in sexual relations and other uncharacteristic activity, including the use of drugs. The action upheld the ruling of the U.S. Court of Appeals for the Ninth Circuit in the case.

- Affirmed a holding of the Ninth Circuit that patent applications are confidential and cannot be made public under the Freedom of Information Act.

1979 Election (from p. 1)

support each must be received by the executive director of the Foundation no later than April 20, 1979.

Current Trustees

Elected trustees currently serving on the Foundation Board are Kenneth L. Donelson (1979), William M. Lucas Jr. (1979), Florence McMullin (1979), R. Kathleen Molz (1979), Neil H. Adelman (1980), Nancy Bolt (1980), Eli M. Oboler (1980), Sophie C. Silberberg (1980), and Grace P. Slocum (1980).

Trustees serving on the Board by virtue of their office in the American Library Association are Frances C. Dean, chairperson of the Intellectual Freedom Committee; Thomas J. Galvin, ALA president-elect; Russell Shank, ALA president; and Robert Wedgeworth, ALA executive director.

Highlights (from p. 3)

dozen titles from all school libraries, including such well known works as *Invisible Man* and *Slaughterhouse-Five*. Today, nearly one year after the trial in the case, a decision is still awaited. We are hopeful that a ruling as favorable to school libraries as the recent ruling in the *Chelsea* case will be handed down. However, we will be ready to participate in the appeal, should such occur.

These cases, briefly recounted here, should make apparent to all of us the importance of a national organization dedicated to the support of principles which we all share—principles which would be disturbingly diminished if these legal suits could not have been filed. We on the Board of Trustees appreciate your support of the Foundation and want to express the hope you will continue to help us grow.

Finally, I want to repeat my invitation to all of you to attend a special program at the ALA's 1979 Annual Conference to celebrate the tenth anniversary of the Freedom to Read Foundation. Thanks to ALA President Shank, that celebration will be a President's Program, on Sunday, June 24, in Dallas. We want to see you there!

Respectfully submitted,
R. KATHLEEN MOLZ
President

Freedom to Read Foundation

50 E. Huron Street
Chicago, IL 60611

First Class Mail

Ballots Coming!

This issue of *FTRF News* announces the slate for the 1979 election. Ballots will be mailed on May 1 to all Foundation members who have paid their 1979 dues by that date. If you have overlooked your 1979 contribution, please send your check today.