



THE

# AFCON

SENTINEL



Volume XIV, Number 3

A Quarterly of the Academic Freedom Coalition of Nebraska

October 16, 2010

## AFCON OFFICERS

Linda Parker  
President

Rod Wegner  
President-Elect

Dwayne Ball  
Past President

Peggy Adair  
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Cathi McMurtry  
Treasurer

David Moshman  
Policy Coordinator

Peggy Adair  
Legislative Liaison

Robert Brooke  
Webmaster

Tom Black  
Newsletter Editor

## Purpose:

To promote academic freedom, defined as intellectual freedom in educational and research contexts. This includes freedoms of belief and expression and access to information and ideas.

## Speechless in Nebraska: The High School Press

### Academic Freedom Coalition of Nebraska (AFCON) Fall Program and Annual Meeting

**Saturday, November 6, 2010, 9:30 a.m. – 1:30 p.m. Country Inn and Suites/ Beacon Hill Restaurant 5353 N. 27th Street, Lincoln, Nebraska**

*Speechless in Nebraska: The High School Press* will explore issues surrounding student expression, including Nebraska incidents and personal accounts. We are fortunate to have **Frank LoMonte** as our guest speaker. LoMonte is Executive Director of the Student Press Law Center based in Arlington, Virginia.

The program will include presentation of Academic Freedom Awards and the AFCON annual membership meeting.

**About [Frank LoMonte](#):** LoMonte is an experienced commercial litigation attorney who joined SPLC after practicing with the Atlanta-based law firm of Sutherland Asbill & Brennan LLP and clerking for federal judges on the Northern District of Georgia and the Eleventh Circuit U.S. Court of Appeals. Before law school, LoMonte was an award-winning investigative journalist and political columnist in state Capitol bureaus in Florida and Georgia and in Washington, D.C., with the Morris newspaper chain. LoMonte graduated magna cum laude from the University of Georgia School of Law, where he was a senior editor of the Georgia Law Review.

**About the [Student Press Law Center](#):** Since 1974, the Student Press Law Center has been the nation's only legal assistance agency devoted exclusively to educating high school and college journalists about the rights and responsibilities embodied in the First Amendment and supporting the student news media in their struggle to cover important issues free from censorship. The Center provides free legal advice and information as well as low-cost educational materials for student journalists on a wide variety of legal topics. In addition, the SPLC operates a formal Attorney Referral Network of approximately 150 lawyers across the country who are available to provide free legal representation to local students when necessary. Approximately 2,500 student journalists, teachers and others contact the Center each year for help or information. Calls come from all 50 states and the District of Columbia.

(See **AGENDA AND REGISTRATION FORM on Page 2**)

## Upcoming Events

AFCON Board and Annual Meeting: November 6, Country Inn and Suites/Beacon Hill Restaurant, 5353 N. 27th Street, Lincoln Nebraska

# SPEECHLESS IN NEBRASKA: THE HIGH SCHOOL PRESS

Academic Freedom Coalition of Nebraska (AFCON)  
Fall Program and Annual Meeting

Saturday, November 6, 2010, 9:30 a.m. – 1:30 p.m.  
Country Inn and Suites/Beacon Hill Restaurant  
5353 N. 27th Street, Lincoln, Nebraska

## Agenda

- 9:30** Check-in / Coffee
- 10:00** Welcome and Introductions
- 10:15** Guest Speaker – **Frank LoMonte**, Executive Director, Student Press Law Center
- 11:00** Panel – **Student Expression Rights and Responsibilities**
- Noon** Luncheon
- 12:45** Academic Freedom Awards / Business Meeting
- 1:30** Adjournment

The Student Press Law Center, based in Arlington, Virginia, advocates for student free press rights and provides information, advice and legal assistance at no charge to students and the educators who work with them.

Registration for the Fall AFCON Program begins **September 20, 2010** and ends **October 30, 2010**.

To register for the AFCON Fall Program/Annual Meeting, send this completed form with \$35.00 per registration (\$20.00 for students). Make check payable to AFCON and send to AFCON treasurer, Cathi McMurtry, at 515 N. Thomas Avenue, Oakland, NE 68045

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone #'s:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**AFCON is a coalition of educational and literary organizations that promote academic freedom in Nebraska**

For further information contact **Rod Wagner**, 402-471-4001, or e-mail: [rod.wagner@me.com](mailto:rod.wagner@me.com)

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## KEY COURT CASES REGARDING STUDENT EXPRESSION

1. **West Virginia State Board of Education v. Barnette**
  - 1.1 Freedom from Indoctrination. 1943
  - 1.2. 319 U.S. 624
  - 1.3. [http://www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0319\\_0624\\_ZS.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0319_0624_ZS.html)
2. **Keyishion v. Board of Regents (No. 105)**
  - 2.1. Intellectual Freedom in Education. 1967
  - 2.2. 385 U.S. 589
  - 2.3. [http://www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0385\\_0589\\_ZS.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0385_0589_ZS.html)
3. **Tinker v. Des Moines**
  - 3.1. Freedom of Expression. 1969
  - 3.2. 393 U.S. 503
  - 3.3. [http://www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0393\\_0503\\_ZS.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0393_0503_ZS.html)
4. **Hazelwood v. Kuhlmeier**
  - 4.1. School Authority over Curriculum. 1988
  - 4.2. 484 U.S. 260
  - 4.3. [http://www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0484\\_0260\\_ZS.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0484_0260_ZS.html)
5. **Morse v. Frederick**
  - 4.1. Bong Hits 4 Jesus. 2007
  - 4.2. 551 U.S. 393
  - 4.3. <http://www.law.cornell.edu/supct/html/06-278.ZS.html>

### Know Your Rights—A Student’s Guide to Rights in SCjool

[http://www.aclunbraska.org/images/attachments/065\\_students\\_rights\\_manual.pdf](http://www.aclunbraska.org/images/attachments/065_students_rights_manual.pdf)

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## Summaries of AFCON Board of Directors’ Meetings—Peggy Adair

June 12, 2010—

**PRESENT:** Peggy Adair, Laurie Thomas Lee, Cathi McMurtry, Carol Mitchell, Linda Parker, and Rod Wagner

**MINUTES:** Minutes for the AFCON board meeting held on April 10, 2010 were approved upon a motion by Wagner and second by Lee. Minutes of the May 8, 2010 executive board meeting were distributed for review.

**TREASURER’S REPORT:** The Treasurer’s report dated June 11, 2010 was reviewed and filed for audit. Balance on hand for June 11, 2010 is \$2,777.07

**PRESIDENT’S REPORT:** President Parker reported her presen-

tation at the Nebraska High School Press Association meeting in May was well-received. Twelve teachers indicated interest in attending a meeting with AFCON members some time in July, 2010 to discuss student expression issues.

President Parker reminded board members that most of the AFCON documents can be accessed online at google.com. Our user name is afcon2010board@gmail.com. For the password, please contact President Parker.

President Parker reviewed the 2010 goals and timeline of activities.

**LEGISLATIVE REPORT:** Adair reported she contacted Tom Green in Senator Haar’s office regarding strategy for LR 433. Green replied that the legislature’s education committee would be meeting soon to determine

how they will approach their legislative resolutions, so we should wait until after that meeting to plan next steps. Adair reported she sent a follow-up email to Green on June 10, 2010 and has not heard back from him yet.

**MEMBERSHIP REPORTS:** Adair distributed a copy of Tom Black’s Public Pulse letter dated June 9, 2010. Adair also reported she sent an updated AFCON board directory via email to all board members.

**ANNUAL MEETING:** Wagner distributed a draft budget of the annual meeting. Motion by Adair, second by Mitchell, that AFCON will charge a registration fee of \$35.00 for adults and \$20.00 for students.

(See **Minutes**, page 4)

## Summaries of AFCON Board of Directors' Meetings (Continued from Page 3)

After discussion motion carried by voice vote. The board also discussed the possibility of soliciting donations for the event from AFCON organizational members and also from other relevant organizations.

**JULY MEETING WITH TEACHERS:** The board brainstormed parameters of the proposed July meeting with the teachers who indicated an interest at the NHSPA meeting. Following are some proposals the board arrived at by consensus: The purposes of the meeting shall be to obtain input from the teachers, and to inform the teachers of the research and background work AFCON has done thus far regarding the status of student expression in Nebraska. Input from teachers may include but not be limited to their personal stories of censorship, their concerns, any objections they may have to the current student expression bill, and their suggestions for improving the bill. The board proposed holding the meeting during the time of the next scheduled AFCON executive board meeting on **July 10, 2010**, at a Lincoln location to be determined. The board proposed inviting Senator Haar and his staff to attend the meeting. Parker will contact the teachers to see if this date/time is feasible for the majority of them.

**BANNED BOOKS WEEK:** Lee offered a motion that AFCON join with ACLU-Nebraska in co-sponsoring Banned Books Week event (s), if the ACLU board decides to take on this project for 2010. The motion also included a provision for AFCON to spend up to \$100.00 in support of the Banned Books Week event(s). Mitchell offered a second to the motion. Motion carried by voice vote.

**After adjournment,** Parker said she will email the AFCON board to solicit suggestions for 2010 Academic Freedom Awards to be presented at the annual meeting in November.

**NEXT MEETING:** The next meeting of the **AFCON EXECUTIVE BOARD** will be on **Saturday, July 10, 2010**, in **Lincoln**. Exact time and place for this meeting depends upon the finalization of the proposed meeting with teachers on the same date.

The next meeting of the **AFCON BOARD OF DIRECTORS** will be **Saturday, September 11, 2010**, at 10:00 a.m. in **Eiseley Library, Lincoln**.

### July 10, 2010— Executive Board Meeting

**PRESENT:** Peggy Adair, Tom Black, Bob Haller, Laurie Thomas Lee, Cathi McMurtry, Linda Parker, and Rod Wagner.

**MINUTES:\*** The executive board agreed to submit the names of Senator Ken Haar and Legislative Aide Tom Green to the full AFCON board at the September 11, 2010 AFCON board meeting as candidates for the 2010 Academic Freedom Award.

**TREASURER'S REPORT:** The Treasurer's report dated July 9, 2010 was reviewed. Balance on hand for July 9, 2010 is \$4,877.01.

\* The July 10 Executive Board meeting was abbreviated to allow extended time for a workshop on student expression with a Lincoln Public Schools high school journalism teacher and two journalism students in attendance.

### September 11, 2010—

**PRESENT:** Peggy Adair, Dwayne Ball, Nancy Comer, Frank Edler, Lora Leibrandt, Cathi McMurtry, Carol Mitchell, Linda Parker, Rod Wagner.

**MINUTES:** Linda Parker convened the meeting at 10:10 a.m. with introductions of those present.

**PRESIDENT'S REPORT:** Linda introduced Lora Leibrandt as a new board member. Lora is the Nebraska Educational Media Association (NEMA) representative. Lora is the librarian at Lewis & Clark Middle School in Omaha.

Linda announced that John Bender has resigned his position as executive director of the Nebraska High School Press Association and will no longer represent the NHSPA on the AFCON board.

Two additions were made to the agenda by consensus: (1) academic freedom award and (2) officers for 2011.

Dave Moshman stated that the AFCON bylaws provide for at-large appointments to the board. There are available at-large board positions and Moshman recommended that Frank Edler be appointed to fill an at-large board position.

It was moved by Dave Moshman and seconded by Cathi McMurtry that Frank Edler be appointed to the AFCON board. Motion approved.

**TREASURERS'S REPORT :** Cathi McMurtry presented the treasurer's report. She noted minimal activity since the last meeting. The \$2,000 gift from the Kurz Foundation was noted. The gift is available for AFCON to use in support of its mission and its use is to be in accord with terms included in a letter from the foundation that accompanied the payment. It was suggested that the gift be identified separately in accounting records for designation of uses and recording of expenditures. Linda Parker will write and send a letter of appreciation.

(See **Minutes**, page 5)

(Minutes, from page 4)

A typo was noted in the Treasurer's report (March balance). The correct balance is \$2,283.48. The treasurer's report was filed for audit as corrected. The current balance is \$4,736.91

**PRESIDENT'S REPORT:**

Linda Parker reported that the July meeting included two students and a teacher from Lincoln High School. She had expected more participants based on responses she had received earlier. Linda said that the meeting didn't get the input that she had hoped for but was a good learning opportunity for the school press representatives. Linda reported that she will give a presentation on "Is this Censorship?" at the October Nebraska Library Association - Nebraska Educational Media Association Joint Conference in Grand Island.

**THE SENTINEL:** Linda expressed regret for not providing a president's column for the Sentinel. It was noted that Tom Black does a great job for AFCON and works hard to edit and publish the newsletter. The board needs to get content to him in a timely way. Discussion of the newsletter noted its value in documenting AFCON's activities and events and in providing news and commentaries on academic freedom and related topics.

The newsletter is also useful for distribution to affiliated organizations and for conferences.

**WEBSITE:** The board discussed ways to make the website easier to update and make changes so the burden is not placed completely on one person. Parker will talk to Robert Brooke to get his input on ideas.

**MINUTES:** Minutes for the AFCON board meeting held on June 12, 2010 were approved upon a motion by McMurtry and second by Wagner. Minutes of the July 10, 2010 executive board meeting were distributed for review.

**TREASURER'S REPORT:**

The Treasurer's report dated June 11, 2010 was reviewed and filed for audit. Balance on hand for June 11, 2010 is \$2,777.07

**LEGISLATIVE REPORT:**

Adair reported the Nebraska legislature's education committee is unlikely to hold hearings on the interim study regarding student expression. Adair will check with Senator Haar's legislative aide to set up a strategy meeting for next steps. Adair noted people still question why a student expression bill is needed and indicated we need to be more specific about how the Hazelwood decision has compromised student expression and academic freedom. Adair will work on this.

**ANNUAL MEETING:** Wagner distributed a draft of the annual meeting registration flier. The board discussed the need for strong publicity efforts including a press release and distribution of the flier to education groups. Adair will email an electronic copy of the flier to her email list of high school journalism advisers when Wagner sends out the finalized copy. AFCON board members should also distribute fliers to their organizations and at any conventions/meetings between now and the registration deadline date.

**AFCON AWARD FOR 2010:**

The executive board presented the names of Senator Ken Haar and his legislative aide Tom Green as candidates for the 2010 Academic Freedom award. Moshman made a motion to close nominations and approve Haar and Green for the award; second by Comer. Motion passed on a voice vote. Adair will contact Haar and Green.

Discussion later in the board meeting led Ball to nominate Lisa Dale, former principal of Benson High.

School, as a third candidate for the 2010 Academic Freedom Award. Edler seconded the motion. Motion carried on voice vote. Ball will contact Dale.

**NOMINATING COMMITTEE:**

The board by consensus appointed Dwayne Ball and Frank Edler to serve as the nominating committee to present a slate of AFCON officers for 2011.

**MEMBERSHIP REPORTS:**

Parker expressed concern over board members who never attend board meetings. Ball will contact board members who have not attended meetings to see if they wish to remain on board and if not, Ball will contact their organization to ask for a replacement.

**BOARD MEETING SCHEDULE:**

The board discussed the possible effect of bi-monthly board meetings and alternating Lincoln/Omaha sites as contributing factors to lower board attendance. The board agreed the issue of scheduling board meetings should be tabled and reviewed after the 2011 AFCON officers are elected. Adair made a motion to hold the October 2010 board meeting as a full board meeting rather than an executive board meeting as is presently scheduled. Edler seconded the motion. Discussion followed. The board felt it is important to hold a full board meeting in October to prepare for the annual meeting in November. Motion carried on voice vote.

**NEXT MEETING DATES:**

The next meeting of the AFCON BOARD OF DIRECTORS will be **Saturday, October 9, 2010** at 10:00 a.m. in **Eiseley Library, Lincoln.**

The AFCON ANNUAL MEETING will be **Saturday, November 6, 2010** at 9:30 a.m. at the **Beacon Hills Restaurant, Lincoln.**

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## Freedom to Discriminate?

David Moshman

Many public schools and colleges permit student groups to be officially recognized, which may enable use of the school's name or logo or enhance access to funds, facilities, or channels of communication. Some require, as a condition of official recognition and the associated privileges, that the group must be open to all of the school's students. In *Christian Legal Society v. Martinez*, decided June 28, 2010, the U.S. Supreme Court ruled that such a criterion is viewpoint-neutral and reasonable, and thus consistent with the First Amendment.

To say that a policy is reasonable and legal, however, is not to say that it is best, and the Court was clear that it was making no such judgment. The Court's ruling leaves schools and colleges free to decide for themselves whether to enforce nondiscrimination requirements on voluntary student groups as a condition for recognition.

What should they do? To the best of my recollection, AFCON has never faced this issue in Nebraska. I addressed it last year, however, in Case 11-6 of my *Liberty & Learning*:

*Case 11-6. Your school requires that recognized student groups be open to all students on a nondiscriminatory basis, without regard to race, sex, religion, sexual orientation, or other such characteristics. A Christian group adopts a charter that limits its membership to Christians. What should be done?*

Your school's nondiscrimination requirement can perhaps be justified on the ground that no group is required to seek recognition as an official student group. Such recognition, it might be argued, should be sought and granted only in the case of groups open to all students. Students, like all persons, remain free to form and join groups with discriminatory membership requirements but they have no right to be recognized as an official student group if their group is not in fact open to all students. If students wish to form a chess club open only to whites or heterosexuals they are free to do so, but any chess club recognized by the school must be open to all students regardless of race or sexual orientation.

But what about religion? A chess club that bans Muslims is no less problematical than one that bans gays or African Americans. But a Christian club open only to Christians is not so clearly objectionable. A case might be made for maintaining a general requirement of nondiscrimination but exempting religious groups that wish to discriminate on religious grounds.

But what if African American students wish to form an African American student group open only to African Americans? What if the Young Democrats are leery of having Republican members, or vice versa? Allowing exemptions only for religious groups might be seen as unfairly privileging religious groups over others and, in a public school, might even be an unconstitutional preference for religion. A school might reasonably seek to avoid this problem by denying exemptions to any group. Students would remain free to form groups focused on matters of special concern to Christians, African Americans, Democrats, gays, or any other population<sup>3/4</sup>but for a group to be recognized as an official student group it would have to be open to all interested students regardless of religion, race, political affiliation, or sexual orientation.

In the case of a voluntary group, however, there is something slightly perverse about restricting its freedom to determine its own membership. Given such freedom, most student groups will probably choose to be open to all interested students. All students will thus be free to join most, if not all, groups. Although the school itself must be committed to nondiscrimination, a case can be made for eliminating nondiscrimination requirements for voluntary groups.

Another option fully consistent with academic freedom is to maintain a nondiscrimination requirement as the default option but allow any group to opt out by providing its own alternative membership requirements. This would encourage a policy of nondiscrimination but would also encourage reflection on that policy and would leave voluntary student groups free to make their own choices.

David Moshman is the AFCON policy coordinator and author of *Liberty and learning: Academic freedom for teachers and students*. He can be reached at [dmoshman1@unl.edu](mailto:dmoshman1@unl.edu).

**AFCON SPEAKER'S BUREAU** (As of December 2007)

Peggy Adair: "Banned Books, Black Arm-bands, and School Prayer: The Evolution of Children's First Amendment Rights in America"

padair@tconl.com

Dwayne Ball: "Threats to Academic Freedom at Universities"

adball@neb.rr.com

Bob Haller: "Civics Education and the Practice of Freedom" and "How Books Can Harm You: Lessons from the Censors"

rhaller1@unl.edu

David Moshman: "Principles of Academic Freedom"

dmoshman1@unl.edu

John Bender and David Moshman: "Student Freedom of Expression/Student Rights"

jbender1@unl.edu

dmoshman1@unl.edu

Laurie Thomas Lee: "Implications of the USA Patriot Act"

llee1@unl.edu

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Presentation of the Readers' Theatre production of A Tangled Web: Student Freedom of Expression

(a cast of adults and students)

**ADDRESS FOR THE AFCON WEB SITE**

**<http://www.nebafcon.org>**

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**Check it out and learn Who We Are and about Our Activities; read our Constitution; learn how to Join Us; see the where and when of our Meetings; meet our Members and Officers; Study our Publications, Principles, and Statements**

**REQUEST FOR NEWS FOR FUTURE ISSUES**

The editor of the AFCON SENTINEL invites all AFCON individual and organizational members to send news about academic freedom issues in Nebraska or editorial comments for inclusion in this newsletter and/or announcements of organizational meetings for the UPCOMING EVENTS column.

**Due date for submissions** to the MONTH DAY, 2010, issue is **MONTH DAY, 2010.**

Send to Tom Black, editor, 610 West Park, West Point, NE 68788 or wpc6296@cableone.net

# AFCON

515 North Thomas Avenue  
Oakland, NE 68045.

Mailing  
Address  
Label

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## ACADEMIC FREEDOM COALITION OF NEBRASKA

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### HELP AFCON PROMOTE ACADEMIC FREEDOM

As a member of AFCON, you can help us

- ◆ support applications of the First Amendment in academic contexts, including elementary and secondary schools, colleges, universities, and libraries.
- ◆ educate Nebraskans about the meaning and value of intellectual freedom, intellectual diversity, mutual respect, open communication, and uninhibited pursuit of knowledge, including the role of these ideals in academic contexts and in democratic self-government.
- ◆ assist students, teachers, librarians, and researchers confronted with censorship, indoctrination, or suppression of ideas.
- ◆ act as liaison among groups in Nebraska that support academic freedom.

**MEMBERSHIP** (To become a member, send dues, organization or individual name, address, and phone number to Cathi McMurtry, 515 N. Thomas Avenue, Oakland, NE 68045)

**Organizational Membership** (\$120) entitles the organization to one seat on the AFCON Board, one vote in the election of officers and at the annual meeting, eligibility for office and chairing standing committees, provides newsletter subscription for the board member to share with the organization's information director, and reduced rates to AFCON conferences for its members.

**Individual Membership** (\$15) provides newsletter subscription, eligibility for office and for chairing standing committees, reduced rates for AFCON conferences, and one vote at annual meetings.

**Student Membership** (\$5) entitles full-time students to the same privileges as provided by the Individual Membership.

**AFCON ORGANIZATIONAL MEMBERS, PLEASE DUPLICATE THIS NEWSLETTER FOR YOUR MEMBERS.  
INDIVIDUAL MEMBERS, PLEASE PASS THIS NEWSLETTER TO A FRIEND AFTER YOU HAVE READ IT.  
ENCOURAGE HIM OR HER TO JOIN AFCON**