

The AFCON Sentinel

Newsletter of the Academic Freedom Coalition of Nebraska

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From the President

Self-Censorship and the Chilling Effect

Vicki Wood



Educators and librarians are experiencing an unprecedented number of challenges to books and curriculum. Some of these challenges are coming from individual parents, but many are being driven by groups such as Protect Nebraska Children, who inflame their followers with false narratives about pedophile teachers and “grooming.” It’s hard to have a legitimate debate about what is appropriate material for children in a library or classroom when outsized claims reach this fever pitch.

While school and library professionals try to grapple with these attacks, many legitimately fear that their jobs may be in jeopardy. When this happens, some will choose to self-censor for fear of creating a controversy in their institution or coming under personal attack. Of course this reaction is human and expected, and unfortunately just what the censors want. Fear is a powerful motivator but we must continue to use our professional judgments and standards in the face of threats and accusations. This is important work that individual professionals can do in their day-to-day work. We can also work through our professional organizations to advocate for free

speech and against censorship by speaking up at school board meetings and in our legislature. While it’s important to know what is happening on the national scene, we can have the most impact working locally and using our voices in support of colleagues under fire and issues close to home. AFCON will continue to support educators as we weather this tumultuous time.

www.academicfreedomnebraska.org

The Academic Freedom Coalition of Nebraska was founded in 1988 to promote intellectual freedom in Nebraska education and research, including freedoms of belief and expression and access to information and ideas.

JOIN OR RENEW

Rod Wagner, Treasurer

AFCON now accepts PayPal! Use PayPal to join or renew. We offer two ways to pay: you can use the PayPal button on our website <https://www.academicfreedomnebraska.org/join-afcon.html> or send us a check payable to AFCON at 3901 S. 27th St., #47, Lincoln, NE 68502. Memberships are \$120 for organizations and \$15 for individuals.

The *AFCON Sentinel* is the newsletter of the Academic Freedom Coalition of Nebraska, published bimonthly in February, April, June, August, October, and December. Unless otherwise indicated, articles represent the views of the authors.

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Save the Date!

The Legacy of Meyer v. Nebraska for Academic Freedom and Parental Rights

Keynote Speaker: Randy Moody

Academic Freedom Coalition of Nebraska
2022 Annual Meeting
Saturday, October 22, 10:00 a.m. to Noon
via Zoom



In 1919, during an upsurge of anti-German sentiment throughout the United States, Nebraska passed a law specifying that

[n]o person, individually or as a teacher, shall, in any private, denominational, parochial, or public school, teach any subject to any person in any language [other] than the English language.... Languages, other than the English language, may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade....

In June 1923 the U.S. Supreme Court found the Nebraska law inconsistent with the 14th Amendment's general guarantee of liberty. Without invoking the First Amendment, the Court ruled in *Meyer v. Nebraska* (1923) that the law was an unconstitutional attempt "to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own."

About the same time, the Ku Klux Klan attempted to eliminate Catholic schools in Oregon by persuading the state to pass a law requiring that all children attend public schools. In *Pierce v.*

Society of Sisters (1925), again without reference to the First Amendment, the U.S. Supreme Court found this law unconstitutional:

The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

In the decades after *Meyer* and *Pierce*, subsequent decisions established fundamental rights to liberty and autonomy in personal and family matters, including marital choice, reproductive freedom, and freedom to raise one's own children.

In June of this year, 99 years after *Meyer*, the U.S. Supreme Court ruled in *Dobbs v. Jackson* that the 14th Amendment guarantee of liberty does not include a right to abortion, thus raising questions about other rights protected by the 14th Amendment guarantee of liberty as interpreted in *Meyer*, *Pierce*, and cases since. These include not only matters of contraception and marital choice, which have been much in the news, but also the right of parents to raise and direct the education of their own children. As we approach the centennial of *Meyer v. Nebraska* and consider the implications of *Dobbs v. Jackson*, AFCON has decided to dedicate its annual meeting to the legacy of *Meyer*, focusing especially on academic freedom and parental rights.

Keynote speaker Randy Moody has written about both Meyer and Dobbs. AFCON (a) supports intellectual freedom in academic contexts regardless of what constitutional protections may apply; (b) supports parental authority with regard to their own minor children in matters of education; (c) takes no position on other issues such as rights to marital choice, contraception, or abortion; and (d) supports the right to teach, learn, read, think, and do research about all of these topics.

Students: Exercise Your Intellectual Freedom

With a new academic year approaching, here is some advice for students. These suggestions were written with college students in mind, but they apply to any student old enough to read them.

Come to school to think. Of course you should come to school to learn. But you should think about what you learn, how it relates to what you already know, and why you should (or shouldn't) believe it. This will enhance both your learning and your thinking.

Exercise your intellectual freedom. In class and out, exercise your freedoms of belief, expression, and inquiry. Seek information, decide what you believe, and join the discussion. Do more research. Reconsider your beliefs. Reflect on how you came to them. Say what you think now, and why. Consider new alternatives.



Respect the intellectual freedom of others. If you don't agree with what you are hearing, express an alternative view. If you don't know enough to formulate and defend an alternative, learn more. Efforts to restrict the beliefs and expression of others are unfair to them and undermine academic freedom for everyone.

Aim to convince. Find out what others believe and listen seriously to their reasons and reasoning. Show them you understand what they believe and why. Recognize the partial truth in their beliefs. Starting with what they presently believe, show them why and how they should modify their views.

Try not to give offense. It doesn't help to ridicule, intimidate, or infuriate those who disagree with you. Offending others undermines your goal of

convincing them. You can't control the feelings of others but you can and should anticipate likely reactions and take these into account in determining what you say and how you say it.

Say what needs to be said. In academic contexts you should say what you believe needs to be said, even if someone may be offended or upset by it. Not everything must or should be said in every social context, but education is a context oriented toward truth and justification. Find the nicest way to say it, but say it.

Think critically, and not just about ideas you dislike. If you agree with all your teachers and fellow students, think more critically. Seek out people who disagree with you and ideas contrary to your own. Consider the possibility that others may sometimes be right, or at least have reasonable ideas, and that you may sometimes be wrong, or at least fall short of the full truth.

Respect the academic freedom of your teachers. Your teachers are collectively and individually responsible for academic decisions about matters of curriculum and instruction and should have the academic freedom to exercise their academic authority. This includes decisions to present relevant information and ideas and to assess your understanding of what you are expected to learn.

Resist indoctrination. The freedom of your teachers to educate is not a right to indoctrinate a captive audience. Curriculum must be determined on academic grounds and aimed at academic goals. Even if the curriculum is academically legitimate, you should have the academic freedom to criticize it, provide additional information or arguments, and express alternative interpretations or viewpoints.

Assert your rights. Most faculty respect the intellectual freedom of students, but you may need to assert yourself to raise questions others are not raising or add additional ideas into a class discussion. If faced with censorship or sanctions, you may be protected by norms of academic freedom, school policies, or (at a public institution) the First Amendment. Learn your rights.

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Focus on education. Exercising your intellectual freedom is not just about asserting your rights. It is about participating in intellectual discussion, thereby promoting learning and development for yourself and others. Insist on intellectual freedom for everyone, not only for the sake of freedom, which is reason enough, but also for the sake of education.

This advice was originally posted by David Moshman on his HuffPost blog in August 2013
http://www.huffingtonpost.com/david-moshman/students-exercise-your-in_b_3773228.html

Latest Links

with Moshmanic commentary

Religious Speech

Nebraska Governor Pete Ricketts and Republican gubernatorial candidate Jim Pillen see *Kennedy v. Bremerton*, the recent coach prayer case, as a basis for more Christianity in public schools.
https://omaha.com/news/state-and-regional/govt-and-politics/ricketts-says-nebraska-schools-should-consider-allowing-religious-accommodation/article_588ab98e-f7df-11ec-a2ad-2f9982157436.html

A careful reading of the decision, however, makes clear that that *Kennedy v. Bremerton* is a victory for the free speech of all public employees, including public school teachers, and protects all speech, not just religious speech, provided the employee is speaking in their personal capacity, not on behalf of their government employer. Under this decision, the coach would have the same freedom of expression if he were taking a knee for racial justice, even if some students chose to join him, provided there was no coercion. The dissenters thought there was indeed coercion here, in part because the case involved high school (rather than college) students, but the majority cited precedent that high school students are mature enough to distinguish the views of individuals from the views of the government, even in the case of government employees, a claim that is supported by developmental research and

important for supporting intellectual freedom in secondary education. This case may have an impact like that of the Equal Access Act, which was originally intended to protect religious speech and ended up protecting much more than that:

https://www.huffpost.com/entry/christian-conservatives-gay-straight_b_878843

Claims of Harassment

Just in the past month, there have been four new examples of how vague harassment codes infringe on freedom of speech, especially with respect to matters of race, sex, gender, and political controversy:

Is this sexual harassment?

<https://reason.com/volokh/2022/07/06/kansas-city-art-institute-expels-student-for-retweeting-sexual-art/>

Is this racial harassment?

<https://reason.com/volokh/2022/07/06/6th-grade-lesson-about-hammurabi-with-how-will-you-punish-this-slave-question-not-illegal-harassment/>

Is this anti-gay harassment?

<https://www.insidehighered.com/quicktakes/2022/07/06/judge-university-can-t-silence-students-religious-views>

Is this political harassment?

<https://www.insidehighered.com/news/2022/06/27/american-u-students-investigated-blasting-roe-decision>

Follow-ups:

Sexual harassment? Expelled student reinstated
<https://reason.com/volokh/2022/07/14/kansas-city-art-institute-reverses-expulsion-for-retweeting-sexually-explicit-cartoons/>

Political harassment? Pro-choice student cleared
<https://www.insidehighered.com/quicktakes/2022/07/11/american-u-clears-law-student-sharing-pro-choice-views>

Here's my 2013 recollection of a 1993 UNL case in which a vague definition of sexual harassment infringed on the academic freedom to teach about human sexuality.

https://www.huffpost.com/entry/sexual-harassment-and-aca_b_3328856

More speech (or in this case, more signs and more history) rather than censorship or cancellation.

<https://www.insidehighered.com/quicktakes/2022/07/11/president-takes-history-seriously>

What would happen if all men suddenly disappeared? Hard to know, but here's what happened when somebody thought to write a novel about that. (Speaking for all men, we're really upset about all of this.)

<https://www.nytimes.com/2022/06/12/opinion/sandra-newman-men.html>

Banning books right and left

<https://www.nytimes.com/2022/07/24/opinion/book-banning-censorship.html>

In a local news follow-up, former lecturer Courtney Lawton lost her First Amendment case against UNL. AFCON agreed with the UNL AAUP in 2017 that her removal from the classroom and the Chancellor's subsequent guarantee that she would never again teach at UNL violated her due process rights, which led to censure by the national AAUP (recently removed after policy changes by UNL). Lawton's First Amendment free speech case, however, was more complicated.

https://journalstar.com/news/local/education/judge-rules-against-former-lecturer-in-lawsuit-alleging-unl-violated-her-free-speech-rights/article_981ff530-e9b9-591c-a7e8-1f8e8114a542.html

And last but not least, a major story in the *Washington Post* about how Nebraska has pioneered a new nation-wide attack on sex education

<https://www.washingtonpost.com/investigations/2022/07/24/grooming-sex-ed-nebraska-judith-reisman/>

**Academic Freedom Coalition of Nebraska
Board of Directors Meeting**

Via Videoconference

June 11, 2022

Present:

Peggy Adair, secretary, legislative liaison

John Bender, representing UNL Faculty Senate
Kari Bulgrin, representing Nebraska School Librarians Association

Laurie Thomas Lee, representing ACLU

Dave Moshman, newsletter editor, policy coordinator
Todd Schlechte, immediate past president, director at large

Rod Wagner, treasurer, representing Nebraska Center for the Book

Vicki Wood, president, director at large

MINUTES

President Vicki Wood called the meeting to order at 10:02 a.m.

MINUTES: A motion was made by Moshman, second by Schlechte, to approve corrected minutes of the AFCON board meeting held on May 14, 2022. Motion carried on a voice vote.

TREASURER'S REPORT: Wagner reported balance on hand as of June 11, 2022, is \$3,3767.67. Treasurer's report will be filed for audit.

NEWSLETTER: Articles for the August issue of the *Sentinel* are due by July 24, 2022.

ANNUAL MEETING: The board brainstormed ideas for the AFCON annual meeting. Moshman, Bender, Wagner and Lee volunteered to serve as the annual meeting committee. The committee will develop a plan for the annual meeting and will present their plan at the July AFCON meeting.

POLICY COORDINATOR'S REPORT: Moshman reported the Foundation for Individual Rights in Education (FIRE) has expanded its mission beyond educational settings and has changed its name to the Foundation for Individual Rights and Expression (still FIRE).

MEMBER ORGANIZATIONS:

Nebraska School Librarians Association: Bulgrin reported Nebraska School Librarians Day will be Saturday, October 15, 2022.

There being no further business, the AFCON board meeting adjourned at 10:57 a.m.

Respectfully submitted,
Peggy Adair, secretary

Academic Freedom Coalition of Nebraska
Board of Directors Meeting
Via Videoconference
July 16, 2022

Present:

Peggy Adair, secretary, legislative liaison
Nancy Comer, representing Nebraska State Literacy Association
Laurie Thomas Lee, representing ACLU Nebraska
Dave Moshman, newsletter editor, policy coordinator
Rod Wagner, treasurer, representing Nebraska Center for the Book
Vicki Wood, president, director at large

MINUTES

President Vicki Wood called the meeting to order at 10:04 a.m.

MINUTES: A motion was made by Lee, second by Wagner, to approve corrected minutes of the AFCON board meeting held on June 11, 2022. Motion carried on a voice vote.

TREASURER'S REPORT: Wagner reported balance on hand as of July 16, 2022, is \$3,874.79. Treasurer's report will be filed for audit.

NEWSLETTER: Articles for the August issue of the *Sentinel* are due by July 24, 2022.

PRESIDENT'S REPORT: Wood continues to converse with Covarrubias on plans to develop and distribute candidate questions for selected political races prior to the November elections.

POLICY COORDINATOR'S REPORT: Moshman reported the decision of the Supreme Court in Kennedy v. Bremerton serves to support free expression of educators, as well as academic

freedom at the high school level. Unintended consequences, for sure.

Moshman also reported a judge has ruled the Ratio Christi case can move forward. The case involves UNL's denial of funding for a speaker the religious group wanted to bring on campus.

ANNUAL MEETING: The board agreed by consensus to authorize the annual meeting committee to select October 22 or October 8 for the date of the annual meeting after the committee determines which date will work best for speakers to attend.

Wood appointed Randy Moody to the annual meeting committee. The AFCON board approved the appointment without objection. The annual meeting committee will converse via email to continue with annual meeting planning.

ACADEMIC FREEDOM AWARD: Adair nominated the Nebraska School Librarians Association and the Nebraska Library Association as recipients of the 2022 AFCON Academic Freedom Award. Lee seconded the motion. Motion was approved on a voice vote. The board approved without objection the disbursement of funds to purchase award plaques for the AFCON Academic Freedom Award recipients.

NOMINATING COMMITTEE: Wood appointed Lee, Adair, and Schlechte as the nominating committee to select officers for the 2023 AFCON year. The board approved the appointments without objection.

MEMBER ORGANIZATIONS:
Nebraska State Literacy Association: Comer reported NSLA elections are coming up and new people will be coming on board.

There being no further business, the AFCON board meeting adjourned at 11:35 a.m.

Respectfully submitted,
Peggy Adair, secretary