

The AFCON Sentinel

Newsletter of the Academic Freedom Coalition of Nebraska

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From the President

David Moshman



Thirty years ago I represented the ACLU's Nebraska affiliate, then called the Nebraska Civil Liberties Union, in a series of meetings with representatives of other Nebraska organizations concerned with intellectual freedom in education. These meetings led, on February 13, 1988, to the founding of the Academic Freedom Coalition of Nebraska. This issue of *The Sentinel* features a recollection by Bob Haller, AFCON's first president, of how AFCON was founded. Bob has continued to serve on the AFCON Board of Directors ever since—twice more as president, as the source of our monthly treats, and as representative of the American Associ-

ation of University Professors and all things wise and wonderful.

In the past few weeks I testified on behalf of AFCON concerning two bills protecting student freedom of expression. But before I get to that, special thanks to Rod Wagner, for becoming president on short notice and ably guiding AFCON through 2017; to Russ Alberts, our new president-elect, for agreeing to serve as president in 2019; to Peggy Adair, our longtime secretary and legislative liaison, who has also served in the unofficial role of special assistant to the president through countless presidential terms; and to Ally Halley, our new treasurer, who understands the tradition initiated by founder Cathi McMurtry that the treasurer serves for 28 years.

So here we are in 2018 with two student expression bills. LB 718, as amended prior to its January 30 education committee hearing, provided broad protection for free speech in public higher education but had sufficiently serious problems that AFCON could not support it. We testified in a neutral capacity that we supported the intent of the bill and most of its provisions and would be pleased to support a properly amended version. ACLU Nebraska provided similar testimony, also in a neutral capacity. The Foundation for Individual Rights in Education (FIRE), taking the same general view, testified in favor of the bill with the understanding that they were already rewriting it in cooperation with its sponsor, Senator Steve Halloran.

AFCON testified that, over the past 30 years, public colleges across the United States have instituted unconstitutional policies authorizing punishment of broad categories of objectionable speech. UNL's Student Code of Conduct, we pointed out, prohibits "verbal abuse" and endangering the "reputation of any person," and other UNL policies include similar threats to speech protected by the First Amendment, as noted by FIRE in 2014 and 2015 letters to UNL.

Free expression issues in Nebraska higher education, we added, are by no means limited to UNL. AFCON has addressed free expression issues at Peru State, Wayne State, and Chadron State, including several serious matters in the past few years. We suggested on the basis of our experience that the state of free expression in the state college system is worse than within the University of Nebraska, in part because it is easier to keep problems hidden. We saw much need for a law that would require all public educational institutions to adhere to strong standards of free expression and to be transparent about their policies and practices in this regard.

We had two general concerns about the bill, however. First, we were concerned that the bill was so detailed as to micromanage the policies and activities of colleges and universities. And second, we were concerned about a lack of clarity concerning the relation of free speech in the public areas of the campus, the focus of this bill, to the academic freedoms of faculty and students in teaching, learning, and inquiry. We also had a number of more specific concerns about vague or inadequate language in some provisions and suggested the committee follow the excellent First Amendment guidance it was receiving from ACLU Nebraska and FIRE.

Many of those testifying against the bill argued that it was unnecessary because the University of Nebraska Board of Regents had just adopted a new free expression policy that shows its strong commitment to the First Amendment. But the new Regents policy, though it has some admirable language, also has serious flaws. ACLU Nebraska provided the Regents with detailed advice about the proposed policy, but it was adopted without change.



One major problem with the new Regents policy is that it invites campuses to designate free speech zones where expression has full First Amendment protection, with the understanding that speech has lesser protection anywhere on campus that has not been so designated. Both ACLU Nebraska and FIRE, in contrast, believe it is well established in First Amendment law that the public areas of a public college campus are traditional public forums, no less than city sidewalks or parks. Public colleges have no legitimate authority to restrict free speech to smaller zones. LB 718 would clarify this.

Another problem with the new Regents policy, of particular concern to AFCON, is that the new language regarding academic freedom is weaker than the existing University of Nebraska Regents Bylaw on academic freedom, which is nowhere mentioned. In particular, the new Regents policy cautions teachers about introducing "controversial matters" in the classroom. Board of Regents Bylaw 4.2 on Academic Freedom, in contrast, makes no exception for controversial topics or ideas. I worry that the

“controversial matters” clause in the academic freedom section of the new Regents free expression policy is a ticking time bomb.

Turning to the second bill, LB 886 protects student journalists and their advisers in higher education and public high schools. AFCON testified before the judiciary committee on February 8 that, in 30 years of defending academic freedom, we had repeatedly learned of and addressed issues of student press censorship in secondary and higher education across Nebraska. We noted that we have supported bills such as this one for most of our history and strongly support LB 886.

Our testimony focused on two issues raised by opponents of LB 718 that applied equally to LB 886 and had been raised in past hearings on its predecessors: (1) institutional academic freedom and (2) the relation of the bill to the First Amendment. We argued that both issues are important but that neither is an obstacle to either LB 718 or LB 886.

Starting with the first issue, academic freedom is historically and fundamentally concerned with the autonomy of educational institutions, especially with respect to legislative coercion. But LB 886, like LB 718, falls squarely within a limited and well-established area of legitimate regulation. Governments at all levels may protect and promote the basic civil rights and civil liberties of all persons. There is no academic freedom exemption from such laws for educational institutions.

Turning to the second issue, why do we need a law protecting free expression when we already have the First Amendment? We suggested two reasons. First, students and teachers shouldn't need to go to federal court to defend their free speech rights. And second, a state

may legitimately decide to protect free expression beyond the constitutional minimum set by the First Amendment.

LB 886 goes beyond the First Amendment in its protection of free expression, but only, we emphasized, in a limited way. Applying only to student journalism, it restores a First Amendment standard that previously governed public education from 1969, when the U.S. Supreme Court set this standard in *Tinker*, to 1988, when it largely removed First Amendment protection for curriculum-related expression in *Hazelwood*, a month before the founding of AFCON.

As of February 13, I concluded, “AFCON will have been defending intellectual freedom in the academic institutions of Nebraska for 30 years. If you'd like to give us a truly awesome birthday present, just pass this bill.”

For anyone else who would like to give us a birthday present, you can start by joining AFCON, which is open to both organizations and individuals, or renewing your membership (see below). And share this newsletter with others. If you'd like to do more, email me at dmoshman1@unl.edu.

JOIN OR RENEW

Ally Halley, Treasurer

AFCON now accepts PayPal! Use your PayPal account to join or renew. We have two ways to pay: send a direct payment to us at afcon.freedom@gmail.com or use the PayPal button on our website <https://www.academicfreedomnebraska.org/join-afcon.html>. The button on the website will auto-renew your membership each year so you don't have to manually submit a payment when it's time to renew. If you do not have a PayPal account, send us a check at 3015 S 35 Ave, Omaha, NE 68105. Memberships are \$120 for organizations and \$15 for individuals.

Thirty Years Ago *The Origins of AFCON*

Bob Haller



In the fall of 1987, Mel Krutz and Gerry Cox, two people with integrity and deep concern for the state of education in Nebraska, approached me with a specific concern and proposal. The concern: Nebraska's many reported challenges of books assigned in classes or acquired by libraries. The proposal: the formation of a state-based coalition of all the organizations who shared this concern, dedicated to the fostering of the freedom to read and to support for the integrity of educational professionals at all levels.

Mel and Gerry were acting on behalf the Nebraska Council of Teachers of English (now the Nebraska English/Language Arts Council). I was a member of the UNL English Department and active in the statewide and the UNL American Association of University Professors and was sure they would join in the effort. Mel

had wisely also recruited Dave Moshman of Ed Psych, whose research showed that teen-agers needed no special protection from dangerous ideas found in Books. The four of us started meeting regularly, inviting leaders of other organizations who shared our goals to discuss with us what form this coalition would take. Thus leaders from the Nebraska Library Association joined with us, bringing their strong statement opposing book challenges. So did leaders in the Nebraska High School Press Association, representing teachers of students in training for a profession protected by the First Amendment. And the Nebraska Press Association, defending those in schools aspiring to the profession. The Nebraska State Reading Association was naturally interested. The NSEA followed along, as did its Lancaster County affiliate. Very appropriately, Fine Lines, a periodical encouraging student and public writers, was also happy to join us.



These discussions were an education in themselves, requiring people from many disciplines and levels to find common ground to recognize their common opponents, the advocates of restrictions and limits that weaken the effectiveness of science, research and civic engagement. We found common ground and mutual support from a wealth of collaborators, which gave us the confidence to write by-laws and to formalize our existence. We chose to focus on *academic* freedom rather than encompassing forms of intellectual freedom beyond the academic context and thus became AFCON, not IFCON, figuring that the narrower focus

would better guide us. We recruited the faculty senates of UNL and UNO, and set our first formal meeting for February 13 of 1988.

Little did we know that a case argued before the Supreme Court October 13, 1987 and decided January 13, 1988 would provide an even stronger reason for our existence. *Hazelwood v Kuhlmeier* compromised the assertion of *Tinker v Des Moines Independent Community School District* that "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." It also demonstrated that Academic Freedom continued to need the active support of every educator, leader and student at all educational levels, to assure the integrity of institutions whose important contributions to the common good require uncompromised freedom.

Minutes

Peggy Adair

Board of Directors Meeting Eiseley Library, Lincoln, Nebraska December 9, 2017

Present:

Peggy Adair, secretary, legislative liaison
John Bender, representing UNL Faculty Senate
Nancy Comer, representing Nebraska State Reading Association
Frank Edler, *Sentinel* editor
Bob Haller, chief baker, representing AAUP and all things wise and wonderful
Laurie Thomas Lee, representing ACLU Nebraska
Paula McClung, representing Nebraska School Library Association
David Moshman, president-elect, policy coordinator
Katie Schroder, representing Nebraska Library Association
Rod Wagner, president, representing Nebraska Center for the Book

President Rod Wagner convened the meeting at 10:11 a.m.

MINUTES: A motion was made by Moshman, second by Edler, to approve minutes of the AFCON board meeting held on September 9, 2017. Motion carried on a voice vote. A motion was made by Moshman, second by Lee, to approve minutes of the AFCON board meeting held on October 28, 2017. Motion carried on a voice vote.

TREASURER'S REPORT: A treasurer's report is not available for December, due to the recent resignation of Linda Parker as AFCON treasurer.

A motion was made by Lee, second by Adair, to appoint Ally Halley as AFCON treasurer for the remainder of 2017. Motion carried on a voice vote.

Wagner reported he has picked up the treasure trove of AFCON treasurer files from retired AFCON treasurer, Cathi McMurtry; with special appreciation to Cathi's daughter, Deirdre McMurtry, who facilitated the transfer of files.

PRESIDENT'S REPORT: Wagner welcomed Katie Schroder to the AFCON board of directors. Schroder represents the Nebraska Library Association.

SENTINEL: Edler reported the latest edition of the *Sentinel* is being proofed and will go to e-press in the next few days. Deadline for articles for the next issue of the *Sentinel* is February 24, 2018.

WEBMASTER: President Wagner appointed Edler as AFCON webmaster, with Edler's consent. A motion was made by Moshman, second by Bender, to confirm the appointment of Edler as webmaster. Motion carried on a voice vote.

TREAT OF THE DAY: Oatmeal raisin cookies! Yumm! Thank you, Bob!

LEGISLATIVE LIAISON: Adair reported the legislature will likely take up bills dealing with civic preparedness of students, free press rights of student journalists, and free speech rights on college campuses.

POLICY COORDINATOR: Moshman and the other AFCON board members discussed at length, again, the complex issues surrounding a student, a table, a watch list, a student-teacher, a finger, a counter-protest, viral videos, escalation of raw emotions, anonymous threats of violence, angry donors, misinformation, speculation, and state senators holding the money bags, all played out in the press and the world-wide web. (See July 8, 2017 AFCON minutes.)

The ensuing drama has led to spiraling escalation that now involves the UNL President, Chancellor, and Regents; a handful of state senators on a toot; FIRE; the media; and a lot of red ants. AFCON will continue to monitor the situation while avoiding becoming unnecessarily ensnared in it.

ANNUAL MEETING, 2017: Wagner thanked Moshman for making arrangements for the superb AFCON annual meeting, held on October 28, 2017

MEMBER REPORTS:

Nebraska School Library Association: McClung reported the Iowa Library Association, Nebraska Library Association, and Nebraska School Library Association plan a joint conference to be held in the fall of 2019 in LaVista, Nebraska.

Nebraska Center for the Book: Wagner reported the "One Book One Nebraska" selection for 2018 is *Nebraska Presence*, an anthology of poems by Nebraska authors.

Nebraska State Reading Association: Comer reported the NSRA Annual

Conference will be held in Kearney, Nebraska, February 22-24, 2018.

There being no further business, the AFCON board adjourned at 12:04pm.

Respectfully submitted,
Peggy Adair, Secretary

Board of Directors Meeting
Eiseley Library, Lincoln, Nebraska
January 13, 2018

Present:

Peggy Adair, secretary, legislative liaison
Bob Haller, chief baker, representing AAUP
and all things wise and wonderful
Ally Halley, sous chef, representing Fine Lines
Laurie Thomas Lee, representing ACLU
Nebraska
David Moshman, president, policy coordinator
Rod Wagner, immediate past president,
representing Nebraska Center for the Book

Amanda Gailey, guest

President Dave Moshman convened the meeting at 10:10 a.m.

MINUTES: A motion was made by Wagner, second by Haller, to approve minutes of the AFCON board meeting held on December 9, 2017. Motion carried on a voice vote.

TREASURER'S REPORT: Halley reported she is working with Linda Parker to assure a smooth transition of treasurer documents. Halley reported Parker has offered to continue serving as liaison to archive AFCON documents, and Parker has suggested we collect AFCON documents twice per year for her to take to the UNO library for purposes of archiving. The board expressed profuse gratitude for and acceptance of Parker's offer.

GUEST REPORT: Amanda Gailey reported her concerns regarding a board-approved op-ed piece Moshman submitted to the

Omaha World-Herald on January 11, 2018. The board thanked Gailey for her input and took her concerns under advisement to discuss later in the meeting, at which point Gailey took her leave.

PRESIDENT'S REPORT: Moshman reported today is the 30th anniversary of the infamous Hazelwood Supreme Court decision that eroded the rights of student journalists. (boo!) Moshman also reported next month (February 13, 2018) will be the 30th anniversary of the founding of the Academic Freedom Coalition of Nebraska. (yay!) Moshman will work with Halley to prepare and distribute membership renewal statements.

SENTINEL: Due to the resignation of Edler, the AFCON newsletter will need a new editor. Moshman discussed with the board the possibility of distributing the newsletter more often but in shorter form. The board agreed by consensus to the concept. Moshman will work on the next issue of the *Sentinel*, with the assistance of Haller, who offered to submit an article about the founding of AFCON in 1988.

WEBMASTER: Due to the resignation of Edler, AFCON will be recruiting a new webmaster.

TREAT OF THE DAY: Chief Baker Bob had another engagement and was not planning on attending today. (boo!) So, to make sure AFCON board members did not wither away from starvation in their two-hour meeting, Halley stepped in to save the day! She brought homemade blueberry muffins! (yay!) But, the plot thickens: Upon learning of a certain AFCON crisis and wanting to provide his full support for AFCON, Chief Baker Bob made the extraordinary effort to attend, and brought cookies! (yay!) So, we had blueberry muffins (yay!), and back-up

nourishment, cookies (double yay!). Thank you, Chief Baker Bob, and thank you to our new Sous Chef, Ally Halley!

AFCON ELECTION RESULTS: Haller reported the 2018 AFCON officers were elected by a record unanimous vote of eleven AFCON members.

LEGISLATIVE LIAISON: Adair reported the following legislative bills have been introduced that have relevance to academic freedom:

LB718, introduced by Halloran, to adopt the Higher Education Free Speech Accountability Act

LB886, introduced by Morfeld, to protect free speech and free press rights of student journalists and their advisers
LB898, introduced by Howard, to require public postsecondary educational institutions to conduct an annual sexual assault climate survey

After discussion, the board agreed by consensus to adopt a position in support of LB886, and a position of neutral on LB718.

GUEST REPORT: The board discussed issues surrounding the student-activist-vs.-student-protestors incident at UNL in 2017, and Moshman's recent op-ed submission regarding same. After much discussion the board determined AFCON will take no further action at this time.

AFCON POLICY: Adair will gather information and draft an AFCON policy that clarifies the process of using the organization's name when making public statements.

There being no further business, the AFCON board adjourned at 12:06pm.

Respectfully submitted,
Peggy Adair, Secretary